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Protection of individual and collective identities.

Ethnopolitics in Bulgaria, France, Greece, Poland and Spain – a comparative approach

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To my Parents – Bogumiła and Piotr,

with endless gratefulness.

Thank you.

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ABBREVIATIONS

ACFC	Advisory Committee for the Framework Convention for the Protection of National Minorities (CoE)
AFSJ	Area of freedom, security and justice
CBSS	The Council of the Baltic Sea States
CCPR	UN Human Rights Committee (Treaty body of the ICCPR, not to be confused with the HRC, which stands for the UN Human Rights Council)
CDADI	The Steering Committee on Anti-Discrimination, Diversity and Inclusion
CEE	Central and Eastern Europe
CEI	Central European Initiative
CERD	Committee on Elimination of Racial Discrimination (UN) (Treaty body of ICERD)
CESCR	UN Committee on Economic, Social and Cultural Rights (Treaty Body of the ICESCR)
CJEU	Court of Justice of the European Union
CLRAE	Congress of Local and Regional Authorities of Europe
CMC	Centre Maurits Coppieters
CoE	Council of Europe
CPPCG	The Convention on the Prevention and Punishment of the Crime of Genocide
CSCE	Conference on Security and Co-operation in Europe
DEB	Party of Friendship, Equality and Peace (*Dostluk-Eşitlik-Barış Partisi)*
DH-MIN	Committee of Experts for the Protection of National Minorities
DRF	Democracy, the Rule of Law and Fundamental Rights (EU Pact)

EACEA	Education, Audiovisual and Culture Executive Agency (EU)
EAJ-PNV	Basque National Party
EBLUL	European Bureau for Lesser-used Languages
ECHR	European Convention on Human Rights (CoE)
ECI	European Citizens' Initiative
ECtHR	European Court of Human Rights
ECOSOC	UN Economic and Social Council
ECRI	European Commission Against Racism and Intolerance (CoE)
ECRML	European Charter for Regional or Minority Languages (CoE)
ECSR	European Committee of Social Rights (CoE)
ECtHR	European Court of Human Rights (CoE)
EE	Euskadiko Ezkerra
EESC	European Economic and Social Committee (EU)
EFA	European Free Alliance
ELEN	European Language Equality Network
ELSTAT	The Hellenic Statistical Authority (Greek: Ελληνική Στατιστική Αρχή)
EOKA	The Ethniki Organosis Kyprion Agoniston (National Organisation of Cypriot Fighters)
EP	European Parliament
Equinet	European Network of Equality Bodies
ERC	*Esquerra Republicana de Catalunya* (Republican Left of Catalonia)
EU	European Union
Eurostat	European Statistical System Committee the European Commission
ETA	Euskadi ta Askatasuna (Basque Homeland and Freedom)

EU-SILC	European Union Statistics on Income and Living Conditions
FCNM	Framework Convention for the Protection of National Minorities
FRA	European Union Agency for Fundamental Rights
FRCh	Charter of Fundamental Rights of the EU
FUEN	Federal Union of European Nationalities
GERB	Citizens for European Development of Bulgaria
HCNM	High Commissioner on National Minorities
HRC	UN Human Rights Council
HRW	Human Rights Watch (UNHCR)
IAGM	Inter-Agency Group on Minority Issues
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICTY	International Criminal Tribunal for the Former Yugoslavia
ILO	International Labour Organization
IOM	International Organization for Migration
IHRC-OU	International Human Rights Clinic – University of Oklahoma College of Law
JxS	Together for Yes *(Junts Pel Sí)*
MEP	Member of the European Parliament
MRF	Movement for Rights and Freedoms
MRGI	Minority Rights Group International
MP	Member of the Parliament
NGO	Non-Governmental Organization
NTA	Non-territorial Autonomy
ODIHR	Office for Democratic Institutions and Human Rights

OHCHR	Office of the United Nations High Commissioner for Human Rights
OMO	(OMO Ilinden–Pirin) United Macedonian Organization Ilinden–Pirin
OSCE	Organization for Security and Co-operation in Europe
ÒC	*Òmnium Cultural*
PCIJ	Permanent Court of International Justice
PDO	Protected Designation of Origin
PGI	Protected Geographical Indication
QCA	Qualitative Comparative Analysis
RED	Racial Equality Directive
SCCA	Systematic Comparative Case Analysis
SIT	Social Identity Theory
SONŚ	The Association of People with Silesian Nationality (*Stowarzyszenie Osób Narodowości Śląskiej*)
SYRIZA	The Coalition of the Radical Left – Progressive Alliance
TANDIS	Tolerance and Non-Discrimination Information System (OSCE)
TEU	Treaty on European Union
TSG	Traditional Specialities Guaranteed
UDHR	Universal Declaration of Human Rights
UN	United Nations
(UN)CRC	Convention on the Rights of the Child
UNESCO	The United Nations Educational, Scientific and Cultural Organization
UNGAOR	United Nations General Assembly Official Records
UNHCR	United Nations High Commissioner for Refugees
UNPO	Unrepresented Nations and Peoples Organization

USSR	Union of Soviet Socialist Republics
WB	World Bank

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INTRODUCTION

Such a majority cannot be honourable and fair, which deprives the rights, and prevents the freedom of minorities within its way of the system.

— Ehsan Sehgal

Even though there are over a hundred *small national or ethnic groups* in Europe[1] (Koter 2003, 13-15), national minorities are not the most popular research area. There are a couple of institutions and NGOs across Europe that are specialized in the topic. There are researchers who study it but at the end of the day, it is a small world where everybody knows each other. It is surprising, taking into account the fact, that in the calculations of the European Union that ten per cent of its citizens belong to ethnic or national minorities. One out of ten citizens of the EU identify themselves as a minority culture member, yet the topic is neither widely studied nor popular. Why is it then?

We can separate the reason into two categories – political and cultural one. Beginning with the political reasons it is important to look closer at the area of interest of European researchers.

What distinguishes ethnic minorities from other ones (e.g. national minorities) is the lack of their own state. For this reason, they are often called *stateless nations*. Meanwhile in Western tradition, the states and the processes taking place in them are the central point of political studies. Due to that minorities are often overlooked when it comes to political research.

When minorities get the academic's attention it is usually because they have already built some political strength like in case of Catalans, Basks or Scots. Other ethnic minorities do not get as much attention, especially the ones that do not fight for autonomy or independence.

Moving to cultural reasons, it is important to underline that Europe is a culturally diverse territory where for centuries different states competed against each other, developed different cultural models and established official languages. These languages were later 'exported' overseas

[1] Not including Russia.

and to this day are a bridge between Europe and former dependent territories. Nowadays many Europeans see learning foreign languages as a cultural and economic leverage and marginalise mother tongues.

On the other hand, globalisation led us to the moment when *local* and *regional* became attractive again. This gives regional languages new opportunities. As different from most commonly spoken European languages, they are closely connected with culture, history, cuisine and customs, which - as we can see - can be also a good, economic opportunity.

Scientific studies bring minorities needed attention and together with it, the empowerment and the feeling of being heard. This is the reason why this thesis has been written and why it is about minorities' rights with a focus on the right of an individual to self-identify, as well as a right of the group to be recognized. Why? Because the self-identification is a fundamental human right that does not get much attention and recognition is seen as a prerequisite of exercising minority rights. Anyhow, there is hardly any literature concerning the topic. One can argue that the right to self-identification results directly from The Universal Declaration of Human Rights. All the people have the same right to use law, and everyone is equal before the law. That means that in case of a census everyone should be treated in the same way. Therefore, there are two routes a state can take. First: it can simply decide that a person's nationality (not citizenship) should not be its concern. Of course, this attitude has its advantages and disadvantages. Advantages – ethnicity and identity are a delicate matter and so is collecting data about it. Withdrawing from it, could be a comfortable solution for individual minority members. On the other hand, without it, it is hard for the state to protect minorities, understand where they live to for instance finance their minority related education, etc. And second: a state can ask about person's nationality letting them express any identity they choose and respect their choice. The biggest threat is that one might not feel secure enough to share it, fearing the exclusion. Therefore, it is crucial to research the right to self-identification together with the level of respecting national minorities' rights in general and, above all, the problem of recognition.

There have been already some books and papers written about minorities rights. The most relevant to this kind of research is Kathraina Crepaz's book *The Impact of Europeanization on Minority Communities*, published in 2016 by Springer VS. The Author presents results of investigation on how two-dimensional ('top-down' and 'bottom-up') Europeanization processes

affect minority communities. She uses a comparative approach, looking at four case studies: the German-speaking minority in South Tyrol/Italy, the Bretons in France, the German minority in Silesia/Poland, and the Italian minority in Istria/Croatia (Crepaz 2016, 1). However, it differs significantly from the assumptions of research plan for described here thesis.

Scott Weiner and Dillon Stone Tatum in their paper Rethinking Identity in Political Science touch an interesting topic of lack of toolkits to talk about identity. The Authors *state (…) political science has identity theories but no theory of* identity (Weiner and Tatum 2020, 2). They point out that the researchers refer to ethnicity, gender, class, and nationality as 'identities' but without a clear answer to the question *Why?* Weiner's and Tatum's aim is to *demonstrate the lack of congruence across identity frameworks and then offer a toolbox for thinking about identity as political scientists* (Weiner and Tatum 2020, 2). Yussef Al Tamimi, on the other hand, offers us an analysis of how the European Court of Human Rights approaches identity (Al Tamimi 2018, 288).

Hakan G. Sıcakkan and Yngve Lithman also give us a legal context to identity regarding citizenship while introducing an interesting concept of differing identity and identification (Sıcakkan and Lithman 2005). Dorte Andersen reflects on the concept of the people in her paper 'The paradox of 'the people' Cultural identity and European integration'. She looks into the problems of identity through European integration.

Joanna Sondel-Cedarmas points out the importance of memory and in todays European society. According to the Author, the memory of totalitarian systems is second most important issue in the EU memory policy, after the Holocaust (Sondel-Cedarmas 2018, 7). The four out of five of states analysed in the case studies had undergone totalitarian regime.

Another important topic which comes together with identity studies is recognition. It was already analysed by different scholars, including Barten, Geis, Taylor, Kymlicka, Banović, Ikäheimo and Laitinen.

Judith G. Kelly asks why study ethnic issues in Europe? And gives us the following answers:

1) *Ethnic issues facilitate a good research design for understanding the role of international actors on domestic scene.* She explains that ethnic issue can be seen as a test for international institutions because influencing on ethnic reforms is harder than technical or economic reforms (Kelley 2004, 4).

2) *(…) ethnic issues hold high priority in international agenda.* The development in minority rights always happens after major international conflicts in which the ethnic minorities suffer, like First World War, Second World War or wars in Balkans (Ibid., 5). International institutions are afraid that without proper minority protection system, another conflict may occur.

3) *(…) how the international community can calm ethnic issues is a growing field of interest to regional organisations, nongovernmental organizations, and others* (Ibid., 6). When Spain started to persecute Catalan politicians sand activists involved in organising the referendum, the politician who managed to flee have been meticulously choosing where to go. Carles Puigdemont ending up in Brussels after visiting different European countries to provoke them to decide whether they would arrest him or not.

Anyhow they do not refer to the European Union`s states reality in the comparative perspective, proposed in presented thesis. Its main aim is to show how EU enlargement influenced minority rights and their legal regulation.

0.1 Main Aim, Territorial and Time Framework

The main aim of the study is to analyse whether the right to recognition (a collective right) and the right to self-identification (an individual right) is present in international law and legal systems of selected states. The study also analyses whether we can distinguish the system of protection of collective and individual identity in selected EU states. The study focuses on ethnic identity which includes many possible dimensions such as religion, nationality, language and common origin.

The object of analysis is the legal system of the European Union, as well as the legal systems and practice of five chosen states: France, Greece, Spain, Poland and Bulgaria. However, there are some exceptions. It is widely accepted that groups like Roma, Sinti and travellers are analysed in separate studies due to their specific way of live. Therefore, those groups will not be considered in this study. This distinction is also often seen in international law.

The thesis does not focus on so called 'new minorities' (groups of immigrants), either. This topic is usually analysed separately as it requires the preliminary analysis of migration law, as well as non-European cultures and ongoing conflicts and crisis in the world. Problems that the new minorities are facing in many ways are similar to so-called traditional European minorities, but they also differ in some crucial aspects. First of all, very often 'new minorities' consist of representants of nations having their own states. This, in turn, is related with a completely different position in international relations. What is important about European ethnic minorities is that they ask to respect their rights on territories they live in for a long time. They usually do not face racism and they mostly live alongside the majority.

The project focuses on states belonging to the European Union. This decision is based on the fact that EU regulations towards minorities have to be applied due to entering the structure. Therefore, at least the legal framework is similar to some extent in all studied cases. These states are also member-states of the Council of Europe (CoE) and United Nations (UN). Ulrike Barten explains the matter:

> (…) there are many actors in the field of minority rights. Most of the instruments originating from these actors are not binding international law. There is no global minority treaty. In Europe there is the Framework Convention in the Protection of National Minorities, but on a

global level, minorities continue to refer to art. 27 of the International Covenant on Civil and Political Rights (ICCPR). Because there are little binding minority law non-binding instruments are included in the project (Barten 2015, 5).

The territorial framework of the thesis refers to France, Greece, Spain, Poland and Bulgaria. These states were not chosen by a chance. Each case is characterized by some specific features. It also includes examples of states that have been joining the European Union in its successive enlargements. France, together with Belgium, Germany, Italy, Luxembourg and Netherlands is the European Union founding member. It is highly centralised unitarian state with its post-colonial history. France is also known for its policy of promoting the concept of "égalité" (equality) among its citizens. Greece was the only state to join EU in 1981. The reason for choosing this state is the conflict with a neighbouring state and its influence to the situation of minorities. As Turkey is not an EU member, the focus has been put on Turkish minority in Western Thrace. Spain is an example of a regional state in Europe. Its imperial past and vast territory, as well as its history in XX century and the situation of minorities under general Franco's dictatorship strongly influenced the law in the new democratic state. It is an interesting case of transition of the territorial autonomy as a privilege for one region at the beginning of the last century, to granting such rights to all interested regions of the state. Poland is one of the most ethnically homogeneous states in Europe. There are 13 recognised minorities, as per 2011 were making 0,75% of the society. However, the Third Republic of Poland functions within completely different boundaries than the First and Second one. Today, it is also a state that experienced a lack of statehood from the end of the XVIII century until the end of the Great War in 1918, the reality of limited democracy after 1926 and its lack between 1945 till 1989. Bulgaria – with similar history behind the Iron Curtain - joined the European Union in 2007. According to the 2011 census, approximately 10.5% of the state's population belongs to national and ethnic minorities. The largest groups are the Turkish (8.8% of the population) and the Roma minorities (3.2% of the population). Other significant groups include the Armenians, Russians, and Ukrainians. Such selection of cases will make it possible to trace the impact of the evolution of the European law on the right to recognition and the right to self-identification in legal solutions adopted in particular states.

The time framework of the thesis covers years 1945 till 2021. The first date – and the initial time framework - is very symbolic. It is marked by the end of the Second World War. This moment

in the history of Europe began a new stage in thinking about the political unification of the continent and strengthening the community of values. The final time framework is set by 2021, when the last national census was conducted in Poland. Regardless of the main time frame, the work will also include references to historical processes that form the background for the studied phenomena.

0.2 Research Questions and Hypotheses

Jarosław Derlicki notes that studies on minorities are based on akin tools and theoretical structure. As the main question on those studies, he recognises the question about minority survival – *why* and *how?* As well as the question about the reasons why some minorities survives and others do not (Derlicki 2006, 44). The Author notes that there are several questions that repeat in most of the studies on minorities – questions about identities, preservation of the culture and their variety, state-minority relations, globalisation, and its influence, etc. (Ibid., 44).

The main data analysis begins in 2011 with the previous census, carried out in many EU states, and ends in December 2021 after the most recent census were carried out. Overall, it covers the 11-years period of time. However – as it was already mentioned above - references to the past are being made through the thesis. **The main research questions** are as follows:

1. How it is built the European legal system concerning the right to recognition (a collective right) of ethnic minorities and the right to self-identification (an individual right)?
2. Is there a relation between recognition of a national minority and protection of the right to self-identification of a person belonging to the national minority?
3. Are there systems of protection of collective and individual identities developed in selected EU states?
4. How differ minority protection systems in studied EU states?

The detailed research questions concern particular cases, selected for research and go as follows:

1. How France protects its minorities?
2. Do conflicts influence minority protection in Greece?
3. How decentralization influences on minority protection in Spain?
4. How becoming an EU member influences minority protection in Poland?
5. How are the minorities' rights protected in states of the last EU enlargement? The study case of Bulgaria.

There are various ways to treat/protect minorities in European states. Not all states consider the protection of minority rights as their duty and interest. International solutions influence minority protection in various ways depending on the state, its attitude toward minority and other factors like conflicts and the moment of joining EU structure.

The main hypothesis assumes, that:

Formal belonging to the structures of the European Union forces its member states to develop legal solutions that allow their citizens to exercise the right to recognition (a collective right) and the right to self-identification (an individual right). Moreover, the later accession to the structures of the European Union forces the state to adapt to the increasingly developed Community legislation on these issues.

0.3 Methods and Sources

The study combines methods of analysis typical for the meta-method known as policy research. In general, policy research is an analysis of how the law functions in a given society. This research includes three methods described below.

0.3.1 Theoretical and Doctrinal Legal Analysis

Legal acts regarding national minorities, adopted and created at international, national, and regional level are the most important sources for proposed research The particular attention will be paid to the European regulations and the states Constitutions. They show in a special way the attitude of the European Union, as well as the selected states, to the researched problems. The analysis concerns also international laws created by such institutions as the United Nations (UN) and the Organization for Security and Co-operation in Euro (OSCE). Those institutions play an important role in creating reports and guidelines that were also a part of the research.

0.3.2 Secondary Data Analysis

Legal acts regarding national minorities, adopted and created at international, national, and regional level are the most important sources for proposed research The particular attention will be paid to the European regulations and the states Constitutions. They show in a special way the attitude of the European Union, as well as the selected states, to the researched problems. The analysis concerns also international laws created by such institutions as the United Nations (UN) and the Organization for Security and Co-operation in Euro (OSCE). Those institutions play an important role in creating reports and guidelines that were also a part of the research.

0.3.3 Comparative analysis

The research is a mix of qualitative and quantitative analysis. My analysis regards legal solutions protecting national and ethnic minorities in different EU states. It presents and analyses the laws protective minorities and their implementation. But it is also focused on the problem how many

solutions were adopted and on what levels, like how many European states decided to implement minority protection in their constitutions and why?

Geoffrey Wilson points out that *comparative studies have been largely justified in terms of the benefit they bring to the national legal system* (Wilson 2017). The Author continues:

> In countries that have adopted codes or constitutions which originated in another system, it has been natural for legal scholars to look at the way that system has developed and has been developed in its original habitat. This applies particularly to those systems in which legal scholarship has a major part to play in the practical working of the system, where the courts pay great attention to doctrine and where it is legal scholars who are mainly responsible for the analysis and development of doctrine (Ibid., 87).

According to Geoffrey Wilson, the purpose comparative studies *to make a practical contribution to the local national system.* He recommends the approach when the study has more international dimension - *This has occurred whenever groups of scholars and practitioners from different systems have come together to try to work out a common solution to a common problem. And here the scope has often been wider because representatives from different families of legal systems have been involved* (Ibid., 88).

Benoit Rihoux and Heike Grimm in their work *Innovative Comparative Methods for Policy Analysis: Beyond the Quantitative-Qualitative Divide* address four main methodological issues in comparative analysis research of applied policies. The first issue is how to overcome technical and methodological difficulties in systematic case study research and SCCA (Systematic Comparative Case Analysis). This includes challenges like case selection, variable selection, and integrating the time dimension.

The second issue is assessing the "Equality" of case studies. Case studies are often criticized for being ill-selected or biased, leading to accusations of being unscientific. The Authors aim to demonstrate that using new methods like QCA (Qualitative Comparative Analysis) can make case study research more transparent and open to discussion, ensuring methodological transparency for policy-makers.

The third issue focuses on the practical value of new comparative methods for policy analysis. The Authors seek to substantiate arguments about the added value of these methods for both policy analysts (academics) and policy practitioners (decision-makers, administrators, lobbyists) (Rihoux and Grimm 2006, 2-3).

The selection of cases of states that will be analysed has been justified above. It seems to meet all the benchmarking assumptions of the comparative analysis. All these states belong to the European Union, although they joined it at different times and after 1945 they existed on different sides of the Iron Curtain.

0.4 Structure

The following thesis is divided into introduction, containing main methodological assumptions, three parts, conclusions and bibliography. The first part is entitled *Protection of Individual and Collective Identities* and presents the theoretical framework – terminology, explication and analysis of international law, common for all studied legal systems. The second one is entitled *Legal Framework for Protection of Cultural Differences in the European Union* and refers to legal solutions concerning minorities protection in EU. And the third part, entitled *Study Cases*, presents the analysis of minorities legal situation in selected states. The answers to the research questions and the verification of the main hypothesis can be found in final conclusions.

PART I

Protection of Individual and Collective Identities

1.1 The Concept of Identity

To discuss the problem of protection of the identities we first must answer the question *what is the identity?* Then, to understand if EU member state guarantee their citizens the right to self-identification, we need to see if identity is defined on legal level. Yussef Al Tamimi after Douzinas calls identity's role in law 'relatively under-theorized' (Al Tamimi 2018, 284).

According to Elya Tzaneva, the changes Europe is undergoing today, strongly influence on identities of Europeans. Mobility, migration and integration are to cause various communities and group members *develop multiple affiliations and more complex group identities* (Tzaneva 2019, 2). The Author emphasises that the process does not weaken ethnic loyalties. She continuous by pointing out that it is not uncommon for the past acculturation processes to be *significantly substituted by the strengthening of ethnic identification and self-identification on a large scale* (Ibid., 2).

As talking about identity regarding minorities it is important to bear in mind that most of the studies concerning the subject have multidisciplinary character (Łodziński, Szmeja and Warmińska, 2014, 14).

The question *Who am I?* has been relevant for humanity for centuries. Already the ancient philosophers were seeking for the answers about 'self' and 'identity'. Nowadays different scientific fields let us take a look at identity from different perspectives.

James D. Fearon points out, that the identity became a popular topic at the end of XX century. The subject is mostly analysed by psychologists and sociologists but is also relevant in political science. James D. Fearon emphasises on how important 'identity' in different fields of humanities and social science is (Fearon 1999, 1).

While psychology focuses on individual perspective, social psychology and sociology offer us a view from another angle – concentrated on individual as a part of society. Those disciplines offer us a more traditional look at identity and will help understand the phenomena better, while political science and identity in law are the perspective on which I focus on for the purpose of this work.

Damir Banović lists the primary sources of identity according to Samuel P. Huntington:

> (1) ascriptive, such as age, ancestry, gender, kin (blood relatives), ethnicity (defined as extended kin), race; (2) cultural, such as clan, tribe, ethnicity (defined as a way of life), language, nationality, religion, civilisation; (3) territorial, such as neighbourhood, village, town, city, province, state, section, geographical area, continent, hemisphere; (4) political, such as faction, clique, leader, interest group, movement, cause, party, ideology, state; (5) economic, such as job, occupation, profession, work group, employer, industry, economic sector, labour union, class; (6) social, such as friends, club, team, colleague, leisure group, status (Banović 2015, 5-6).

Banović later compares it with Anthony D. Smith list of *categories and roles of which the self is usually composed*: gender, territory, class, and religion (Ibid., 5-6). The Author underlines that listed positions are categories and sources of identification but neither of them could be a base of identity alone (Ibid., 5-6).

Identity has to be analysed in the context of belonging. Patrycja Matusz and Danielle Drozdzewski raise a very interesting point of how threat and uncertainty can influence on belonging on a collective level. Although the Authors bring this point in the context of nation it can be also brought on the level of other groups that share territory, history and memory.

> Broadscale support for the idea of the nation is even more important in times of uncertainty. As Yuval-Davies (2010, p. 197) has contended, 'belonging tends to be naturalized, and becomes articulated and politicized only when it is threatened in some way'. Threat, and/or uncertainty can relate to war, civil unrest, conflict, foreign occupation and large-scale societal. Such threats and uncertainties can be imagined, tangible in the present day and/or historical. In her conceptualisation of social locations of belonging, Yuval-Davies (2010, p. 201) has discussed how 'particular historical conditions' are put to work to 'construct the grid of power relations within which the different members of the society are located'. Picking up on her notion of 'particular historical conditions', our key point of entry here is that the identification of these conditions in the Polish context relate to Poles' lived experiences of threat and uncertainty. The deeply embedded notion of Poland's struggle for independence and freedom from foreign occupation involves both Polish cultural memory and the lived experienced of many generations of Poles (Drozdzewski, 2008; Orla-Bukowska, 2006; Krzyzanowska ˙ & Krzyzanowski, ˙ 2018). (Drozdzewski and Matusz 2021, 2)

1.1.1 Identity in Psychology

In the field of psychology there are many theories that try to explain the concept of identity and often in order to do it introduce more definitions like 'self', 'self-concept', 'self-knowledge' and many others. Sometimes they are used as synonyms but sometimes they have different meanings.

Zimbardo Philip G. Zimbardo and Richard J. Gerrig indicate that the first to really analyse the idea of self was William James in 1890 (Zimbardo and Gerrig 2006). James identified three components that together build 'self' – material, social and spiritual self. The important part of his concept is that what constitutes one's 'self' are also things that one links with themselves. They can be separate objects, ideas, people, group and even experiences that one incorporates to create their 'self' (Ibid., 449).

But are self and identity the same concept? A popular textbook explains that 'self' and 'identity' can be used to talk about things such as psychological experiences, which can mean anything from thoughts, through feelings to motives and that both terms 'reflect and influence' one's portrayal of themselves as well as their place in the social world (Simon and Trötschel 2008).

Meanwhile other Authors prove that there is distinction between self, self-concept and identity (the last being the most basic factor which constitutes the other two). People have various identities that together build *self*. According to Daphna Oyserman, Kristen Elmore and George Smith, identities can have different forms like 'traits, characteristics, social relations, roles and social groups memberships'. All of those make one who they are and can be focused on past, present or future (Oyserman, Elmore and Smith 2012, 69). According to the Authors, scholars agree that identities which one has create the idea of what one thinks about themselves and their theory about their own personality (Ibid., 69).

As we can see, there is no easy answer nor an agreement among psychologists to what 'self' and 'identity' really are. But according to Simon and Trötschel everyone is can answer the question which is behind both concepts – 'Who am I?' (Simon and Trötschel 2008, 90-91).

Scholars agree that interacting in the social world influences on identity (or that even identity is an outcome of interactions one has) which later influences on the way one interacts in the social world

(Simon and Trötschel 2008, 91). That means that identity is not something that once established stays in the same way but on the contrary – it changes constantly.

1.1.2 Personal vs. Social Identity

John C. Turner introduced distinction between personal identity and social identity. This concept has led to self-categorisation theory according to which personal identity considers one's idea of themselves, also in relation to the group whereas social identity defines one as a member of a group in contrast with another (outer) group (Simon and Trötschel 2008, 105-106). Self-categorisation is all about the groups that the individual identifies with – including nations and minorities. Those are actually a great example to see how individual this categorisation is – some members of minorities feel that their group makes a part of a dominant group while others feel the minority they belong to is a separate group[2].

According to Turner, social identity relates to the social categorical self. Because social identity is opposed to personal identity, it does not in any way create or attribute personal identity – 'it is a more inclusive level of self-perception' (Turner, Oakes, et al.1992, 2-3). The Author explains the difference as when one discerns themselves as 'we' and 'us' rather than 'I' and 'me'. To conclude, let's have a look at his own definition:

> Personal identity refers to self-categories which define the individual as a unique person in terms of their individual differences from other (ingroup) persons. Social identity refers to social categorizations of self and others, self-categories which define the individual in terms of his or her shared similarities with members of certain social categories in contrast to other social categories. (Ibid., 3).

[2] We can see this in the results of censuses when the respondents are allowed to state more than one ethnicity/nationality.

1.1.3 Social Identity Theory (SIT)

Another useful concept is social identity theory (SIT). Simon and Trötschel indicate that social identity theory is used by social psychologists as a theoretical framework to conduct an analysis. This theory is based on an observation of how one's social identity is built on their relations with different groups. The group-based social identity is established on a simple categorization into ingroup (a group belong to) and outgroup (a group we do not belong to) (Simon and Trötschel 2008, 104). The Authors define social identity as:

> a part of person's self-concept which derives from the knowledge of his or her membership in a social group (or groups) together with the value and emotional significance attached to that membership (Ibid., 104).

SIT has a direct implementation on minority issues. Scholars agree that social identity has an impact on conflicts between groups and discrimination. According to the theory, people have a need for positive social identity when they act as group members. Because of that, when they want to position their ingroup as a superior, they have to undermine the outgroups they compare themselves with. The Authors explain – 'Intergroup discrimination can then be a means, though not the only one, to establish such positive ingroup distinctiveness ('The fact that we have and deserve more than they do just shows that we are superior!')' (Ibid., 104).

> A typical application of SIT can be found in the analysis of the social psychology of low-status minorities or otherwise disadvantaged groups (e.g., immigrants, blue-collar workers, women or gays and lesbians). According to SIT, the disadvantaged social position of such groups confers an unsatisfactory social identity on the respective group members. This predicament then motivates group members to search for appropriate problem solving strategies which help them to achieve a more satisfactory social identity. These strategies can range from individualistic strategies of social mobility, such as leaving the disadvantaged minority and joining the advantaged majority (where that is possible), to collective or group strategies of social change, such as collective protest or even revolutionary reversals of status and power relations. (Ibid., 104).

This means that the social and cultural contexts have strong influence on creating one's 'self'. Different experiments concluded throughout the years have only proved that. The individualist

cultures (characteristic for Europe, Australia and Northern America) make their representants more likely to create independent construal of self. On the other side people raised in collective cultures tend to develop interdependent construal of self which makes them seeing themselves as a part of a bigger social context (Zimbardo and Gerrig 2006, 451).

1.1.4 Identity in Sociology

Individualism versus collectivism is also one of the dimensions presented in Geert Hofstede 6-D model of national cultures. In this model high score on Individualism-Collectivism scale means that an individual is supposed to take care only for themselves and their close ones (loosely-knit social framework). On the other side of the scale collective cultures (tightly-knit framework in society) are the ones in which bigger groups of family members and relatives are loyal to each other and are expected to take care of other group members.

Hofstede Insights which continues Hofstede's work on 6-D model, notes that members of individual cultures are more likely to relate to themselves as 'I' than 'we' in opposition to collective cultures members' tendencies. We can presume, that the culture and its preservation is more important in collective culture as the group influences more on one's idea of 'self'.

Yussef Al Tamimi states that 'Identity refers to those attributes and qualities that enable us to recognize an individual or collective from other'. Al Tamini adds after Redman, that identities are created based on what they are not, rather than on what they are. In other words, for group members to identify with each other, there has to be in contact with another group which they can differ from in some way which corresponds with Florian Znaniecki us vs. they theory (Al Tamimi 2018, 285).

Vivian Vignoles notes that identity, even individual, is a very social phenomenon as it is based on the language. The Author writes that people's self-awareness is more developed than in case of other species. People represent themselves with abstract ideas and object. Both of those are symbolic concepts which are based on communication and language; therefore, self-awareness and self-concept cannot occur without social interactions (Vignoles 2017, 6).

Another aspect of building an identity and identifying with a group is people's need to feel that they belong. This necessity was soundly revealed in famous Asch's experiment[3] which showed that people tend to choose and even defend an obviously wrong answer rather than disagree with a group (Zimbardo and Gerrig 2006, 568). Belonging to a group can be also important regarding incorporating group's culture. Raz states that belonging to a culture is one of the most important determinants of one's identity. Moreover, Raz believed that a well-being of citizen can be only achieved by within a cultural community, therefore the state cannot be neutral regarding culture and should by all means *take an active role in fostering a harmonious development of different cultures* (Banović 2015, 15).

Belonging to a certain group, identifying with it, means one must accept certain norms and rules applied to the group. Abdelal argues that those constitutive norms play a very important role. Firstly, they indicate which behaviours are 'proper' or 'appropriate'. Secondly, they allow other people to recognise one as a member of a certain group, meaning someone with a certain identity.

The Author continues – 'They are also distinct from social purposes (i.e., interests or preferences). Rather than specifying the ends of action, norms help to define social meaning by establishing collective expectations and individual obligations. Thus, constitutive norms do not determine the preferences of a group; rather, they define the boundaries and distinctive practices of a group.' (Abdelal, et al. 2005, 4).

The rules Abdel analysis can be seen as roles in Erving Goffman's theory. Goffman developed 'dramaturgical approach' to explain human interactions. According to his theory, each individual has several roles and acts according to them. One acts differently in the working environment where they play a role of an employee than at home where they play a role of a parent. People internalise the roles they play and identify with them. Losing a role can influence one's perception of themselves. We can see it when one loses job, retires or does not have to look after their kids when

[3] Solomon Asch asked a group of students to take part in an experiment concerning visual perception. Each participant was sited in a room with other people who they thought were other participants. In reality only one person was taking part in an experiment while others were helping Asch who first instructed them to give a wrong answer.

The experimenter showed group three cards with pictures of straight lines and asked which one has the same length as the line that was showed as a sample. The difference in lines' length was significant in order to eliminate the risk of errors. Asch conducted this experiment in various scenarios. Every time fifty to eighty percent of participants chose the clearly wrong answer so they would not stand out from the group.

they become adults. Each of these situations can lead to a crisis. Those roles regulate social interactions and instruct people how to behave as well how to perceive others. Every role is linked to specific status.

Goffman's theory can be contradicted with what Turner calls 'self-categorisation' (social definitions of the individual). Turner explains:

> self-categories are social representations of the individual-in-context in that they change with the context, not just with attributes of the individual. They are not representations of enduring individual attributes somehow adjusted for or displaced by context. In fact, it is more accurate to say that they are social contextual definitions of the perceiver, definitions of the individual in terms of his or her (and others') contextual properties. The meaning and form of the self-category derives from the relationship of the perceiver to the social context. The perceiver gains identity from being placed in context (Turner, et al. 1992, 9-10).

Unlike Goffman, Turner puts an emphasis on individual's perception rather than social influence.

As we can see, there is a constant interaction and mutual influence between the individual and the society they live in. The influence of the group is stronger in less anonymous areas (Spears and Tom 1995, 165). The minority cultures and languages are therefore easier to be preserved in rural areas rather than in the cities. Anthony Giddens on the other side believed that in modern societies unlike traditional ones the identities are built by the individuals as stories they tell about themselves. In traditional societies, the identity is based on social roles.

Manuel Castells (Castells 2009, 22-27) indicates that identity is always constructed in the context of power relations. He proposes three forms and sources of constituting an identity – legitimising, resistance and project.

Legitimising identity is the one introduced by the dominating institutions to enlarge or establish their dominant position over the society. Resistance identity on the other side is a type of identity build by social actors who are in an inferior position or devaluating circumstances and or are being stigmatised by the logic of domination. Using different rules than the ones applied by the society, they build their identity. Project identity is when social actors based on the cultural elements create a new identity which redefines their position in the society. By doing it they try to transform the social structure (Ibid., 23-24).

Importantly, Castells treats these forms as a part of on-going processes. A group which once has been dominated can reconstruct its identity as a resistant one and with the time and growth can develop project identity. If successful, the project identity can become legitimising.

Analysing the concept of identity, Damir Banović takes a closer look at Castell's ideas in this field. He notices that in 1997 Castells had introduced a few new sources of identity and proposed three origins of identity. The first one – legitimizing identity – *is introduced by the ruling institutions of society in order to extend and rationalize their domination over social actors* (Banović 2015, 6-7). It can refer to identities imposed by states, churches, or schools as well as other institutions.

As an opposition to legitimizing identity Castells recognises resistance identity. This type of identification is the most relevant to our topic of interest as it refers to the actors in *positions/conditions devalued and/or stigmatized by domination* (Ibid., 6-7). This identity is based on a willingness of survival as well as resistance towards the institutions of society and their principles. It is particularly interesting regarding the topic of minority as it refers to those who find themselves in *stigmatised* or *devalued* positions. Banović notes that the stigmatisation is caused by the dominant group so those who are depreciated grow the need of resistance and survival.

Some scholars see a cause-effect chain that leads from being a part of a devalued group to distortion in one's relation to oneself (Ibid.,11).

The third type of identity introduced by Castells is project identity. Banović describes it as an identity that is a result of a group redefining itself using culture (he brings the example of feminists moving away from a resistance identity to construct women's identity and women's rights in opposition to the patriarchal system (Ibid., 6-7).

The Author continuous explaining Castell's idea stating that identity, being a construct, uses different building materials such as *history, geography, biology, productive and reproductive institutions, collective memory and personal fantasies, power apparatuses and religious revelations* (Ibid., 6-7). Banović adds that the crucial facet of using said materials is *rearranging their meaning according to social conditions and cultural projects that are rooted in their social structure and their spatial and temporal framework* (Ibid., 6-7).

1.1.5 Identity in Political Science

Most of the scholars agree, that political scientists base their perception of identity on what was earlier developed by sociologists and although they find identity as a relevant topic, they have not developed many theories concerning it.

James D. Fearon from Standford University recognises 'identity' as *a centre of lively debates in every major subfield [of political science]* (Fearon 1999, 1). The Author continues by naming those areas – (1) 'identity politics' of race gender and sexuality (2) work on nationalism and ethnic conflict, (3) In international relations, the idea of 'state identity' is at the heart of constructivist critiques of realism and analyses of state sovereignty, (4) And in political theory, questions of 'identity' mark numerous arguments on gender, sexuality, nationality, ethnicity, and culture in relation to liberalism and its alternatives. However, Fearon adds that in comparison with other fields like history or humanities, political scientists' attitude towards 'identity' can be described as 'laggard' (Ibid., 1).

Even though identity plays an important role in political studies, Scott Weiner and Dillon Stone Tatum point out, that 'political science has identity theories but no theory of identity' (Ibid., 2). The Authors recognise two main problems as (1) lack of variety of its own theories of identity, (2) a big range of definitions and instrumental usages of the term within different subfields (Ibid., 3).

Leonie Huddy points out what according to her is overlooked in social identity theory – (1) the choice of identifying with a group (2) gradation of the identity (Huddy 2001, 130-131).

1.2 Identity in Legal System

Eric J. Mitnick asks *why law should categorize people?* (Mitnick 2007, 828) and it is a fair question. Why should law deliberate on something as individual, almost intimate as identity?

Mitnick explains Rawls' concept of justice. According to him, it regards division of benefits and obligations in society. This concept sees legal system as a 'formula' of justice (Ibid., 829).

According Krasnowolski, the sole existence of different cultural groups with different identities within one state always creates some kind of tension between different groups. Meanwhile the way to mellow those tensions is to guarantee minorities certain rights (and therefore the recognition) to protect them from the majority dictation (Krasnowolski 2011, 4). Krasnowolski believes that national minorities (as a phenomenon) have always been causing problems related to the place minorities live in and the rights the minorities could have. He states that the majority dictation causes not only tensions but political reactions threatening not only the existence of the states but causing international implications (Ibid., 4-5). According to the Author, this is what makes the international institutions reluctant towards assuring minorities 'too many' rights, as it was believed that 'too many rights' could strengthen the separatist movements. Meanwhile there is an understanding that there is a need to assure minorities special rights as the equality and democracy would actually reduce minority rights with majority always overruling the minority (Ibid., 5).

There are several problems concerning identity in legal systems. Firstly, it is fluid, individual and can be hard to define in the black and white reality of law. Secondly, the very purpose of identity in legal systems is that it is to guarantee special rights to those who identify differently than the majority which is not very convenient to the states.

Bhabha cites Article 27 of the International Covenant on Civil and Political Rights[4], reminding us that with a certain identity come certain (cultural) rights – *the right of minorities, in*

[4] An implementing convention of the Universal Declaration of Human Rights.

community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language (Bhabha 2000, 3).

From a pragmatic point of view, implementing those rights can be costly and require effort. Bhabha adds that some states (including Spain) intend to prevent more groups (like migrants and diasporic peoples) from being recognised as minorities. They argue that minorities' lack of assimilation is a threat to national unity, therefore only historical minorities that *enhanced the historical stability and the integrity of the 'whole' society of the state* should be guaranteed minority rights. The Author quotes Commission's working papers which state that loyalty constitutes the definition of minority (Ibid., 3).

Al Tamini agrees with Bhabha's statement that there is prioritization of national identity (Al Tamimi 2018, 286-287). They believe that this comes directly from the fact that minority rights are guaranteed by international law which is an agreement between nations. Al Tamini adds after Bhabha

> Besides international law, European Union Law is more explicit in its exclusive protection of national identity. Article 4 of the EU Treaty guarantees the protection of national identity as a guiding principle: 'The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.' (Ibid., 287).

Barten adds that the fact that definitions of minorities even though are broadly accepted, are not legally binding and that according to some, it can result with little impact (Barten 2015, 8). Barten continues – *A key determinant in minority rights is the state in which the minority lives; though minority rights are based on international law, the state remains responsible for guaranteeing them. Without recognition from the state, minority rights are withheld from the minority* (Ibid., 8).

Hakan G. Sıcakkan and Yngve Lithman analyse the concept of identity in the legal context regarding citizenship. The Authors differ identity and identification:

> Many proponents of the term "identity" couple it with belonging, asserting that identities spring from "objective belongings". They emphasize the tangible social environment and/or childhood socialization in their conception of identity. In this discourse, objective belongings can be birthplace, ethnicity, class, race, religion, culture, nationality, gender, age, etc. On the

other hand, those who prefer to use "identification" usually criticize the former for using "identity" as a static concept that ignores the role of individuals and the social processes involved in formation of identities.

Thus, they usually conceptualize "identity" in terms of "subjective belongings", which also emphasizes individuals' creativity and role in formation of their own identities. Furthermore, they object to conceptualizations of "identity" in terms of binary oppositions, that is, in terms of mutually exclusive categories. When they use the terms "identity" and "identification", they refer to a relational, dynamic, and alterable phenomenon, which is complex (Sıcakkan and Lithman 2005, 2).

1.2.1 Individual and Collective Identity

We have already seen what scholars mean by *social identity,* but what is collective identity and how does it differ from individual identity?

Charles Taylor underlines the change of the way we understand the term 'identity' (linking the change with democratisation and the collapse of XVIII century social hierarchy). He concludes:

> (…) the new understanding of individual identity that emerges at the end of the eighteenth century. We might speak of an individualized identity, one that is particular to me, and that I discover in myself. This notion arises along with an ideal, that of being true to myself and my own particular way of being (Taylor 1995, 28).

Weiner and Tatum note the difference of the basis of ethnic and national identity also regarding collectiveness. According to the Authors, *ethnic identity is based primarily on descent, participation in the collective experience of the nation and connecting with the history of this experience is of greater importance to nationalism* (Weiner and Tatum 2020, 6). The Authors explain that the understanding of identity relies on the connection between an individual's identity and the shared identity of a specific group. Additionally, a recognized marker refers to an identity characteristic that is not only understood by the individual, but also by others within the society or social context (Ibid., 9). They continue by analysing the attribute of 'visibility', stating it is

significant in a conceptualization and theorization of identity (Ibid., 12). By this they understand how much the identifying attributes are visible or observable to others.

> this sense, visibility is the nexus of individual and social elements of identity. It refers to an identifying factor being a clear and unambiguous symbol of individual membership in a collective identity community. An identity need not be visible all the time, but it must be visible in the relevant social context (Ibid., 12).

Abdelal, Herrera, Johnston and McDermott in their paper Identity as a Variable focuses on the collective identity. They define it as *a social category that varies along two dimensions—content and contestation.*

> Content describes the meaning of a collective identity. The content of social identities may take the form of four, non-mutuallyexclusive types: constitutive norms; social purposes; relational comparisons with other social categories; and cognitive models. Contestation refers to the degree of agreement within a group over the content of the shared category. Our conceptualization thus enables collective identities to be compared according to the agreement and disagreement about their meanings by the members of the group (Abdelal, et al. 2005, 1-2).

1.2.2 Ethnic Origin vs Identity

Joseph Rudolph points out that in complex social and economic systems there is a tendency for individuals to identify with different associations and have more than one identity. While the identity can be multiple the Author emphasises that there can be only one ethnic origin (Rudolph 2019, 18).

Although this statement is very logical there are some strong counterarguments. First of all, nowadays when the movement of people is stronger than ever, there are more and more people with mixed ethnic origin whose parents belong to different ethnic groups. Those people often identify with more than one group but usually never fully as they tend to have the outsider's perspective on each group. Can we say with certainty that they only have one ethnic origin?

On the other hand, the same ethnic origin can be manifested in different identities. Looking at the results of census in Poland in 2011 we see that Silesians, a minority not recognised by Polish law, identified themselves in various ways:

- Silesian,
- Silesian-Polish,
- Polish-Silesian,
- German-Silesian,
- Silesian-German,
- Czech-Silesian,
- Silesian-Czech.

Can we then say that all those choices are different manifestations of the same ethnic origin or is there some difference between one another? In other words – if one person identifies as Polish-Silesian and their neighbour identifies as Silesian while being a part of the same group with dame roots, can we say that their ethnic origin is the same while their perception of it is different? How objective can we be when we analyse something as individual as one's identity?

Culture has a strong impact on one's identity. It is reflected in interdependent self – the one created based on social interaction in contrast with independent self which is based on individual traits and abilities (Spears and Tom 1995, 108-109). The culture has an impact on a very early stage as it determines socialisation process.

Svetluša Surová points out after Joan Nagel that the position of ethnic identity is a principal aspect of ethnicity as well as an essential concept in the studies of ethnicity (Surová 2016, 9). Importantly, it's definition has been intensely since Donald L. Horovitz published *Ethnic Groups in Conflict* in 1985 (Chandra 2006, 397). Surová notices that ethnic identity is one among five most popular concepts of identity in literature - personal identity, cultural identity, social identity, ethnic identity and (post) modern identity (Ibid., 10).

Surová underlines that there are many meanings and connotations of ethnic identy simply because *ethnicity* itself is a term understood in various ways. She notes that the term can be understood in two main ways – one of them focuses one the orgin while the other puts an impact on tradition.

The Author defines the first one as a *large group of people who have the same national, racial, or cultural origins.* She points out that this rather essentialist approach focuses on common features and attributes shared by the group which has (both as individuals and entity) *´something´, that defines it in ethnic terms*. Concluding the Author proposes the following definition *group or community of people and/or membership in a social group with some shared features* (Ibid., 9).

The second approach, focusesing on cultural and national traditions, goes agains clasification of groups (we vs.them) Surová seems to agree with Nagel's view that ethnic identity is *a dialectic between internal identification and external ascription.* She underlines the complexity of identification and the fact that there is always more than one of them. Surová describes ethnicity as *field of study, the classification of people and group relationships, which consider themselves and are regarded by others as culturally distinctive as well minority issues or race relations* (Ibid., 9). She then reminds that some scholars have been questioning the usefulness of the term in social science, even though others find in suitable in the processes of identification using it as an analytical concept.

Svetluša Surová that the most popular approach towards ethnic identity focuses on desent and recognises it as a relevant aspect defining an ethnic group. She adds that there is a problem in this attitude – there is no common agreement on the role of decent and it can *mean common ancestry, a common myth of ancestry, a common language, a common culture and a common homeland* (Ibid., 9).

The Author takes a closer look at Kanchan Chandra's approach pointing out Chandra's belief that the scholars should give up all the criteria that have been used up to this point to define 'ethnic identity' in comparative politics. Instead, she defines identity as:

> a social category in which an individual is eligible to be a member and ´ethnic identities´ are understood as a subset of identity categories in which membership is determined by attributes

associated with or believed to be associated with descent or descent-based[5] attributes (Surová 2016, 10).

Chandra states that it is popular among scholars to use the term without previously proposing its definition and that very often, those scholars who define it, misuse it as the identity they recognise as ethnic does not match the categories, they had proposed themselves beforehand (Chandra 2006, 398).

Chandra notices that membership in ethnic group, the ethnic identity, depends on having certain attributes that are attributed to this descent-based category (Chandra and Wilkinson 2008, 517) – *Nominal ethnic identities are those for which we possess the attributes of membership while activated ethnic identities are that subset of our nominal categories in which we profess membership or are assigned membership by others.*

According to the Author, scholars agree that descent plays an important role when defining an ethnic group. Many definitions mention other characteristics such as common culture although those attributes always come along descent. *The principal innovation in our definition is in its precise specification of the role of descent—introduced in the distinction between categories and attributes—and in its elimination of features other than descent*. (Ibid., 517).

Weiner and Tatum add that *(…) national identity is rooted in attributes that exist in the present, but like ethnicity it also appeals to processes of history* (Weiner and Tatum 2020, 6).

Kanchan Chandra and Steven Wilkinson introduce a conceptual framework for understanding ethnic identity. It defines ethnic identity as a category based on descent, where descent-based attributes are necessary for membership. The framework distinguishes between nominal ethnic identities (possessing the attributes of membership) and activated ethnic identities (professed or

[5] The author explains that descent and descent-based attributes can be acquired in three different ways: (1) genetically (skin colour, gender, hair type, other physical features); (2) by cultural and historical inheritance (names, languages, places of birth and origin of one's parents and ancestors); (3) acquired in the course of one´s lifetime as markers of such inheritance (such as last name or tribal markings. Meanwhile Chandra sees those attributes as regarding myths of association with descent (Surová 2016, 10).

assigned membership). The definition focuses solely on descent, eliminating other features commonly associated with ethnicity.

The framework also introduces the concepts of ethnic "structure" and ethnic "practice." Ethnic structure refers to the distribution of attributes in a population and is multidimensional. Ethnic practice refers to the activated ethnic categories in different contexts, which can be multidimensional, overlapping, and incomplete.

The text critiques the use of the ELF index (Ethnicity and the Liberal Foundations of Democracy) and argues that it produces indeterminate conclusions about the effect of ethnicity on various outcomes. It proposes two alternative measures: "Ethnic Imbalance" (ECI) and "EVOTE" (percentage of the vote obtained by ethnic parties), which address the limitations of the ELF index. These measures focus on capturing specific aspects of ethnic practice and do not assume mutual exclusiveness or exhaustiveness of ethnic categories.

The main contribution of the new measures is to provide meaningful conclusions that can serve as a foundation for further research and improvement. The text emphasizes the transparency of the definitional and operational criteria guiding the design of these measures, allowing for justifiable interpretations and opportunities for refinement (Chandra and Wilkinson 2008, 517-518).

1.2.3 Politicisation of Identity

Interesting observation regarding identity concerns the expectations the society (by the implied laws) has towards minorities and indigenous peoples. Barten, after Daes and Eide, notes different purposes minority and indigenous rights have. While the aim of minority rights is to include the minority, while preserving its distinctiveness, indigenous rights intend to guarantee an autonomous development (Barten 2015, 11).

This observation does not directly regard identity but shows how minorities and indigenous peoples are perceived. Indigenous people are ‘allowed’ to live ‘outside’ of the society, while

minorities are expected to assimilate. The Authors claim that the group might self-identify differently to gain specific rights as they vary strongly.

Al Tamini adds after Bhabha that international agreements that regulate situation of minorities are done between nations and in their nature are reflecting just that – the dominant position of nations over the minorities (Al Tamimi 2018, 287).

Svetluša Surová notes that national identity is described in literature as 'the central identity in modern world'. She adds after Brubaker that it is typically understood as 'socio-territorial psychic constructs and many scholars relate them to nationalism' (Surová 2016, 8-9). Surová later points out that national identity and nationalism link with national pride:

> National pride is related to the feelings of patriotism and nationalism but is not equivalent to being nationalistic. Rather it is positive affect, which public can feel towards their state (Smith-Kim, 2006). The theory suggest that national pride is greater among the dominant cultural group and lower among minority groups (Ibid., 9).

Surová juxtaposes those approaches with Mccrone's belief that national identity is diverse from nationalism and nation. Mccrone emphasises the difference between nation and state and comes to the conclusion that national identity does not equal nationality or citizenship (Ibid., 9).

1.2.4 Self-identification/ Self-identify

To understand *distinctiveness* Banović investigates Taylor's and Walzer's work. Walzer notices that there are two main approaches used by the dominant identity towards distinctiveness – assimilation and ignoring (Banović 2015, 15).

Following this observation Taylor states that *this assimilation is the cardinal sin against the ideal of authenticity* (Ibid., 15). Banović explains that the principle of non-discrimination and the principle of discrimination (as for preserving distinctiveness) are seemingly contradictory to one another (Ibid., 15). The Author explains that the principle of discrimination refers to positive discrimination towards the members of a group or collective, while the principle of non-discrimination relates to individual rights. According to Charles Taylor what stands behind said

principles is the dignity. Positive discrimination as a temporary measure is supposed to repair the damage that historical discrimination did to unfavoured groups and eventually remove the disadvantages (Ibid., 15).

According to Joseph Rudolph, the same outwardly visible features as language and attire allow group members to recognise each other and let the outsiders *to identify the group's "otherness"* (Rudolph 2019, 2).

> The Council of Europe (CoE) and the United Nations (UN) have interpreted the treaty provisions on minority rights in favour of acknowledging the self-identification of minority groups. The 1994 General Comment by the UN Human Rights Committee (HRC) on Article 27 of the International Covenant of Civil and Political Rights (ICCPR), 4 makes clear that the existence of minorities does not depend on state decisions but is to be established by objective criteria; and that non-citizens and even nonpermanent residents of states qualify for protection under Article 27 (Dimitras 2004, 1).

1.2.5 Recognition

One might ask, why are state so resentful in recognising minorities within their territories? *Will Kymlicka points us towards the direction of thereat - Minorities, (…) are a "problem" in a world of nation-states: they pose a challenge to a nation-state's legitimacy* (Kymlicka 2018, 167).

> Recognition by the state is not part of the theoretical definition, but plays a crucial role in practice. This points to a gap between theory and practice. However, this gap is by no means as wide as it is in the context of peoples. There are even those who advocate that theory is superfluous and it is only important that minorities to enjoy their rights (Barten 2015, 7).

Anna Geis on the very beginning of her article on recognition in international political theory, describes the term as 'fuzzy' as its being used in various connotations. She then names three different usages of the term distinguished by Ikäheimo and Laitinen:

- as a synonym to 'identification',

- as synonym to ‘acknowledgement’ (meaning evaluating something and giving meanings),
- as a reference to interpersonal recognition (Geis 2018, 2).

Charles Taylor also highlights the link between identity and recognition which, according to the Author, is a relatively new concept (Taylor 1995, 25-26). He adds that the change of the perception of those terms would not have been possible without the democratisation of the society and the collapse of social hierarchies (Ibid., 25).

Taylor explains that the switch from honour to dignity was followed by politics of universalism. This perspective underlines the equal dignity of all citizens and avoidance of ‘first-class’ and ‘second-class’ division among citizens (Ibid., 37). This perspective is particularly important for minority rights.

Another link to identity observed by the Author are the two degrees of identity:

> And so the discourse of recognition has become familiar to us, on two levels: First, in the intimate sphere, where we understand the formation of identity and the self as taking place in a continuing dialogue and struggle with significant others. And then in the public sphere, where a politics of equal recognition has come to play a bigger and bigger role (Ibid., 37).

As we can see, the two levels can be easily related to individual and social identity. In fact, Taylor believes that the politics of recognition became even more important because of the fact that the formation of identities comes through a dialogue. He stated that a healthy democratic society is achieved by equal recognition (Banović 2015, 12). Banović continuous explaining that there are to paths in which the discourse of politics of recognition evolved in the public sphere:

- *recognition of equal political rights and suffrage for all citizens of a state;*
- concerning the politics of distinctness – *the recognition of the unique identity of a person or group entails the recognition of their distinctness in relation to others* (Ibid., 12).

Banović points out that a common attitude towards identity politics can be found already in Hegel’s belief that *identity is constructed dialogically through a process of mutual recognition* (Ibid., 11). In his approach recognition is understood as a mutual relation between subjects with a

reciprocal understanding of equality among themselves (Ibid., 11). Ulrike Barten seems to be one of the scholars who conformed Hegel's views on recognition writing about minorities:

> Overall, a minority has been defined in a way that, though not legally binding, is accepted by states and minorities alike. One could fear that the definition is not used in practice and therefore has little impact. A key determinant in minority rights is the state in which the minority lives; though minority rights are based on international law, the state remains responsible for guaranteeing them. Without recognition from the state, minority rights are withheld from the minority (Barten, 2015, 8).

Banović continues analysing Nancy Fraser's idea – *Recognition is thus essential to the development of self. To be denied recognition, or to be misrecognized, creates a distortion of one's relation to one's self and an injury to one's identity* (Banović 2015, 11). Charles Taylor is one of the scholars who share this view associating recognition with identity. He sees the concept as something that is formed based on a person's understanding of who they are (Ibid., 12). Therefore, lack of recognition of one's identity is harmful to those who are being deprived of it. One of the results of it is to omit the imposed identity (Ibid., 12). Banović states that recognition is a fundamental human need rather than a courtesy. Importantly this refers both to individuals and groups.

Recognition is often investigated together with redistribution and economic status of a group. Banović refers to Kymlicka stating that according to Marxist economic hierarchy is parallel to status hierarchy, therefore fair redistribution of goods is to eliminate cultural inequalities. Kymlicka does not agree reminding that reducing economy to status is too much of simplification and is not proved by data (Ibid., 12).

European institutions use the term 'recognition' as a synonym to 'identification', which we can see in Minority Rights Group International's report from 2004 *Recognition of Minorities in Europe: Protecting Rights and Dignity* we can see that (Dimitras 2004, 8).

Rita Dhamoon compares Kymlicka's theory of multicultural citizenship and Taylor's theory of recognition, concluding, that *culture is employed as a code for speaking of specific ethnic groups, historical nations, and linguistic minorities* (Dhamoon 2006, 354-355). She points out that although there are strong differences between Kymlicka's and Taylor's views, both Authors *limit their analysis of minority or misrecognized cultures to national minority groups that are territorially concentrated and share a common language (e.g., indigenous people and the Qu´eb´ecois) and*

polyethnic/immigrant minorities whose members are assumed to share language, history, and broad belief system. Dhamoon argues that there are *consequences of privileging an interpretation of culture as ethnic, national, and linguistic difference* (Ibid., 354-355).

> Culture[6] hence adopts features of stability, formal structures, and longevity. Indeed, in defending his classification of national and polyethnic minorities Kymlicka argues that there are legitimate reasons "to show that ethnocultural groups do not form a fluid continuum, in which each group has infinitely flexible needs and aspirations, but rather that there are deep and relatively stable differences between various kinds of ethnocultural groups."[8] In order to legitimize the boundaries of his identity categories Kymlicka declares that each of us belong to one culture and that generally people do not move between cultures, although they can enjoy other cultures. The boundedness of a culture is hence integral to Kymlicka's ability to categorize groups (Ibid., 355).

Rita Dhamoon observes that in Kymlicka's way of understanding culture the focus is put on differences *between specific kinds of group claims*, while ethnic, national and linguistic differences are not given as much of importance (Ibid., 355). What is important to not is that Kymlicka's views on minorities are strongly shaped by his views on Quebec.

Dhamoon futher comparres Kymlicka's theory with Charles Taylor's theory on recognition:

> Taylor takes the position that identities are dialogically constituted, where recognition and misrecognition shape the production and experience of an identity He provides a more nuanced view of identity production than Kymlicka in that he understands that recognition takes place within shared meanings, or horizons of significance, where we define who we are. In the process of recognition, Taylor argues, it is required that 'we' investigate other cultures, while always leaving open the possibility that the standards we employ will also be transformed. Yet despite Taylor's turn to broaden 'our' horizons so as to understand 'them' he tends to adopt an essentialist approach to evaluating Other cultures. Specifically, in arguing that judgments about worth are possible and necessary, he evokes the idea that cultures must be unified and

[6] Kymlicka uses term 'culture' as synonymous to 'a nation' and 'a people', understanding it as *an intergenerational community, more or less institutionally complete, occupying a given territory, or homeland, sharing a distinct language and history* (Dhamoon 2006, 355)

homogeneous in such a way as to make assessments about them as whole entities (Imbid., 356).

Dhamoon continues by pointing out that according to Taylor, cultures need to be 'worth' of recognition by being *stable, timeendured, mature, and encompassing of many people* and notices that this understanding of culture is exclusive, especially for groups that *may be shifting, transforming, 'in-between', partial, or only more recently organized* (Ibid., 356).

Małgorzata Bieńkowska-Ptasznik notices that there are several dimensions of ethnic relations including institutional dimension meaning authorities' politics towards cultural differences (Bieńkowska-Ptasznik 2007, 85). According to the Author, each model of relations is associated with a different type of politics towards minorities. Assimilative type means that the state tries to adjust educational system to encourage or push the *others* to abandon their alterity. Accommodational system is recognised when the homogenisation of the society is not the main goal but the dominant group still has a very strong position and is the one with power. Bieńkowska-Ptasznik emphasises that the pluralistic types like cultural and separationist also maintain a strong position of dominant group. The efforts to deescalate the situation are typical for the conflict type.

The Author notes that suitable political actions are required for multicultural type of society and states that it is commonly agreed that managing multiculturalism is an important part of research about multiculturalism (Ibid., 85).

Capotorti's definition of minority prepared for the UN is one in the most common usage. Ulrike Barten points out that regarding practice, not all states use Capotorti's nationality requirement. Meanwhile, others recognise it as an essential component (Barten 2015, 166-167). The Author adds that the issue of practice is more complicated *by the fact that minorities may exist according a legal definition, but if a state does not recognize a minority and its rights, not much is gained from the definition* (Ibid., 7).

He brings France as an example of states which deny the existence of minorities within their territories. Barten notes that although Bretons meet Capotorti's requirements, the group does not *enjoy the applicable minority rights under international law* (Ibid, 7). He later emphasises that even

though state's recognition is not part of the theoretical definition, it plays a vital role in practise. The Author recognises it as a proof of a gap between the theory and practice. Barten notices that this kind of gap is even bigger in case of peoples (Ibid, 7-8).

What follows recognition is a possibility of non-territorial autonomy. The topic is further presented by Mabel Wong. The Author explains that NTA is based on cultural identification rather than territory (Wong 2013, 58). According to Wong NTA can be characterised by several important features:

1) By granting national groups legal authority over their own cultural practices, the distinction between majority and minority is eliminated, along with the inclination towards discrimination that often accompanies such a distinction.
2) This understanding of autonomy is closely linked to individual freedom, as cultural identification, particularly when it is given legal significance, is perceived in terms of voluntary choice (Ibid., 59).

In the opposition to traditional models of autonomy, non-territorial autonomy recognises cultural identification as its principal criteria (Ibid., 58). Wong presents Karl Renner's model of non-territorial autonomy, in which upon turning into legal voting age, individuals are required to declare their cultural identity so they can be recognised as members of their chosen national group. In this model the national groups are granted legislative power over all national-related affairs like education, etc. Wong underlines that:

> (…) Renner, as do most advocates of non-territorial autonomy, sees such a model as a supplement to and not a substitute for traditional territorial sovereignty. The state, especially in multinational regions, operates alongside these national councils and is responsible for all matters—such as economics and foreign policy—perceived to be unrelated to culture. By allowing nations control over their own cultural development and sustenance, the point is not only to ameliorate competition amongst nations, it is also to remove potential conflict between the interests of the state and of those of the nation (Ibid., 59).

1.3 Minorities

Because of the context of this work the types of minorities discussed are related to the group identity. Although there are other types of minorities like linguistic or religious, their nature is different than the characteristics of the analysed groups.

Łodziński, Szmeja and Warmińska in their overview of Polish publications regarding minorities after 1989 educed five approaches towards the topic in analysed literature (Łodziński, Szmeja and Warmińska 2014, 14). According to the Authors, the first path is sociology of the ethnicity (nation) where the main focus is directed on different aspects of the ethnic (national) minority culture. Typical for this concept is defining strengths and weaknesses and ways of understanding George Simmel's concept of *us* and *others*.

The second approach distinguished by the Authors are researchers regarding ethnic conflicts conducted mainly by political scientists, sociologists and psychologists. Another perspective regards minority rights and protection and is represented mostly by political scientists and lawyers. The fourth manner the Authors recognise after Leszek Gołdyka, Robert Woźniak and Dariusz Wojakowski. It focuses on the frontier and the fact that some minorities live and function on the frontiers (minorities living on the boarders of different states) – both spatial and cultural (social). The emphasis of this approach lays on the co-living of different societies. The last approach is specific for Poland and concerns the territories the state gained in XX century in the west and north. (Ibid., 14).

Marina Germane points out after Ezra Mendelsohn that it is particularly dangerous for a minority to be 'caught' in the middle of two rival cultures which try to make the minority choose whom to ally with (Germane 2015, 52-53). The Author explains that in those situations minorities often decide to collaborate with another minority.

> (…) even as isolated communities, minorities can suffer discrimination by association (cultural, religious, ideological, linguistic, or 'region of origin' affinity, real or imagined) with another minority that has 'displeased' the host nation as either a former oppressor or as an overly active competitor for the ownership of the state. Minorities may also not seek direct contact or association with another minority, but simply 'jump on the bandwagon' and use this

> minority's existing achievements (in negotiating with the majority group, or in securing special status) as precedents in their own bargaining strategies (Ibid., 53).

Ulrike Barten agrees with Sylvia Lehmanm that lack of clear definitions allows (by using it as an excuse) some states to not grant the rights enacted on specific groups and that this is what happens also to minorities. He points out that there are a lot of grey areas between in the current categorisation (Barten 2015, 2).

Not all the authors see definite line between the terms. Rita Dhamoon points out, that Will Kymlicka uses culture broadly as synonymous to 'a nation' and 'a people', understanding it as *an intergenerational community, more or less institutionally complete, occupying a given territory, or homeland, sharing a distinct language and history* (Dhamoon 2006, 355). Kymlicka understands the culture of national minorities (societal culture) as *set of institutions, covering both public and private life, with a common language, which has historically developed over time on a given territory, which provides people with a wide range of choices about how to lead their lives* (Ibid, 355).

1.3.1 The Concept of Minority

Minority is a very broad term. Ulrike Barten reminds us that there is no legally binding definition and agrees with Bertus de Villiers that there is an inability or unwillingness to decide on a clear definition (Barten 2015, 6). On its own it does not tell us much, so usually it is used with some kind of specification like 'national', 'ethnic', 'linguistic' but also 'religious', 'sexual', 'social' etc. Ulrike Barten also points out that the term 'classic minorities' is often used when it comes to ethnic or national minorities (Ibid., 9).

The name itself gives us the idea that the discussed group is smaller than the rest of the society and has a non-dominant character – aristocracy or oligarchs have never been seen as a minority even though they are relatively small groups. Derlicki after Eriksen points out how relative is the term giving the example of Russians being a majority in USSR and becoming minority in individual states created after the fall of USSR (Derlicki 2006, 42).

Minorities can be also explained on the centre-periphery axis, where the centre can be understood as political (decision-making) or cultural. Centre is represented by the dominant culture while the periphery represents minority culture (Muś 2021, 15-16). The minority culture is non-dominant within the state.

It is important to add that while some authors use the terms very precisely and try to categorise discussed groups the best they can, others use those terms as synonyms. Ulrike Barten notes that the term is often used without further explanations and that in international law there is a general understanding of the term (Barten 2015, 9).

Barten also notices that the word is used in UN Minority Declaration to describe national, ethnic, linguists and religious minorities, while in Copenhagen Document it covers only national minorities. He also points out that the classification in international law is unclear as different documents often describe the same groups with different terms and suggests that the term 'minority' in the classical sense is suitable for all of the groups (Ibid., 9).

Although there are plenty of definitions of *national minority*, *ethnic minority*, and *minority* as such, used by researchers, in international law those terms are usually not defined. As the United Nations explains it

> the existence of a minority is a question of fact and that any definition must include both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as members of a minority) (United Nations, 2010).

Also the former OSCE High Commissioner on National Minorities Max van der Stoel agreed that the existence of minorities is 'a matter of fact and not of definition' and famously said 'I would dare to say I know a minority when I see one.' (Barten, 2015, 7).

In 1979 United Nations had Italian layer, Francesco Capotorti specialised in international law, create a definition for their purpose. According to him, a national minority is

> A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly,

a sense of solidarity, directed towards preserving their culture, traditions, religion or language.' (Capotorti 1979, 96).

Almost twenty years later, in *Encyclopaedia of Public International Law,* Capotorti removed the citizenship requirement from his definition (Kędzia and Płowiec 2010, 41).

Ulrike Barten analysing Capotorti's definition indicates that the minorities that are in fact protected by international law fit Capotorti's definition of the term but emphasises after Musafiri that the requirement of nationality in said definition has been notably discussed and rejected by the Human Rights Committee. According to the Author, there is a contrast in the way different states approach the nationality requirement in Capotorti's definition – while some of them ignore it others take it rather seriously.[7]

The Athor distinguishes two types of approaches to defining minority – a characteristic approach and the territorial approach which focuses on whether the group is spread out or has settled in the region primarily. The first approach is represented by Capotorti, Pablo de Azcárate (Director of the Minority Section at the League of Nations) and Jules Deschênes (UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities) rights are withheld from the minority. (Barten 2015, 6-8). Even though there are differences in analysed definition and their authors focus on different characteristics, Barten grouped those and named the factors taken into account in this approach, which are:

- objective factors (observable differences in culture and language),
- subjective factors (consciousness of these differences and the will to preserve these differences) (Ibid., 7).

The term 'minority' was used (along with the term 'people') in the early legal work produced by the Permanent Court of International Justice and the League of Nations. Gentian Zyberi states that 'neither the Permanent Court nor the ICJ has endeavoured to provide a general, comprehensive

[7] This topic will be discussed in the case study of France.

definition of either the notion of peoples or that of minorities' (Zyberi 2013, 1). The Author cites the definition introduced by PCIJ which reads:

> A group of persons living in a given state or locality, having a race, religion, language and traditions of their own and united by this solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instructions and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other (Ibid., 1).

Another definition presented by the Author comes from the report *Protection of Minorities: Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities*, Commission on Human Rights: Sub-Commission on Prevention and Protection of Minorities, by Asbjørn Eide, UNGAOR, forty-fifth Sess, Agenda Item 17, UN Doc E/CN.4/Sub.2/1993/34 (1993), 7, para 29, that reads:

> a minority is any group of persons resident within a sovereign State which constitutes less than half the population of the national society and whose members share common characteristics of an ethnic, religious or linguistic nature that distinguish them from the rest of the population (Ibid., 2).

Anna Muś presents another definition introduced by PCIJ in 1919 in Court's Interpretation of the Convention Between Greece and Bulgaria Respecting Reciprocal Emigration, signed at Neuilly-Sur-Seine (Question of the "Communities") that reads:

> By tradition, which plays so important a part in Eastern states, the "community" is a group of persons living in a given state or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other (Muś 2019, 39-41).

We tend to use a term 'minority' as a safety net. It does not require a specification of what bonds the discussed group. Is it shared nationality, language, ethnicity? This term does not oblige us to answer those questions. What it does, is putting all the emphasis on being the smaller part of something, being a non-dominant group. The non-dominant characteristic is what is often

problematic for many groups recognized as minorities, but before analysing the criticism and problems connected to this term, we will take a closer look at its definition.

The European Union understands minority as:

> a non-dominant group which is usually numerically less than the majority population of a State or region regarding their ethnic, religious or linguistic characteristics and who (if only implicitly) maintain solidarity with their own culture, traditions, religion or language (IOM 2019, 141).

and recognises *ethnic* and *national minority* as narrower terms, reminding that up to this day there is no 'universally accepted definition of minority in international law, although a variety of international documents have attempted to define the concept of a minority' bringing of Art. 27 of the 1966 International Covenant on Civil and Political Rights (ICCPR) as an example. Meanwhile, ECMI founding-father, Kurt Hamer, stated that minorities are:

> all national cultural, ethnic, religious and linguistic minorities whose minority status has been recognised by national legislation or by Internationally binding declarations as well as minorities that define and organise themselves as such (ECMI Kosovo. Minority Rights: A Short Introduction.).

What we can find problematic in this definition is the requirement of being recognised by international or national law. This stands in a contradiction to what most of the experts and international institutions agree upon:

> (…) the existence of a minority is a question of fact and that any definition must include both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as members of a minority)' (United Nations 2010, 2).

Although what is problematic for many minority members as well as the observers is the term 'minority' itself. It strongly suggests the non-dominant characteristic of a group which is often incorrect – minority members tend to look at themselves as inhabitants of a certain regions where they are often in majority and which they often want to govern on their own terms. As for the observers it is often hard to see Scots as a minority, but they do apply as such even though they are big in numbers and occupy a bigger and more isolated territory.

Tholen and de Vries defend the term explaining that the concept of minority in political sense does not refer to the number of group members but group's political force (Tholen and de Vries 2004, 457). They add that a minority can be even bigger than the rest of the society and still be recognised as a minority. As the Authors use the term regarding discrimination, they chose Wilensky's definition describing minority as *any collectivity that on the basis of shared social characteristics is discriminated against by a dominant group, comes to see itself as an object of discrimination and organizes around this perception* (Ibid., 457). The Authors point out that Wilensky's definition lacks explication of what discrimination is.

1.3.2 Ethnic Minority

Ernest Renan, XIX-century author with Breton and Gascon origin, presented a theory about nationalism. His idea of civic and ethnic nationalism tells us a lot about ethnicity as a contract in which the blood relations and race per se play an important part. He notices that in his times, there is often a confusion regarding terms 'race' and 'nation' (Renan, 1882). Over a century later we can observe how the perception of those terms have changed and that they are not confused anymore.

Ethnicity is a more complex category than legal status or origin, especially in regard to data collection and statistics. Only relatively few states use ethnicity as a concept in social statistics. Ethnicity may refer to characteristics of persons, including colour of the skin, national origin, religion, regional identification, language, amongst others.

On the beginning of XX century Ferdinand de Saussure pointed out that ethnicity does not require any political bond (Żelazny 2010). Following that fought we can assume it is one of the factors that differs it from nation.

Marina Germene tracks the term *ethnic minority* (and it's understanding as 'deeply segregated communities') back to Mill's *Considerations on Representative Government* published in 1861 (Germane 2015, 54). She states that Mill's opinion together with a belief of domination of a nation-state as a basic unit of analysis was commonly shared for decades and re-established by the events

of 1930's and the Second World War. The Author also holds Mill responsible for spreading the stereotype that it is not possible for different ethnic groups to have any relevant collaboration and that there will always be a squat between them while they will always look for assistance from their 'common arbiter'. She explains that for the years to come ethnic groups were seen as a part of the conflict and unable to put the common interest above their own:

> …Each [nationality] fears more injury to itself from other nationalities than from the common arbiter, the state. Their mutual antipathies are generally much stronger than jealousy of the government. That any one of them feels aggrieved by the policy of the common ruler is sufficient to determine another to support that policy. Even if all are aggrieved, none feel that they can rely on the others for fidelity in a joint resistance; the strength of none is sufficient to resist alone, and each may reasonably think that it consults its own advantage most by bidding for the favour of the government against the rest (Ibid., 54-55).

The problem is the government is far away from being an impartial arbiter. People who constitute the government are not brought from a void and have their own background. Often, they come from the same social group and class or like in case of France, even the same school.

Germane adds that ethnicity and nation-state both affected the conflict but the civic-ethnic dichotomy influenced the way of thinking about nationalism introducing division to positive (civic) and negative (ethnic) nationalism. Civic nationalism was described as progressive and liberal while ethnic became a symbol of 'backwardness and oppression, partly exonerated nationalism, but left ethnicity high and dry' (Ibid., 55). The Author indicates the shift that took place in the period between the two world wars and changed the main focus from ethnic activism to individual human rights (that were supposed to include ethnic activism). It empowered the belief that ethnic minorities should be integrated into supposedly civic nation-states while ethnically-based collective action on behalf of minorities was regarded with deep suspicion by social scientists and policymakers alike – a suspicion that was only reinforced by the breakup of the former Yugoslavia and the accompanying ethnic cleansing (Ibid., 55).

The division to civic and ethnic nationalism was first introduced by Ernest Renan and although it became very influential, it has also received a lot of criticism. Rogers Brubaker points out that the glorification of civic nationalism usually linked to Western Europe is not just. Described

as ‘modern’, ‘liberal’ and ‘inclusive’, civic nationalism is linked to violent events in Basque Country and Ireland (Brubaker 1999, 56).

Polish reader, due to Poland’s legal solutions, is used to differencing ethnic and national minorities.[8] But it is not a case in international law, where all the minorities are called ‘national’ and the existence of a state does not matter. This is the approach, that will be presented in the following work.

But ethnicity is not fully left out. It appears as one of the characteristics of national minorities. Including the preamble to the Framework Convention for the Protection of National Minorities:

> Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity; (Framework Convention for the Protection of National Minorities, 1995).

The definition of ethnic minority is often very similar to the definition of minority but highlights the ethnic factor. Thomas Hylland Eriksen’s definition states that it is *a group which is numerically inferior to the rest of the population in a society, which is politically non-dominant and which is being reproduced as an ethnic category* (Eriksen 1999, 147-148).

Derlicki points out that most of the ethnic minorities are trying to higher their status and become national minorities (Derlicki 2006, 43). According to the Author, such attempts can meet several traps. To prove his point, he presents three arguments. First, he states that those minorities do not have their own state (which is one way of understanding national minorities but as we will see later, international actors nowadays use the term more broadly). Secondly not all of the members of those minorities recognise themselves as a national group (which can also be argued as becoming a national group or nation is a process). The last point is that in Author’s understanding the word ‘national’ should be affiliated with ‘some kind of homogeneity of culture and identity’, which according to him does not take place. This is an interesting observation as it is commonly agreed

[8] Ustawa z dnia 6 stycznia 2005 r. o mniejszościach narodowych i etnicznych oraz o języku regionalnym. Dz.U. 2005 nr 17 poz. 141.

that national culture does not exist as such but rather as an aggregation of regional and local cultures (Ibid., 43).

European Commission's website informs that the term is often used as a synonym of 'ethnicity' or 'nationality' and that in some of the EU Member States it is an addition to citizenship.

Due to the character of the following analysis, I am focusing on a legal and euro-centrical understanding of the term. It is important to add that depending on the approach there might be different understanding and focus on the characteristics of this phenomena. Although it is not directly written in the cited definitions, ethnicity is strongly related to origin (being born into the group) and place of birth and this approach dominates the north American authors (M. Myśliwiec 2014, 46). The Author states that even though in some European publications there is the connection between blood relations and ethnicity, but it is a rather rare situation. It is worth mentioning that there are differences in European and American approach, one of the being the lack of usage of the term 'race' in Europe.

Myśliwiec also adduces Donald Horowitz, north American author who puts an emphasis on the fact of being born into the group as a major factor of ethnicity and that one's identity is important not only to themselves but influences group identity. New possibilities of entering the group will weaken this approach. (Ibid., 47-54). Possibly also globalisation and increasing movement of people will change the approach to ethnicity in future as more and more children are born in mixed families.

The European approach is not homogenous and in central and eastern Europe it is typical to recognise differences between ethnic groups, and nationalities and nations. Unlike the ethnic group the two others have high culture (Ibid., 47). The Author adduces Polish sociologist who in early XX century described the phenomenon of ethnic minority with the word 'people' explaining that both people and nation are cultural phenomenon. According to Znaniecki people are a social group with a rather loose structure and which differs from the society only with cultural characteristics that the rest of the society lacks (Ibid., 47). He adds that people are a sealed group which is conservative regarding its own tradition which does not allow any diversity within itself. What differs people from nation according to Znaniecki is literature. The lack of high culture in the concept of ethnic nationalities is also characteristic for Miroslav Hroch – the Author explains that ethnic groups have little to no tradition of high culture expressed in their own language and usually uncomplete social structure (they normally would not be a part of the ruling class and elites) (Ibid., 48). He also points

out that this kind of minorities usually lived in multi-ethnic states and did not speak in the same language as the administration, elites and culture, so the only way to become successful was to accept the dominant group's identity and language (Ibid., 48).

Table 1 Ethnic minority according to Antonina Kłoskowska

	Ethnic groups	
	Classic ethnic groups (traditional, primal, archaic)	**Scattered groups sharing similar traditional culture living within a bigger society**
Society	Small groups	Small groups contrasting with the culture of a bigger society among which they live
Territory	Strong connection with the territory which has magical or symbolical context	No specific or shared territory. Often district or neighbourhoods or reserves (indigenous people)
Culture	Approbation of the dominant culture often together with taking some of its elements as their own (possibly with or without neglecting their own culture). Folklore, ludicity, one traditional culture shared by all.	No consolidated culture. Group's culture is being adjusted to the circumstances. The attitude towards the dominant culture can differ.
Connection	Neighbourhood relations	
Identity	Lack of historical autoreflection, community based on frequent contact, similarities and habits	

Table created based on Antonina Kłoskowska's views on ethnic groups presented in 'Kultury narodowe u korzeni' (Kłoskowska 1996).

Ethnicity can be placed between kinship and nationality and gains the importance when there is an interference with another ethnicity at the same territory, so the ethnicity places an important role in self-identification (M. Myśliwiec 2014, 49).

Summing up characteristics (not all of them have to be fulfilled) brought up by different authors are (1) non-voluntary character of the group (one is born into it and does not choose to be a part of it), (2) shared territory, (3) common culture, (4) kinship, (5) no high culture, (5) no literature.

Marina Germene brings up an interesting observation made by Gupta – in situation of a conflict ethnic groups might be overlooked and lack political representation and recognition (a problem described by Barten) and become 'hidden communities'. The Authors bring examples if when groups seeking rights for themselves also speak on behalf of other groups – not only ethnic but any discriminated non-dominant groups like LGBTQ+ or migrants (Germane 2015, 53).

1.3.3 National Minority

National minority is a very interesting term as it dominates in international law. ACFC uses it to describe most of the groups it works with and is rather inclusive regarding the usage of the term – the groups recognised as national minorities vary and according to social science represent different types of minorities.

Derlicki draws our attention to the problematic character of the term and connects it with the fact that it often appears in legal acts involving international law and refers to the legal status of a group (Derlicki 2006, 43). Jarosław Derlicki states that the character of the term is (due to its involvement in international law) is controversial and is a topic of political rather than social science (Ibid., 43). The Author believes that not all of the groups recognised as national minorities fulfil the requirements presented in UN's proposal of the definition (a group of citizens of a particular state, which is smaller than the dominant group). He also underlines that the United Nations have never managed to agree on a single definition of national minority and factors that constitute it. Author's understanding of the term corresponds with the definition presented in Polish law. He also quotes

Antonina Kłoskowska and her criteria which are: distinction based on ethnic, religious and linguistic basis together with some notion of solidarity, willingness to survive and fight for rights equal to those of a dominant group (Ibid., 43).

Małgorzata Budyta-Budzyńska opening the topic of national minorities points out that in everyday-life terms such as community, social group, collectiveness are used as synonyms, which they are not in sociological studies (Budyta-Budzyńska 2013, 129). It is not a problem most of the times but can cause difficulties, when term is not defined in law.

One of the few legal documents that define the term is the Instrument for the Protection of Minority Rights introduced by the Council of the Baltic Sea States on 19 November 1994. It describes national minority as:

> a group that is smaller in number than the rest of the population of a State, whose members being nationals of that State, have ethnical, religious or linguistic features different from those of the rest of the population, and are guided by the will to safeguard their culture, traditions, religion or language (CEI Instrument for the Protection of Minority Rights, Article 1).

After Wawrzyniec Konarski, Małgorzata Myśliwiec points out that the term 'minority' and 'national minority' are often used as synonyms. Following Richard Schermerhorn's definition of minority she deduces that minorities do not have to be necessarily the smaller group as the non-dominant factor and submission to the dominant group play the main role. (M. Myśliwiec 2014, 56-57)

In Polish tradition the term has a different meaning than the one presented in international law. Both Antonina Kłoskowska and Marek Waldenberg agree that national minority identifies with a nation in another state (Ibid., 55-57). Kłoskowska adds that this type of minority usually lives in a rather dense territory at the boarder of the state, while Waldenberg explains that nationality differs from national minority by only one element. According to the Author, nationality does not relate to a nation with its own state (Ibid., 57).

Katharina Crepaz points out that although these minorities can relate to a kin-state which can speak on their behalf, take bilateral actions through treaties, its actions and their success depend on kin-state's position and relations with the state the minority lives in:

While e.g. Austria was very open about advocating rights for its minority in Italy, Germany could not as easily support the German minority in Poland for fear of this behavior being regarded as irredentis. (…) National minorities in the EU therefore differ significantly, not only in size, but also in political impact, degree and possibilities of political representation, presence or absence of protection standards, etc. (Crepaz, 2016, 2).

1.4 Other Categories of Groups

The debate concerning nations and national minorities lacks a longer perspective. From one side because mentioned ideas are relatively new, secondly because we tend to forget how fast ethnopolitics change. We look at the current situation forgetting that it has never been constant. Meanwhile the history of Europe is the history of constantly changing states and nations (Strzelczyk 2006, 2-3).

1.4.1 Nation

Similar as in the case of 'nationality', the term 'nation' comes from Latin 'to be born' (*nascor, nasci, natus sum*) and birth (*natio, nationis*) which can also mean kind, people or tribe (M. Myśliwiec 2014, 54)

Miroslav Hroch points out that the concept of nation is specific for Europe and was copied to other continents (where nations constituted in a different way than in Europe), which causes the changes in its understanding today. (Hroch 2015, 7). Meanwhile, nation is probably one of the hardest concepts to explain, yet almost every European feel as a part of one. What is problematic is that the term developed in different ways across Europe. It is important to explain that in his work *Naród jako fenomen właściwy Europie* (Nation, a phenomenon specific for Europe) he uses the term nation in two variants – in Polish an English to distinguish their meaning (explained later in the text).

Hroch indicates that in early modern period word 'natio' was used to describe the elites belonging to the same state or religion. Only in later years it developed and started to describe bigger masses. According to the Author, the already-existing term 'nation' was used to describe a new phenomenon. Hroch emphasis that the term from the very beginning was used in different ways in different European macro-regions. While in English-speaking areas it was always connotated with state, in Central Europe it was related with culture and language (Ibid., 8). In another part of this

text, he indicates that in states like France, England, Sweden and Holland nation was created as identification with the ruling monarchy.

Miroslav Hroch declares that he does not share Hans Kohn's belief that nation as a large group of people is a consequence of the emergence of the idea of nation understood as nationalism. The Author argues that nationalism is an aftermath of the end of feudal world and the following crisis of identification – people who earlier identified with their social group had now have to find another group to relate to (Ibid., 9-10). According to Hroch also the widespread access to schooling system taught the masses abstract thinking.

The Author tries to find the answer for the question why some ethnic groups became nations while others became regional groups? He believes that regional identity developed as an alternative to national identity and in some cases the latter (sometimes a total of regional identities) overcame singular regional identities. He distinguishes three scenarios:

1. Activists from the very beginning were calling their ethnic group 'nation', mostly when those group could identify with a state existing in the past – Czechs, Hungarians, Norwegians.

2. Regional identity evolved to national identity – Slovaks, Fins, Slovenians, Flemish, Catalans.

3. Attempts to change from regional to national identity failed – Bretons, Moravians, Dalmatians (Ibid., 8-9).

He adds that nowadays there are no discussions about 'historical' and 'non-historical' nations that were very popular in XIX century. He points out that the discussion specific to our time is the one concerning sovereignty of a nation (the right to self-determination) – according to him secession is a moment when a nation in his (central European) understanding becomes a nation. In the 'English' meaning of the word and that history plays an important part in the process (Ibid., 9).

What Hroch explains as different ways of understanding the concept of nation in Europe can be was also noted by Wawrzyniec Konarski as two traditions of this understanding – civic and ethnic nations corresponding with West-European and East-European tradition (M. Myśliwiec 2014, 57). Ulrike Barten also agrees that nation has a different meaning in the west and east of Europe, according to him the Eastern European definition is closer to the origin as the Latin word *natio* meant a membership to the community (being born into it). He believes that the French

Revolution played the role in bringing together nation and citizenship. Barten also brings up report to the Parliamentary Assembly of the Council of Europe which stared that the two understandings consisted in Europe for hundreds of years. He adds that if we look at Europe with the characteristic approach Iceland and Portugal would be the only non-multi-national states (Barten 2015, 14-15).

Interestingly there is a definition of nation which brings together the two approaches and was introduced by György Frunda.

> A nation is a specific political, social, economic and cultural community, often with a common language, culture and history, living in neighbouring territories, with 'independent' political institutions and social organisations; it presupposes a politically sovereign people, master of its own territory, with its own economic life and its state or, failing this, which aspires strongly to these things (Ibid., 14-15).

Miroslav Hroch points out that one of the consequences of the First World War was a deep crisis of multi-national empires and creation of new states for several nations like Estonia, Finland, Latvia, etc. (Hroch 2003, 5). Many of those groups, that we now call nations, had never had their own state and recognition before, so from today's perspective we would have called them ethnic minorities at the time. As we can see, the terms we use are very vague and not precise, especially because they try to specify big groups that evolve all the time and are not monoliths.

Hroch indicates that the 'new' states are usually small and unsignificant and are a result of – as some Authors point out – Lenin's and Woodrow Wilson's idea that every nation has a right to self-determination and its own state (Ibid., 6).

Przemysław Mazur analysing the term adds his explanation of nationalism, pointing out the link between two concepts. The Author notices the difference in how nationalism is understood in Western and Eastern Europe where the term has rather negative connotations (Mazur 2010, 38). While in Western Europe the phenomenon is connected directly with the process of creation of the nation, in Eastern Europe it is used as a synonym of xenophobia.

The idea of national states was meant to resolve Europe's problems but was also a consequence of a relatively new concept - nation. Dividing any territory based on nationality is not an easy task mainly for two reasons – first, many territories are inhabited by different nations and secondly, nations and nationalities are not given as such – they constantly develop, change and

evolve. A great example of a new nation are Moldavians. Nation that was almost artificially created by creating a state but eventually became something more.

Elya Tzaneva points out that about twenty years after the Royal Institute of International Affairs had attempted to create one of the first lists of attributes of identity, B. Shafer decided to improve the list and introduced his own proposition of what he saw essential for the nationhood to exist (Tzaneva 2019, 12). Tzaneva adds that even Shafer himself admitted that his ten-statement-long list was incomplete. It included:

> (1) an undivided territory actually or virtually held; (2) features in common, such as language, literature, and customs; (3) a minimum of common social (including religious) and economic institutions; (4) a common independent or sovereign government either actually or virtually in existence (type does not matter), or, with rare exceptions, the desire for one; (5) a shared belief in a common history and often in a common ethnic origin sometimes thought to be religious or racial; (6) some common values held by all nationals, or preference and esteem for fellow nationals; that is for those who share the common culture, institutions, interests, and heritage, or at least greater preference and esteem for them than for members of other similar groups (the "foreigners") who do not share these; (7) pride in the successes and chagrin at the failures of national policy; (8) contempt for or hostility to foreign nationalities; (9) a devotion to the entity (even if little comprehended) called the nation (or patria, or fatherland) that embodies or symbolizes the territory, people, culture, institutions, interests, heritage and whatever else the people have or think they have in common; and (10) hope for the future national power (Ibid., 12).

In European contexts, as well as minority issues contexts, the concept of nation goes hand in hand with nationalism. Svetluša Surová notices that there are two main perspectives in which nationalism is discussed – primordialistic and constructivist paradigm. The first one describes the phenomena as a fixed identity external to other social phenomena, while the second approach sees nationalism as 'malleable, which can be subject to a number of social influences and not necessarily hierarchically ranked different components of multiple identities' (Surová 2016, 8-9).

National identity has a special position in the legal system by which it is being protected. Al Tamini cites Article 4 of the EU Treaty which as a guiding principle guarantees the protection of national identity – *The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.* (Al Tamimi 2018, 287).

1.4.2 Nationality

The term has the same etymology as ‘nation’ which was analysed in the previous part. Nationality is quite problematic as it has different meaning in different European states. In English it is a synonym of citizenship while in other languages it means something between nation and ethnic minority.

In Poland in census in 2011 the term was used to describe personal identification. Respondents could choose between various national affiliations but also national and ethnic groups like Silesian and Kashubian. The term is often used by Silesian activists and suggests that Silesians are not a nation (due to lack of political will) but are something more than ethnic minority.

Responders could choose up to two nationalities (first option being dominant). Interestingly, in Silesia several options appeared – Silesian, Silesian-Polish, Silesian-German, Polish, Polish-Silesian, German, German-Silesian. It shows quite vividly that concepts related to identity are hard to be put in brackets. A popularity of double nationality in the census shows how complex is the nature of identification and proves that it is not possible to draw a thick line between discussed concepts. What is particularly interesting are options that include both dominant and non-dominant nationalities in the analysed state (Silesian-Polish and Polish-Silesian).

The term nationality also appears also in Spanish law. Małgorzata Myśliwiec points out its linear centre-periphery character (M. Myśliwiec 2014, 29). Spanish constitution recognises groups such as Catalans, Basks and Galicians as nationalities which is rather empowering. In other states they would be recognized as ethnic or national minorities or not at all. The term was also used in USSR (together with nation they were the only terms used) and former Yugoslavia (meaning minority), while in Romania it was substituted with ‘co-inhabiting nationality’ (Barten 2015, 15).

Nation states were supposed to end ethnical conflicts as each nation would have its own state. As the later history shows us, the ethnical conflicts continued and had often escalated. Across Europe different people live next to each other and it has never been possible to create boarders that would separate them. Not all of the groups that wanted to create their own states were able, or I should rather say – allowed to do it. Creation of new states were political decisions and were based on political interest of other states.

According to Karl Deutsch what distinguishes nationality from nation is that nationality is people that has a will to gain control, power and it becomes nation when it receives support (M. Myśliwiec 2014, 54-55). Myśliwiec cites another author who agrees with Deutsch. Jerzy Wiatr believes that nationalities and nations are not much different, but nationalities are somehow 'incomplete' nations that do not have a political will towards self-determination (Ibid., 55).

To some extend nationality can be understood as what some call 'stateless nations'.

1.4.3 People

The term 'people' is not very popular in the literature but is chosen by some of the organisations that focus on minority issues, among them European Party – European Free Alliance. The study focuses on the European approach but it is worth mentioning that the term has a different meaning in USA, Canada and Australia as those states have a history of settling (Barten 2015, 5).

For those organisations the vague character of the term is its strong con. They represent different types of groups that identify themselves in various way, so it is important that the language is as inclusive as possible.

Miroslav Hroch believes that in German 'Volk' was a term alternative to 'nation' and that both words had positive connotations (Hroch 2015, 11). We can find similar approach in the works of Florian Znaniecki from the early XX century. The Author used the term *people* to describe ethnic minority underlining that *nation* is a purely cultural phenomenon (M. Myśliwiec 2014, 47). According to Znaniecki, *people* is a rather hermetic and closed social group characterised by a vague structure, conservative approach towards its own culture which is what differs the group from others (Ibid., 47).

Ulrike Barten states that UN Declaration on the Rights of Indigenous Peoples gives peoples the right to self-determination which applies also to the minorities even though they are not named in the act. He points out that peoples have been defined with two approaches – territorial and characteristics (already explained in the part about minorities). The territorial approach by people

do not only understand the specific group but all of the people in the territory – one region mean one people, while in the characteristic approach there might be several people living on one territory (Barten 2015, 3). In this part, the Author focuses on decolonisation and the right of self-determination of people (using African example) which are not relevant to this work as it focuses specifically on the EU. The territorial approach is strongly criticised as we can easily find many examples of territories occupied by more than one people. Another point of criticism is the fact that it is hard to define specific borders of such a territory.

Same as in case of minorities the characteristic approach focuses on specific characteristics that define people and whether they can enjoy certain rights. Barten quotes an International Meeting of Experts on Further Study of the Concept of the Rights of Peoples which took place in 1989 under UNESCO's direction and presented a report that introduces seven features that are 'inherent in a description (but not a definition) of a "people"' (Ibid., 5). The group also has to be big enough, must want to be recognised as people or understand that they are such a group and have institutions or other ways of expressing its features and will for identity (Ibid., 5).

Importantly for a group to be recognised as people it does not have to meet all of the seven characteristics which are:

- a common historical tradition,
- racial or ethnic identity,
- cultural homogeneity,
- linguistic unity,
- religious or ideological affinity,
- territorial connection,
- common economic life (Ibid., 5).

As a criticism of this approach Barten quotes Jane Wright who indicated that most of the minorities fulfil the majority of stated criteria so it is hard to see the difference between people and minority, especially because UNESCO left the list without any additional comment.

Barten indicates that the right to self-determination was reserved only to nations and it was after the World War I that it was implemented also on people and indigenous peoples (Ibid., 13).

> Minority rights presuppose the existence of a group; without it, there is no member who can claim minority rights. According to this commentary, the same group of persons can be a people and a minority. For the aim of self-determination, the group is a people while individuals in the group are members of a minority. Clear delineation of the categories is either not possible or not desired (Ibid., 8).

1.4.3.1 Nation vs People

There is a discussion among some authors where nation and people are two terms describing the same phenomenon. Ulrike Barten does not agree with Gudmundur Alfredsson's idea that the two terms can be used as synonyms. Alfredsson believes that the term nation is 'too ethnically loaded' and that was the reason why the United Nations uses the term 'people'. Although Barten agrees with the cite, Author explains that 'nations and peoples can be the same group of persons' (Barten 2015, 13-15). The Author cites another author – Dinstein, who opted for distinguishing nation and people (nation means all of the citizens of state which can include more than one people) – but points out that Dinstein's definitions do not clarify the subject and actually do the opposite. Barten statates that the Author uses to types of approaches – territorial to define nation and characteristics to define people (Ibid., 13-14).

Barten adds that Frunda examined the way the terms *nation* and *people* are being used only to find out that in constitutions of Spain, Italy and Slovenia the terms actually coexist. The Author sees it as a potential way of understanding how the UN is based on *the people's right to self-determination* (Ibid., 13-15).

1.4.4 Indigenous People

Even though there are often separate laws dedicated to indigenous people apart from minorities, there is no legally binding definition of the term.

Article 1 of Indigenous and Tribal Peoples Convention from 1989 offers us a definition which reads:

> (a) tribal peoples in independent states whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
>
> (b) peoples in independent states who are regarded as indigenous on account of their descent from the populations which inhabited the state, or a geographical region to which the state belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Anna Muś notes that this definition is one of few legal definitions of this term and adds that Article 2 of the same convention adds that self-identification of the group should be applied as a basic criteria to recognize a group as indigenous people (Muś 2019, 42).

Barten cites Martinez Cobo's definition from 1986 that reads:

> Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems (Barten 2015, 8).

Barten compares this definition with Capotorti's definition of minority stating that Martinez's approach is more technical but admits the approach is similar in both of the cases. Another definition presented by the World Bank reads:

> (…) Indigenous Peoples" is used in a generic sense to refer to a distinct, vulnerable, social and cultural group'. In addition, it lists four criteria that must be satisfied to varying degrees:

> a) self identification as members of a distinct indigenous cultural group and recognition of this identity by others;
>
> b) collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
>
> c) customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
>
> d) an indigenous language, often different from the official language of the country or region. self-identification, ancestral territory, customary cultural, economic, social and political institutions differing from the majority, and an indigenous language (World Bank, 2005/2013: para. 4)

What is important and strongly differs the group is the approach of institutions towards them. Barten points out that while the objective of minority rights is to include the minority in the majority of a society and at the same time preserve their distinctiveness, the purpose of indigenous rights is to ensure their autonomous development (Barten 2015, 11). So to say, the indigenous people are to live next to the society rather than within it. Barten points out that it is possible that a group would define itself based on which rights it wants to receive while fulfilling the criteria. He brings an example of Sami people who in Sweden claim minority rights while being recognised as indigenous people. The opposite situation does not usually take place even though certain minorities were allowed special rights concerning natural resources within the territory they occupy (Ibid., 11).

In Europe there are not many groups recognized as indigenous people, also their rights are usually regulated by separate acts like the UN Declaration on the Rights of Indigenous Peoples. Ulrike Barten underlines the fact the document combines both collective and individual rights (with an emphasis on collective approach) while the UN Declaration on the Rights of Persons Belonging to National Minorities includes only individual rights with an assumption of existence of a group (Ibid., 11).

1.4.4.1 Indigenous people vs people

Barten recognises five aspects that differ indigenous people from people and minorities:

- characteristics approach is used to designate indigenous people,
- membership can be a contested, as both the individual and the group must agree,
- both peoples and indigenous peoples enjoy self-determination, though indigenous, self-determination is restricted to the internal form,
- indigenous peoples may claim minority rights, but minorities cannot as readily claim indigenous rights,
- minority rights are individual rights, whereas indigenous rights can be both individual and collective (Barten 2015, 8-10).

1.4.5 Other

There are several other terms introduced by scholars to describe discussed groups. Miroslav Hroch introduces terms like small nations and relicts of people (Hroch 2003).

Ernest Renan in his famous piece presented in Sorbonne in 1882 describes different forms of society, including:

- great agglomerations of men after the fashion of China, Egypt, and ancient Babylonia;
- tribes such as Hebrews and the Arabs;
- city-states on the Athenian and Spartan model;
- reunions of diverse states such as were to be found under Carolingian Empire;
- communities such as Israelites and the Parsis, lacking a state and maintained by religious bonds;
- nations like France, England, and most other modern, autonomous polities;
- confederations after the fashion of Switzerland and America;
- the great families that race or rather language, has established between different branches of Germans, the different branches of Slavs (Renan, 1882).

In the proposed list we can see some correlation with newer ideas especially the division within Europe which corresponds with the way terms ‘nation’ and ‘nationality’ are understood. Derlicki bringing example of poly-ethnic and multi-ethnics points out that the new concepts are often created without a reference with the old ones (Derlicki 2006, 43).

1.4.5.1 Diaspora

Some scholars who analyse the topic connect it also with diasporas. Derlicki sees it as a narrower term often used alternatively to ethnic or national minority. He classifies it ss a type of minority and refers to it as sub-type of ethnic minority. After William Saran he describes diaspora as an ‘expatriate minority’ and names its following features, although he believes that hardly any diaspora represents all of them:

> (1) They (or their ancestors) were dispersed from the homeland to at least two foreign regions; (2) They maintain some kind of collective memory, especially about original homeland; (3) They believe they are not fully accepted by the host state; (4) Ancestral homeland is regarded as an ideal home (5) They think they are obliged to restore their homeland; (6) They relate themselves to the homeland (Derlicki 2006, 43).

The Author refuses the idea that all diasporas want to come back to their homeland arguing that it is not always the case and as the history has taught us, the home state might not even exist anymore.

Meanwhile Marina Germane brings up an interesting observation about diasporas stating that different ethnic group from the same state (territory) outside of that state live together in a diaspora. The Author states that the new situation influences the relations and dynamics not only outside of the state of origin but often also back there (Germane 2015, 55).

Table 2 Ulrike Barten's Comparison of definitions

	People territorial approach	**People characteristic approach (UNESCO)**	**Minority (Capotorti)**	**Indigenous People (Martinez Cobo)**	**Nation characteristic approach (Nick)**	**Nation territorial approach**
Territorial approach						
One state = one …	**x**					**x**
Characteristics approach						
Characteristics/differences						
Common tradition		**x**	**(x)**	**(x)**	**x**	
Racial or ethnic characteristics		**x**	**x**	**x**		
Cultural characteristics		**x**	**x**	**x**	**x**	
Linguistic characteristics		**x**	**x**		**x**	
Religious or ideological charact.		**x**	x (religion only)			
Consciousness						
Consciousness		**x**	**x**	**x**	**(x)**	
Preservation of characteristics			**x**	**x**		
Territory						
Territorial connection		**x**	**(L)**	**x**	**x**	
over time				**x**		

Way of living				**(L)**		
Common institutions						
Common economic life		**x**			**(x)**	
Institutions		**x**		**x**	**x**	
Legal system				**x**	**(x)**	
Other factors						
Number of persons		**x**	**x**			
Non-dominant position			**x**	**x**		
Nationality requirement			**x**			
Historical continuity/ ’prior’				**x**		
Aspiration of becoming a state					**x**	
Self-Determination Consequence	**x**	**x**		**x (internal only)**	**x (very probably)**	**x**

Source: (Barten, 2015, 17-18)

An x in the table indicates that the respective factor is mentioned in the definition. An (x) indicates that the factor is not mentioned explicitly, but by the wording of the definition, the factor is fulfilled. Lastly, an (L) indicates that the factor is included in a definition in the wider literature or wider description of the category (Barten 2015, 19).

1.5 Cultural Security

Michel Wieviorka names three ways of understanding the cultural security:

1) the possibility of reproducing one's culture;
2) the possibility of producing new cultural forms;
3) Zygmunt Bauman's conception of *a somewhat unstable, or 'liquid' mixture of both* (Wieviorka 2018, 18).

The cultural security which is interesting for me regarding ethnic minority rights is mostly about being able to reproduce one's culture as well as being able to freely live in it an exhibit it without any persecutions.

Wieviorka discusses the tension between innovation and tradition in contemporary culture and highlights factors such as difficult economic conditions, racism, exclusion, and fear that may drive individuals and groups to embrace traditions or reinvent them instead of embracing inventiveness and diversity. It questions whether this tension is related to identity, reproduction, traditions, and essence versus mixing, production, invention, and change. The text emphasizes the role of research in understanding and acknowledging the considerable diversity of possibilities along this spectrum. It acknowledges that individuals or groups may hold different perspectives and attitudes towards various cultural elements, even within their own experiences. For example, someone may value the culture of certain migrant groups for its dynamism while being concerned about the presence of other migrants due to racist reasons (Ibid., 18).

Cultural security comes together with the topic of pride. People have a natural need to identify and be proud of their culture. Andreas Wimmer examines *how proud respondents are of their country's nationality (...) whether they evaluate membership in the imagined community of the nation in positive terms* (Ibid., 606). Wimmer found out that:

- Individuals belonging to underrepresented groups in national governance tend to exhibit lower levels of national pride compared to members of the dominant political body. At a national level, there exists a negative correlation between the proportion of the population deprived of governmental representation and the average level of national pride among citizens.

- Ethnic conflicts in the past, which erode confidence in the stability of one's present political situation, are linked to lower levels of national pride, both within specific ethnic groups and at the state level. Nations that have power-sharing systems involving multiple political elites tend to be less stable compared to more homogeneous regimes. This increased instability contributes to greater uncertainty regarding one's future political status, consequently diminishing national pride.
- Individuals belonging to ethnic groups that currently hold a less advantageous position in the power hierarchy, compared to a previous period, tend to exhibit lower levels of pride in their ethnicity compared to those whose political status has remained unchanged.
- The majority of groups that experience a loss or gain in political status between survey rounds tend to exhibit a corresponding decrease or increase in their level of national pride in the subsequent survey. This suggests that pride is influenced by power dynamics, rather than the reverse causation scenario (Wimmer 2017, 607).

This shows how important is including the minorities in the political life of the state and helping them to be represented on administrative level.

1.6 Ethnopolitics

Even though the term ethnopolitics is widely used in the literature, scholars tend to use it without offering a specific definition.

Andrzej Wierzbicki underlines interdisciplinary character of ethnopolitics. He explains that ethnicity, ethnopolitical organism and the ethnopolitical process make ethnopolitics a subject of interest of disciplines such as anthropology and political science (Wierzbicki 2010–2011, 29-30).

> The first of these elements is the ethnopolitical organism as a form of organisation of social life, comprising not only state organisations (from the perspective of political studies), but also (in the anthropological view) ethno-social organisms, such as a clan or a tribe, which emerge in order to meet certain needs and lead to the formation of tribal social connections. The ethnic element in politics means more than just the representation of the interests of a given nation; it

> also reflects the importance of the traditional clan and tribal structures of nominal nationalities, the so-called sub-ethnic ones. The second element is the ethnopolitical process, which discusses politics in terms of a social process, from the perspective of anthropology and political studies. That social process allows the scholar to observe the unequal distribution of power within the society, the fight for power and the government's influence on the allocation of resources (including the representation of ethnic communities in the public authorities and their hold on state administration, the preservation of the language, traditions, history, customs and lifestyle) (Ibid., 29-30).

Vassilis Petsinis looks closer at the field of ethnopolitics, which lies between biopolitics (concerned with people) and geopolitics (focused on territories). According to the Author, ethnopolitics explores the interconnection between groups of people sharing sociocultural affinities (ethnos/ethnie) and specific territories. It is an interdisciplinary field that incorporates approaches from modern history, political science, sociology, and cultural studies. The 1990s witnessed the dissolution of federal states in Central and Eastern Europe, leading to debates over territorial integrity, state sovereignty, self-determination, and minority rights. This sparked academic interest in ethnopolitics, particularly in the Baltic Sea and Black Sea regions. The objective is to update theoretical models in ethnopolitics in light of recent developments and the influence of new catalysts such as anti-immigration sentiments and the rise of populist and radical right movements in Central and Eastern Europe. Petsinis suggests that collaboration between experts in nationalism and the populist and radical right can provide valuable insights into the impact of variables like Euroscepticism on ethnopolitics. The interdisciplinary cooperation can benefit the study of ethnopolitics, nationalism, and the populist and radical right not only in specific regions but also in Western Europe. The chapter introduces the ethnosymbolic approach and discusses case studies from the 1990s, emphasizing the need to update existing theoretical models based on recent developments (Petsinis 2020, 28).

Meanwhile, Geoff Pfeifer points out that the discussions of justice across international borders have traditionally focused on the responsibility of nations to enforce and regulate justice between national communities. However, with the rise of globalization, this framing is being disrupted. Scholars and activists are now exploring the linkages between individuals, groups, and communities beyond national borders, recognizing the effects of global practices and policies on various groups. This shift prompts the exploration of global justice frameworks and their relevance to ethnic politics.

The text highlights that while issues of social justice within national communities still exist, the understanding of justice is expanding to include transnational connections and challenges brought about by globalization (Pfeifer 2019, 3).

Antonia Kleczkowska recalls that due to C. Offe, group rights can be a remedy to all identity conflicts within the society. Offe named three types of them:

- the right to limited autonomy, which applies to multinational societies,
- group rights that protect ethnicity (for example legally guaranteed programs funded by public money and aim to recognize and promote ethnic, religious, linguistic, and other groups and their contributions to the political life of the community)
- "special representational rights" that address the issue of who should represent a particular group or whether selective promotion of individuals' chances of holding positions should be increased (Kleczkowska 2013, 105-108).
- Ethnicity is strongly politicised nowadays. Joseph Rothschild states that politicised ethnicity became *a major aspect and issue of interstate relations.* He belives that the reason for that is the international solidarity based on ethnicity and not class or formal ideological affinities like in the past (Rothschild 1981, 173).

Ethnicity is strongly politicised nowadays. Joseph Rothschild states that politicised ethnicity became *a major aspect and issue of interstate relations.* He believes that the reason for that is the international solidarity based on ethnicity and not class or formal ideological affinities like in the past (Ibid., 173).

PART II

Legal Framework for Protection of Cultural Differences in the European Union

2. Minority Protection in European Union

Of course, the aim of a constitutional democracy is to safeguard the rights of the minority and avoid the tyranny of the majority. (p. 102)

— Cornel West, Race Matters

In the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic from 1992 we read that *States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.*

This article expresses the way international institutions tend to see minority rights protection today. But as it is a relatively new discipline, we ought to look closely of how we arrived to where we are today in order to better understand our position.

In the *Part II Legal Framework for Protection of Cultural Differences* we will focus on the exact ways in which minorities are protected in European Union today. We will examine on which levels is the protection guaranteed and what institutions stand behind it. We will also take a closer look at the difference between collective and individual rights and the right to self-identification.

But to do that, we will begin with the birth and evolution of minority rights in Europe. Understanding this development will help us understand better the place where we are now regarding minority rights protection in EU.

In his article for Human Rights Quarterly 'Minority Rights: A Major Misconception?' Bas de Gaay Fortman introduces the story from Switzerland where with the decision of majority[9], the Muslim minority could not build a minaret. *On 29 November 2009 Switzerland accepted a people's*

[9] Swiss law permitted that the law could pass even though the turnout was 53 percent, and the result was 57,5 to 42,5.

initiative to amend Article 72 of its constitution (on Church and State) with a third section entitled 'The construction of minarets is prohibited.' (de Gaay Fortman 2011, 266). This law was counter to Swiss constitution and international human rights. This example shows that we need international law to prevent majorities from acting undemocratically upon minorities.

De Gaay Fortman later analyses Abraham Lincoln quote *'a government of the people, by the people, (and) for the people',* explaining that the first part means a need of a representative government and not only self-determination. *By the people* stands for participatory government, and *for the people* refers to accountability (Ibid., 268). This way of governing should assure more fairness, although a representative government still means there is a majority within it or that there is a way to find one. Participatory[10] does not necessarily mean just. The Author points out three principles of minority rule:

- decision rests on majorities;
- dissenters acquiesce;
- majorities respect and protect minorities.

Bas de Gaay Fortman concludes with an important question. He points out that the main issue is not a status of minority or majority as such, but *the construction of dominant positions based upon collectively exclusive elements and the actual abuse of such positions.* He asks if when a majority is intolerant does that mean that the minority cannot fulfil their rights? (Ibid., 276)

Fortman is not the only one, the importance of minority protection is often highlighted by human rights lawyers including Dr Nicolas Levrat, who calls minority protection a 'litmus paper of democracy'.

[10] Participatory democracy was first introduced in Athenian democracy. The idea was developed in XIX century by inter alia Jean-Jacques Rousseau, J.S. Mill and G. D. H. Cole, who argued that participation is necessary for a just society.

2.1 Evolution of Legal Framework for Protection of Cultural Differences

Grzegorz Pawlikowski notes that the main reason behind legal protection of national minorities is to prevent ethnic conflicts (Pawlikowski 2011, 281). What proves him right is the fact that minority protection reappears on European agenda each time a major conflict takes place.

Marina Germane notes that minority rights have not surprisingly re-enter the international agenda. She quotes Soysal who believes that *collective identity has been redefined as a category of human rights*. Germane links those process with the progress of European integration, devolution of power and increasing role of international organisations (Germane 2015, 55). She also notes that the idea of *ethno-culturally neutral civic nation-states* has been contradicted (Ibid., 55). That leads to a necessity of including minorities in the political life. The scholars believe that ethnic organisations can be a tool to fight against discrimination.

But where does discrimination come from? Minorities protection is a relevantly new area of studies just as minority studies itself and all the disciplines it relates to political studies, sociology, anthropology, etc.

Minorities can be simply understood as ethnic groups, which are not a new concept. But for minorities to become something more than groups with their own culture, we had to develop a certain type of society. Minority as such can only exist in contrast to a majority, therefore national minority exists in a contrast to some kind of 'national' majority. This majority is nothing else but a nation (understood as people who identify with national culture). In conclusion, for national minorities to become what they are today, we had to develop the idea of nation and national states.

It is important to emphasize that the groups we call minorities are not new. The only thing that is new is the way we perceive them. They are the same people that have lived in Europe for centuries, having their traditions and customs. This phenomenon is harder to understand if we focus on western Europe where borders did not change that much over the last centuries. But if we look at eastern Europe and take nations like Latvians or Slovakian as an example, we can see that what distinguishes minorities from majorities is often what we can call 'luck' or politics. Probably, if it were not in the interest of Western States Poland would not exist now and instead of 'nation', we

would be calling Poles ‘minority’. On the other side some minorities that tried to create a new state did not have that luck, as it was not in the interest of others.

It is possible to track minority protection back to Roman laws and institutions, similar solutions existed in early Middle Ages in Frankish and Lombard laws (Białek 2008, 16). But until the Congress of Vienna the topics of national minority protection and religious minority protection are treated as one.

Germane states:

> Although other divisions, such as class, education, professional and economic achievement, political convictions, gender, and sexual orientation, are present within ethnic groups just as they are present in larger society, extant studies demonstrate that many, if not all, can be trumped by ethnic solidarity, particularly during a period of ethnic mobilization. In other words, in becoming civically and politically active through the medium of an ethnic organization, a minority individual may experience less discrimination and face the lowest possible entry barrier (Germane 2015, 55).

On the other side, a big part of minority protection depends directly on minority-state relations. Derlicki points out that those relations can be difficult as states tend to see minorities as a danger for their homogeneity (Derlicki 2006, 47).

The author notes that most of the scholars recognise three ideal types of strategies states have towards minorities (which are usually mixed together) – (1) violent (e.g. genocide) or peaceful (e.g. cultural assimilation) elimination, (2) marginalisation and (3) integration (typical for decentralised and well-developed states with the aim to build a civil society) (Ibid., 47-48).

Also, the ways minorities respond, can be described as different ideal types of strategies – (1) complete or incomplete assimilation, (2) acceptance of domination or peaceful coexistence, (3) exit or secession (Ibid., 47-48).

Being a member of a minority means identifying as such, it is one’s big part of identity. And an identity can demonstrate itself in various ways, including culture, language and even habits. But at the end of the day, it is what makes us who we are. Therefore, so many people around the world work to protect minorities.

Being a member of a minority can manifest in many ways such as cultivating certain traditions, jobs, way of life, cuisine, or beliefs. In ethnic minorities (Renan, 1882) a person is a member of a minority because their parents are members of such a group.[11]

Minorities protection can often be limited to protection of minorities' endangered languages. Though language is an important part of minorities' identity, minorities' heritage cannot be limited to just that. It was proven many times along the way that not all people who identify themselves as members of minorities speak minority language. In some cases, languages after almost disappearing were reinstated thanks to providing education in minority language. Linguistic issues of minority protection are often converted into political battle fields.

Table 3 Development of Legal Framework for Minority Protection

YEAR	INSTITUTION	REGULATION/ ESTABLISHED INSTITUTION
1919	Paris Conference	The Committee on New States and for The Protection of Minorities
1923	PCIJ	Advisory Opinion on the Acquisition of Polish Nationality
1945 26th June	UN	The Charter of the United Nations
1948 9th December	UN	The Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG)
1948 10th December	UN	Universal Declaration of Human Rights
1950 4th November (entered into force on 3rd September 1953);	CoE	the Convention for the Protection of Human Rights and Fundamental Freedoms
1958 25th June	UN	The Convention concerning Discrimination in Respect of Employment and Occupation
1960 15th December (entered into force 22nd May 1962)	UN	UNESCO's Convention against Discrimination in Education

[11] Renan introduced the division into ethnic and civil nationalism. Ethnic being based on blood-relation, civil on identity.

1965 21st December (entry into force 4 January 1969)	UN	International Convention on the Elimination of All Forms of Racial Discrimination
16th December 1966	UN	International Covenant on Civil and Political Rights
1975	CSCE/OSCE	Helsinki Final Act
1989 27th June (entered into force 5th September 1991)	UN	The Indigenous and Tribal Peoples Convention
1989 20th November (effective from 2nd September 1990)	UN	Convention on the Rights of the Child
1990	CSCE/OSCE	Charter of Paris for a New Europe
1990	CSCE/OSCE	The Copenhagen Document
1991	CSCE/OSCE	Report of the CSCE Meeting of Experts on National Minorities in Geneva
1991	OSCE	Office for Democratic Institutions and Human Rights (ODIHR)
5th November 1992 (entered into force on 1st March 1998);	CoE	European Charter for Regional or Minority Languages (ECRML)
18th December 1992	UN	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Adopted by General Assembly resolution 47/135
1992	OSCE	High Commissioner on National Minorities (HCNM)
1993	EU	Accession Criteria (Copenhagen Criteria)
1994	CBSS	Commissioner on Democratic Development (former Commissioner on Democratic Institutions and Human Rights including the Rights of Persons belonging to Minorities)
1994	UN	Human Rights Committee, General Comment No 23: Rights of Minorities (Art 27) UN Doc HRI/GEN/1/Rev.1, 38 (1994), para 5.2.
1994 19th November	CEI	Instrument for the Protection of Minority Rights
1994	EU	European Monitoring Centre on Racism and Xenophobia (EUMC); replaced by FRA

1st February 1995 (entered into force the same day).	CoE	The Framework Convention for the Protection of National Minorities (FCNM)
1998 (operating since 1st July 2002)	UN	The International Criminal Court (ICC)
1999	CSCE/OSCE	Charter for European Security.
2005	UN	The United Nations Independent Expert on Minority Issues
2007	UN	The United Nations Forum on Minority Issues (former Working Group on Minorities)
2007	EU	European Union Agency for Fundamental Rights (FRA)
2007	OSCE	The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations & Explanatory Note 2007
2007	EU	Treaty of Lisbon (Article 2 of TEU)

Source: own elaboration.

In the table above, the underline text means that the organisation was established, while the regular text indicates a new legal solution.

2.1.1 Before the World War II

Although there were particular laws developed earlier, the idea of minority protection became common after the Second World War. Earlier attempts in XIX and XX centuries were only fragmentary (Jabłoński 2017, 22). For example, the Congress of Vienna (1814-1815), a direct consequence of Napoleonic Wars, guaranteed the rights to the Polish minority. Jabłoński points out that earlier solutions regarded specific groups and their specific rights.

The aftermath of the Great War brought the League of Nations' Minority Treaties. Raul Cârstocea decided to take a closer look at Minority Treaties and the way they are perceived after one hundred years since their establishment. He argues that today they are mostly seen as precursors

or antecedents. The Author believes that both people who applaud the Treaties and see the League of Nations as a peak of liberalism and those who criticise them as they failed to protect the minorities, look at the Treaties written in XIX century perspective of contemporary human rights and legal framework for minority protection (Cârstocea 2020, 2-3).

Cârstocea emphasises that we should not forget about the difference in the position most of the population is now in comparison with *long nineteenth century*. The Author notes that at the time some people were seen as subjects while there has been conflict between to ideas of state – revolutionary nation and the counter-revolutionary empire (Ibid., 4-5). He reminds his readers that these were still the times of the colonial empires and *colonial hierarchisation of subject populations predicated on notions of civilizational superiority* (Ibid, 5).

Cârstocea explains how to ways of conceptualising rights that became standards in XIX century were brought together and combined into a *joint normative framing of difference* during the Peace Conference in Paris (Ibid, 15). The Author quotes Erez Manela and his description of what he calls the 'Wilsonian moment' when the transformation of the norms and standard of international relations began and led to establishing the *self-determining nation-state as the only legitimate political form throughout the globe* (Ibid, 15).

Raul Cârstocea discusses the normative emphasis on national sovereignty and the expansion of citizenship rights in XIX century. The principle of self-determination and the formalization of minority rights were seen as complements to each other – *The principle of self determination had its complement, and apparent limit, in the formalisation of minority rights, granting recognition to national communities that, for various reasons, were not seen as meeting the necessary prerequisites of statehood or were separated from their kin-state as a result of the most comprehensive redrawing of borders undertaken in history*. The League of Nations was established as an international organization to ensure both self-determination and protection of minorities within state borders. The League had a broader global reach compared to previous European conferences by having members such as Abyssinia, Siam, Iran, and Turkey (Ibid, 15-16).

League of Nation's Minority Treaties did not include the rights of all the minorities but concerned the newly established states like Latvia, Lithuania, Estonia, Poland, Czechoslovakia, Yugoslavia, and Bulgaria (1908) or Albania (1912), states that had recently acquired new territories like Greece, Romania and the losing side – Hungary, Germany, Austria and Turkey. What is

interesting for me is that those treaties did not include western European states. Yes, some of them like Portugal and Spain did not participate in the War, others like Malta did not yet gain their independence, but not having to take care of minorities issues in those states, when the first ever treaty concerning it was established, could have influenced the way those states deal with minority issues nowadays. For France, Belgium, Portugal, Ireland, and Malta this way means claiming not having national minorities on their territories.[12]

When we look back, we can see how the dissolution of the Ottoman Empire caused some enormous changes on the political map of Europe. The newly established states were full of different minorities. Zyberi points out that their government were reluctant to comply with obligations they took upon themselves with Paris Peace Treaties and unilateral declarations (Zyberi 2013, 3). The Author notes that it is not clear whether said minorities were capable (sufficiently cohesive) to or even motivated to take charge of their cultural or political affairs (Ibid., 3).

Another issue to which Zyberi brings our attention is migration of minorities after the Great War which considered mostly states that emerged after the dissolution of the Ottoman Empire. The Author underlines that this situation was a cause of arousing issues between the states (Ibid., 3-4).

Marina Germane criticises League of Nations' minority protection system pointing out its fiasco and events that took place in 1930s' and during the Second World War. She claims that for decades (ethnic) minorities were seen as *inevitable adversaries of the state (and of each other), unable to rise over their narrow sectarian interests in the interests of common good, and therefore as progenitors of conflict* (Germane 2015, 54).

Germane agrees with philosopher and historian Hans Kohn, who in 1940s' was critical towards civic-ethnic dichotomy, still very influential today. Both Authors do not agree with labelling nationalisms as 'good' and 'bad' by associating them with *strong normative tags* (Ibid., 54). In this dichotomy 'civic' stands for growth, development, liberalism and progress, while 'ethnic' is associated with oppression and backwardness. The theory leaves the ethnicity shipwrecked but somewhat justifies nationalism (Ibid., 54).

[12] This topic is followed up in the part about Framework Convention for National Minorities.

Germane highlights that even though ethnic activism and minority rights took the spotlight after the Great War, there had also been a shift which moved the focus towards individual human rights. It was understood that human rights include minority rights (Ibid., 54). She explains that in the interwar period integration of ethnic minorities into what has been seen as a civic nation-state was believed to be a universal solution. At the same time social scientists and policymakers would look with suspicion at *ethnically-based collective action on behalf of minorities.* This tendency was reinforced by the breakup of the former Yugoslavia and the ethnic cleansing that took place there (Ibid., 54-55).

Permanent Court of International Justice

Permanent Court of International Justice was ICJ predecessor established after by the League of Nations the First World War. Gentian Zyberi notices that PCIJ made a significant contribution to the legal framework considering national minorities rights (Zyberi 2013, 3-4). The Author underlines that the Court in a time period of eighteen years, between 1922 and 1940, dealt with twenty-nine cases between states. The result of PCIJ work were twenty-seven advisory opinions, several of which regarding minority rights (Ibid., 3).

2.1.2 The Aftermath of the World War II and the Cold War

The World War II and its genocides had a huge impact on the way the world looked at the need of minority protection.

The League of Nations was replaced by the United Nations, which in order to protect minorities almost immediately established the UN Convention on the Prevention and Punishment of the Crime of Genocide (also known as the Genocide Convention). Approved on 9 December 1948 it entered into force on 12 January 1951. United Nations became one of the important players

in the area of minority rights protection with initiatives like the International Covenant on Civil and Political Rights (ICCPR) which included Article 27 dedicated to minority rights protection.

The idea that minority rights are encompassed in human rights therefore the focus should be put on the latter, raised before the interwar period (Germane 2015, 54). After the World War II the United Nations expanded this idea and included it in their legal system – the Charter of the United Nations (1945) and Universal Declaration of Human Rights (1948) prioritised protection of individual rights over collective rights (Pawlikowski 2011).

The events of the World War II brought attention to the topic of human rights in general. We can see also in the constitutions of European countries, where guaranteeing equal rights regardless gender, origin, religion, etc. is a standard practise.

2.1.3 1990s – the Fall of USSR and the Aftermath of the War in Former Yugoslavia

1990s' were particularly important period in history of minority rights as what was happening to minorities was for the entire world to follow on mass media.

The fall of the USSR and new states appearing on the European map together with the war in Yugoslavia and ethnic cleansings brought the new attention to minority issues. All the big international organisations that were interested in human rights reacted by developing their legal framework. The most important acts of the time being OSCE Copenhagen Document (1990), the CoE European Charter for Regional or Minority Languages (1992), the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) and the CoE Framework Convention for the Protection of National Minorities (1995).

Gwendolyn Sasse shows how keen on action and fast were the international institutions reacting to the 1990s crisis:

> The EU explicitly adopted the CSCE norms in the context of the Badinter Arbitration Committee. Its emphasis on the rights of 'peoples and minorities' was affirmed by the EU Foreign Ministers' Declaration on the Guidelines for Recognition of New States in Eastern

> Europe and the Soviet Union and the Declaration on Yugoslavia of December 16, 1991, which made recognition conditional upon, amongst other things: "guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE."5 Thus, the EU's political accession conditionality took shape against the background of a widening pan-European normative and institutional framework. The norms of the Council of Europe and the CSCE/OSCE became an integral part of the EU's political agenda for enlargement (Sasse 2004, 62).

Legal acts are not the only mechanisms established in the nineties to protect national minorities. The OSCE in 1992 constituted the High Commissioner on National Minorities, while in 1993 the United Nations' General Assembly founded the Office of the United Nations of the High Commissioner of Human Rights.

OSCE standards for minority protection were crucial in the early nineties when the new states in Eastern and Central Europe were negotiating bilateral agreements among themselves and used OSCE standards as a point of reference. (Barcz 2010, 14-15) At that point there were far fewer international standards and laws (the table number 3), so OSCE's regulation played an important part.

> Empirical evidence from a series of conflicts, during the 1990s, testifies to the validity of Rogers Brubaker's outlook on ethnicity as a process (Brubaker 2002). For instance, nowadays, it has become almost customary for academic and non-academic experts to regard the multiple wars of secession within the former Yugoslavia (1990s) primarily as ethnic conflicts. Nevertheless, this occurrence is indissolubly linked to the multifaceted institutionalization of ethnicity (e.g. the peoples/narodi and ethnic minorities or 'nationalities'/narodnosti) inside a multi-level constitutional arrangement (i.e. the republics, autonomous provinces and self-management units) within the former Yugoslavia. These structural realities gradually facilitated the joint endeavour by a multitude of external and internal actors (e.g. political leaderships, paramilitary groupings, political activists and journalists), during the 1990s, to frame these conflicts as primarily ethnic (Petsinis 2020, 33).

Petsinis futher discusses empirical evidence from conflicts in the 1990s, particularly in the former Yugoslavia, that supports Rogers Brubaker's perspective on ethnicity as a process. The conflicts in the former Yugoslavia were framed as ethnic conflicts due to the institutionalization of ethnicity within the state's constitutional arrangement. The dissolution process of Yugoslavia saw

new leaderships attempting to re-nationalize state institutions, leading to discriminatory policies against minority groups and their kin states protesting against violations of collective rights. Similar dynamics were observed in ethnically diverse parts of Romania, where Romanian and ethnic Hungarian nationalist groups competed symbolically and aimed to strengthen group identity within their respective communities. The controversy between Northern Macedonia and Greece over the cultural heritage of Ancient Macedonia also highlighted the role of ethnosymbolism and its intersection with foreign policy. These examples contribute to the conceptualization of the triadic nexus theory and the understanding of ethnic conflicts (Petsinis 2020, 33-34).

> During the same period, the ethnically diverse parts of Romania (namely Transylvania) witnessed the symbolic competition between Romanian and ethnic Hungarian nationalist groupings in the public space (e.g. in urban centres such as Cluj-Napoca) as well as their simultaneous endeavour to generate groupness inside the Romanian majority and the ethnic Hungarian minority. These developments on the grass-roots level, in combination with the occasional interference by Romania's larger political parties as well as a string of Hungarian governments in Budapest, provided Rogers Brubaker with additional raw material towards the further concretization of the triadic nexus theory (Brubaker et al. 2008). Lastly, developments such as the gradual heightening of the controversy between Northern Macedonia and Greece over the cultural heritage of Ancient Macedonia, since the early 1990s, hinted at the validity of the ethnosymbolic approach in regard to the socio-psychological appeal of constituent myths and symbols as well as their potential intersection with the realm of foreign policy (Danforth 1997) (Ibid., 33-34).

The aftermath of the events of 1990s continued in the new millennium. Probably the most important initiative after 2000 was Minority Safe Pack, furtherly described in the next part. Other significant initiatives being:

- the United Nations Independent Expert on Minority Issues (2005),
- the United Nations Forum on Minority Issues (former Working Group on Minorities) established in 2007

2.2 Individual and Collective Rights Today – Overview of Sources and Institutions

There are two main conceptions of minority protections nowadays. The first one relates to the social group and the other to an individual enjoying the rights granted to every human being (Pawlikowski 2011, 282).

Pawlikowski points out that establishing minority protection on individual rights is against the group character of a minority itself. This antagonism has led to creation of a midway conception which means treating minorities as groups of persons belonging to a minority. The Author concludes that the issues of minority protection should be looked at in three aspects:

- individuals declaring certain ethnicity,
- groups of persons belonging to a minority,
- minorities understood as social groups (Ibid., 282).

2.2.1 Collective Rights

Ulrike Barten notices that 'Minority rights presuppose the existence of a group; without it, there is no member who can claim minority rights' (Barten 2015, 8).

The aim of the collective rights is to give an opportunity to fulfil the individual rights as the individual rights are meant to help benefiting the rights meant for a group. (Muś 2019, 32). Muś names self-determination, the right to preserve the identity and the right to grow accordingly to local conditions as examples of such rights.

The Author points out various problems that come with the term 'collective rights'. The main issues are precedence – the question of whether individual and collective rights have an equal importance – and the idea that only and an individual can be a subject of legal rights. Muś warns that this assumption can lead to a danger of preventing some of fulfilling their rights and reducing

a sense of just (Ibid., 32). The Author explains that one of the interpretations of the collective rights is to understand them as the rights of collectives (peoples' rights). She adds that this approach can be deduced from international criminal law taking in account that the purpose of genocide is to exterminate the group rather than an individual. She underlines that the only way to achieve minority protection is to use both of the presented approaches as complementary to one another (Ibid., 33).

Muś notices that the most popular interpretation of collective rights in today's legislation is to see them as rights dedicated to individuals which at the same time can only be employed by a group (Ibid., 32-33).

Banović is one of the scholars who share the idea and summarises that the collective rights can be seen in two ways: *(1) rights belonging to supra-individual entities such as Volk or; (2) rights belonging to individuals of a social group* (Banović 2015, 20).

We can therefore see a process of how the approach towards the collective rights has changed over time from the League of Nations to the Framework Convention. Regarding laws that protect the minority rights today, most of them were established after the collapse of the USSR and have a liberal approach focusing on individuals rather than group rights (Craig 2016, 8).

> However, the increasing influence of cosmopolitan ideas means that more attention is now being given to the individual dimensions of the right to self-identify in the development and application of more group-oriented protections. This does not mean that challenges to the individual dimension do not persist, particularly in relation to tensions with the peace and security agenda. This is discussed further below. There are nonetheless particular harms and injustices that people suffer as members of groups. The points made above about domination and oppression, and about misrecognition, highlight the problems of imposition of minority status or identity by the State or others (in particular majorities) and of non-recognition. The rest of the article focuses on the current status of the right to self-identify at the European level. It argues that its status as a fundamental right remains unclear and makes the case for giving greater prominence to the right, focusing in particular on the need for a greater emphasis on internalisation of the right at the domestic level (Ibid., 13).

2.3 Legal Framework on the International Level for Protection of Cultural Differences Today

According to Grzegorz Pawlikowski the legal framework for minority protection is based mostly on agreements, treaties, international institutions, mechanism of control and state's internal regulations. The Author believes that the legislative system played a crucial work in avoiding further tensions. The legal framework requires from persons belonging to minorities loyalty towards the states they live in, including its sovereignty and territorial integrity (Pawlikowski 2011, 288).

> The nation state as the primary legislator on minority protection is therefore the closest partner for achieving new rights or finding compromises; weather or not this relationship is successful depends on the country's general views on minority protection and diversity, but also on the current government and its party coalition. In general, center-left parties appear to be more favorable to ominority concerns, and more open to implementprotection measures or grant further competences to regional levels (Crepaz 2016, 161)

Ulrike Barten points out that states are rather reluctant on guaranteeing group rights. He agrees with Lehman on that the deficiency of proper categorisation allows states to avoid granting groups and minorities rights usually dedicated to specific groups (Barten 2015, 2). Often states are more interested in protecting their own nationals outside their territory, which can be a push for states to acknowledge minorities, than giving rights to the groups within its border. This can happen especially if the group tends to hold double citizenship. Crepaz raises an interesting point of how state's economic situation Influences minorities. She brings up the example of minorities in Italy pointing out that even when the communication channels with the nation state are opened, the financial crisis and austerity measures can aggravate minorities possibility of reaching their goals (Ibid., 161).

Barten underlines that the international law has always been created by states for states. Those same states created international organisations and therefore had to at least in some measure accept them as actors under international law that have specific rights and obligations within the said law (Barten 2015, 2).

The Author sees the rise of human rights as a cause of admitting individuals as actors of international law. He describes the process as reluctant and unsure and notes that groups, contrarily

have not received recognition under international law. Barten names several reasons for this situation. First of all, he sees international law as a fragile system which in order to function requires identifiable partners. He argues that groups cannot be seen as such as they in their nature are unstable and tent to form and dissolve easily as well as have their composition change. Due to those factors, issues like legitimacy, leadership and accountability are often raised, therefore groups are not taken into account as a reliable actor for international law. Barten adds that despite those obstacles *it has been necessary for international law not only to accept groups into its vocabulary but to endow them with certain rights and obligations* (Ibid., 2).

Minorities protection can be described using various qualities. Firstly, it can be assigned as governmental or nongovernmental. It can also be described with a level on which it's applied - local, regional, national, international and supranational.

We can also divide those institutions based on the topic they focus on. Many of them deal only with issues concerning culture like Catalan institution Òmnium Cultural. Others focus on language only, that can mean both linguistic studies and promotion of minority language (Pro Loquela Silesiana). Some of the organisations work as an umbrella organisation for other associations like European Association of Daily Newspapers in Minority and Regional Languages MIDAS that brings together authors of newspapers published in minority or regional languages from all around the Europe like Basque *Berria*, Tyrolean *Dolomiten* or *Aalands Tidningen* from Aaland Islands, Finland.

Minorities can be protected on various levels:

Local – it can apply to organisations that work with minorities so small, that appear only on a local level. That is a case of a minority called Vilamovians, based in Wilamowice, southern Poland, a town inhabited by around three thousand people. Small, local minorities can be more likely to be protected by local administration. But it is not the only case. Any minority can be protected by local authorities, who can for instance use their culture and education funds to help preserve the minority's culture (which in case of a town can be its majority).

Regional – some states like Spain, Germany and Italy protect minorities on the regional level. In some cases, it might mean that there are no specific laws on the national level in regard to minority protection. From one side regional protection can be a very good solution - minorities tend to have better representation among regional administration, so they can decide about what concerns them. On the other side it really depends on circumstances and some minorities might not be protected enough. We can see strong irregularity for instance in Germany between Sorbs, Frisians and Danes protection. Meanwhile in Spain the regional irregularities have their origin in differences on the national level.

National – most EU states protect minorities on the national level (exception being Belgium, France, Greece, Ireland, Luxembourg, Malta). Many states mention national minorities already in their constitutions, sometimes naming all of them. Although minority protection on the national level is especially important, implemented in a wrong way can have opposite results. Let's stick to the example with constitutions. Guaranteeing minority protection in a state's most important Act helps them a lot, but on the other side, if a state makes a list of all the minorities protected by its law there is no place for changes. If a minority was left out in the first place it will not be easy to add them later. This is a case including many minorities like Silesians in Poland or Serbs in Slovenia.

International – in a strict sense 'between nations' – meaning all the agreements made between two or more states. The way minorities are protected highly depends on the two states relations, positive example - Danish-German bordering region in comparison with Turkish minority in Greece, Russian minority in Latvia or overall situation in Cyprus.

Supranational – following Gabriel N. Toggenburg's idea, there is a difference between international and supranational protection. The latter means the tools that are above states. It is important, so they can have an adequate impact, if states' own solutions are not enough. We have a number of institutions working in that way within the EU, like OSCE or UN. Even though supranational solutions are working quite well, there are still several problems: 1) Up until now we did not come up with a proper way to make states do certain things. France has never sign FCNM, Belgium, Greece and Luxembourg have never ratified it and other states even after doing so, just claim that there are no national minorities on their territory. 2) Some minorities are not a priority when compared to minority issues in other states. So, most of the forces will be always focused on

conflict zones etc, not on the EU states, which is natural but can work as a disadvantage for EU minorities.

Supranational solutions date back to the sixties, when in 1966 and UN's International Covenant on Civil and Political Rights, which Article 27 reads:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.[13]

Opened for signatures in 1966, the new law entered into force in 1976. Zdzisław Kędzia and Witold Płochowiec suggest that this was the first time that states decided to bring minority protection under supranational protection, as they were reluctant to do it after the Second World War (according to the Authors, the solutions presented in Universal Declaration of Human Rights in 1948 were not sufficient and lacked a specific protection for national minorities (Kędzia and Płowiec 2010, 39-40).

Let us take a closer look at institutions that protect minorities and depict them one by one for a better understanding of minorities' situation in the EU. It is also important for me to make a proper introduction of the international institutions and laws concerning minority issues, as I refer to them in the following parts.

International agreements and treaties are one of the first ways introduced to protect minorities. Turkish minority in Greece up to these days is protected by the Treaty of Lausanne (1923).

What is characteristic about bilateral agreements is that each time they must define the minorities. Jan Bracz (Barcz 2010, 16-17) points out that there are five ways in which it happens:

- using the terms like 'members of minorities' without specifications;
- naming the minorities in both states;

[13] International Covenant on Civil and Political Rights Adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

- using the term ‘national minority’ referring only to one state and describing the groups in the other;
- using the term ‘national minority’ referring to one state and not giving any specifications for the other;
- other solutions different to the four methods.

There are bilateral and multilateral agreement and treaties concerning minority rights. At this part we will focus on multilateral agreements and analyse specific bilateral ones when discussing the particular States, we are to compare in the last part.

Pawlikowski notes that after World War II over one hundred of bilateral agreements concerning national minorities were signed. According to the Author, they concerned mostly the minorities living in the borderland and rarely were exclusively about persons belonging to minorities (Pawlikowski 2011, 287-288). He points out that when it comes to constructing bilateral agreement, the rights the minority already enjoys cannot be reduced (Ibid., 288).

The Author brings the declaration from 1955 signed by Germany and Denmark regarding minorities in Schleswig as an example of what is believed to be the best realisation of such an agreement (Ibid., 287-288). Pawlikowski emphasises that the principle of reciprocity does not always work pointing out at the agreement between Poland and Lithuania. Polish minority in Lithuania included almost sixty thousand people in 2000 and could benefit from minority right while there is no recognised Lithuanian minority in Poland.

2.3.1 European Union

As pointed out by Crepaz, the EU is an institution to which the minorities from ‘old’ member states turn to when it comes to advocating for their rights, and the ‘new’ member states tend to follow (Crepaz 2016, 159).

Although the cultural diversity comes together with EU values, the culture and language continue to be competences of member states (Bianculli, Jacint and López-Berengueres 2016, 37). Of course, the state can cede some of the competences to the lower administration levels but it remains in its decision.

Recognition is crucial for the minorities to be able to enjoy their rights. Bianculli, Jacint and López-Berengueres focus on linguistic rights, but the same approach can be noticed regarding other cultural rights:

> The tension between unity and diversity in terms of the conflict between the need for a monolingual public space and a plurilingual sociological context can be translated in the EU case into the conflict between a hegemonic centre and a subaltern periphery. There are 23 officially recognised languages, more than 60 regional and minority languages, and a large number of languages spoken by migrant minorities. Despite this extraordinary linguistic diversity, the most spoken foreign languages (English, French and German) constitute a parallel linguistic space, much more homogeneous, operative in the European space, in EU institutions and policies: EU working languages of the EU, languages used in the EU programmes, EU institutions, and legislation, among others (Bianculli, Jacint and López-Berengueres 2016, 37).

Pawlikowski notices that European Union has first introduced regulations concerning minority protection regarding the upcoming enlargement. The Author adds that even though the Copenhagen Criteria (1993) refer to minorities, the later introduced pre-access reports concern national minorities. Pawlikowski calls EU practice a double standard as only new member states are obliged to protect minorities, while states like France and Greece continue to ignore the issue (Pawlikowski 2011, 285-286).

Crepaz points out that EU's focus is on human rights[14] protection and anti-discrimination system rather than minorities themselves. She underlines different channels of impact and collaboration within EU's internal dimension (Crepaz 2014, 74).

The Author emphasises that the EU does not have much power over its member states regarding minority protection. It is important to point out that with the minority protection

[14] As individual rights.

development the situation looks different for ‘old’ and ‘new’ member states. ‘New’ member states had to agree upon stronger minority protection during the process on accession process (Ibid., 74).

Meanwhile, Ulrike Barten commenting on European Union in the context of minority rights uses a phrase ‘possible schizophrenia’. Meaning that even though the EU claims that minority rights are important to them, it has no legal competences to do anything about it (Barten 2016, 4).

Daniel Šmihula points out that the national minorities issue was not under EC/EU authority until the Amsterdam Treaty was introduced (signed on 2 October 1997 and entered into force on 1 May 1999). The Author admits that beforehand there were some indications in the Accession Treaties of states like UK and Austria, Sweden, Finland, Norway but nothing in the Primary Law of the EC/EU (Šmihula 2008, 52).

To understand what the European Union can and cannot do about the minorities, we need to look at the Treaty on European Union, which is what brings us basis of the EU law. From 2009 and entering into the force of the Lisbon Treaty there is a new the Article 2 of the Treaty on European Union, that sets EU’s common values, and it mentions the minorities:

> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. (Treaty on European Union, Article 2)

Pawlikowski notices that although the Lisbon Treaty is the main EU regulation concerning minorities, it does not refer to national minorities but points to the Charter of Fundamental Rights of the European Union signed in December 2000 (Pawlikowski 2011, 286).

The Author compares the Charter with UN Declaration from 1948 commenting that they both forbid any kind of discrimination including among others the ones based on race, skin colour, ethnic origin, language, religion, and belonging to national minority (Article 20-22) (Ibid., 286). Pawlikowski adds that implementing the Lisbon Treaty meant improving human rights protection as it meant adapting the European Convention on Human Rights, therefore putting EU legal system concerning human rights protection under independent control (Ibid., 285-286).

As Ulrike Barten points out, when analysing EU's approach towards minorities it is important to remember, that there are three bodies constituting the EU - the Parliament, the Commission, and the Council - and one should not forget that they all have different competences and ways of working (Barten 2016, 106-107).

The institution protects minorities in various ways, from projects that bring awareness to establishing new institutions dedicated to protecting certain rights. Many EU actions are taken together with the Council of Europe like establishing European Year of Languages 2001.[15]

What is also important is that according to Copenhagen Criteria, to enter EU a state must establish, among other things, *stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities*[16]. That means that all the states that entered EU after 1993[17] should have resolved the problems with minorities. If we look at ACFC work, we can see that the states that ignore minorities' issues in their legislation and the international efforts are the old EU members. – France is the only EU state that has never signed ACFC, while Belgium has not ratified it. Malta and Ireland state that there are no national minorities in FCNM understanding on their territories.

Though a quick look at the EUR-Lex website[18] can help better understand the way the majority understands minorities. In the section dedicated to Human Rights in the part "minorities' all seven legislations are dedicated specifically to Roma (Roma integration in the context of equal treatment, Integration of Roma in employment, National Roma integration strategies: common European framework, Integration of Roma in healthcare, Integration of Roma in housing, Social and economic integration of Roma, Integration of Roma in the area of education).[19] There is not even one legislation that would also include other minorities. Roma is a very particular minority,

[15] The European Year of Languages 2001 https://www.europarl.europa.eu/language/annee_en.htm Accessed 26.01.2021

[16] Accession criteria (Copenhagen criteria) https://eur-lex.europa.eu/summary/glossary/accession_criteria_copenhague.html?locale=en Accessed 26.01.2021

[17] The Copenhagen criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995.

[18] https://eur-lex.europa.eu/ gives access to all EU legislation.

[19] Roma Summary https://eur-lex.europa.eu/summary/chapter/1301.html?locale=en Accessed 25.01.2021

which is why I do not include them in my research. Roma differs so much from other minorities that most of the researchers who explore this topic dedicate themselves only to this minority.[20] From this perspective it is understandable to produce legislation dedicated only to Roma. The fact that in this section minorities are narrowed to Roma, does not mean there is no legislation concerning protection of other minorities, but it reassures the reader that minorities mean just Roma.

Crepaz points out that after the accession, the 'new' member states have to start to behave more like the 'old' member states:

> Being a post-2004 or an 'old; member state is not an influential factor, contrary to what the dichotomy made in the literature so far would lead us believe. The duration of the EU membership or accession conditionality seem to no longer have much of an impact once the country has joined the EU. EU leverage remains limited to the accession period, and once the 'new' country has become a member, it is no longer available. The EU does also not try to interfere in the matters of sovereignty in the 'new' member states, and minority protection policy returns to being an only domestic policy issue. At best, commitements or statements made before accession could be used to 'rhetorically entrap' the member state. As the issuese falls outside the acquis (except, of course, for the related fields of non-discrimmination and the fight against racism and xenophobia), the EU does not have any legal power once the country has become a member. In the post-accession context, influence from the EU and the negotiations made during accession diminish relatively quickly, and the patterns of norm development and influence move closer to those analyzed for 'old; member states (Crepaz 2016, 159).

It is hard not to agree with Crepaz and her discoveries, but it is worth to add, that as shown in this part of the work, the minority rights develop only after big events involving minorities. The 'new' member states were entering the EU in the shadow of the events in the Balkans and later legal arrangements which influenced their negotiation before EU succession. In the parts about Poland and Bulgaria we will have a closer look at how these events and European Union's influence shaped post-2004 member states legal framework regarding minority protection.

[20] Sinti, Roma, and Travellers are mostly researched separately because of their nomad lifestyle and living apart from the rest of the society

The Author points out that the frequency of appeals to the European Union or other supranational institutions, indicate the quality of the dialog between the minority and nation-state (Ibid., 160-161).

Let's take a quick overview of European Union's institution.

Barten calls **the European Commission** 'the heart of the EU'. Its Commissioners are independent and work in the interest of the European Union as stated in the Article 17 of the Treaty on European Union (Barten 2016, 106)**.** Alain Chablais and Pierre Garrone in the article *European Commission for Democracy through Law: Review of Recent Reports and Opinions Relevant to the Protection of National Minorities* published in European Yearbook of Minority Issues (Chablais and Garrone 2007).

European Union Agency for Fundamental Rights (FRA) was established in March 2007 as a replacement for European Monitoring Centre on Racism and Xenophobia (EUMC, established in 1994). FRA divides its work to several areas: (1) Justice, victims' rights, and judicial cooperation, (2) Equality, non-discrimination, and racism, (3) Asylum, migration and borders, (4) Data protection, privacy and new technologies, (5) Support for human rights systems and defenders.

FRA describes itself as an institution that: collects and analyses law and data, provides independent, evidence-based advice on rights, identifies trends by collecting and analysing comparable data, helps better law making and implementation, supports rights-compliant policy responses, strengthens cooperation and ties between fundamental rights actors.[21] The Agency uses several tools like information systems (EU Fundamental Rights Information System - EFRIS), databases (Criminal detention database, Anti-Muslim hatred database, Case-law Database, Promising practices: equality data collection), an FRA e-learning platform and a data visualisation.

[21] FRA: What we do https://fra.europa.eu/en/about-fra/what-we-do Accessed 26.01.2021

The EU Charter for Fundamental Rights was adopted in Strasbourg in December 2007 and refers to national minorities in *Article 21 Non-discrimination* that reads:

> 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
>
> 2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.[22]

Meanwhile *Article 22 Cultural, religious, and linguistic diversity* does not mention national minorities, but states: *The Union shall respect cultural, religious and linguistic diversity.* This article can also be used as a protection of national minorities.

Certifications is another way in which the EU tries to protect the cultural heritage of its member states. The European Union provides three types of regional product protection. Protected Designation of Origin (PDO), Protected Geographical Indication (PGI), and Traditional Specialities Guaranteed (TSG). It might not be the most obvious one, but the certification of regional products is yet another way of how to protect minorities' culture and their way of life.

The certification of a product means it can only be produced in a certain way with specific ingredients to be allowed to use its original name. This way the traditional production and therefore way of life are protected, while the product gains a free promotion – there are various articles and other materials about based on the list of EU certified regional products.

Regional products are often produced by minorities who thanks to their regional specialties gain visibility.

European Language Equality Network (ELEN) was established in 2011 based on European Bureau for Lesser-used Languages (EBLUL) that has been set up by European Parliament in 1982. ELEN states that it represents around 50 million Europeans (10% of population) who are

[22] *Charter of Fundamental Rights of the European Union* (2007/C 303/01).

minority languages speakers. ELEN is an umbrella organisation that brings together and collaborates with various institutions and organisations from universities to organisations that present themselves in elections.

Enlargement of the EU in 2004 was a perfect occasion to evaluate and seek for new methods to protect minorities (Ebner, 2004, 18). This led to a conference "The European Union and the Protection of Minorities: The Way Forward" and Bolzano/Bozen Declaration on the Protection of Minorities in the Enlarged European Union.

Gabriel N. Toggenburg writes about a need of creating supranational ways of protecting minorities in contrast to national and international solutions that in his view are not enough (Toggenburg 2004, 18). In a way FCNM is a supranational instrument. He also raises an interesting counterargument pointing out that 'the Union cannot possibly define 'EU minorities,' due to the simple fact that it knows no 'EU majority' and no full-fledged citizenship law.' This raises yet another question: can the *EU successfully protect its minorities without further unification?*

Not all EU states mention the existence of minorities in their constitutions. Draft EU Constitution mentions *minority languages,* which is a big step forward in guaranteeing minorities supranatural, unified rights.

The EU does not only provide the legal framework for the protection of the minorities, but as underlined by Gabriel Toggenburg, it provides the monitoring system (Ibid., 56).

> When governments are inattentive to or dismissive of domestic critique, the check provided by international monitoring of states' human rights performance is invaluable. In order to monitor effectively among a group of states, however, it is first necessary for them to defi ne the content of their shared values, and then to make clear, demonstrable commitment to those values a condition of group membership. The EU must devote additional resources to reexamining and further articulating the obligations of minority protection in the European context, and it must make it clear that all member states are held to these obligations equally. Strong monitoring mechanisms at the EU level would be an effective means of promoting members' adherence to common minority protection standards and sharing best practices among member states; the operation of such mechanisms would also facilitate an ongoing process of reexamining and refining these standards over time (Ibid., 56).

The Author also sees a positive role of EU enlargements on minority protection:

> There are hopeful signs that accession has already provided an impetus to reinforce and strengthen the EU's minority protection standards and institutions. As noted above, the adoption of the Race and Employment Directives represent a major step forward in the articulation of EU standards for protection against discrimination. Despite resistance and slow progress towards compliance in some states, the direction that all member states are expected to follow is clear, and progress (or lack of progress) can be monitored with relative ease by international and domestic monitors. Moreover, the entrance of candidate states in 2004 may provide fresh impetus to the 'emerging consensus' among EU member states on minority rights issues (Ibid., 56).

Importantly, the EU is not the only international institution providing the monitoring of minority and human rights.

2.3.2 Council of Europe

Hofmann and Friberg in their paper 'The Enlarged EU and the Council of Europe: Transfer of Standards and the Quest for Future Cooperation in Minority Protection' suggest, that when discussing the primary mechanisms within the Council of Europe (CoE) that directly relate to minority protection, it is important to acknowledge that there are several other CoE institutions or bodies that, either directly or indirectly, also support minority protection in member states. These include the European Commission against Racism and Intolerance (ECRI), the European Commission for Democracy through Law (the Venice Commission), the Congress of Local and Regional Authorities of Europe (CLRAE), the Commissioner for Human Rights, the Parliamentary Assembly, and the Committee of Ministers. It is worth noting that the Committee of Experts for the Protection of National Minorities (DH-MIN) is expected to resurface in 2005 as a broad platform for intergovernmental cooperation, addressing policy issues in various areas of minority protection. This comprehensive and complementary approach, encompassing judicial, legal, and political

mechanisms, constitutes the Council of Europe's complete contribution to promoting the rights of individuals belonging to national minorities within the CoE region (Hofmann and Friberg 2004, 128).

The Council of Europe's minority protection system is particularly important as it applies to all European states except Belarus. CoE divides its task in the sphere of human rights into three areas - promoting human rights, protecting human rights and ensuring social rights. In each of the mentioned areas there are commissions, committees, acts and treaties which work concerns minority rights.

Even though CoE is such an important institution regarding minority rights, one must remember that the Council represent state interest (Barten 2016, 107). Barten points out that the institution is involved in law-making process and that *art. 16 TEU regarding the competences of the Council mirrors art. 14 TEU on the European Parliament* (Ibid., 107). Gwendolyn Sasse adds *The Treaty of Maastricht (1992) entrenched, for the first time in the history of the EU, specific provisions on fundamental rights and a vague recognition of the requirement that member states respect "national and regional diversity" (...)* (Sasse 2004, 63).

As underlined by Gwendolyn Sasse the 1990s brought an important development in the Council of Europe:

> The nexus between democracy and human rights had always been at the core of the Council of Europe's self-definition and membership criteria. The quick engagement of the Council of Europe in CEE—Hungary became a member as early as 1990, followed by the Czech Republic and Poland in 1991—turned it effectively into an institutional stepping stone towards the EU. When defining its own membership conditions for the new candidates from CEE, the Council of Europe's criteria provided the obvious normative basis for the EU to build on. After the EU Copenhagen criteria were formulated, but before the accession negotiations had begun, the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) of 1995 put in place a complex and legally binding pan-European instrument for the continuous assessment of minority issues (Ibid., 61-62).

The three most important legal acts introduced by the CoE are:

- the Convention for the Protection of Human Rights and Fundamental Freedoms from 4 November 1950 (entered into force on 3 September 1953);
- European Charter for Regional or Minority Languages (ECRML) from 5 November 1992 (entered into force on 1 March 1998);
- The Framework Convention for the Protection of National Minorities (FCNM) from 1 February 1995 (entered into force on 1 February 1995).

National minorities are mentioned twice in **the Convention for the Protection of Human Rights and Fundamental Freedoms**. Section I Rights and Freedoms, Article 14 Prohibition of discrimination reads:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. (European Convention on Human Rights, p. 13).

This antidiscrimination provision was added thanks to the Danish delegate Hermond Kannung and his motion, contains an (Pawlikowski 2011, 285). Another part referring to minority protection is the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms which states in Article 1:

> 1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Another CoE institution protecting minority rights is **the European Court of Human Rights**. After the adoption of the Convention in 1950 and its entry into force in 1953, the first members of the Court were elected by the Consultative Assembly of the Council of Europe in January 1959, the first Court sitting took place a month later.

The European Charter for Regional or Minority Languages was established in 1983 and took five years. The text was prepared by the Standing Conference of Local and Regional Authorities of Europe and was adopted as a convention on 25 June 1992 by the Committee of Ministers of the Council of Europe. It entered into force on 1 March 1998.

According to the Charter, regional or minority language means a *traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and* [are] *different from the official language(s) of that State.*[23] The Charter does not concern dialects of State's official language(s) or migrant's languages.

Pawlikowski underlines that the Charter is complementary to The Convention and does not give individual or group rights to linguistic minorities but names the duties the state has towards them to protect their languages in any area of life. It refers among others to education, jurisdiction, culture, social and economic life. States are also obliged to report their actions (Pawlikowski 2011, 284). Moreover, if the state or international agreement assures more beneficial rights the Charter cannot be used as an excuse not to fulfil them (Ibid., 284).

The Framework Convention for the Protection of National Minorities and **the Advisory Committee for Framework Convention for the Protection of National Minorities** are extremely important when it comes to the protection of minority rights. The FCNM is the first legally binding, multilateral act protecting national minorities in European history.

The mail goal of the FCNM is to state the rules for the states about the way they are to protect national minorities within their borders (Ibid., 285). As Pawlikowski states it gave a legal character to the obligations which until that point were only political. What is specific for the Convention is that it leaves states the freedom of how to apply it according to the specifics of the state. What is important is that 1) the goals stated by the Convention should be accomplished by using state's legal system and congruent government's politics; 2) The Convention does not contain a definition of national minority; 3) There is no system of control whether the parties are complying with the duties the Convention lays upon them (Ibid., 285).

[23] *European Charter for Regional or Minority Languages* 1992. ETS No. 148.

On Council of Europe's website, we read that adopted in November 1994, the Convention is *the first legally binding multilateral instrument devoted to the protection of national minorities worldwide, and its implementation is monitored by the only international committee dedicated exclusively to minority rights: the Advisory Committee*.

The Advisory Committee is a committee of experts whose aim is to evaluate the implementation of the FCNM by completing a monitoring procedure and providing detailed state-specific opinions. To complete this task the ACFC meets with governmental interlocutors, national minority representatives and other relevant actors and examines State Reports. The Committee should also advise the Committee of Ministers.

Though it is the most important, ACFC is not the only body/law introduced by the Council of Europe that protects minorities. There are also: The European Convention on Human Rights, The European Social Charter, The European Charter for Regional or Minority Languages, The European Commission against Racism and Intolerance (ECRI), The Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI), The Roma and Travellers Team of the Council of Europe. Not all the mentioned bodies were introduced to protect minorities specifically, but they all contribute to the case.

FCNM lacks a definition of minority. From one side it can be an advantage as it lets minorities define themselves. From the other side states are usually not keen on protecting minorities and ensuring their rights, and that together with lack of definition can lead to interpretations that are not in minorities favour. That happened among many states, including Poland which ratifying the Convention had issued a statement claiming that due to the lack of definition of national minority, Poland interpretates national minorities accordingly with its law.

Having FCNM to call upon, European minorities can be seen as privileged compering with minorities on other continents, but the Council of Europe's Framework Convention is not a perfect solution either. 1) France and Turkey have never signed it. 2) Belgium, Greece, and Island have never ratified it. 3) Other states simply do not collaborate - Malta's newest State Report[24] contains

[24] The Advisory Committee works within cycles and is currently (as in 2021) working on the 5th cycle. Each cycle is constructed with various phases. First stage is a State Report (or a statement) prepared by the state undergoing the

two pages: first with a title and date, second with the following statement: 'The Republic of Malta reiterates its position that Malta has no national minorities in its territory and that any substantive obligations previously mentioned in the Conclusions of the Advisory Committee are not within the remit of the Framework Convention on National Minorities.'[25]

The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as "race", national/ethnic origin, colour, citizenship, religion and language (racial discrimination); it prepares reports and issues recommendations to member States.[26]

The Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI) was set up by the Committee of Ministers in 2019. Its mission is to promote equality and build more inclusive societies.

Although as explained earlier in the Introduction, Roma is a very specific minority in Europe, and will not be a part of this work's analysis, **the Roma and Travellers Team of the Council of Europe** is an important minority protection tool which should be mentioned here. According to CoE Roma and Travellers Team has two main missions being *ensuring the implementation of the*

monitoring procedure. Once received the report Advisory Committee delegation visits the state and meets with the representatives of minorities, NGOs and the state. Based on the information it collects, the Committee issues its Opinion. The government has the right to comment on the opinion. Based on this dialogue Committee presents the Resolution and organises a Follow-up Dialogue. The length of a cycle depends strongly on the quality of communications and state's attitude as it often happens that state reports are received long after their due date.

[25] Advisory Committee on the Framework Convention for the Protection of National Minorities. Fifth Report submitted by Malta. ACFC/SR/V(2019)010.

[26] Eureopean Commission official Website. Knowledge for Policy. https://knowledge4policy.ec.europa.eu/organisation/ecri-european-commission-against-racism-intolerance_en

Strasbourg Declaration on Roma Issues (as adopted in October 2010) and *coordinating the work on Roma at the Council of Europe notably through the development of transversal approaches.*[27]

Despite the fact that **the European Social Charter** does not refer directly to national minorities, it is mentioned on CoE's website as one of the ways the CoE protects the minorities. Unfortunately, very often due to exclusion, education-related problems, etc. minorities are in more vulnerable social situations than the rest of the society.

2.3.3 Organization for Security and Co-operation in Europe (OSCE)

OSCE brings together 57 participating States from Europe, Central Asia, and North America. The organisation often deals with extreme situations, which might influence the way it understands minorities.

OSCE's system of minority protection is based on its own work as well as its predecessor's - the Conference on Security and Co-operation in Europe (CSCE). One of the fields of OSCE work described as human rights category is *supporting the implementation of legislation protecting the rights of persons belonging to minorities*.[28] OSCE states that in the field of national minority issues it focuses on

> (…) better integrating national and ethnic minorities into public life, ethnic minority protection, training, reforming the education system, enhancing equitable representation, strengthening the use of minority language, curbing discrimination, building confidence

[27] Council of Europe Official Website. Roma Team and Travellers. https://www.coe.int/en/web/democracy/support-team-for-roma-issues Accessed 20.02.2021

[28] OSCE Official Website. Human Rights. https://www.osce.org/human-rights Accessed 10.01.2021

among communities, fostering regional networks to build sustainable institutions for minority communities and to protect their rights.[29]

The most important documents produced by CSCE/OSCE that consider minority protection are 1975 Helsinki Final Act, 1990 Copenhagen Document, 1990 Charter of Paris for a New Europe, 1991 Report of the CSCE Meeting of Experts on National Minorities in Geneva, and 1999 Charter for European Security.

As we can see, three out of four documents were introduced in the 1990s. Gwendolyn Sasse points out how important was this period foe the Organisation:

> The reinvigoration of the CSCE/OSCE process from 1990 onwards further enhanced this normative basis by making explicit the link between democracy, human rights, conflict-prevention, and minority protection. The CSCE Paris Charter of 1990 stipulated that "peace, justice, stability and democracy require that the ethnic, cultural, linguistic and religious identity of national minorities be protected, and conditions for the promotion of that identity must be created.". The OSCE General Recommendations of 1996, 1998, and 1999 subsequently attempted to refi ne a European standard for minority protection (Sasse 2004, 62).

Regarding the documents themselves, Helsinki Final Act was the first document obliging Member States to respect minority rights. It obligated States to respect equality before the law (Witkowski 2017, 34-35). CSCE played an important role in development of minority protection. Helsinki Final Act[30], which refers directly to national minorities stating that:

> The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere.[31]

[29] OSCE Official Website. National Minority Issues https://www.osce.org/national-minority-issues Accessed 10.01.2021

[30] Known also as Helsinki Accords or Helsinki Declaration.

[31] CSCE. 1975. Conference on Security and Co-operation in Europe - Final Act.

Pawlikowski underlines that the decisions taken in Helsinki were later approved in Madrid in 1983 and Vienna in 1989. During the latter states assured additional rights to national minorities (Pawlikowski 2011, 286). The Author states that the Vienna meeting was an out-break in the development of minority protection and guaranteed institutional control over rules adherence (Ibid., 286). In the Final Act we can read that the states will take all the needed actions – lawmaking, administrative and juridical to ensure that the human rights and basic rights of minority members are respected. The Act was also to ensure that there is no discrimination towards the minorities while creating an environment in which ethnic, cultural, linguistic and religious identities are encouraged at minorities' territories (Witkowski 2017, 35).

Pawlikowski brings our attention to Copenhagen Document established in 1990 as one of significant importance considering national minorities. The document is a result of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE – the first Meeting of the Conference was held in Paris from 30 May to 23 June 1989. He notes that the Document is based on the conception of individualised rights of national minorities' members (Pawlikowski 2011, 286). Furthermore, the Document also called 'European Minority Card' was the first case when the international society has formed a catalogue of minority rights (Witkowski 2017, 35).

The Copenhagen Document reads *To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice* (para 32, CSCE/OSCE Copenhagen Document 1990). Choosing weather to be a part of national minority is nonetheless a question of identity. Therefore, we can assume that the OSCE recognises self-identification as a right.

Furthermore, the document based on the individual rights, pinpoints materialistic norms as well as the ones referring to procedures and implementation (Pawlikowski 2011, 286). The former CSCE attendees had also voiced the need of improving national minorities situation in the Charter of Paris for a New Europe signed in November 1990 (Ibid., 286).

The Article 32 guarantees minorities several rights, such as to *freely express and preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects.*[32]

The Act underlines the right to freely use their mother tongue both in private and public. It gives importance to institutionalisation of the culture by giving the right *to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek - voluntary financial and other contributions as well as public assistance, in conformity with national legislation.*[33]

'European Minority Card' refers to religious rights including conducting religious educational activities in minority's mother tongue. It sees minorities as groups who do not necessarily live within the boarders of one state and guarantees minorities the right to establish and maintain unimpeded contacts with their group within the State and abroad (based on shared ethnicity or national origin, cultural heritage or religious beliefs). According to the creators of the Act, minorities should also have access to and be allowed to exchange information in their mother tongue (para 32, CSCE/OSCE Copenhagen Document 1990).

The aim of minority rights is not to give minorities special rights but to decrease the differences between the minorities and the majority. It is to allow them to keep their own identity and have the same opportunity to participate in the public life in its cultural, social and political dimension (Witkowski 2017, 36). That is why the national and international law regarding minority rights focuses on a social life and cultural rather than political rights (Ibid., 36).

According to Tomasz Witkowski, the international law only gives frames to realisation of minority rights, while the actual minority protection relays mostly on states and importantly, can strongly depend on relations between the state and the state with which the minority identifies (this will be further examined in the part about Greece) (Ibid., 36). The Author emphasises that acts regarding minority protection in state's legal system are not always respected and sometime

[32] CSCE/OSCE. 1990. *Tthe Charter of Paris for a New Europe signed in November 1990* (30 I.L.M. 190 (1991)).

[33] (Ibid.)

incoherent with said system. What is also important is the clerks' attitude towards the minority. Without their help minorities cannot have their rights respected (Ibid., 36).

To guarantee the implementation of the minority rights and improve the collaboration, the participating States decided to hold a meeting of experts, which took place in Geneva in 1991. The Report of the CSCE Meeting of Experts on National Minorities in Geneva states that the Copenhagen Document should be considered as a base of national minority rights related legislation as it contains optimal standards regarding national minority protection (Pawlikowski 2011, 287). The Report has reaffirmed CSCE's previous decision.

In 1992 in Helsinki the organisation introduced the High Commissioner on National Minorities based in Hague. From 1992 to 1999 there was no new development, including 1995 when OSCE was established (Ibid., 287).

1999 Charter for European Security reaffirms previous commitments and recalls provisions of the Copenhagen 1990 Human Dimension Document, and the Report of the Geneva 1991 Meeting of Experts on National Minorities.

> The protection and promotion of the rights of persons belonging to national minorities are essential factors for democracy, peace, justice and stability within, and between, participating States. (…) Full respect for human rights, including the rights of persons belonging to national minorities, besides being an end in itself, may not undermine, but strengthen territorial integrity and sovereignty. Various concepts of autonomy as well as other approaches outlined in the above-mentioned documents, which are in line with OSCE principles, constitute ways to preserve and promote the ethnic, cultural, linguistic and religious identity of national minorities within an existing State. We condemn violence against any minority. We pledge to take measures to promote tolerance and to build pluralistic societies where all, regardless of their ethnic origin, enjoy full equality of opportunity. We emphasize that questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law. We reaffirm our recognition that everyone has the right to a nationality and that no one should be deprived of his or her nationality arbitrarily. We commit ourselves to continue our efforts to ensure that everyone can exercise this right. We also commit ourselves to further the international protection of stateless persons (OSCE 1999).

Within OSCE there are various institutions dedicated to protection of human rights and minorities, which are briefly introduced below. OSCE also gives legislative support to its participating states and works on integration of societies.

OSCE Missions play an important role in the monitoring of minority protection in the most conflicted areas. OSCE is currently (as for January 2021) present in Albania and has its missions in Bosnia and Herzegovina, Kosovo, Moldova, Montenegro, Serbia and Skopje. Although, there are no missions within EU member states at the moment, some EU countries received OSCE missions before entering the structures of the European Union:

- Estonia (1993-2001),
- Latvia (1993-2001),
- Croatia (1996-2007).

In its Helsinki Decision of July 1992, the Organization for Security and Co-operation in Europe (OSCE) established the position of **the High Commissioner on National Minorities (HCNM)** to be an instrument of conflict prevention at the earliest possible stage regarding tensions involving national minority issues. In the course of 15 years of sustained activity, the institution of the HCNM has gained a unique insight into identifying and addressing potential causes of conflict involving national minorities. In this context, the HCNM has devoted much attention to those situations involving persons belonging to ethnic groups who constitute the numerical majority in one State but the numerical minority in another (usually neighbouring) State. This issue engages the interest of government authorities in several States and constitutes a potential source of inter-State tension, if not conflict. Indeed, such tensions have defined much of modern and contemporary European history.'

The position was established in 1992 and since then six Commissioners took the post, Kairat Abdrakhmanov starting in December 2020.

As the OSCE website reads High Commissioner's on National Minorities (HCNM) main task is 'to address ethnic tensions and to prevent hostilities over national minority issues.' Again, the most important aspect is to prevent possible conflicts, but the actions also include monitoring and

education. Only in 2020 HCNM was planning to visit at least six EU states (Sweden, Lithuania, Slovakia, Finland, Estonia, Latvia).[34]

The High Commissioner works in various areas including integration of societies, the right to access to the broadcast media, conflict prevention, education, minority languages, promoting effective participation in public life, inter-State relations and policing in multi-ethnic societies.

The Office for Democratic Institutions and Human Rights (ODIHR) was established in 1991. Its mission is to help participating States by providing support, assistance, and expertise in the area of promoting democracy, rule of law, human rights and tolerance and non-discrimination.

From missions to HCNM, OSCE produces a big number of materials such **books, videos, press release**s and other materials dedicated to their activity. Those materials are often helpful for minorities, scholars and researchers and popularise knowledge about minority issues.

2.3.4 United Nations

As the United Nation's primary mission is to preserve world peace, it was only natural that at some point, the worldwide organisation will show an interest in protecting minorities.

After the Second World War it was believed that national minorities can only be successfully protected by a universal system of human rights protection (Pawlikowski 2011). The UN produced several documents that consider national minorities rights and protection:

- The Charter of the United Nations (signed on 26 June 1945);
- Universal Declaration of Human Rights (10 December 1948);

[34] Due to Covid-19 pandemic outbreak some of the visits had to be postponed or rescheduled.

- The Convention on the Prevention and Punishment of the Crime of Genocide[35] (CPPCG) (9 December 1948);
- The Convention concerning Discrimination in Respect of Employment and Occupation[36] (25 June 1958);
- UNESCO's Convention against Discrimination in Education (signed on 15 December 1960, entered into force 22 May 1962);
- International Convention on the Elimination of All Forms of Racial Discrimination (of 21 December 1965 entry into force 4 January 1969);
- International Covenant on Civil and Political Rights (16 December 1966 entered into force 23 March 1976);
- Convention on the Rights of the Child (20 November 1989, effective from 2 September 1990);
- The Indigenous and Tribal Peoples Convention (27 June 1989, entered into force 5 September 1991);
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (18 December 1992).

Article 1 of Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities refers directly to the right to self-identification, stating:

> 1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
>
> 2. States shall adopt appropriate legislative and other measures to achieve those ends.

Introducing the development on minority rights we tackled PCIJ and its work in interwar period. After the Second World War ICJ replaced its predecessor. Since then, the Court opinionated in several cases concerning peoples and minority rights. Gentian Zyberi notes that because peoples

[35] Known as Genocide Convention.

[36] *Discrimination (Employment and Occupation) Convention.* (ILO Convention No.111).

and minorities do not have the right to stand before ICJ, the Court involvement in this type of issues was mainly as an advisory body (Zyberi 2013, 3).

Zyberi points out that even though peoples and minorities have been granted certain rights, neither of those groups is capable of demanding respect for those rights as they have not yet achieved this type of legal capacity (Ibid., 1). He notices that it had not been peoples or minorities that acted but states and institutions like the UN (or previously the League of Nations) that took it on behalf of them. He continuous explaining his point by citing ICJ *all States should bear in mind that the injured entity is a people which must look to the international community for assistance in its progress towards the goals for which the sacred trust was instituted* (Ibid., 1).

Scholars agree that although the Universal Declaration of Human Rights from December 1948 was an important act regarding minority rights seen as human rights, the Declaration itself is not legally binding (Pawlikowski 2011, 282).

Another big step forward in area of minority rights was UN's next initiative – International Covenant on Civil and Political Rights from 16 December 1966 which was a legally binding act. The document became a standard for national minority protection and for a time being the only universal, legally binding act in this area (Ibid., 282).

Austin Badger underlines that the fact of ICCPR being a treaty brings it more importance in comparison to the non-binding Universal Declaration of Human Rights, adding that the Covenant has been at least partially successfully invoked by indigenous peoples (Badger 2011, 487-488). Moreover, there is a possibility of oversighting ICCPR's provisions by the Human Rights Committee (Ibid., 488). An additional protocol allows a petitioner to reach to the United Nations Human Rights Committee and ask for review when the domestic remedies have been exhausted.

Pawlikowski names Articles 18, 20, 26 and 27 as the ones considering minorities (Pawlikowski 2011, 282). Badger on the other side brings reader's attention to Article 27 of ICCPR which considers ethnic, religious, or linguistic minorities living within host nations. It specifies that the state is obliged to ensure that people who fit the depicted description can enjoy their own culture together with other group members. While all the mentioned articles regard human rights, only the Article 27 refers directly to national minorities. Badger describes it as *encompassing an individual*

right of cultural access by implicitly requiring preservation of the group in order for that culture to continue to exist (Badger 2011, 496). Article 27 reads:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language (UN 1966).

1979 was another important date in UN efforts to protect national minorities. Francesco Capotorti wrote *Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities* which presented *Study on the right of persons belonging to ethnic, religious and linguistic minorities.* This document included Capotorti's definition of a minority that for years was shaping international standards and is further analysed in the part about minorities.

In 2010 UN published a guideline about how to treat minorities – 'Minority Rights: International Standards and Guidance for Implementation'. The first part of the document answer questions like *Who are minorities under international law? Are indigenous peoples considered to be minorities? Do minority rights apply to non-citizens? What is the relationship between minorities, non-citizens and stateless persons?* Publications like this are important to set the standards for the states.

Setting standards is not the only thing UN does to protect minority rights. It also has mechanism of control over signing States to assure they respect UN's standards of human rights and persons belonging to national minorities. Pawlikowski names some of those mechanisms: 1) UN Secretary General's reports, 2) UN General Assembly's resolutions, 3) prevention mechanisms including Secretary General's telegrams, appeals, complaints, investigations, visits, public condemnation, 4) establishing special working groups, 5) compensations, 6) reporting procedure (Pawlikowski 2011, 283).

Overall, UN organs deal with the most serious crimes against minorities like ethnic cleansing or genocide. In 1993 UN established International Criminal Tribunal for the former Yugoslavia (ICTY) which had a temporary character. In 1998 a permanent solution was introduced as UN established The International Criminal Court (ICC) (Ibid., 283).

On 18 December 1992 the United Nations adopted **the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**. Pawlikowski calls it the most important UN document regarding national minority protection (as for 2011). The Author argues that the Declaration has a rather political character as it does not put any formal obligations on a signing state but draws rules of minority protection and puts them as an element needed to guarantee state's security (Ibid., 283).

> The Declaration was inspired by Article 27 of the International Covenant on Civil and Political Rights, which is the most widely accepted legally binding provision on minorities. In terms of monitoring, human rights treaty bodies (in particular the Committee on the Elimination of Racial Discrimination and Human Rights Committee) as well as special procedures have been paying increasing attention to situations and rights of persons belonging to minorities.[37]

UN Sub-Commission on the Promotion and Protection of Human Rights was established in 1947 with 12 members and was renamed in 1992. The original name of the Sub-Commission was United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities. The focus of the commission is preventing the discrimination.

After establishing **the United Nations Human Rights Committee**, United Nations decided to create **the Office of the United Nations High Commissioner for Human Rights** in 1993. UNHCHR's role is to guarantee that human rights are being respected. To achieve it, the Office collaborates with the states, prepares opinions and resolutions for other UN organs (Pawlikowski 2011, 283).

[37] UN Official Website. Let's Fight Racism. https://www.un.org/en/letsfightracism/minorities.shtml Accessed 10.01.2021

2.3.5 Other International Agreements

Pawlikowski points out that Central European Initiative (CEI) and The Council of the Baltic Sea States' initiatives had a significant importance for minority protection on regional level (Pawlikowski 2011, 287).

CEI was founded as Quadragonale in Budapest on 11 November 1989 by Italy, Austria, Hungary and the Socialist Federal Republic of Yugoslavia. Its Member States today are Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Italy, Moldova, Montenegro, North Macedonia, Poland, Romania, Serbia, Slovakia, Slovenia and Ukraine. It is said to be the largest and oldest forum of regional cooperation in Central, Eastern and South Eastern Europe.

CEI's most significant document produced in order to protect minority rights is CEI Instrument for the Protection of Minority Rights from 19 November 1994 (Ibid., 287). Article 1 of the document recognises the existence of national minorities and guarantees them *the appropriate conditions for the promotion of their identity.*

The Council of the Baltic Sea States was established by Denmark, Estonia, Finland, Germany, Iceland (since 1995), Latvia, Lithuania, Norway, Poland, Russia and Sweden. The Council of the Baltic Sea States constituted the office of CBSS Commissioner for Human Rights and Minorities and the office of Commissioner on Democratic Institutions and Human Rights including the Rights of Persons belonging to Minorities. In 2000 the position was renamed to Commissioner on Democratic Development. Pawlikowski points out that by focusing on a specific region, both organisations can be more effective in resolving problems connected to legislation regarding minorities issues (Ibid., 287).

Some national minorities identify with a nation kin state. In this case the **state often helps *its people*** **in another state** by advocating for them. Usually, those people are only citizens of the state they live in and the protection is based on their identity rather than legal status.

This can work very well like in Danish-German bordering region that is often set as an example. But it can also work as a disadvantage for a minority. Around 25% of Latvian citizens are Russians. Latvian authorities can dread Russian propaganda being spread among the community. Any anxiety towards Russia can result in limiting minority rights, which can be a consequence for all minorities inhabiting the state.

2.3.6 Non-Government Organisations

Non-government organisations that dedicate their work to minorities rights can work on local, regional, national, or supranational level. They can also join their forces collaborating or joining an umbrella organisation. It is impossible to introduce all minority-rights-orientated NGOs, but I will introduce at least a couple of them.

Minority Rights Group International is an organisation was founded in 1969 by David Astor, English newspaper publisher and editor. The NGO campaigns for minority and indigenous people rights ('to the land they live on, the languages they speak, to equal opportunities in education and employment, and to full participation in public life'[38]) in over 50 states together with around 150 partners. Their work contains training and education, legal cases, publications and the media. MRG has a consultative status with the United Nations Economic and Social Council (ECOSOC) and observer status with the African Commission for Human and Peoples' Rights.

Another supranational organisation focused on minority rights is **The Federal Union of European Nationalities (FUEN).** The FUEN was established in 1949 and is yet another international NGO dedicated entirely to minority issues. It was created in conjunction with constituting the Council of Europe. The Federal Union of European Nationalities works as an

[38] MRGI Official Website About us. https://minorityrights.org/about-us/ Accessed 19.03.2021

umbrella organisation and *mutual support community*[39] for over 100 members from 35 states representing ethnic, linguistic and national minorities from across entire Europe. FUEN's mission is to give the voice to *European cultures and languages that do not possess form as a nation-state*. It also *preserves a large network of European regions, policy makers, scientific institutes, cultural and educational institutions, youth organisations, media and other associates*. The institution acts as an advocate for national minorities, autochthons, nationalities, and language groups, working mainly on European level and representing them in various international organisations like OSCE, the European Union, the Council of Europe, and the United Nations. Its main aim is to *preserve and promote the identity, language, culture, rights, and traditions of the European minorities*.

The organisation has offices in Flensburg (Schleswig), Berlin and Brussels. After the success of its European Citizens' Initiative, the Minority SafePack, the Federal Union of European Nationalities has gained visibility. FUEN has also advocated in the Council of Europe to adopt the Council of Europe to adopt the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities.

According to the organisation, one in seven Europeans are members of such minorities and fifty-three languages are spoken in Europe by such minorities.[40]

The Minority SafePack is an initiative coordinated by the FUEN and was the fifth successful European Citizens' Initiative in the history with 1,123,422 validated signatures and 11 EU Member States in which it managed to pass the threshold.

Minority SafePack is a packet of legislative proposals that were to ensure national minorities' safety *a set of EU legal acts that enable the promotion of minority rights, language rights, and the protection of their cultures. In short, it sums up our main objectives: safety for minorities and legislative package for minorities.*

The authors of Minority SafePack accuse the European Union of repeatedly ignoring the requests to make the situation better and has left the minorities issues to be dealt by Member States,

[39] FUEN Official Website. https://fuen.org/en Accessed 19.03.2021

[40] FUEN Official Website. https://fuen.org/en Accessed 19.03.2021

or by other international institutions. They suggest the EU does not live up to its motto - *In varietate concordia – United in diversity*. The Minority SafePack authors call the UE to improve the protection of people belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union.

The EU is called upon to take the responsibility and make the Copenhagen Criteria protect the rights of minorities and the EU itself to promote cultural and linguistic diversity across Europe. The European Commission registered nine out of eleven original proposal put forward by the Minority SafePack Initiative:

1. EU-Recommendation for the protection and promotion of cultural and linguistic diversity;
2. Funding programmes for small linguistic communities;
3. The creation of a Language Diversity Centre;
4. The objectives of EU's regional development funds to include the protection of national minorities and the promotion of cultural and linguistic diversity;
5. Research about the added value of minorities to our societies and Europe;
6. Approximating equality for stateless minorities e.g. Roma;
7. A single European copyright law, so that services and broadcast can be enjoyed in the mother tongue;
8. Freedom of service and reception of audio-visual content in the minority regions;
9. Block exemption of regional (state) support for minority culture, media and cultural heritage conservation.[41]

In European member states there are NGOs dedicated to specific minorities. **Like Òmnium Cultural**, which is very active in the area of Catalan Culture in Spain. The organisation was founded in 1961 during the Francoist Dictatorship. It was established to promote Catalan language and

[41] Minority SafePack Official Website. About. http://www.minority-safepack.eu/#about Accessed 14.01.2020

culture as the institutional use of Catalan was not permitted.[42] Òmnium was focusing one the two areas until the end of Francoism and restoration of democracy. Since that point, the organisation has extended its interest to Catalonia's self-governance and organised a march in Barcelona in 2010 with one million attendees (there are 7 million people living in Catalonia). The march was a protest after the Spanish Constitutional Court rejected the new Statute of Autonomy of Catalonia.

Òmnium Cultural has over 180 thousand members and offices in more than 40 locations around the region. In 2017 along with Assemblea Nacional Catalana it supported the Catalan self-determination referendum, which resulted in arrestment and imprisonment of both Òmnium and ANC presidents - Jordi Cuixart and Jordi Sànchez, who were both sentenced nine years in prison. Various organisations including Amnesty International, the Office of the United Nations High Commissioner for Human Rights, PEN International, the World Organisation Against Torture, Front Line Defenders and the International Association of Democratic Lawyers have reacted urging Spain to free both activists and politicians who were arrested along with them.

In Poland there is **Helsinki Foundation for Human Rights**. The foundation was founded in 1989 by the members of the Helsinki Committee in Poland and is dedicated to the promotion and protection of human rights, including the minority rights.

2.3.7 Political Organisations and Parties

Many minorities have political organisations and parties that represent them. Sometimes their only aim is to get a better protection (Party of Friendship, Equality and Peace representing Turkish Minority in Western Thrace, Greece; Lusatian Alliance representing Wendish people in Lausatia, Germany), sometimes it can also be enlarging autonomy for minority's region, gaining an autonomy

[42] Òmnium Cultural Official Website. Presentation. https://www.omnium.cat/en/presentation/ Accessed 14.01.2020

(Silesian Autonomy Movement in Upper Silesia, Poland) or independence (Scotish National Party in Scotland, UK; Republican Left of Catalonia in Catalonia, Spain).

Minorities also have their representation on European level in a political party European Free Alliance being represented by nine MEPs (January 2021).

Anna Muś points out that the main goal for minority parties is to give expression to their group's political interest as well as promote and achieve their objectives (Muś 2021, 22). She names three of the most important goals minority parties try to reach: *recognition of minority, preservation of its distinctiveness and ensuring non-discriminatory policy* (Ibid., 22). The Author recalls scholarly literature which proves a positive influence having a political party and existing in the state tools of political inclusiveness has on minority representatives. Muś concludes that inclusive ethnic politics can have a stabilising effect on democracy (Ibid., 22).

Marine Germane points out that ethnic organizations have been recognised by many scholars as a necessary precondition that allows minorities to participate on political level in the democratic life of the nation-state. The Author explains that membership in voluntary organisations generates two types of social capital – bonding and bridging. Bonding is a result of participation in *intra*ethnic organisation, while bridging is related to membership of *inter*ethnic organizations (Germane 2015, 55). Ethnic and non-ethnic social capitals are also being linked to being generated by monoethnic and multi-ethnic organisations. It is believed that both types of social capital are equally important for political participation. On the contrary to what have been believed, a strong ethnic community does not have a negative effect on integration but is a precondition crucial for successful integration (Ibid., 55-56).

Małgorzata Myśliwiec brings our attention to the fact that even though ethnicity in Europe does not seem as serious of an issue as in other parts of the world, ethnicity is still one of the most relevant socio-political divisions in Europe (M. Myśliwiec 2014, 47). Moreover, as Donald Horowitz points out, the Western Europeans tend to identify more strongly with the state than people in other parts of the world (Ibid., 51). As a reason to that Myśliwiec sees the fact that the Western European states and their political systems have been established long ago compared to Africa or Asia and do not bring so many emotions. As a matter of fact, Western European have had simply more time to accept the situation and the existing borders and could have develop layered identities (Ibid., 51). According to the Author, the regional layer tends to be very strong but

identification with the state or even European structures can be similarly relevant, especially after years of European integration which made the ethnic differentiation stronger.

Donald Horowitz sees the influence of religion, nationalism and class on European states policies and believes there is correlation between ethnic division within a states and states' class system (Ibid., 54). Horowitz introduced a division of ethnic systems to hierarchical and parallel.

In hierarchical systems class divisions coincide with ethnic divisions, while in non-hierarchical (parallel) system class divisions do not coincide with ethnic divisions (Ibid., 54).

European Free Alliance (EFA) is an umbrella organisation bringing together parties and political organisations that share the idea of self-determination. It was founded in 1981 and contains parties that represent several ideologies: regionalism, autonomism, represent ethnic or national minorities. EFA has stronger representation in 'old' member states. It either has or used to have representation in each of the states presented as the case studies in this work. In 2007 EFA established **The Coppieters Foundation**, formerly Centre Maurits Coppieters (CMC), dedicated to the promotion and research on the European and international level. The foundation's main areas are among others – minority rights, decentralisation, cultural and linguistic diversity.

Regional political Parties are dedicated to politically representing the minorities on local, regional, national and international level. **The Republican Left of Catalonia (ERC)** does that on all of the mentioned levels and is one of the Europe's oldest ethno-regional party established in 1931 after a two-days-long congress of left-wing Catalan parties. (M. Myśliwiec 2014, 118-119) Its leaders played a crucial role during the Civil War, Spanish Republic and was creating resistance during Franco's regime. Some of ERC's most known leaders were Lluís Companys i Jover who proclaimed the Catalan State in 1934, was the second President of the Generalitat (1933-1940) and was executed by Franco's regime, Josep Irla i Bosch who is the patron of ERC's foundation, Francesc Macià i Llussà – the first President of the restored Generalitat of Catalonia (1931-1933) and Josep Tarradellas i Joan after whom the Barcelona's airport was named.

ERC is represented in the European Parliament by 2 MEPs associated with EFA (733,109 votes, 21.19%) and in Spanish Congress – 13 MPs, 869,934 votes (22.56%). The party had the second-best result in elections for the Parliament of Catalonia in 2021 with only two percentage points difference from the winning party. ERC got 603,607 votes (21,3%) securing 33 seats in the Catalan Parliament. *Esquerra* is proud for its representation in municipal areas with 359 mayors and 3,114 councillors (821,357 votes, 27.14%). It is also represented in the Valencian State (11 councillors) and in the Balearic Islands (10 councillors). ERC works closely with other nationalist parties from different Spanish regions and is continually active on European level. Jordi Solé, responsible for ERC's international affair, is an MEP and EFA's Secretary General.

Esquerra nowadays continues to support Catalonia's independency. In 2017 Catalan Government co-created by ERC[43] called for a referendum (O-1). As the result, several Catalan politicians and activists were arrested and held in prison without a trial for over one and a half year. Others fled the state to avoid imprisonment. ERC's leader and former Vice President of Generalitat, Oriol Junqueras i Vies, was sentenced 13 years imprisonment and 13 years ban to hold office, Carles Mundó i Blanch, the Minister of Justice of Catalonia; Marta Rovira i Vergés, ERC's Secretary General is now in exile (as per 2021).

2.3.8 Other Organisations

The European Centre for Minority Issues (ECMI) was not established by OSCE, but by governments of Denmark, Germany and Schleswig-Holstein, it is playing an important role of governing it together with representatives from Denmark and Germany. Since 1996 'ECMI is committed to work for the improvement of the situation of Europe's minorities through heightened

[43] In 2015 ERC stood for elections in a pro-independence coalition Junts Pel Sí.

awareness of minority rights and minority issues among all relevant actors.'[44] we read on ECMI's website.

ECMI is an interesting case as it is a way states decided to protect their minorities by conducting further research. Research is another way to protect minorities and their heritage, as knowledge brings acceptance and is crucial to preserve minorities.

[44] ECMI Official Website. ECMI Mission. https://www.ecmi.de/the-centre/our-mission Accessed 10.01.2021

2.4 Right to Self-identification in International Law and the Problem of Census

The CSCE/OSCE Copenhagen Document from 1990 reads *To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.*[45] Choosing weather to be a part of national minority is nonetheless a question of identity. Therefore, the OSCE recognises self-identification as a right (para 32, CSCE/OSCE Copenhagen Document 1990).

Gentian Zyberi states that the right of a minority to preserve its own identity might have been one of the first group rights with an international recognition (Zyberi 2013, 8).The Author recognises that what plays an important part of the minority protection system are *the treaty clauses aimed at protecting a minority's culture and specific identity.*

Minorities were guaranteed the right to the language and religion together with taking charge of their educational establishment meaning schools, charitable, religious, and social institutions (Ibid., 8). The Author recalls 1928 PCIJ's Advisory Opinion on *Rights of Minorities in Upper Silesia (Minority Schools)*, which states:

> German nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other German nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein. Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.[46]

[45] European Union. 1993. European Union Accession Criteria (Copenhagen Criteria).

[46] PCIJ. 1928. Advisory Opinion on Rights of Minorities in Upper Silesia (Minority Schools). PCIJ Series A. No 15.

Vrdoljak points out that with its ruling in a ruling in a case between Poland and Germany *Rights of Minorities in Upper Silesia (Minority Schools)*[47] in 1928 The Permanent Court Of International Justice decided that the minorities exist by 'fact not law' (Vrdoljak 2013). Meanwhile paragraph 32 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE states that:

> To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice. Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will[48] (para 32, CSCE/OSCE Copenhagen Document 1990).

According to Zyberi *the Permanent Court underscored the importance of religion, language, and traditions in distinguishing a minority community from the rest of the population*. He points out that in Easterns states tradition plays an important role and by it,

> (…) 'community' is a group of persons living in a given state or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other (Zyberi 2013, 8-9).

He continues underlining that *In its Advisory Opinion on Rights of Minorities in Upper Silesia (Minority Schools) the PCIJ recognized the right of every national to declare freely according to their conscience and on their personal responsibility whether or not they belong to a racial, linguistic, or religious minority and to declare the language of a pupil or child for whose education they are legally responsible* (Ibid., 9). Adding that the Permanent Court itself does not allow such

[47] PCIJ. 1928. Advisory Opinion on Rights of Minorities in Upper Silesia (Minority Schools). PCIJ Series A. No 15.

[48] The document was signed by Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Yugoslavia.

a declaration to become a subject of *verification, dispute, pressure, or hindrance whatsoever on the part of the authorities*. The finding of the Permanent Court allows parents or legal guardian of a child who belongs to a minority to choose for the child the language of education. This right was confirmed again in the *Access to German Minority Schools in Upper Silesia* case (Ibid., 9).

Claudia Tavani points out that the recognition of the importance of cultural identity dates back to 1935 and the decision of the Permanent Court of International Justice and its ruling in the case *Minority Schools in Albania* when the Court recognised the two main purposes of minority treaties:

- perfect equality for the minorities protected,
- preservation of their peculiarities, traditions, and characteristics (Tavani 2012, 103).

Zyberi adds that the discussed fragment of the Opinion emphasises that very idea for the Minority Treaties was to make sure that the minorities have *suitable means* in order to be able to preserve their *racial peculiarities, their traditions and their national characteristics* (Zyberi 2013, 8).

Zyberi underscores that even though the named rights were based on the group rights, the components of minority community were not defined. The Author suggests that PCIJ might have seen *the existence of communities was a question of fact and not one of law* (Ibid., 8).

Meanwhile Elisabeth Craig sees the right to self-identification in the 1990 CSEC/OSCE Copenhagen Document para. 32 that states: ‘To belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice.’ (Craig 2016, 9).

Gentian Zyberi discusses the cultural rights granted to minorities in international human rights instruments. These rights, initially established in minorities treaties and further elaborated in the case law of the PCIJ (Permanent Court of International Justice), have been incorporated into various instruments. Article 27 of the International Covenant on Civil and Political Rights (ICCPR) and Article 30 of the Convention on the Rights of the Child emphasize the right of individuals belonging to ethnic, religious, or linguistic minorities to maintain their own culture, religion, and language. The European Charter for Regional or Minority Languages of 1992 includes more comprehensive provisions regarding the right to education of minorities. The Framework Convention for the Protection of National Minorities, established in 1995, addresses equality before the law, equal

protection, and the prohibition of discrimination. It also guarantees the right of minorities to establish and manage their own educational institutions, which is crucial for preserving their identity. These principles are further reinforced by the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Zyberi 2013, 9-10).

> Another important finding of the PCIJ with regard to the right of minorities to preserve their identity is that acknowledging the obligation of a state to allow minorities to establish and maintain their own educational institutions. Obviously, in the absence of such a right the ability of a minority to pass on from generation to generation their language, culture, and religion would be severely curtailed. Article 13 of the 1995 Framework Convention for the Protection of National Minorities reflects this finding, in providing that within the framework of their education systems, states parties shall recognize that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments (Ibid., 9-10).

But does the fact that the minorities exist mean that they can also self-identify as such? The document later states that the members of minorities have the right to organise themselves in organisations and associations as well as international NGOs. But there are examples of situations when states were limiting those rights.

Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms

In 2017 Silesian organisation *Stowarzyszenie Osób Narodowości Śląskiej* (The Assosiation of People with Silesian Nationality) applied to The European Court of Human Rights in Strasbourg. The association was established in 2012, after in 2011 for the first time Silesians could choose Silesian nationality in census.

> The Association of People of Silesian Nationality gathers those who state their nationality as Silesian. In December 2011, after 14 years of effort and for the first time in Poland's history, people who were declaring Silesian nationality could organise themselves legally.

> The meaning of national and regional identity varies within numerous groups operating in Silesia. There are Polish, German and Czech Silesians. Some of them declare themselves exclusively as Poles, some as Germans and some as Czechs. There are also a large number of people who, when asked about their nationality will answer proudly: "I am Silesian!" and for them the Association was established.[49]

After a positive decision of the Court in Opole to register the organisation in 2011, the Supreme Court in 2014 decided to abolish it after an appeal. After completing the path of appeals in Poland the organisation appealed to the European Court of Human Rights.

It is not the first time Silesian appeal to the ECtHR when Polish authorities limit their right to association. In 2004 in Case of Gorzelik & Others v. Poland (Application no. 44158/98) the court ruled in favour of Polish authorities. The applicants complained that the Polish authorities 'had arbitrarily refused to register their association under the name of «Union of People of Silesian Nationality»'. They alleged a violation of Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECtHR, Application no. 44158/98). Article 11 – Freedom of assembly and association, reads

> 1 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

The Court argued that even though 'the refusal to register the applicants' association amounted to an interference with their freedom of association', the adopted actions were 'prescribed by law'.

[49] SONŚ Official Website. https://slonzoki.org/ Accessed 18.11.2021

Meanwhile, ECtHR had ruled in favour of Turkish applicants who argued that Greece is limiting their right to assembly. In fact, Greece has lost several cases concerning that matter:

- Bekir-Ousta and others group of cases v. Greece,
- Tourkiki Enosi Xanthis (Xanthi Turkish Union) and Others v. Greece,
- Ermin and Others v. Greece (Verhás 2019, 7-8).

According to the Court, Greece has violated Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

CERD General Recommendation XXX on Discrimination Against Non Citizens, para 37

> Take the necessary measures to prevent practices that deny non-citizens their cultural identity, such as legal or de facto requirements that non-citizens change their name in order to obtain citizenship, and to take measures to enable non-citizens to preserve and develop their culture (CERD 2002).

Although it is not in states power to decide if a minority exists or not, it is in its power to recognise it. Even if the international institutions create more and better laws protecting minorities, states can always decide not to obey or to simply state that there are no minorities within their territory.

As Vrdoljak points out, Article 27 ICCPR states *in those states in which ethnic, religious or linguistic minorities exist*. France submitted a 'declaration' while ratifying said Covenant stating that there are no minorities within its borders as all the citizens are equal before the law (Vrdoljak 2013, 42).

2.5 Self-identification in Practice

2.5.1 Censuses

Censuses were conducted already by ancient civilisations to collect data about citizens. Nowadays they are usually organised every ten years and aim to count the entire population of the state as well as gather information about housing and population attributes such as demographics, family, social, economic, and geographic characteristics.

For the purpose of this research rather than analysing the data gathered in censuses we will focus on the questionnaires and methods of answering. This way we can learn what kind of information are important to the authorities.

In European Union censuses are organised by member states and are regulated by laws on different levels including European statistical legislation which outlines the most important statistical definitions as well as specific data and metadata that should be provided by EU member states.

2.5.1.1 EU Regulations

Although censuses differ with their form among EU member states, EU statistical legislation apply to all of the members. Eurostat, established in 1953 as The Statistics Division for the Coal and Steel Community, is an organisation responsible for statistics in EU.

The organization of censuses within the European Union is regulates among the other by Regulation (EC) No 763/2008 with a focus on the output rather than the input (Eurostat 2011). The act from 9 July 2008 specifies which topics must be covered by the Population and Housing Censuses. It does not contain a requirement to specify respondent's ethnicity or nationality (in subjective sense).

Regulations concerning 2011 and 2021 censuses differ from one another. There were three new regulations introduced before 2011 census including Commission Regulation (EC) No 1201/2009 of 30 November 2009 implementing Regulation (EC) No 763/2008 of the European Parliament and of the Council on population and housing censuses as regards the technical specifications of the topics and of their breakdowns.

This document specified once again all the topics that should be covered by 2011 census. The respondents should define their state of birth and citizenship. Once again, the ethnicity is not among required subjects.

In 2017 the European Commission published a report Analysis and comparative review of equality data collection practices in the European Union. Data collection in the field of ethnicity prepared by Lila Farkas. The Commission recognised the importance of data collection concerning ethnicity and minorities and advised European Union Agency for Fundamental Rights to poll European citizen about their readiness to provide sensitive personal data to improve the fight with discrimination and be able to implement positive action measures (Farkas 2017, 49). Commission emphasised that FRA should focus on Afro-Europeans, European Muslims and the Roma. FRA was also recommended to make sure of collecting equality data relating to the defence of legal claims and court orders concluding such claims.

According to the Commission's recommendations, Eurostat should organise a European Union Statistics on Income and Living Conditions module about racial and ethnic origin to understand the ethnic and racial background of different areas like living standards, housing, education, health, and access to services. Eurostat should also prepare a methodological guidance, (which, if necessary, should be complementing the Code of practise) and pilot in European surveys categories of geographic, racial, and ethnic origin. Again, Eurostat should pay more attention to the Roma, Afro-Europeans and European Muslims. Those groups should also be included in a special consultation mechanism with a purpose of preparing a guideline on categorisation and methodologies of data collection on racial and ethnic origin, and guidelines for consultation at the national level. The report reads as follows:

> Minorities should be consulted whether to include in Eurobarometer and European surveys Roma and Travellers as a category under ethnic origin/ethnic group (including Roma,

Travellers, Manush, Sinti, Egyptian, Ashkalia, etc.). and whether to include Afro-European and European Muslim as a category under colour/race (Farkas 2017, 49).

The Commission advised Equinet (European Network of Equality Bodies) to publish its findings and recommendations after organising a consultation with national equality bodies in order to recognise the best practices of equality body involvement in data collection on racial and ethnic origin. Equinet was also encouraged to improve the collection of comparable data on the number of complaints and cases of discrimination before equality bodies.

The recommendations included encouraging by European Commission the methodological standardisation of research into discrimination experiences, anonymous testing and on-line discrimination surveys. European Commission is also to make sure that the data collection on racial and ethnic origin is supported through research programmes funded by the EU. The last recommendation for the European Commission was to encourage Member States to exchange experience and identify good practices with an emphasis on measuring the impact of anti-discrimination policies.

The European Commission advised the Article 29 Working Group and the European Data Protection Supervisor to provide guidance on consent forms and the practical implementation of ethnic data collection principles (Farkas 2017, 49).

On Eurostat's webpage we read that 'the 2011 EU census round was a milestone'. They argue, that it was for the first that 'European legislation defined in detail a set of harmonised high-quality data to be collected by census in the EU states' (Eurostat). Data from that year supposedly:

- reflect a major collective achievement by the European Statistical System (ESS);
- offer policymakers, researchers, businesses, and the general public harmonised and comparable information that is extremely rich; and

- provide exceptional flexibility, enabling different variables to be cross-tabulated in fine geographical detail.[50]

As explained in the materials prepared and published by Eurostat – *EU legislation on the 2011 Population and Housing Censuses - Explanatory Notes*. Regulations (EC) No 1201/20092, (EU) No 519/20103 and (EU) No 1151/20104 concern certain conditions that should be secured in order to fulfil the objectivity and secure the data quality. Moreover, every member state was obliged to use the same format (SDMX5).

Regulation's (EC) No 1201/20092 aim is to achieve comparability of data collected across the Europe. It includes both definitions and technical specifications for the census topics (variables) and their breakdowns. The Commission decided that a comparably structured quality report for all EU Member States should be produced and support the exchanges of experience conducted during the 2011 round so they can become a reference for development of census methodology in the future.[51]

European Union is not the only institution with recommendations regarding data collection. The United Nations had also published their recommendations on statistical data collection regarding ethnicity.

Lilla Farkas in her report prepared for the EU *Analysis and comparative review of equality data collection practices in the European Union. Data collection in the field of ethnicity* discusses the factors influencing the decision to collect and share information on ethnic or national groups in a census. This decision depends on national circumstances and considerations such as the need for data, the suitability of asking ethnicity questions, and the sensitivity surrounding them. Understanding the ethno-cultural characteristics of a population is increasingly important in the context of migration, integration, and policies affecting minority groups. Due to the sensitive nature of these questions, it is crucial to assure respondents that data protection and disclosure control measures are in place. Informing the public about the uses and necessity of ethnicity data helps gain support for the census. Such data provides insights into the diversity of a population and allows for

[50] Eurostat Official Website. Population and Housing Census. Background. https://ec.europa.eu/eurostat/web/population-and-housing-census/background Accessed 09.01.2021

[51] Eurostat. 2011. EU legislation on the 2011 Population and Housing Censuses - Explanatory Notes.

the identification of subgroups. Various fields of study, including demographics, employment, income, education, migration, family, social networks, and health, rely on ethnicity data for analysis and understanding (Farkas 2017, 21).

According to Farkas, ethnicity is a concept that encompasses shared historical and territorial origins, cultural characteristics like language and religion. Factors such as respondents' understanding, awareness of family background, generations spent in a state, and time since immigration can influence how ethnicity is reported in a census. Ethnicity is a multidimensional and evolving concept, so ethnic classification should be flexible and adaptable (Ibid., 21). She later states that:

> Ethnicity can be measured using a variety of concepts, including ethnic ancestry or origin, ethnic identity, cultural origins, nationality, race, colour, minority status, tribe, language, religion or various combinations of these concepts. Because of the interpretative difficulties that may occur with measuring ethnicity in a census, it is important that, where such an investigation is undertaken, the basic criteria used to measure the concept are clearly explained to respondents and in the dissemination of the resulting data. The method and the format of the question used to measure ethnicity can influence the choices that respondents make regarding their ethnic backgrounds and current ethnic identification (Ibid., 21).

The Author summarises by underlining that the subjective nature of ethnicity necessitates self-declaration and the option to indicate multiple ethnic affiliations in data collection. Ethnicity should not be inferred from citizenship or birth information. Classifying ethnic groups requires considering various levels, including self-perceived, regional, local, religious, and national groups. Pre-coding or pre-classification of ethnic groups may lead to loss of detailed population diversity information. Due to the variation in data collection methods and ethno-cultural compositions, there are no universally applicable criteria or classifications for ethnicity at an international level (Ibid., 21-22).

2.5.1.2 Member States Regulations

Only twenty-seven percent of constitutions worldwide contain instructions about censuses. This practise is not particularly popular in Europe as it concerns only nine states – seven of which are members of the European Union – Austria, Belgium, Greece, Ireland, Italy, Malta and Portugal. Almost all of those represent earlier EU expansions – Malta and Austria being the newest members among them which represent 2004 and 1995 expansions. The rest of the EU states do not mention census in their constitutions at all. Although some of the EU member states mention censuses in their principal act, they usually only mark the existence of such a procedure rather than further instructions.

Even though the EU took measures 'to ensure proper transmission of the data and metadata and provide user-friendly access to this information' (Eurostat 2011), censuses' forms in EU member states differ. There is no consensus regarding questions about ethnicity. European Commission's report from 2017 concludes that the experience of national surveys on discrimination is not valorised enough and that Eurostat should have a closer look on the best practises regarding racial and ethnic date collection and share their recommendations with the member states (Farkas, 2017).

12 out of 27 EU member states asked about ethnicity or nationality in 2011 census. Those questions had both opened and closed forms. In some cases () it was possible to choose nationality from a list. In others there was a possibility to write it on one's own. Some sates decided to use both closed and opened form presenting a list that included an option "other" that gave (or not a possibility to write the answer).

2.5.2 Protection of Sensitive Personal Data

When discussing self-identification, the argument of sensitive data and its protection is often raised. Can we ask minorities about their ethnicity? Yes, but only for statistical purposes. Point 26 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) reads:

> The principles of data protection should apply to any information concerning an identified or identifiable natural person. (…) The principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. This Regulation does not therefore concern the processing of such anonymous information, including for statistical or research purposes. (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

The representatives of national minorities are clear about the fact that they should not be asked about their ethnicity when they apply for schools, jobs etc. On the other hand, it actually serves the minorities to know how many of them there are and where, as it is easier to organise themselves and campaign.

PART III

Case Studies

Introduction

The quantitative research done as a preparation for this study has shown a corelation between when the state has become the European Union member and the way it protects the minorities. 'New' member states have a higher tendency of including minority rights in their constitutions.

Table 4 Minorities in European Constitutions

Enlargement	Minority rights included in the constitution	Minority rights not included in the constitution
Founding members	*Italy (1947)[52]	Belgium (1831) Germany (1949) France (1958) Luxembourg (1868) the Netherlands (1814)
1973		Denmark (1993) Ireland (1937)
1981		Greece (1975)
1986	Spain (1978)[53]	Portugal (1976)
1995	Austria (1920) Finland (1999) Sweden (1974)	

[52] Only linguistic minorities

[53] *it recognizes and guarantees the right to selfgovernment of the nationalities and regions of which it is composed and the solidarity among them all.*

2004	Czech Republic (1993) Estonia (1992) Hungary (2011) Latvia (1922) Lithuania (1992) Poland (1997) Slovakia (1992) Slovenia (1991)[54]	Cyprus (1960) Malta (1964)
2007	Bulgaria (1991) Romania (1991)	
2013	Croatia (1991)	

Source: own elaboration.

Of course, we cannot conclude that the date of entering the European Union has influenced member states' constitutions, but we can say, that younger democracies, who have entered European structures later, more often include minorities rights in their legislation. Few states – Austria, Croatia, Finland, Slovenia, and Sweden – decided to name the specific groups in their constitutions.

Different states use different naming. The Austrian Constitution refers to 'autochthonous ethnic groups'. It is the only EU constitution using this wording. Croatian and Estonian Constitutions grant rights to 'national minorities', Slovenian to 'national communities'. Latvia and Lithuania focused on ethnicity using names 'ethnic minorities' and 'ethnic communities'. Italy refers to minorities three times in its Constitution. Twice as 'linguistic minorities' and once as 'minorities'.

Poland, Slovakia and Romania mention both national and ethnic minorities. Sweden refers to 'ethnic, linguistic and religious minorities' and refers directly to Sami. Finland chose a similar

[54] Only Italian and Hungarian national communities are given rights

approach but mentions only Sami calling the 'indigenous people'. Meanwhile, both Hungary and Spain refer in their Constitutions to 'nationalities'.

Albi and Bardutzky propose the following categorisation of EU member states' constitutions:

- Political or Historical Constitutions: The Predominance of Parliament with the Absence of or a Weak Role for a Constitutional Court, and a Generic or ECHR-Based Bill of Rights **(UK), Malta, Netherlands, Luxembourg, Denmark, Sweden, Finland** (Albi and Bardutzky 2019, 13)**.**
- The Post-Totalitarian or Post-Authoritarian Constitutions of the 'Old' Member States: An Extensive Bill of Rights, Rule of Law Safeguards and Constitutional Review by a Constitutional Court **Germany, Italy, Spain, Portugal, Greece** (Ibid., 13-14).
- The Post-Totalitarian Constitutions of the 'New' Member States from the Post-Communist Area: A Detailed Bill of Rights, Rule of Law Safeguards and Constitutional Review Entrenched after the Recent Memory of Arbitrary Exercise of Power **Slovenia, Poland, Czech Republic, Slovakia, Estonia, Latvia, Lithuania, Bulgaria, Romania, Croatia** (Ibid., 13-14).
- Traditional or Hybrid Legal Constitutions: Combining Strict and Flexible Aspects, e.g. an Older or ECHR-Based Bill of Rights **Ireland, Austria, Belgium, Cyprus, France** (Ibid., 16).
- **Hungary** was granted a separate category due to the changes after 2010 and its illiberal approach (Ibid., 16).

FRANCE

France alongside with Belgium, Germany, Italy, Luxembourg, the Netherlands is the European Union founding member. It is a unitarian state with a strong central power. Another important feature which influences France relation with its minorities is its post-colonial history and territories oversees. Michel Nicolas describes France as a state which is *particular in that it is both highly unitary (from an administrative and political point of view) and highly multifarious. History has left it with a legacy of extremely diverse populations on its fringes* (Nicolas 1994, 68).

France is known for its policy of assimilation emphasizing the unity of the French nation and promoting the concept of "égalité" (equality) among its citizens. The roots of this policy come from the principle of "laïcité" (secularism) and the idea of a common French identity based on republican values.

In 2020 UN complained in Human Rights Council 'Report of the Human Rights Council on its thirty-eighth session' that France did not accept *certain recommendations that had implied the recognition of the concepts of minority and indigenous peoples*.[55] The report continues:

> Indeed, French law was based on two essential principles enshrined in article 1 of the Constitution: the equal rights of citizens "without distinction as to origin, race or religion"; and the unity and indivisibility of the nation. Thus, France did not recognize collective rights to groups that would be defined by a community of origin, culture, language or belief. Consequently, the production of statistics disaggregated by racial or ethnic origin, mentioned in certain recommendations, was not practiced in France. And it was by virtue of that same constitutional tradition that France could not guarantee collective cultural rights to particular groups on an identity basis. Similarly, France could not recognize the concept of indigenous peoples, and that was why it did not envisage ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169).[56]

[55] UN Human Rights Council. 2020. *Report of the Human Rights Council on its thirty-eighth session' that France did not accept certain recommendations that had implied the recognition of the concepts of minority and indigenous peoples.* A/HRC/38/2. p.52

[56] (Ibid., 52)

France does not recognise the existence of minorities within its territory even though groups like Bretons meet Capotorti's requirements to be recognised as such. Therefore, the minorities in France cannot be protected by international law (Barten, 2015, 6-7). Nevertheless, France recognizes its linguistic and cultural diversity. Instead, it emphasizes the notion of individual rights and equal treatment for all citizens, irrespective of their ethnic or cultural background.

Regarding the language, France recognizes the French language as the official language and places a strong emphasis on its promotion and use in public life. The French state has historically been cautious about granting official recognition and support to regional languages, citing concerns about the potential fragmentation of national unity. Efforts have been made to protect and promote regional languages within the framework of cultural heritage and education.

It is worth noting that France has faced criticism and scrutiny from international organizations, such as the United Nations and the Council of Europe, for its approach towards national minorities. Some argue that the emphasis on assimilation and the lack of official recognition for national minorities may hinder the preservation and promotion of linguistic and cultural diversity within the state. Michel Nicolas notes that *The yearning by people to have their identity recognised has proved to be one of the most powerful driving forces in history* (Nicolas 1994, 67). The Author states that the 1990s' focus on Eastern Europe took away the attention from the struggles of minorities in "old" member states (Ibid., 67).

Lucian Boia agrees with this statement. He writes:

> In spite of a number of spectacular manifestations and sometimes bloody confrontations (Northern Ireland, the Basque Country, Corsica, etc.), minorities in the West pose problems of an occasional and local character, which do not affect overall cohesion. In the other half of Europe, however, and particularly in Central and Southeastern Europe, the situation is of a *structural* nature. The size of the minorities, their diversity and their specificity are on a quite different scale to what prevails within the present boundaries of the European Union (Boia 2001, 139).

And it is hard not to disagree with. As shown before, minority rights are only being developed after big events like wars and genocides. In which case, with few exceptions mentioned by the Author, the Eastern minorities get more attention as there are seen as less stable and potentially with a higher possibility of a conflict.

As France is EU's founding member it did not have to incorporate minority protection laws introduced later on. Crepaz explains how minorities from "old" member states lobby for their cause in Brussels. She writes:

> Europeanization processes thus have to come "from below" in the "old" member states; e.g. through minority groups lobbying for their causes in Brussels, or through connections between minority groups made at the European level. Sub-national entities and actors can reach out to the supra-national level, bypassing the sometimes neglectful nation state. Conversely, the European level can connect with non-governmental organizations (NGOs) and activists, which could become the "eyes" and "ears" of EU institutions, providing information about local developments and on-the-ground implementation of measures (e.g. of the EU's programmes for fostering minority languages). Collaboration at the supra-national level and new opportunities for lobbying can then in turn impact on the minority's situation, through the sharing of best practices and new models in different policy areas, or through awareness-raising processes and demand for more regional co-operation (Crepaz 2014, 75).

Nowadays the uniformization of the society is done by institutionalised actions of cultural elites, ethnic organisations, and especially media and school system. This process causes dissolution of minorities' diversity (Dołowy-Rybińska 2011, 143).

Michel Nicolas shows regionalism in Breton as an example of resistance to assimilation in France. The Author describes the movement as *opposed to the very idea of integration and assimilation* (Nicolas 1994, 69). Breton Movement dates back to XIX century (Ibid., 70) and Breton Nationalist Party was founded in 1911.

2. Legal Framework

Throughout the XX and XXI centuries, the French state's approach towards national minorities has evolved. In the 50s' there was a growing recognition of the importance of regional languages in France. The state introduced laws to protect and promote regional languages, such as Breton, Basque, Catalan, and Occitan. The Deixonne Law of 1951 and the Basque Language Act of 1981

were significant steps in acknowledging and supporting the use of regional languages in education and public life.

Although France is a highly centralized state, it has undergone a process of decentralization. It granted greater administrative and political powers to regional governments. This allowed regions to have more control over their cultural and linguistic policies, including the promotion and preservation of regional languages and cultures. The Law for the Promotion of Corsican Language and Culture in 2018 granted Corsican the status of a regional language and aimed to support its use in public life. Additionally, there has been increased attention on acknowledging and preserving the cultural heritage of immigrant communities.

France's approach towards national minorities has been influenced by international human rights standards and obligations. France ratified the European Charter for Regional or Minority Languages in 1999, signalling its commitment to protect and promote regional languages. However, the charter does not confer official status on these languages but rather aims to support their use and visibility. On the other hand, France has never signed nor ratified the Framework Convention for the Protection of National Minorities. Meanwhile Belgium and Luxembourg had both signed it in 2001 and 1995 but have never ratified it. We can see it as a tendency of old member states in the approach towards the minorities.

There have been more debates surrounding identity, integration, and secularism. The issue of religious symbols in public spaces and restrictions on religious practices have generated discussions about the balance between individual rights and the preservation of secularism as a core value of the French Republic.

14 distinct minority languages and two minority language groups are recognised by the French Ministry of Culture and Communication recognized in metropolitan France and 47 minority languages in the French overseas territories [57]. Minority Rights Group International names all of them (including languages of new minorities): Western Flemish (extreme north-west), Alsatian, Francique (north-east), Franco-Provençal (south central), Corsican (Corsica), Catalan (south),

[57] This study will only focus on metropolitan France as its topic are traditional (autochthon) minorities. It is important to underline the importance and 47 minority languages in the French overseas territories and the influence of the sole fact of how many minorities and minority languages France has in its overseas territories.

Basque (south-west) and Breton (north-west), Maghrebi Arabic, Western Armenian, Berber, Romani, Judeo-Spanish and Yiddish; 10 recognized Oïl languages: Picard, Norman, Gallo (north-west), Walloon, Champenois (north), Poitevin, Saintongeais, Burgundian (north central), Franc-Comtois, Lorrain (north-east); six recognized Oc languages: Limousin, Auvergnat (south central), Vivaro-Alpin, Provençal (south-east), Languedocian (south) and Gascon (south-west) and four variants of French Creole in the French regions of Guadeloupe, Martinique, French Guyana and Réunion; four variants of Anglo-Portuguese Creole and six Amer-Indian languages in French Guyana; 28 Melanesian languages in New Caledonia; seven Polynesian languages in French Polynesia; two Malayo-Polynesian languages in Wallis and Futuna; and two Bantu languages in Mayotte (Minority Rights Group International 2018).

Although the minorities overseas and minorities formed from migrants and their dependents born in France, more and more often as the next generations are still considered new minorities, with the time that has already passed they will soon have to be considered old minorities which can influence French administration's decision making.

Minority Rights Group International wrote in 2018 – *In line with its tradition of secularism, the collection of information about an individual's ethnicity or religious beliefs has been prohibited since 1872. Consequently, there is no official data available on the composition of France's ethnic or religious minorities* (Ibid., 2018). When it comes to religion France's dominant religion is Roman Catholic (63-66%), Islam is a religion of 7-9% of the population. Other religions make less than 1% of the population, while up to 28% of the population does not identify with any religion (Ibid., 2018).

The Minority Group international reports on France linguistic diversity based on the data from 1999 census:

- 650,000 Alsatian speakers (plus 230,000 occasional speakers),
- 50,000 Basque speakers,
- 280,000 Breton speakers (plus 600,000 occasional speakers),
- 110,000 Catalan speakers,
- 70,000 Corsican speakers (with 100,000 occasional speakers),
- 30,000 Flemish speakers (plus 50,000 occasional speakers),
- 600,000 Occitan speakers (with 1.6 million occasional speakers)

- 200,000 Romany speakers,
- 950,000 speakers of different Arabic dialects (plus 220,000 occasional speakers)
- 1.5 – 2 million speakers of different Berber dialects. (Minority Rights Group International 2018).

Looking at this number, we can see that almost 3 million people are Arabic and Berber speakers, compared to much smaller groups of different ethnicities which do not consist of one united group.

The Constitution

The Constitution of France was written in 1958 and since then amended several times. Due to changes France undergo as a state, its Constitution grew slightly out of date. Burgorgue-Larsen, Astresse and Bruck point them out in their work *The Constitution of France in the Context of EU and Transnational Law: An Ongoing Adjustment and Dialogue to Be Improved*. The French Constitution proclaims the principle of indivisible national sovereignty and guarantees the equality of all citizens before the law. This principle has shaped French policies on national minorities, with a focus on integration and promoting a shared national identity.

It is important to note that in 1958 when the French Constitution was adapted, the state still had colonies. This fact alone points on why there is not much about minority rights in the document. Moreover, the Algerian War started four years prior in 1954. The Authors point out that this crisis shed the light on the flaws of the previous Constitution (described by them as a weak one)[58] and led to writing a new one (Burgorgue-Larsen, Astresse and Bruck 2019, 1182).

[58] *This Republic was characterised by a weak Constitution, in which ministerial crises and governmental instability reigned without apparent remedy. In other words, Parliament was all-powerful and it determined the Government's birth and survival. From the mid-1950s, most politicians were convinced that a major revision of the Constitution was needed in order to put an end to the gradual paralysis of the decision-making mechanisms.* (Burgorgue-Larsen, Astresse and Bruck 2019, 1182).

Burgorgue-Larsen, Astresse and Bruck describe the Constitution of the Fifth Republic of 1958 as a result of an adjustment to previous regime and believe that it is characterised by a real parlementarisme rationalisé, and continue by explaining that by disciplining the legislative power, the Government has the necessary means to carry out its mandate (Ibid., 1183).

Article 1 of the Constitution states that *France shall be an indivisible, secular, democratic and social Republic*. Although this statement does not refer directly to the minorities, it can be used when trying to establish minority rights in France. The article continues *It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organised on a decentralized basis.* The second part of the article is even more important as it admits that there should not be any distinction regarding the origin, race or religion. Moreover, it establishes France as a decentralised state.

Article 72 brings to live territorial communities, which in the conditions provided for by statute, these communities should be self-governing through elected councils and should be guaranteed power to make regulations for matters coming within their jurisdiction. It also reads that in the territorial communities of the Republic, the State representative, representing each of the members of the Government, should be responsible for national interests, administrative supervision and compliance with the law.

Regarding minorities, Corsica became a territorial community in 1982 replaced the Corsican Regional Council with the Corsican Assembly, which unlike its predecessor has executive powers over the region. French law gives more power to overseas territories but as they minorities living there are not traditional minorities it will not be further analysed here.

Other Legal Acts

Although France claims its approach towards minorities comes from claims to protect equality, its actions often show otherwise. In 2011 France delegalized wearing hijabs in public space which deiminases Muslim girls[59] (Audard 2001, 136-137).

The attitude towards minorities can be seen in a 'declaration' provided by France when ratifying International Covenant. France stated that regarding the Article 27 *minorities did not exist in the state because its constitution ensures equality before the law, without distinction as to origin, gender or religion* (Vrdoljak 2013, 42). Regardless the declaration, which the United Nations Human Rights Council (HRC) took the note of, the HRC and the Permanent Court of International Justice (PCIJ) before it does not accept this statement (Ibid., 42). In its Concluding Observations, the HRC stated:

> The Committee takes note of the declaration made by France concerning the prohibition, prescribed under article 27 of the Covenant, to deny ethnic, religious or linguistic minorities the right, in community with members of their group, to enjoy their own culture, to profess and practise their own religion or to use their own language. The Committee has taken note of the avowed commitment of France to respect and ensure that all individuals enjoy equal rights, regardless of their origin. The Committee is, however, unable to agree that France is a state in which there are no ethnic, religious or linguistic minorities. The Committee wishes to recall in this respect that the mere fact that equal rights are granted to all individuals and that all individuals are equal before the law does not preclude the existence in fact of minorities in a state, and their entitlement to the enjoyment of their culture, the practice of their religion or the use of their language in community with other members of their group.[60]

The United Nations' Human Rights Committee in its General Comment No 23 (Article 27 ICCPR) *provides that the existence of a minority within 'a given state party does not depend upon*

[59] Although Muslims are not a national minority, the example shows the French state's approach toward diversity.

[60] UN Human Rights Committee (HRC). 1997. *UN Human Rights Committee: Concluding Observations of the Human Rights Committee*. CCPR/C/79/Add.80.

a decision by that state party but requires to be established by objective criteria' (Vrdoljak 2013, 42). The Author continues:

> Likewise, the ILO Convention concerning Indigenous and Tribal Peoples in Independent States provides that self-identification is the fundamental criterion for establishing the existence of an indigenous people, with no need for official state recognition. To permit states to defi ne or determine the existence of a minority or indigenous community would effectively render such legal protection illusory. This jurisprudence in respect of the right to nationality and existence of a minority group is complemented by rights pertaining to self-identification by the individual to the group and by the group of the individual. The UN Minorities Declaration provides under Article 3(2) that there shall be 'no disadvantage . . . for any person belonging to a minority as a consequence of the exercise or non-exercise (Ibid., 42).

Belgium, Greece, Iceland and Luxembourg have signed but not ratified the Framework Convention. France, like Andorra, Monaco, and Turkey has neither signed nor ratified the Convention.

France is a highly centralized state. Its education, the law, and public administration are primarily conducted in standard French. In some regions, the minority languages are taught in schools, but usually as an optional subject. The introduction of bilingual education in certain regions, such as Alsace and Lorraine, Brittany, and Corsica, began in the 1990s through the efforts of private associations, supported by regional and central governments. Several acts and regulations, including the Deixonne Act of 1951, Haby Act of 1975, Toublon Act of 1994, and regulations on regional languages in 1995 and bilingual education in 2002, provide the framework for teaching regional languages. The establishment of Academies of regional languages, such as Basque, Catalan, Corsu, Alsatian, Platt, Breton, Creole, and Occitan, has further promoted language preservation. However, in 2006, the French National Assembly rejected an amendment for constitutional recognition of regional languages. The French Constitution, particularly Article 2, which declares French as the language of the Republic, has posed challenges to the ratification of the European Charter for Regional or Minority Languages. The Constitutional Court ruled that certain provisions of the Charter granting specific rights to minority/regional language speakers

were incompatible with the French Constitution. In 2008, the Constitution was revised to include Article 75/1, recognizing regional languages in the state. Despite signing the European Charter on Minority Languages, France has yet to ratify it (Minority Rights Group International 2018). In 2004 the region of Brittany made Gallo its official regional language next to French and Breton. When it comes to legal Framework MRGI writes:

> The 1881 law on the press freedom prohibits libel and slander and defamatory speech and writing against a group of people. The 1972 Pleven law extended this ban to racist speech and writing against individuals, and created the offences of incitement to hatred or racial violence and of discrimination. The 1990 Gayssot law bans Holocaust denial. From 2001 the Labour Code bans direct and indirect discrimination in recruitment, training, pay and promotion, and dismissal. The burden of proof was altered so that the victim must present evidence of the likelihood of discrimination but does not have to prove it. The 2003 Lellouche law increases the severity with which racist and anti-Semitic offences are judged, but indirect discrimination is not taken into account in the Criminal Code. France created a High Authority against Discrimination and for Equality in December 2004. The new Labour Code, Lellouche law and High Authority bring French law into compliance with the European Union (EU) directives against racial discrimination and discrimination in employment (Ibid.).

France signed European Charter for Regional or Minority Languages in 1999 but did not ratify it since. Council of Europe cites the arguments used during the public debate – *a very high number of regional languages would have to be covered under the Charter – some claim that there would be more than 70 languages.*[61]

The Council counterargued stating that:

> In light of the aforementioned criteria, the Charter would apply to the following seven regional languages of France: Basque, Breton, Catalan, Corsican, Dutch (Western Flemish and standard Dutch), German (dialects of German and standard German, regional language of Alsace-Moselle) and Occitan.

[61] Council of Europe Official Website. Promoting ratification of the European Charter for Regional or Minority Languages in France. https://www.coe.int/en/web/european-charter-regional-or-minority-languages/promoting-ratification-in-france Accessed 23.10.2022

> Therefore, concerns currently expressed in the public debate that the Charter's application would become difficult to manage as a result of a very high number of regional languages are completely unfounded.[62]

Various municipalities in Brittany had shown interest in implementing the Charter and were encouraged to do so by the Council. As a results, several local and regional authorities across Alsace and Basque Country signed a local charter containing Charter provisions. The CoE emphasises that *Such local initiatives help to prepare the future implementation of the Charter.*[63]

Self-identification in Practice

France does not recognise any minority on its territory. It also does not include any race or ethnicity questions in its official census.

Interestingly, the states with colonial history like France, Belgium, Italy and Spain are the ones which happen to collect data about racial or ethnic origin. These happened in Belgium, France, Italy, Spain (Farkas, 2017, 14).

Even though France claims there are no minorities on its territory, it has organised (as have Belgium, Italy and Spain) a specific national survey on racial or ethnic origins. Moreover, according to Farkas, the equality bodies which are investigating complaints sometimes collect ethnic data. This also takes place in Hungary, Slovakia and Spain (Ibid., 24-25).

There is a lot of criticism towards France regarding data collection in the field of ethnicity. However, Farkas notices that there are few business-initiated best practice examples in national reports of France, Germany and The Netherlands. She explains – [In France] *The mobilisation around promoting "diversity" came from the largest companies signing Diversity Charters since*

[62] (Ibid.)

[63] (Ibid.)

2004. It quickly spread within the State and some local communities who signed their own charters (Ibid., 29).

Farkas notes that only Spain, Belgium, France, and Italy have organised specific national surveys on racial or ethnic origin (Ibid., 27).

According to Farkas, non-governmental sources play an important role in France, Luxembourg, Spain where the data emerges of major initiatives by both institutes and universities (Ibid., 27-28). Consultations with minorities were noted in France, Belgium, Germany, Ireland, The Netherlands and Sweden. In France the Committee for the Measurement and Assessment of Diversity is *essentially composed of social scientists conducive to changes in the census organised alternative hearings for various associations representing minority populations* (Ibid., 41-42).

Moreover, *in the majority of Member States, research institutes – and to a lesser degree – universities play an important role, even if limited mainly due to financial constraints*. The Author state that the *research ranges from gathering data on the experience of discrimination of racial and ethnic minorities through the testing of discrimination to surveys* (Ibid., 27).

In France, researchers often use a quantitative method to break down data into two parts: one that can be explained by individuals' characteristics and another that is attributed to discrimination. This method has been widely applied in the field of employment to uncover ethnic or racial disparities using existing datasets. In one study, researchers used the first names of students from the National Education database in Bordeaux as a proxy for their cultural origins (including religion and state of origin). The study found evidence of segregation among students with African and Turkish backgrounds (Ibid., 27).

Regarding the inclusion of minority communities, Farkas points out that racial and ethnic minorities feel discouraged from engaging actively due to *the potential abuse of data collection and the complacency of public authorities in data collection at the national level*. She points out that regional efforts are more successful.

Another best practice example from the regional level is ECRI's consultations held in 2006 with NGOs and a report that lay the ground for ethnic data collection in the framework of the national census. The report canvassed opinions from all sides: NGOs, national statistical offices, data protection authorities and equality bodies. ECRI concluded that out of the 42 Council of Europe

states covered by the study, 22 collect data on ethnicity (usually termed 'nationality'), 24 on religion and 26 on language (most commonly mother tongue) (Ibid., 41).

The third of equality bodies have been regularly and recently collecting or commissioning the discrimination data. France, alongside with Belgium, Germany, Malta, The Netherlands, Romania uses the methodology of situation testing for the data referring to discrimination experiences or attitudes (Ibid., 26). France, alongside Hungary and Slovakia, occasionally collects ethnic data while the equality bodies investigate complaints, however, the example brought by the Author regarding France does not refer to traditional national minorities but to a French citizen with the last name of North African origin (Ibid., 25). When it comes to anti-discrimination practices, in France, Germany and the Netherlands, there were also examples of Few business-initiated best practice examples (Ibid., 29).

Human Rights Council, in its newest 'Working Group on the Universal Periodic Review on France', focused mostly on the issues of the new minorities, racism and migrants. It had referred also to Roma, Travellers, Indigenous People and minorities. France was recommended to:

> step up its efforts to ensure equal treatment with the rest of the population with regard to access to economic, social and cultural rights, including access to health and education, taking into account the particular needs of each territory and the cultural and linguistic diversity of indigenous peoples. It also recommended that indigenous peoples be consulted on any legislative or administrative measures that may affect their rights with a view to obtaining their free, prior and informed consent, particularly before the approval of any project affecting the use of their lands or territories and other resources.[64]

Although this part of the Human Rights Council's document is called 'Indigenous Peoples and minorities', and the text does not name any particular group, it seems that by the use of the term 'indigenous peoples' it refers mostly to French citizen from Frances its overseas territories. In the later part it refers directly to the group from Comorian islands of Mayotte:

> The same committee recommended that the necessary measures be taken to protect the right of indigenous peoples to own and use their lands, territories and resources, including through

[64] UN Human Rights Council. 2023. *France. Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights.* A/HRC/WG.6/43/FRA/2. P.9

> the necessary legal recognition and protection, and reiterated its earlier recommendation that more efforts be made to ensure that the Mahorais people enjoy their economic, social and cultural rights fully and on an equal basis with the rest of the population.[65]

The document refers also to migrants, refugees and asylum-seekers. Having in mind problems that these groups have in France as well as other European states, there is no wonder, that institutions like UN Human Rights Council focus their efforts on them rather than autochthonous minorities, which compared, live peacefully in better conditions.

In Human Rights Council's 'Summary of stakeholders' submissions on France' of 2023, the OHCHR refers to Unrepresented Nations and Peoples Organization findings:

> UNPO deplored the constitutional principle of an "indivisible Republic," making minority groups completely invisible in France's legal system. UNPO and IHRC-OU recommended to formally recognize indigenous peoples, national minorities, and other minorities in France.[66]

The report continues:

> Having noted that national minorities struggled to protect their languages, and were excluded from decisions that directly concern them, UNPO recommended to ensure the true political participation of all its constituent peoples in relevant decision-making, such as over language and cultural rights. Joint submission 4 recommended the effective inclusion of itinerant citizens at all levels of political life in France.[67]

[65] (Ibid., 9)

[66] UN Human Rights Council. 2023. *Summary of stakeholders' submissions on France. Report of the Office of the United Nations High Commissioner for Human Rights.* A/HRC/WG.6/43/FRA/3. p.8

[67] (Ibid., 8)

GREECE

There are two main reasons of why Greece is one of the case studies. First, it was the only state to join EU in 1981. Secondly, it will help us understand how a conflict with a neighbouring state can influence the situation of minorities.

When we ask the question – *Do international conflicts and relations influence on how states treat minorities?* – the simple answer is yes. But there are so many ways in which international relations and conflicts actually do influence minorities, that this answer is not enough. Minorities issues are usually being raised when there is a conflict and international players need to protect minorities. This part will differ from other ones in to ways. 1) I am strongly focusing on one minority, its history and specific problems. 2) I am showing the background of another state, which itself is not the topic of this case study but its history and the big politics that entered its territory influenced the minority situation in Greece. It is not hard to guess that the minority in question is the Turkish minority in Western Thrace, the conflict is between Greece and Turkey, and the state which became a parallel battlefield is Cyprus. As Turkey is not an EU member state the focus will be put on Turkish minority in Western Thrace, Greece.

Of course, good relations between two states can influence positively on how minorities in those states are being treated. Good example of it is a bordering region between Germany and Denmark. Good relations between those two states reflect on how Germany treats Danish minority on its territory and Denmark treats German minority in Denmark. There is always place for improvement, but the relations in Schleswig are widely used as a positive example. On the other side we have probably more examples of situations were bad relations between two states like Greece and Turkey reflect on how minorities are treated in those states. Other vivid example are the Baltic states. Very small countries with very big population of Russian minorities – Estonia with a population of 1 294,5 out of which 25% belong to Russian minority; Latvia with 2 070,4citizens and Russian population 26,9%' Lithuania[68] with 3 043,4 of citizens and a Russian population of

[68] Lithuania is the only Baltic state where the Russian minority is not the biggest one. The population of Poles is slightly bigger and makes up 6,8%.

5,8%.[69] Baltic states after becoming independent in the early 1990s were keen on joining international institutions to protect their sovereignty, fearing the way Russia uses minority protection to interfere in domestic issues of other states or even attacks them. Russian invasion on Ukraine in 2014 and escalation in 2022 proved that states with significant number of Russians among citizens were right to be anxious. Protection of Russians living in different states can be used as an excuse for Kremlin to mingle in other states' politics or even to attack them. Although the Baltic states were right to be reluctant when it comes to trusting Russia, this fear should not be an excuse to reduce minority rights.

Although, in 2013 Smith was pointing out that the debate over Hungarians in Central Europe and Russians in the Baltic states illustrate *a continued tendency to view minorities as an 'anomaly' and impediment to successful state and nation-building in the region, rather than as a resource which could make a positive contribution to this process* (Smith 2013, 45).

The Author continues:

> The experience of the past twenty years, however, suggests that fears of widespread and protracted ethnopolitical conflict and instability—so prevalent during the period immediately after the wars in Yugoslavia—have in fact been hugely exaggerated and that this remains the case today even within the new, more uncertain context of economic crisis and heightened nationalism. In light of this, there would seem to be a strong case for shifting the analytical focus away from macro-political, state-centric perspectives and engaging more thoroughly with minorities as actors in their own right (as opposed to mere objects of host state or external homeland policy) and with the outlooks and agendas that they bring to the current construction of state political communities and processes of Europeanisation within the region (Ibid., 46-47).

Coming back to Greece, its relationship with Turkey is not only very vivid in the way things are handled in Cyprus, but also in the way both states treat minorities. Xanthi's Turkish

[69] Data from 2011 Population and Housing Census in Estonia, Latvia and Lithuania

Association's problems in 1983 after Declaration of Independence of the Turkish Republic of Northern Cyprus being a good example.

As mentioned before in the part *2.3.3 Organization for Security and Co-operation in Europe (OSCE)*, according to Tomasz Witkowski, the international law only gives frames to realisation of minority rights, while the actual minority protection relays mostly on states and importantly, can strongly depend on relations between the state and the state with which the minority identifies (Witkowski 2017, 36). The Author's words are even more important here, when it comes to the analysis of Greece. Witkowski underlines the fact that acts regarding minority protection in state's legal system are not always respected and sometime incoherent with said system. What is also important is the clerks' attitude towards the minority. Without their help minorities cannot have their rights respected (Ibid., 36).

Greece-Turkey conflict is not the only one shaping the minority situation in Greece but it is the one I will be focusing on in this part. Greece has also a conflict with Northern Macedonia and a small Macedonian minority within its borders. Zan Strabac and Marko Valeta introduce the issue from Macedonian perspective:

> Greeks are a small minority in Macedonia, but an interesting one from the analytical point of view because they have a somewhat unusual combination of traits: they share the Orthodox Christian faith with Macedonians, but Greece has also been involved in a long- lasting dispute with Macedonia over the name of the country (Macedonia). The dispute seems to be purely symbolic in nature, but has been long- lasting and quite bitter at times; it has also had serious consequences for Macedonia, insofar as Greece has been blocking that country's accession into the European Union and NATO. Looking at the social distance between Macedonians and Greeks, it seems that the dispute did have some negative effect on the acceptance of Greeks. About two- thirds of Macedonians are willing to accept Greeks in the country, and, somewhat amusingly, a slightly larger proportion of Macedonians are willing to accept Greeks as workmates and friends. Looking at the rest of the questions and comparing the results in Macedonia with the results from Croatia, we see that the acceptance of Greeks in Macedonia is only a little greater than the acceptance of Serbs in Croatia; so it seems that symbolic conflicts also might reduce acceptance of minorities. This is supported by the results concerning the acceptance of Turks. We can see that Turks actually are doing slightly better than Greeks on the majority of questions, with a marked exception being the question of

acceptance into a close family by marriage, where Greeks are much more accepted. We can only speculate about the reasons for this result, but possible reasons might involve the existence of negative stereotypes about Muslims as marital partners and social status considerations (Valenta and Strabac 2016, 51-52).

Greek and Turkish nationalism

Greek identity (understood as the feeling of unity and separateness) was born on the beginning of XIX century (Cyris 2012, 42). Łukasz Cyris recognises internal and external factors which lead towards it. Among internal factors the Author names the situation of Greeks in the Ottoman Empire characterised with high position of the Orthodox Church and the important role of Greek trade as well as weakening of the Empire and deepening lack of trust of Sultanate towards conquered nations (Ibid., 42).

Interestingly, Greek authors have a tendency to avoid mentioning any Greek-Turkish interactions even when discussing the birth of Greek nationalism (Ibid., 42). Cyris emphasises that the Ottoman Empire was not only the background of this process but one of the factors which created it.

As for the external factors, Cyris mentions the Enlightenment's fascination with Ancient Greece, when Greeks in Western Europe realized they are being identified with Ancient Greeks (Ibid., 45). Until that time Greeks called themselves *Romaioi* (Greek word meaning Romans as Hellenism was rejected when Greece became Christian) (Ibid., 45).

Meanwhile, Turkish nationalism was born in XIX century when Western Thrace was still a part of Ottoman Empire. Importantly, the Ottoman Empire was an ethnically diverse state which gave its citizens religious freedom. Turkish word *Millet*, meaning 'nation' used to mean 'ethnic community' and was given its new meaning for the first time by İbrahim Şinasi. Şinasi was also one of the main authors of liberal *tanzimat* reforms (Bilski 2012, 11). Bilski reports that the unpopularity and failure of *tanzimat* was one of the factors that lead to creation of the national movement which emphasised distinctiveness of Turkish ethnicity, their special position and solidarity with Turks living outside of the Ottoman Empire (Ibid., 11).

Western Thrace

The minorities in Thrace[70] got trapped between two strong nationalist movements, both referring to ancient traditions. Western Thrace is traditionally inhabited by Turks and was a part of Ottoman Empire from XIV century (when the current Ottoman Sultan Murat has settled there Turkomans from Anatolia). In the Ottoman era Christians were given protection due to Islamic policy of tolerance towards the people of the book (*zimmis*). Circassians and Tartars fleeing the Tsarist empire settled in the region in the second half of XIX century the Tsarist empire (Human Rights Watch 1999). The region remained in the ottoman Empire until the First Balkan War (1912-1913) when the armies of Montenegro, Greece, Serbia, and Bulgaria attacked the Ottomans.

Following the war, the Treaty of Bucharest in 1913 awarded Bulgaria the majority of Western Thrace, which it governed until the conclusion of the First World War. Between 1919 and 1920, the region was under a joint administration by the Allies and Greece. Eventually, in 1920, Western Thrace was ceded to Greece and has since remained an integral part of the Greek Republic 93 years after the state proclaimed independence.

> In January 1923, Greece and Turkey signed the Convention Concerning the Exchange of Greek and Turkish Populations. The convention was signed in the wake of Greece's failed invasion of Turkey's Anatolian mainland and Turkey's repudiation of the Treaty of Sèvres of 1920. The Treaty of Sèvres granted Izmir to Greece, then known as Smyrna, as well as a large tract of territory surrounding the city. To prevent further irredentist Greek claims, Turkey demanded repatriation of ethnic Greeks residing in the Anatolian areas of the former Ottoman Empire in exchange for the return of ethnic Turks living in the Kingdom of Greece. In exchange, Turkey allowed those ethnic Greeks residing in Istanbul before October 1918 – some 110,000 – to remain, along with the Orthodox Patriarchy; reciprocally, Greece would allow a similar number of ethnic Turks, estimated at between 105,000-120,000, to remain in Thrace (Ibid.).

Before the Treaty was ratified, the Turkish War of Independence began. After its end, a new agreement – the Treaty of Lausanne – was signed. This treaty left the territory of Western Thrace

[70] Today Bulgaria (Northern Thrace), Greece (Western Thrace) and Turkey (Eastern Thrace).

under Greek administration. Up until this day it is one of the most important legal documents establishing the situation of the Turkish minority in Western Thrace. UNHCR's institution – Human Rights Watch notes just how much the intra-state relations influence minorities:

> Since 1923, reciprocal treatment of the Greek minority in Istanbul and the Turkish minority in Thrace has largely reflected the state of Greco-Turkish relations. Despite some friction, both minorities benefitted from the rapprochement in inter-state relations, that was engineered by two former rivals, the Turkish leader Mustafa Kemal Atatürk and the Greek Prime Minister Eleftherios Venizelos. It lasted roughly from 1930 to 1955 (Ibid.).

In light of the potential threat from fascist Italy, a Friendship Pact was signed by both nations in September 1933. Following World War II and in response to Soviet expansion, Turkey, Greece, and Yugoslavia formed a treaty of friendship and assistance, which was later followed by the short-lived Balkan Pact one year later. During a state visit to Greece in 1954, President Celal Bayar of Turkey referred to Greco-Turkish relations as an exemplary model, illustrating how two countries that had historically mistrusted each other have embraced close and loyal collaboration through the recognition of life's realities.

In December 1954 to all mayors and presidents of the Communes of the Prefecture of Rodopi have received an order from Giorgios Fessopoulos, the General Administrator of Thrace[71]:

> Following the order of the President of the Government ((Prime Minister), we ask you that from now and in all occasions the terms, `Turk-Turkish' are used instead of the terms `Muslim-of Muslim'. On this matter, we ask you to ensure the replacement, within the region (Thrace), of any signs like "Muslim schools", or `Muslim Community', with the term `Turkish' (Kingdom of Greece, General Administration of Thrace, Interior Office, Protocol No. A 1043, Order of 28.1.11954).

The order was changed after 6 months in May 1955, when the General Administrator of Western Thrace:

> In spite of the strict orders of the government to replace the terms `Muslim-of Muslim' and use from now on the terms `Turk-Turkish' in the village Aratos and on the public road connecting

[71] Cited after Iris-Kalliopi Boussiakou – *The legal status of the Muslim minority in Western Thrace : efficacy of the present regime in the light of current international human rights law.*

> Komotini with Alexandroupole there exists a very prominent sign with the words `Muslim' School. Any further, necessary, replacements should be done immediately in the region of Rodopi. All majors of the region are asked to take notice of these orders and act accordingly in replacing any such existing signs in their prefectures 6 (Order of 5.1.1955, Protocol No. A 202).

As per the Legislative Decree issued on January 28, 1972, the "Turkish" schools were renamed as "Minority" schools. This regulation aimed to reform the minority education system with the intention of separating it from Turkish ideological influence. The period of closer relations between Greece and Turkey, which began when both countries joined NATO, abruptly ended with the coup d'état in Athens in April 1967. Since then, the term "Muslim" has been used to describe the existence of the religious minority in Western Thrace. In the mid-1950s, Greek-Turkish relations underwent a significant change when the issue of Cyprus became the central focus of political attention. This change marked a new era for both minorities in Greece and Turkey. The major exodus of Greeks in recent years occurred during two significant historical and political events in 1955 and 1964. In September 1955, a series of violent attacks targeted the Greek minority in Istanbul. Specifically, on the nights of September 5th and 6th, violent demonstrations took place in Istanbul and Smyrna (Izmir), in support of the Turkish stance on the Cyprus issue. Simultaneously, two bombs exploded in Thessaloniki, between the house where Kemal Ataturk was born and the Turkish Consulate. These events were reported in the Turkish newspaper "Istanbul Express," leading to the organization of a mob instigated and directed by Turkish authorities, which spread terror and fear among the Greek minority in the streets of Istanbul through acts of vandalism and looting (I.-K. Boussiakou 2003, 124-125). Boussiakou explains how the attacks could have been inspired by the government:

> Six years later, after a military coup, a Turkish court tried Adnan Menderes, the Prime Minister of Turkey on various charges. During the court proceedings, strong and irrefutable evidence was presented that the main perpetrators of the anti-Greek violent attacks were Adnan Menderes and the Turkish Minister of Foreign Affairs Fatin Zorlu. The Turkish court held that the government of Menderes was the main perpetrator of the violent attacks that took place in Istanbul in order to incite and justify anti-Greek violence in Turkey. The Court also found that the bombing in Thessaloniki had been ordered by Prime Minister Menderes and others in his government to incite and justify anti-Greek violence in Turkey (Ibid., 125).

In this period of time the relations between the two countries were relatively good - *In 1954, while on a state visit to Greece, then Turkish President Celal Bayar called Greco-Turkish relations "the best example of how two countries who mistakenly mistrusted each other for centuries have agreed upon a close and loyal collaboration as a result of recognition of the realities of life."* (Human Rights Watch 1999). This situation did not last long as in 1955 the conflict in Cyprus has had negative consequences for the Turkish minority in Thrace and the Greek minority in Istanbul. It is impossible to understand the relations between Greece and Turkey without understanding the conflict in Cyprus. So let's take a moment to take a closer look at it.

Cyprus' geographical location in Mediterranean Sen between the Middle East, Europe and Africa has been creating its attractiveness throughout the history. The Island was a part of the Roman Empire, the Byzantine Empire and the Ottoman Empire (since 1573). In 1878 the Island fell under the administration of the British Empire which took interest in the island due to its strategic position. Cyprus was still under nominal Ottoman suzerainty but under a British protectorate as a direct consequence of Russo-Turkish War (1877-1878). The role of the British Empire grew and led to proclamation of the Crown Colony of Cyprus in 1925. The annexation was first opposed by Turkey and was eventually accepted by Atatürk. The annexation was confirmed by the Treaty of Sèvres in 1920 and the Treaty of Lausanne in 1923.

British ruling of the island led to increasing strength of the opposition from both Greek and Turkish Cypriots. Greek Cypriots opting in majority for *enosis* (unification with Greece) created a guerrilla called EOKA (1955-1959), while Turkish Cypriots created an underground political organisation named Volkan. Greek Cypriots and Turkish Cypriots who originally lived together got eventually separated in two sides of the island as the hostility grew. Great Brittan lost sovereignty over Cyprus in 1960, after in 1959 Greece, Turkey and the United Kingdom agrees on a constitution which gave Cyprus shared powers with a Greek Cypriot president and a Turkish vice-president. This however did not stop the conflict and the crisis arose both in 1964 and 1974 (Bozkurt 1999, 215)

> In 1963, the President of Cyprus, Archbishop Makarious had proposed constitutional amendments that led to violence between the two sides (White, 1993: 241). "Greek extremists who wanted enosis-union with Greece-launched a series of attacks on Turkish Cypriots, killing some and taking others hostage" (Cooper ve Berdal, 1993: 118). Turkey threatened to invade.

> By the British and the U.N. intervention a cease-fire and the United Nations Peace Keeping Force in Cyprus was established. Another crisis is observed in 1967, but resolved (Ibid., 215).

So back to the situation in Western Thrace, the Greek Cypriots' attempts to break away from British colonial rule and unite with Greece, known as Enosis, often led to violent attacks against the Turkish Cypriot community. Despite comprising around 20 percent of the island's population and opposing union with Greece, the Turkish Cypriots became targets of these attacks. In response, retaliatory measures were taken against the Greek minority in Istanbul. The Turkish government under Prime Minister Adnan Menderes was believed to have orchestrated large-scale violence against the Greek community in 1955, resulting in the destruction of approximately 3,000 to 4,000 shops and the forced departure of thousands of ethnic Greeks from the city. Following Cyprus' independence in 1960, ongoing communal violence, including massacres of Turkish community members in December 1963, led to the Turkish government revoking the residence permits of 12,000 Greek citizens residing in Istanbul and confiscating their property. In July 1974, Turkey, as a guarantor power under the Treaty of London, intervened in Cyprus after a coup by Nicos Sampson overthrew the elected Makarios government in an attempt to unify the island with Greece. As a result, Turkey occupied nearly 40 percent of Cyprus. In the post-1955 period, although less violent, Greek pressure on the Turkish minority in Thrace had equally detrimental effects. Ethnic Turks experienced illegal expropriation of their land, denial of professional licenses, forced emigration through the unilateral revocation of their citizenship, and restrictions on religious freedoms. This discriminatory policy created a civil rights movement among the Turkish minority in the mid-1980s, led by the late Dr. Sadik Ahmet (Human Rights Watch 1999).

Although Article 19 of the Greek Citizenship Law (No. 3370) from 1955 is no longer in power, I believe it is useful to introduce it here for a better understanding of Turkish minority situation in Western Thrace. The Article stated:

> A citizen who is not from Greek race may be deprived of citizenship in case he/she leaves the state without the intention to come back. Deprivation of citizenship may be applied the ones that are not from Greek race, born abroad and still live out of the borders of Greece. The underage children whose parents or the alive parent have been deprived of citizenship may be

> denaturalized as well. Ministry of Interior Affairs decides with the ratification of Citizenship Council of Greece.[72]

Article 19 was used to deprive non-ethnic Greek citizens their citizenship. In 1998 the Article 19 was repealed and people who became stateless under it were promised to be given back their citizenship:

> However, for forty-three years, successive Greek governments, including the present one, used Article 19 in an attempt to alter the demographic balance in Thrace in favor of ethnic Greeks. In clear violation of the guarantee of equality before the law under Articles 1 and 2 of the Greek constitution and Article 40 of the Treaty of Lausanne, Article 19 differentiated between ethnic Greeks and non-ethnic Greeks:
>
> A person of non-Greek ethnic origin leaving Greece without the intention of returning may be declared as having lost Greek nationality. This also applies to a person of non-Greek ethnic origin born and domiciled abroad. His minor children living abroad may be declared as having lost Greek nationality if both their parents or the surviving parent have lost the same. The minister of the interior decides in these matters with the concurring opinion of the National Council.
>
> One scholar noted that, "The Greek Constitution does not directly create distinctions on the basis of ethnic origin. Yet....one must examine the application of certain rules in the Code of Citizenship which facilitate the acquisition of Greek citizenship by those who belong to the nation (omogeneis) and its loss by those who do not (allogeneis)."
>
> According to the Greek government, between 1955 and 1998, approximately 60,000 individuals were deprived of their citizenship under Article 19. Of these 60,000, approximately 7,182 lost their citizenship between 1981 and 1997 (Human Rights Watch 1999).

The numbers are not definite and according to Cem Şentürk from Federation of Western Thrace Turks in Europe, up to 33 thousand people might have been indirectly affected by the law during 33 years (Şentürk n.d., 7).

[72] Historical Law: 3370/1955.

> According to the Greek Parliementary's reply to the notice of question given by Ilhan Ahmet in May 2005, MP for Rodopis in the Hellenic Parliament, 46.638 Turkish (muslim) in Western Thrace and the Island of Rhodes (Twelve Islands) were deprived of citizenship through the related article of the Greek Citizensip Law until 1998. The former Minister of Interior Affairs, Alekos Papadopoulos, announced that the victims of the law sum up to 60 thousand until the announcement date, 23.01.1998.[4] The critical point is that these numbers give the sum of the "direct" victims but when we consider the "indirect" victims, their number sum up to nearly 20-30 thousand in these 33 years of time. We concept the "indirect" victims as the children of these people, who were denaturalized (Ibid., 7).

Importantly, the repeal of Article 19 does not have retroactive force. *Those who remain stateless within Greece (1,000-4,000) and those who adopted the nationality of another country after losing Greek citizenship and having left Greece (the vast majority) have no right under Greek law to regain Greek nationality* (Human Rights Watch 1999). Statelessness leads to significant problems like difficulty receiving social services (ex. health care and education). Until 1997 stateless individuals were denied the protection of the 1954 U.N. Convention Relating to the Status of Stateless Persons, ratified by Greece in 1975 (Ibid.).

The situation of Turkish minority in Western Thrace is a perfect example of minority which struggles to be able to self-identify. Although the group identifies as Turks, Greek state refers to them as Greek Muslims and has delegalized organisations with a word 'Turkish' in its name, including (names of delegalized organisations). The only organisation which has not been delegalized due to its name is The Western Thrace Minority University Graduates Association (WTMUGA), established in 1982. It joined FUEN in 2007 and states that it dedicates to *Social, cultural and educational development of the Turkish Minority of Western Thrace, representation of the minority in the international platform, combating racism and Xenophobia, monitoring and reporting human and minority rights violations of the region.*[73]

On the list of recommendations, the Human Rights Watch gives to the government of Greece, the first one states:

[73] https://fuen.org/en/members/Western-Thrace-Minority-University-Graduates-Association Accessed 16.04.2023

> Acknowledge the existence of the Turkish minority, as has been done in the past, most recently in the 1950s, and grant ethnic Turks all the civil and political rights enjoyed by other Greek citizens; this should include the right to call themselves and their associations and schools, if they so choose, "Turkish." End prosecutions and punitive actions against those who called themselves "Turkish" (Human Rights Watch 1999).

Meanwhile the first recommendation to the member states of the UE reads – *Raise the issue of the Turkish minority of Thrace, especially the Greek government's denial of their ethnic identity, in bilateral meetings with Greece and in the E.U. as a whole* (Ibid.).

In 2002 Tzemil Kapza from the Association of the Western Thrace Minority Graduates in Greece presented Turkish minority's case to the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights:

> In recent years, certain restrictions on the acquisition of land and property, driving licences, etc. have been created under what is defined as the policy of 'equality among citizens' (Isonomia-Isopolitia). Greece alleges that this policy provides sufficient reform and continues to ignore its obligations regarding the rights of the Turkish Muslim minority to violate the bilateral and multilateral treaties and agreements to which it is a party.
>
> A major issue is the violation of the right of the minority to identify itself as Turkish. In earlier years, Greek authorities made it obligatory for the minority to be named as 'Turkish' and its members as "Turks. This policy was later changed. The designation of the minority associations as 'Turkish' has been forbidden. Consequently, several Turkish Minority associations which have been active since early XXth (sic!) century are now banned by court order (Hayrullah 2013, 13-14).

During the OSCE Human Dimension Implementation Meeting in Warsaw in 2003 Tzemil Kapza went into more details on delegalization of Turkish associations:

> The Federation of Western Thrace Turks in Europe is composed of 31 associations across Europe. Since 1988 it has been working on the promotion of human and minority rights across Europe and international institutions.
>
> Western Thrace Minority University Graduates Association is 21 years old. This organisation came into life shortly before banning of Turkish minority's century-old associations. Following the imposition of restrictions on our freedom of association in Greece, since 1980s,

> we practically turned into the single officially recognised broad-based civil organisation of the Muslim Turkish minority of Western Thrace. (…)
>
> Recently the trial of the Xanthi Turkish Union which has been a legal society since 1927, and banned in 1984[74] reached its final phase before the Supreme Court. The case was reviewed on 19 of September. Although the decision of the court is yet to be announced, a heated debate started within the legal, academic and political circles. Greek national press is also actively taking part in the debate (Hayrullah 2013, 20-21).

The Supreme Court of Greece dissolved the Union, arguing that its due to the word 'Turkish' in its name. The application of registration of the Rodopi Turkish Women's Cultural Association was rejected by the same court (Ibid., 42). In May 2005 Western Thrace Turkish Teachers Union, Komotini Youth Union and Xanthi Turkish Union were all banned. Association of the Clergies of Western Thrace Mosques was never register due to the word 'Western' (Ibid., 52).

The European Court of the Human Rights had ruled in favour of Turkish minority's applicants who argued that Greece is limiting their right to assembly. In fact, Greece has lost several cases concerning that matter:

- Bekir-Ousta and others group of cases v. Greece,
- Tourkiki Enosi Xanthis (Xanthi Turkish Union) and Others v. Greece,
- Ermin and Others v. Greece (Verhás 2019, 2).

Evelin Verhás names 4 main findings about the minority in Western Thrace in her report published by Minority Rights Group Europe. Firstly, although the Turkish minority in Western Thrace has inhabited the territory for centuries, it is officially recognised by the Greek state only as a 'Muslim minority in Thrace. This category includes the Turkish, Roma and Pomak communities (Ibid., 4). Other recognised minorities are Greek Jews, Catholics and Protestants (Triandafyllidou 2011, 99). Therefore, all of the mentioned minorities[75] have a status of a religious and not ethnic/national minority. After the fall of Yugoslavia, in the 1990s there was an ethnical

[74] Right after Declaration of Independence of the Turkish Republic of Northern Cyprus.

[75] Roma community usually has special laws dedicated only to them.

mobilisation of a Slavic speaking Macedonian minority but the Greek state ignored their claims of cultural and linguistic recognition (Ibid., 99).

> Comprising individuals of Turkish origin, Roma and Slav-speaking Pomaks, prior to World War II, the Muslims of Thrace coexisted largely as a religious community. Since the 1970s, the minority has mobilised to assert a common Turkish identity, thus stirring anxieties among Greek elites and public opinion. Although an initially repressive state policy in the 1970s and 1980s has been replaced since 1991 with a series of measures ensuring non-discrimination against minority members by the state and the full respect of their individual rights, the Greek state tenaciously refuses to recognise their existence as an ethnic (Turkish) community and is particularly sensitive to any assertions of collective ethnic rights on the part of the minority. (Ibid., 99-100)

According to data from the 2011 census conducted by the Hellenic Statistical Authority (ELSTAT), the Muslim population in Greece was reported to be around 97,605 individuals, accounting for approximately 0.91% of the total population at that time. This number includes but is not limited to the Turkish minority in Western Thrace. Per the second finding Verhás writes:

> The barriers confronting the Turkish minority have increased further in recent decades. This has resulted in a wide range of restrictions on their ability to establish associations, practice their culture and provide education in the Turkish language, representing a serious threat to their identity, participation and self-expression (Verhás 2019, 2).

Third conclusion refers to the religious freedoms. Verhás mentions the parallel structure of Mufti which are either appointed by the state or chosen by the minority itself. Human Rights Watch on the other side points out that *(…) the Treaty of Lausanne clearly grants the Turkish minority the right to organize and conduct religious affairs free from government interference (…)* (Human Rights Watch 1999). The organisation argues that even though the vast majority of Turks in Western Thrace does not agree with the authorities electing their religious leaders, the state went further and after electing Muftis directly for the first time in 1985, in 1990 it codified the law as Law No. 1920 (Ibid.). After the death of the mufti of Komotini, Hüseyin Mustafa Efendi, in 1984 without a previous consultation with the minority, the Greek government appointed Rüstü Ethem as acting mufti. The minority opposed and referring the Treaty of Athens and Law No. 2345 petitioned the governor. After no successes the minority decided to hold unofficial elections of muftis and chose Mehmet Emin Aga to become the mufti of Xanthi and Ibrahim Serif for the position of mufti in

Komotini (Ibid.). Greek authorities responded with the Decree No. 182 and repealing Law No. 2345. After being approved by the parliament in 1991, the decree became Law No. 1920 (Ibid.).

Iris Boussiakou argues that the elections that lead to appointing the Mufti in 1990 by the minority were undemocratic as they were not *representative of all the members of the Muslim minority. (…) an informal committee composed of certain members of the minority organised those elections without a list of candidates, a ballot or even an election committee* (I. Boussiakou 2008, 11). As a reaction to this, after four days, Greek President referring to the Article 44(1) of the Constitution, adopted a legislative act (*praxi nomothetikou periehomenou*) and appointed another Mufti by which the manner of the appointment of the Mufti was changed.

Paragraph 1 of Article 44 of Greek Constitution states as follows:

> Under extraordinary circumstances of an urgent and unforeseeable need, the President of the Republic may, upon the proposal of the Cabinet, issue acts of legislative content. Such acts shall be submitted to Parliament for ratification, as specified in the provisions of article 72 paragraph 1, within forty days of their issuance or within forty days from the convocation of a parliamentary session. Should such acts not be submitted to Parliament within the above time-limits or if they should not be ratified by Parliament within three months of their submission, they will henceforth cease to be in force.

Its use to change the appointment of a religious leader, when other measures could have been taken seems at least excessive. Human Rights Watch indicates that the minority has been allowed to choose its Muftis on *its own by earlier legislation, both an international treaty and Greek law*. HRW reminds about the Treaty of Athens of November 1913, according to which *Greek sovereignty of former Ottoman territories in Epirus, Macedonia, and the Aegean, allowed muftis to be elected by the Muslim population* (Human Rights Watch 1999). Greek Law No. 2345 of 1920 found a middle ground solution. Article 6 of Law No. 2345 allowed the minority to choose the Muftis from a list of candidates earlier approved by the head mufti, the Ministry of Religious Affairs, and the governor general and/or prefect of the region (Ibid.). Since becoming elected by the minority both muftis were persecuted and sentenced several times for 'usurping the title of mufti'. Each time they were sentenced six to twenty months imprisonment (Ibid.).

Boussiakou writes *that The strong persistence on anachronistic views and practices prevents the development of individual human rights on a universal basis within the Muslim minority.* (I.

Boussiakou 2008, 3). The Author does not take into account secularization of the society. Religion is a part of culture and its rules do not always correspond with people views or actions. More often in today's society people identify with the religion they were born into and celebrate main holidays but are otherwise not active or not believing. Taking this argument aside, the state is obliged to protect minorities' religious rights and not question them based on the views. Although the religion plays an important factor in Western Thrace Turkish community, it is not dominant, neither extremist. The Party of Friendship, Equality and Peace – party representing Turkish minority in Western Thrace – is lead since 2019 by a female leader Çiğdem Asafoğlu. Meanwhile, there are many cases of documented oppression from States's side towards minority elected Muftis.

The last of Verhás' key findings is the outdated legal framework established a century ago. According to her, in the light of entering structures like the European Union and accessing international human rights treatise, *Greek authorities must take immediate steps to recognize the Turkish minority in Western Thrace and remove all barriers to the full enjoyment of their rights* (Verhás 2019, 2).

These are not the only problems faced by the minority, another problem recognised by HRW is a police surveillance:

> Community leaders from the Turkish ethnic minority reported being under clandestine police surveillance. Birol Akifo_lu, a deputy from the New Democracy party, reported that police officials called him to inquire when he was meeting with members from Human Rights Watch and the Greek Helsinki Monitor in September 1997. Mr. Akifo_lu reported that he does not feel that he is followed all the time, but thinks it "very possible" that his phone is tapped. Mr. Mehmet Emin A_a, the elected mufti of Xanthi, was of the strong belief that he is followed by the police on a regular basis. A representative of Human Rights Watch and two members of the Greek Helsinki Monitor experienced such surveillance first hand while conducting interviews in Thrace in September 1997. The three were followed for two days in the area around Komotini by two separate Greek security organizations. When a Human Rights Watch representative confronted the surveillance teams, the operatives became angry. Only after both groups complained to uniformed police officials and Interior Ministry officials were the police tails removed.[126] Given state suspicion of the ethnic Turkish minority, such surveillance is not surprising (Human Rights Watch 1999).

Actions like this do not help minorities to feel free and be able to identify as they please. Especially when these actions come together with restrictions on freedom of expression and discrimination in public employment. HRW reports state persecutions against a small Turkish-language press. Abdulhalim Dede who ran a radio station and a newspaper was *known for his opposition to both official Greek and Turkish state policy toward the Turkish minority of Thrace* (Ibid.). HRW reports three cases against him between 1997 and 1998. Ethnic Turks very unlikely get jobs in public employment. HRW reports:

> Although they comprise a substantial minority in Thrace, few members of the ethnic Turkish community work in the civil service, either at the municipal or state levels. While low education levels and poor Greek may explain part of this, outright discrimination plays a large role. In our 1990 report, we pointed out that, according to official admission, no ethnic Turks worked in the governorships of Komotini or Xanthi.[129] In our follow-up report two years later, the situation had remained largely the same, with only a handful of ethnic Turks hired as street cleaners (Ibid.).

The institution notes only a very small improvement of the situation since. Tzemil Kapza summed up the situation of the Turkish minority:

> Many of our forefathers had to take refuge in Turkey and other European countries because of the bitter experiences during the past 40-50s. For many years minority students had to continue their education at schools and universities in other countriesdue to the impossibility of having proper education in Greece. Since the second half of the 90s however, thanks to a number of constructive measures introduced by the Greek Government and through introduction of 0,5% admission quota, our youth also started enjoying possibilities of higher education in our homeland as well (Hayrullah 2013, 21).

Legal Framework

The Third Hellenic Republic is a relatively young state created after the fall of the Greek junta (Regime of the Colonels) which ruled the state between 1967 and 1974.

Greece recognising the Turkish minority in Western Thrace as Greek Muslims focuses on minority's religious rights. Iris Boussiakou names several legislations protecting 'Muslim minority' religious rights - Treaty of 7 Constantinople in 1881, Law No. 1920/1991 and 1923 Treaty of Lausanne (I. Boussiakou 2008, 6-7).

The Constitution

Greece adopted its Constitution in 1973. It came into force two years later in 1975, six years before the state has joined the European Union and after the collapse of the military dictatorship. Since then, the constitution of Third Hellenic Republic was amended four times – in 1986, 2001, 2008 and 2019. The current Constitution has roots in its 1864 predecessor (Contiades, Papacharalambous and Papastylianos 2019, 642).

> The 1864 Constitution had been enacted after a revolution against the monarch and was influenced by the 1831 Constitution of Belgium and the 1849 Constitution of Denmark. The election of a new king by the Constituent Assembly and the enactment of a liberal constitution marked the passage from constitutional monarchy to parliamentary democracy (Ibid., 642).

Next to the constitutions of Germany, Italy, Spain and Portugal, Greek is an example of post-Totalitarian or Post-Authoritarian Constitutions of the 'Old' Member States. characterised by an Extensive Bill of Rights, Rule of Law Safeguards and Constitutional Review by a Constitutional Court (Albi i Bardutzky 2019)**.**

The 1975 Constitution was shaped after 1864 Constitution, which has served the state for the longest period as far. Xenophon Contiades, Charalambos Papacharalambous and Christos Papastylianos in their analysis note, that the 1864 document was influenced by the constituent power exercised by the 1831 Constitution of Belgium and the 1849 Constitution of Denmark (Contiades, Papacharalambous and Papastylianos 2019, 642).

The Authors point out that as previous Greek Constitutions since the one in 1864, the 1975 Act contains a detailed list of rights including civil, political and socio-economic rights. They follow:

> The Constitution of Greece sets out the basic rules of the game, organising and allocating powers and providing for the detailed protection of fundamental rights. It has therefore been central to the legal and political life of Greece, generating a strong culture of constitutionalism; constitutional narratives are dominant in the Greek political discourse (Ibid., 643).

It is worth noticing that Greece has applied for accession to the EU on the very same they its new Constitution came into force. Contiades, Papacharalambous and Papastylianos point out that this was not a coincidence and that the Constitution was written with a purpose of future accession. Despite of that there is a conflict regarding hierarchy of legal rules. The subject of debate are EU laws and the Greek Constitution (Ibid., 644-645).

The Constitution of Greece - Article 4 of the Constitution of Greece recognizes the existence of religious and linguistic minorities in the state, and guarantees their rights to practice their religion and use their language.

Amendments

To make any changes (either review or make amendments) in the constitution, at least one sixth of the MPs must put forward a motion. After that, the Parliament must agree with the changes twice with three fifths majority in two votes separated by at least one month. To confirm the changes the next Parliament (after the elections) has to vote in their favour (fifty percent plus one).

The aim of 1986 amendments, was to limit the powers of the President of Republic and did not consider national minorities. In 2001 introduced changes concerned, among others – constitutional consolidation of the doctrines of proportionality and vertical power of human rights.

In 2008 additional point was added to Article 101 stating: ‘The legislator and the Public Administration, when acting in their regulatory capacity, must take into consideration the special

circumstances of the insular and mountainous areas caring for their development.'. The other two changes did not consider minorities or regional issues.

Several important motions which could have potentially help minorities did not pass. They included:

- the protection of the human rights of foreigners – an issue often raised in ACFNM opinions,
- the rewriting of the preamble, which recognises the dominant role of Greek Orthodox Church
- introduction of a new legislative procedure initiated by the people – a procedure that gives minorities a possibility of influencing on legislation and stating their needs in more effective and visible way.

Changes introduced in 2019 are the latest ones (as for 2021).

The Preamble

The preamble of Greek constitution is extremely short and consists only one sentence – 'In the name of the Holy and Consubstantial and Indivisible Trinity'. Meanwhile Article 3 establishes a special position of Eastern Orthodox Church of Christ. Although Article 3 of Greek Constitution from 1975 describes the religion represented by Eastern Orthodox Church of Christ as 'prevailing' in Greece, it adds that 'The ecclesiastical regime existing in certain districts of the State shall not be deemed contrary to the provisions of the preceding paragraph.'.

The dominant character of the Orthodox church and its place in constitution can be problematic for Turkish Minority in Western Thrace. The minority identifies itself as Turkish while the authorities insist on calling its members Muslim Greeks.

Basic Provisions (articles 1-3)

The very first article of Greek Constitution explains that 'All powers derive from the People and exist for the People and the Nation; they shall be exercised as specified by the Constitution.' We can understand from here that by the *Nation* it means all Greek citizens.

Article 2 states that the principal obligation of the Greek state is to 'respect and protect the value of the human being' which refers to all the people including non-citizens. It later vaguely informs us that Greece wants to foster friendly relations between peoples and States. Although it does not directly refer to national minorities, it can be later used by them to protect their rights.

Article 3 guarantees a prevailing position to the Eastern Orthodox Church of Christ. There is a strong on-going discussion about this Article with left-wing parties trying to erase it along with the Preamble.

Individual and Social Rights (Articles 4-25)

The second part of the Act starts with Article 4, stating that all Greeks are equal before the law. Alike in the Article 1, we understand that as for the Greek law, Greek citizen equals Greek.

Article 5 refers to the protection of 'all persons living within the Greek territory'. The protection applies regardless nationality, race or language and of religious or political beliefs and concerns life, honour and liberty.

Article 12 regards the right to association. It strongly concerns minorities as forming and participating in different types of associations is often a statement indicating the way one identifies. Point 2 of the Article states that 'association may not be dissolved for violation of the law or of a substantial provision of its statutes, except by court judgment'. Minority Rights Group International re cognises the importance of minority associations and organizations calling them a 'backbone' of

Turkish minority in Western Thrace[76]. The organisation emphasises the importance of the role that these institutions play in supporting the preservation of language and culture by supporting not only local activists and leaders but teachers and schools.

Even though they are protected by the Constitution, Turkish organisation have been repressed for years by Greek authorities. The Western Thrace Turkish Teachers' Union established in 1936 is one of the examples. The problems had started during the military dictatorship but continued after restoring the democracy. The institution's signboards were removed in 1985 only a year before Greece has joined the European Union.

> Article 12
>
> 1. Greeks shall have the right to form nonprofit associations and unions, in compliance with the law, which, however, may never subject the exercise of this right to prior permission.
>
> 2. An association may not be dissolved for violation of the law or of a substantial provision of its statutes, except by court judgment.
>
> 3. The provisions of the preceding paragraph shall apply, as the case may be, to unions of persons not constituting an association.

Other Legal Acts

1923 Treaty of Lausanne

> In November 1923, Turkey signed the Treaty of Lausanne, which put an official end to the Greco-Turkish War and secured international recognition, with minor changes, of Turkey's present borders. In addition, Articles 37-45 of the treaty obligated both Turkey and Greece to grant and respect a broad array of rights for the Greek minority of Istanbul and the Turkish minority of Thrace. Such rights included equality before the law, free exercise of religion, free

[76] https://stories.minorityrights.org/western-thrace/chapter/activism/ 25.09.2021

use of its own language including in primary schools, and control over religious affairs (Human Rights Watch 1999).

The Treaty of Lausanne was signed on 24 July 1923 and ended the war between Greece (Allied Powers) and Turkey. After 100 years, the Treaty is still binding and remains one of the main legal documents to which the Turkish minority refers to protect their rights. The document provides collective rights and sees minority as whole (I. Boussiakou 2008, 2-3). It was incorporated to the Greek domestic law according to Legislative Decree 25/1923 (Ibid., 2).

The entire Section III of the treaty is dedicated to the protection of the minorities on both sides of the borders. Articles 37 to 44 describe Turkey's obligations towards non-Moslem minorities (plural), while Article 45 states as follows - *The rights conferred by the provisions of the present Section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory.* It is worth noticing that the exact wording is *similarly* and not *in the same way.*

The role of Article 37 is to assure that no other laws interfere with the Treaty – *(...) the stipulations contained in Articles 38 to 44 shall be recognized as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.* This article was violated several times when Greek authorities introduced laws limiting Turkish minority rights (the topic was presented in the part about the election of Muftis).

According to the Treaty, the Muslims of Western Thrace should be guaranteed special cultural, religious and educational rights like the possibility of being judged under shari'a law, bilingual schools, and bilingualism in public administration (Triandafyllidou 2011, 99). In practise these special rights are not always guaranteed.

Human Rights Watch underlines that the Treaty of Lausanne was violated by Greece several times. Some of the cases like the election of muftis were already analysed. Another case was interfering with the administration of Vak1f[77]. HRW notes that the independence of Vak1f has been

[77] Vak1f is a private charitable foundation which purpose is to support education, minority activities, and social welfare (Human Rights Watch 1999).

repeatedly threatened since 1967 when it was supervised by the Junta. In 1973 a non-Muslim was appointed as a chairman, in 1979 (after Junta lost power) a bill was presented to the parliament by the Karamanlis government. The bill was (…) *further restricting the activities of the Vak1f and the Turkish minority's right to administer them. The bill was enacted on November 12, 1980, as Law No. 1091, provoking widespread outrage in the minority community and from the Turkish government* (Human Rights Watch 1999). In 1991 the Presidential Decree No. 1 was introduced. Same as Law No. 1091 its purpose was *to weaken the Vak1flar financially as well as dilute the community's control over them* (Ibid.).

This directly violated Article 40 of the Treaty of Lausanne, which states:

> Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.

HRW adds that Vak1f is also protected by Article 12 of the Treaty of Athens of 1913 which obligated Greek state to respect Vak1f property and Article 10 of Law No. 2345 of 1920 according to which the muftis should supervise the Vak1fl, while Article 12 of Law No. 2345 of 1920 gives administrative power to councils elected for three years by Muslim voters (Human Rights Watch 1999).

Previously cited Article 40 of the Treaty of Lausanne together with Article 41 award Minority the right to education in its own language and the autonomy to manage educational institutions. The Article 41 states:

> As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.
>
> In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the

enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes.

The sums in question shall be paid to the qualified representatives of the establishments and institutions concerned.

These rights have been repeatedly violated by the Greek authorities. HRW recognises the biggest problems *as a mixed system of administration, a poorly-educated teaching staff, a lack of secondary schools, inadequate and outdated textbooks, and the absence of a curriculum to teach Greek as a second language* (Human Rights Watch 1999).

Other legal acts include:

- Law 147/1914 - This law regulates the status of the Muslim minority in Thrace, recognizing its legal personality and providing for the establishment of Muslim religious institutions.
- Law 1920/1991 - This law recognizes the Macedonian minority in Greece, and provides for the protection of its cultural heritage and the use of the Macedonian language in public life.
- Law 2817/2000 - This law provides for the protection and promotion of the rights of the Roma minority in Greece, including their right to education, employment, and access to health care.
- Law 3304/2005 - This law recognizes the existence of the Arvanite minority in Greece, and provides for the protection of its cultural heritage and the use of the Arvanite language in public life.
- Law 3838/2010 - This law provides for the protection and promotion of the rights of the Jewish community in Greece, including its right to religious freedom and cultural expression.
- Law 4443/2016 - This law recognizes the existence of the Vlach minority in Greece, and provides for the protection of its cultural heritage and the use of the Vlach language in public life.

- Law 4619/2019 - This law provides for the recognition and protection of the rights of the Roma, Muslim, and Vlach minorities in Greece, including their right to education, employment, and access to health care.

Self-identification in Practice

The 2011 Census in Greece did not contain any questions considering ethnicity or religion. The published materials only indicate how many foreign citizens live in the state. As we could see in the part regarding the situation in Western Thrace, Greece not only does not guarantee, but actively acts against the right to self-identification for its citizens.

When it comes to collecting ethnic data, Greece is one of the states where NGOs and academics collaborate on reporting hate crimes, Farkas adds that in Greece there is also a collaboration with Ombud (Farkas 2017, 29).

In Greece and Cyprus, Roma is seen as a religious minority and put into the category of Muslim (Ibid.,38). Moreover, Greek ombuds and NGOs use broad categories for the collection of data on ethnic origin, which are: Africa, Europe, Asia, Unknown (Ibid., 24).

SPAIN

Spain is an example of a decentralised state in Europe, which is why it is one of the analysed states. Its undemocratic history and the situation of minorities under general Franco's dictatorship strongly influenced the law in the new democratic state.

Laura Desfor Edles points out after several authors that the Spanish transition to democracy after almost 40 years of General Franco's dictatorship became *"very model" of successful transition from authoritarianism to democracy* (Desfor Edles 1999, 311). Nevertheless, Spain is still a relatively young democracy.

Spain entered European Union in 1986 together with Portugal. Today it is divided in 17 autonomous communities and 2 communities states (Ceuta and Melilla). The communities have three different categories – nationality (Andalusia, Aragon, Balearic Islands, Basque Country, Canary Islands, Catalonia, Galicia, Navarre, Valencian Community), region (Castilla–La Mancha, Community of Madrid, Extremadura, La Rioja, Region of Murcia) and historical communities (Asturias, Cantabria, Castile and León). The most important, however, is the assumption that territorial autonomy is no longer a privilege for one or a few selected regions, but a form of decentralization of the entire state (M. Myśliwiec 2014, 142).

Joseph R. Rudolph points out that

> Making concessions beyond regionalization requires formally crossing the gap separating a unitary system in which the center legally retains the totality of political authority, to a federal system in which multiple levels of government exist, each with the ability to make, adjudicate, and execute laws in the areas assigned to it (Rudolph 2019, 13).

But to better understand today's regionalisation of Spain, we need to take a look back at the history. Małgorzata Myśliwiec underlines the importance of the geopolitical situation where the main role was first played by Mediterranean states, only to be dethroned by territories with the direct access to Atlantic in the late 15th and early 16th centuries (M. Myśliwiec 2014, 73). According to the Author, the beginning of the era of political rivalry among various European monarchies to become the most powerful empire of the time had diverse consequences and many of them continue to shape our reality to this day, including the functioning of political parties (Ibid., 73).

Małgorzata Myśliwiec discusses the process of state centralization in Spain and the challenges it faced. Despite early unification, legislative distinctiveness of historical regions persisted until XVIII century. The Bourbon dynasty's accession to the throne marked a shift towards centralization to build a strong position in Europe. However, the process of administrative and economic unification unfolded differently in Spain compared to other European countries like Italy and Germany. The lack of economic and territorial success hindered national unity, and the principles of romanticism fuelled peripheral nationalisms. Spain did not embrace liberalism and democracy as a prosperous nation due to internal crises and the Napoleonic invasion. This lack of positive motivation prevented the development of a unified national identity. Spain's unique circumstances, including the Carlist movement, contributed to a period of significant political, social, and economic transformations in XIX century (Ibid., 77-79).

Spain nowadays is strongly influenced by two major events from its past – the civil war and Franco's regime. The civil war not only strengthened the distinctions in the society but had left the state in a dept which has been being paid until 1960's. The 1980s, on the other hand, were the moment in the Spanish history when more attention was paid to minority rights after years of Franco's regime repressions against the minorities in Spain.

> Castilian is the national majority language in Spain. Still, whereas regional languages have always been present in Spain, these were repressed during Franco's dictatorship (1939-1975). This severe proscription affected the public sphere where Castilian remained as the only language. Regional languages were thus mainly used at home and family circles. In all, this only language policy backfired as it 'triggered great linguistic and cultural awareness and a popular desire to recoup these languages and their cultures' (Lasagabaster 2011, 111). The impact, yet, varied across regions. Thus, for example, in Galicia, for many centuries schooling was in Castilian and restricted to a minority, while the population was almost universally monolingual in Galician; all of which in turn, triggered hierarchical relations between the two languages (Silva 2000). In the case of Catalonia, Catalan was standardized already at the beginning of the 20th century, and during the dictatorship Catalan was the vehicular language at the Escola Catalana, which comprised a network of cooperative schools. In a rather similar vein, in the 1960s, Basque was used in schools in the so-called ikastolak; i.e. schools for students whose mother tongue was Basque (Bianculli, Jacint and López-Berengueres 2016, 8-9).

It is important to remember that Spain had do re-learn the democracy. Agnieszka Kasińska-Metryka and Rafał Dudała add, that democracy mean a set of values, including dialog and the dialog with authorities (Kasińska-Metryka and Dudała 2019, 13). The Authors explain, that states are not static but constantly evolve (Ibid., 12).

According to Kasińska-Metryka and Dudała, social changes in Spain, which occurred after 2008, were initiated from the grassroots level. They were caused mainly by political activism of predominantly young citizens. This demarcating, social dialog mentioned earlier, could only been developed after the end of Franco's regime, therefore in less than 30 years. Spain and its society had to undergo an accelerated course of democracy precisely in conditions of its threat (Ibid.,14).

Małgorzata Myśliwiec notices, that already the election results in 1977 indicated that reaching a political compromise would not be an easy task (Myśliwiec 2010, 131).

Kasińska-Metryka and Dudała underline the difficulty of this process, as the economic crisis was only one of many, state went through in those years - the crisis of the monarchy, political parties, leadership, and social trust had their roots, among others, in the disruptions of dialogue between the governing and the governed (Kasińska-Metryka and Dudała 2019, 14).

To add on top of that, one of the consequences of Franco's regime, was lack of trust in authorities and small communities, especially family. Modern Spain was characterised by citizens lack of political involvement and apoliticality of the society (Ibid., 14-15).

Kasińska-Metryka and Dudała describe the system changes in Spain (in traditional approach) as 'model' and agree with the way Victor Pérez Díaz sees its stages throughout the years:

- Transition – on a state level from Franco's death to the establishment of the new Constitution (1975-1978); on the regional level from Franco's death to the establishment of the Statues of Autonomy;
- Consolidation: socialist rule (1982-1986);
- Institutionalisation: an ongoing process, especially if understood not only as establishment of democratic institutions but also internalisation of the rules of the political game by political elites and citizens (Ibid., 16).

Other important factors that influenced the process of democratization in Spain, according to Kasińska-Metryka and Dudała are:

- Past influence of Nazi Germany and Fascist Italy;
- The process of getting 'closer' to the Western Europe;
- Democratisation of the Catholic Church, which after decades of collaboration with the regime had to reinvent itself and seek for understanding and forgiveness;
- Political reforms by the prime minister Adolfo Suárez and king Juana Carlo (Ibid., 16-17).

Spanish political stage, formed after 1978, can be characterised with its possibility of getting closer to one of the two models - *the parliamentary government (in the case of existence of the majority government) or to the model of parliamentary committee (in thecase of the minority government)* (Myśliwiec 2010, 145).

Regionalism and decentralisation

What is characteristic for Spain are separatist movements that last for decades and which politicians actually govern in regions. In 2015 after several failed attempts to call an independence referendum (a referendum can be only called by the authorities in Madrid), Catalan President Artur Mas dissolved the Parliament and called for new elections which were supposed to have a character of independence referendum. Each party was to clearly declare if its pro or against separation from Spain and the results were to set the dispute. The main pro-independence party Junts pel Sí (JxS) was a coalition of different parties and activists and won the elections getting 44.4% of votes and 71 out of 135 seats.

Meanwhile in Basque Country (EAJ-PNV), Basque Nationalist Party has been governing or co-governing since 1980 (with a break between 2009 and 2012).

Catalonia and Basque Country have the strongest separatist movement but are not the only regions in Spain with those. Smaller movements exist in Valencia, Balearic Island, Canary Island and Andalusia.

Importantly, the autonomies root back to medieval ages when Basque Country has had a degree of political autonomy regarding both private and public law within the Kingdom of Spain (J.-M. Landa 2013, 8). Jon-Mirena Landa emphasises a notable division in the Basque society. Throughout history, the Basque people have maintained a certain level of political autonomy within both public and private law. The Kingdom of Spain respected an institutional framework that allowed for this autonomy. However, during XIX century, civil wars resulted in attempts to assimilate and equalize the Basque Region within Spain. These efforts jeopardized the foundation of Basque identity by abolishing a significant portion of its legal status. Concurrently, the industrial revolution and its associated socio-economic changes attracted a growing influx of migrants from other regions of Spain to the Basque Region. These factors played a crucial role in the emergence of the "Basque problem," leading to the development of distinct political identities characterized by varying degrees of autonomy, independence, identification, or integration within Spain (Ibid., 8).

Although Spain is not a federation, compared with other European states it is strongly decentralised. As Joseph R. Rudolph notes - *A unitary state can decentralize administratively by allowing more local governments adjust centrally made laws to local conditions or – more far reaching – by giving local councils the ability to make law in specific areas (for example, educational curriculum)* (Rudolph 2019, 13). The Author points out, that in both cases the central government's primacy remains clear.

According to the Author, extending beyond regionalization necessitates a formal transition from a unitary system, where political authority is solely held by the central government, to a federal system with multiple levels of government. In this federal system, each level has the capacity to create, interpret, and enforce laws in their respective areas of jurisdiction. Moreover, this transition can lead to additional demands, as leaders of the federal entity may request the transfer of an increasing range of decision-making powers from the central government to the state (Ibid., 13-14).

> For a quarter century, namely from 1979 to 2006, Spain and Catalonia got along with the first autonomy statute for Catalonia. With the reform of this statute in 2006, it turned out that the clocks in Madrid were ticking substantially slower than those in Barcelona. The reform statute was subjected to an application for judicial review with the Spanish constitutional court, which led to the court declaring in 2010 that a total of fourteen articles of the statute were invalid, and for another twenty-seven provisions, a restrictive interpretation was provided that

conformed to the constitution.10 No small number of observers viewed this to be a significant step backwards for Catalan self-government, in particular in the area of language, but the decision showed above all else "the limits of the decentralization of the Spanish state."11 The subsequent growth of the independence movement in Catalonia has in many cases been considered to be a reaction to the excess of centralism in Madrid (Pan 2018, 9).

The decentralisation is one of the reasons for a high number of actors, laws and channels used for the advocacy for the minority rights. It is shown in the table prepared by Bianculli, Jacint and López-Berengueres.

Table 5 Bianculli, Jacint and López-Berengueres: Comparison of the dimensions of analysis: claims, actors, arguments and channels. Synthesis

Comparison of the dimensions of analysis: claims, actors, arguments and channels. Synthesis				
Direction of the claims				
	Catalonia	*The Balearic Islands*	*The Basque Country*	*Galicia*
Education	Immersion in Catalan vs. bilingual CatalanCastilian	Bilingual CatalanCastilian vs. trilingual Catalan-CastilianEnglish	Three-options model vs. immersion model in Basque	Bilingual GalicianCastilian vs. trilingual GalicianCastilian-English
Media and public space	Immersion in Catalan vs. bilingual CatalanCastilian	Inclusion vs. noninclusion of Catalan TV	Immersion in Basque vs. bilingual Castilian-Basque	Bilingual GalicianCastilian vs. trilingual GalicianCastilian-English

Actors				
	Catalonia	*The Balearic Islands*	*The Basque Country*	*Galicia*
Education	Political parties, unions, CSOs	Political parties, unions, CSOs	Political parties, unions, civil society, organizations, institutions	Political parties, unions, CSOs, institutions
Media and public space	Political parties, unions, CSOs	Political parties, unions, CSOs	Political parties	Political parties
Arguments				
	Catalonia	*The Balearic Islands*	*The Basque Country*	*Galicia*
Education	Political, sociolinguistic, social, pedagogical, legal, cultural	Political; sociolinguistic, economic, pedagogical, social, cultural	Political, legal, pedagogical, sociolinguistic	Political, cultural, pedagogical, sociolinguistic
Media and public space	Sociolinguistic, social, legal	Economic, technical, political, sociolinguistic, legal, social, cultural	Political, sociolinguistic, legal	Political, pedagogical, cultural
Channels				

	Catalonia	*The Balearic Islands*	*The Basque Country*	*Galicia*
Education	Legal, political, civil	Legal, political, civil	Political	Legal, political, civil, administrative
Media and public space	Legal, political, civil, administrative	Political, civil	Political, administrative	Political

Source: (Bianculli, Jacint and López-Berengueres 2016, 36)

Legal framework

In Spain national and ethnic minorities are protected on national, regional and local level. When it comes to the EU impact on Spain, Bianculli, Jacint and López-Berengueres point out, that the views on diversity differ in Spanish and EU perspective. The Authors state:

> (…) linguistic diversity is depicted as a defining feature of the European culture, an element of unity (European culture as a culture of cultures). The lack of a common EU official language and EU competences in the domain of culture and language makes the European arena a neutral space regarding linguistic diversity (Bianculli, Jacint and López-Berengueres 2016, 8).

They underline, that *EU legal framework addresses the question of linguistic diversity as something to be promoted and respected* (Ibid., 8). What is important, is that in this case, the interests of national and regional authorities differ (Ibid., 8). We can see based Spanish regional parties and associations activity, that they have learnt to advocate for their rights directly on the European and supranational level. Something that Crepaz describes as a typical strategy for the 'old' member states minorities (Crepaz 2016, 158-159).

The Constitution

Spanish Constitution was established in 1978 after general Franco's death and marked state's transition to democracy. Albi and Bardutzky classify Spanish, Portuguese and Greek constitutions as post-totalitarian (Albi and Bardutzky 2019, 14), while Solanes Mullor and Torres Pérez the importance of transitional period to democracy after dictator's death in November 1975 (Solanes Mullor and Torres Pérez 2019, 544). The document was result of a consensus reached by the main political parties in the Spanish Parliament chosen in elections of 1977 (Ibid., 544).

> The drafters were conscious of the need to reach a broad agreement about the basic structural principles of the newly established political order. The main goal was to design a stable democratic system and to ensure the protection of individuals′ fundamental rights. The need to reach a consensus about highly controversial issues, such as the model of political decentralisation, on occasion led to ambiguous constitutional provisions in need of further interpretation and political negotiations. The Spanish Constitution was very much influenced by the German and Italian constitutions, regarding for instance the centralised model for the judicial review of legislation. Eventually, the Constitution was ratified in a referendum on 6 December 1978 (Ibid., 544).

The new Constitution caused an important public debate especially in Basque Country and Catalonia, although both regions had different approach towards it. It took 16 months to write the document and as Spain was thorned between regime and opposition, the consensus became the strategy to fulfil the task. At the end, in December 1978 the Constitution was approved by the majority of the voters after being approved by the Congress and the Senate (Desfor Edles 1999, 312).

The *period of consensus* began with the first elections after general Franco's death in 1975. The approval of the new Constitution was rather consensual with an exception of Basque Country – the PNV politicians have left the Congress of Deputies moments before the approval of the existing text of the Constitution and abstained from the final Cortes vote on the Constitution. Later the party has also campaigned for abstention in the Constitutional referendum (Ibid., 312). PNV was not the only Basque party against the new Constitution. Euskadiko Ezkerra's deputies voted against it and were campaigning against the ratification later on. This resulted in more than fifty per

cent of Basques not participating in Referendum of Constitution in 1978 – compared with 32% abstentions within entire Spain (Ibid., 312).

From the Basque's who did vote, 24% were against the Constitution. Laura Desfor Edles compare these numbers with 4,6% Catalanes and 7,8% of Spaniards who casted negative votes (with much higher attendance). The Author notes that at the time, with lack of consensus from Basques, Euskadi ta Askatasuna's (Basque Homeland and Freedom; ETA) violence increased (Ibid., 312).

Laura Desfor Edles asks why was there such a big difference between Catalan and Basque attitude towards the Constitution? The Author points in the direction of political traditions – Catalan nationalist leaders were able to be more conciliatory as Catalan nationalist cherish pragmatism, democratic inclusion and Europeanization (Ibid., 312). In the eyes of their voters, agreeing to the consensus did not question commitment to Catalanism (Ibid., 313).

Solanes Mullor and Torres Pérez underline that next to establishing a system of representative democracy, separation of powers and the rule of law and protection of constitutional rights and liberties, the territorial decentralisation of political power in Spain is one of the three most important elements of the rationale of the Constitution:

> The model of territorial organisation wasparticula rly contested and eventually a sort of quasi-federal state was established, i.e., the Estado de las autonomías. The allocation of powers between the central state and the autonomous communities has been a permanent source of conflict, and today this model is under pressure by the secessionist movement in Catalonia (Solanes Mullor and Torres Pérez 2019, 544).

Spanish Constitution was amended twice. For us important is amendment from 1992 which purpose was ratification of Maastricht Treaty – *The Maastricht Treaty represented a turning point from an economic to a political union and introduced EU citizenship. EU citizens were granted the right to vote and stand as candidates in local elections in their place of residence* (Ibid.545-546). The second time, in 2011 is further analysed by Małgorzata Myśliwiec (Myśliwiec 2021).

Solanes Mullor and Torres Pérez note that there are three groups of tights devided in three chapters of the Constitution:

- Chapter II, Section 1 – the right to life, physical integrity, free speech, privacy and association, the right to vote and fair trial;
- Chapter II, Sector 2 – Rights and Duties of Citizens;
- Chapter III – principles on social and economic policy included (Ibid., 552).

Although in some cases the rights provided in the Spanish Constitution can be restricted or suspended (Ibid., 552-553),

> (…) according to Art. 10(2) of the Constitution, constitutional rights need to be interpreted according to the Universal Declaration of Human Rights and other international human rights treaties ratified by Spain. This provision has been commonly used with regard to the European Convention on Human Rights (ECHR) and the corresponding European Court of Human Rights (ECtHR) case law (Ibid., 553),

The Authors continue:

> Beyond this debate, the special status of international treaties on human rights ratified by Spain should be highlighted. According to Art. 10(2) of the Constitution, fundamental rights and freedoms recognised by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and other international treaties and agreements protecting human rights. These treaties, therefore, are considered to be a constitutional canon of interpretation (Ibid. 578).

What's important for minorities is that *the implementation of EU law has entailed challenges in Spain regarding the rule of law, the separation of powers doctrine and the territorial distribution of power.* This included *the increase of administrative regulations to implement EU measures and the weakening of the political autonomy of the Autonomous Communities* (Ibid., 569).

> The approval of several national legislative measures under the pressure of EU law has undermined the political autonomy of the Autonomous Communities. First, Organic Law 2/2012 of 27 April on Budget Stability and Financial Sustainability has regulated the implications of the golden rule incorporated in Art. 135 of the Constitution and limited the financial autonomy of the Autonomous Communities. Article 135 of the Constitution requires the Autonomous Communities to pass balanced budgets, limits their capacity to issue public debt and, overall, imposes the supervision of their financial system by the Central Government

> and European institutions. In addition, the material powers and competences of the Autonomous Communities have been constrained as a consequence of legislative measures at the central level such as Law 20/2013 of 9 December on the Guarantee of the Internal Marke. Finally, some austerity measures launched by the Central Government have had an impact on the self-organisation and personnel of the Autonomous Communities. For instance, the Central Government has imposed a reduction of the salaries of the civil servants of the Autonomous Communities, and recently the CC has upheld this measure declaring that the Central Government is entitled to take such measures and, therefore, to delve into the organisational structures of subnational entities. (Ibid., 570-571).

Analysis

Chapter 1, Section 11, Point 2 of Spanish Constitution played an important part during the 2015 political campaign in Catalonia. The then prime minister Mariano Rajoy and its cabinet were trying to scare Catalans with a claim that leaving Spain means leaving EU. But as pointed out in one of the TV interviews with Rajoy *'No person of Spanish birth may be deprived of his or her nationality.',* which meant that even if Catalonia were not a part the EU, its citizens would be. The Spanish Constitution also allows double citizenship for citizens of states with which Spain has a strong historical bond (Klonowski 2014).

Other Legal Acts

National Level

At the national level, Spain has several laws that protect the rights of national and ethnic minorities. These include:

- The Organic Law 3/2007 of 22 of March, on the Effective Equality of Man and Women. (Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres.),
- The Organic Lew 2-2006 of 3 of May on Education. (Ley Orgánica 2/2006, de 3 de mayo, de Educación.),
- The Law 52/2007 of 26 of December on the Historic Memory. (Ley 52/2007, de 26 de diciembre, de Memoria Histórica.).

The Law on the Historic Memory states:

> Article 2. General recognition.
>
> As an expression of the right of all citizens to moral reparation and to the recovery of their personal and family memory, the radically unjust nature of all convictions, sanctions and any form of personal violence produced for political, ideological or religious reasons during the Civil War, as well as those suffered for the same reasons during the Dictatorship, is recognized and declared.
>
> 2. The reasons referred to in the previous section include membership of, collaboration with or relationship to political parties, trade unions, religious or military organizations, ethnic minorities, secret societies, Masonic lodges and resistance groups, as well as the exercise of behaviors linked to cultural, linguistic or sexual orientation choices.
>
> 3. It also recognizes and declares the injustice of the exile of many Spaniards during the Civil War and the Dictatorship.

Regional and Local Level

On the regional level Spain is divided into 17 autonomous regions with regional parliaments, governments and administration. There are Autonomous Communities (Andalusia, Aragon, Asturias, Balearic Islands, Basque Country, Canary Islands, Cantabria, Castile and León, Castilla-La Mancha, Catalonia, Extremadura, Galicia, La Rioja, Madrid (Community of Madrid), Murcia, Navarre, Valencian Community). The Autonomous Communities have the power to legislate and

govern on various matters within their territorial boundaries, including education, healthcare, culture, and public safety.

Apart of the status of Autonomous Regions, some regions have a status of Historic Nationalities. The three regions – Catalonia, Basque Country, and Galicia – have additional powers and privileges granted by their specific statutes of autonomy.

> Section 2
>
> The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all Spaniards; it recognizes and guarantees the right to selfgovernment of the nationalities and regions of which it is composed and the solidarity among them all (Spanish Constitution).

Meanwhile, Navarre has a unique status of a Chartered Community. The region has its own administrative institutions and a separate legal system, known as the Navarrese Legal Regime. Navarre has the power to govern and legislate on various matters within its territory, and it has a higher degree of fiscal autonomy compared to other regions.

Special statuses are not only granted to regions but also to the cities. Ceuta and Melilla have a status of Autonomous Cities. Due to their location in northern coast of Africa and separation from the mainland Spain, the cities were given have a higher level of self-government compared to other municipalities and are governed by their own institutions.

Thanks to the autonomy, minorities can be protected also on the regional level. In Basque Country and Catalonia, Basque language, Euskara, and Catalan are the official languages, while Galicia introduced laws to protect the Galician language and promote its use in education, the media, and public life. According to Iñigo Urrutia Libarona, the process of creating legal solutions for Basque language started in the 1980s as a consequence of a political consensus (Urrutia Libarona 2021, 11). Most of the legal acts presented by the Author are on the regional level of administration. He points out that the Statue of Autonomy is not very ‘expressive’ when it comes to the legal aspects of the double officiality regime. It does however bring some central aspects, like the recognition of the right of people to use their own language (Ibid., 17).

On the local level there are also known attempts of protecting the minority[78] languages. The city of Barcelona has a policy of affirmative action for ethnic minorities in employment, education, and housing and the city of Valencia has a policy of promoting the use of Valencian, a regional language, in public spaces and signage.

Examples of the Laws on the regional level are:

- Law regulating the use of Catalan in Balearic Islands (Ley 9/2012, de 19 de julio, de modificación de la Ley 3/2007, de 27 de marzo, de la función pública de la Comunidad Autónoma de las Illes Balears. Norma derogada por Ley 4/2016, de 6 de abril de medidas de capacitación lingüística para la recuperación del uso del catalán en el ámbito de la función pública.),
- Decret regulating validation of Basque language certificates (Decreto 64/2008, de 8 de abril, de convalidación de títulos y certificados acreditativos de conocimientos de euskera, y adecuación de los mismos al Marco Común Europeo de Referencia para las Lenguas.).

ACFC

On February 3, 2021, the Advisory Committee for the Framework Convention for the Protection of National Minorities adopted a resolution on Spain, stating that the situation of national minorities in the state did not require country-specific monitoring at that time.

The resolution noted that Spain has taken positive steps towards improving the situation of national minorities, including adopting legislation to protect linguistic diversity and recognizing the rights of the Roma community. The resolution also acknowledged that Spain has engaged in a constructive dialogue with the Advisory Committee and responded to its recommendations.

[78] The use of the word *minority* is often criticized by the group itself as they argue they are not a minority but a majority within their region.

However, the resolution also highlighted ongoing concerns regarding the situation of the Basque and Catalan minorities, particularly with regard to their right to use and learn their languages, and their participation in public life. The resolution called on Spain to continue its efforts to fully implement the Convention and to address these concerns in a constructive manner.

In summary, while the Advisory Committee did not consider it necessary to initiate country-specific monitoring of Spain's implementation of the Convention at that time, it called on Spain to continue to work towards full implementation and to address ongoing concerns regarding the rights of national minorities, particularly the Basque and Catalan communities.

The resolution adopted by the Advisory Committee for the Framework Convention for the Protection of National Minorities on Spain on February 3, 2021 did not specifically focus on the right to self-identification. However, the Advisory Committee has previously raised concerns about this issue in relation to Spain, particularly with regard to the Basque and Catalan minorities.

In its previous reports on Spain, the Advisory Committee has noted that the right to self-identification is a fundamental aspect of the protection of national minorities, and that Spain should take steps to fully respect and protect this right. The Committee has recommended that Spain recognize the distinct identities of the Basque and Catalan communities, and ensure their participation in decision-making processes that affect them.

The Advisory Committee has also highlighted the importance of ensuring that national minorities are able to use and learn their own languages, as an essential aspect of their right to self-identification. The Committee has recommended that Spain adopt measures to promote the use and recognition of Basque and Catalan, and to provide adequate education and media representation in these languages.

Overall, while the February 3, 2021 resolution did not specifically address the right to self-identification, the Advisory Committee has previously raised concerns about this issue in relation to Spain and has recommended that the state take steps to fully respect and protect this right, particularly in relation to the Basque and Catalan minorities

Self-identification in Practice

Regarding collecting data on ethnicity, the European Commission admits that (…) *racial or ethnic minority communities are seldom involved in designing, implementing and establishing policies through racial and ethnic data collection* (…). (Farkas 2017, 42) The Commission encourages states to involve the recognised ethnic minorities in the process of equality data collection. The European Commission's report on data collection in the field of ethnicity from 2017 states that:

> When preparing reports on discrimination experience, the Spanish Council of equal treatment consulted NGOs on the categories. The final categories were based on geographic origin present among immigrants in Spain. NGOs and ethnic minorities were involved in collecting data. (Ibid., 43)

In the 2011 Census there were no questions referring to ethnicity. In the individual questionary the surveyed person is asked about their nationality – understood as citizenship. Questions 7 and 8 refer to the birth state of the mother and father of the surveyed person.

Farkas notes that only Spain, Belgium, France, and Italy have organised specific national surveys on racial or ethnic origin (Farkas 2017, 27).

In Spain both research institutes and universities play an important role as they gather data on the experience of discrimination of racial and ethnic minorities. This is done by through the testing of discrimination to surveys (Ibid., 27) – *the Map of Discrimination covers both racial and ethnic origin and consists of two pieces of research published in 2013: the first one being a diagnostic study on secondary sources on discrimination in Spain published in 2013 and the second regarding Perceptions of Discrimination in Spain developed by the Sociological Research Centre* (Ibid., 28).

POLAND

Poland is one of the most ethnically[79] homogeneous states in Europe. There are 13 recognised minorities, as per 2011[80] making 0,75% of the society. They live in a larger clusters mostly in the Opole, Podlaskie, Silesian, Warmian-Masurian, Lower Silesian, Lesser Poland, and Pomeranian voivodeships (Malicka, 2017, 56). Zbigniew Rykiel adds that regional consciousness in Poland is generally limited due to two factors – *(...) rather frequent changes in the regional divisions (...)* and *(...) the structural weakness of regional consciousness must be kept in mind, characteristic of the communist system with its impossibility of free social self-organisation* (Rykiel 1994, 118).

At the beginning of this part, we should establish why Poland is one of five states analysed? Poland represents post-communist states which wrote their Constitutions and minority laws quite late in the history comparing to other European states. The other factor here is writing the minority laws while planning to become a member of European Union and other international organisations. Katharina Crepaz points out that the process of Europeanization has had a strong impact on minority protection and is well research as to EU's "new" member states but not the "old" ones. It can be explained with how accession phase impacts minority politics (Crepaz 2014, 73).

It is also important to add, that the some of the territories inhabited by the minorities did not belong to Poland until XX century. We can therefore assume that the cultures of these minorities were influenced by other national state than Poland. Moreover, as Patrycja Matusz and Danielle Drozdzewski underline, Poland's recent history can be characterised by *enduring threat and uncertainty* (Drozdzewski and Matusz 2021, 2).

The Authors continue - *Following a 123-year absence of the formal Polish state, the reformation the Second Polish Republic in 1918 lasted just 19 years until German and Russian forces occupied Poland again during WWII. The post-WWII Soviet occupation of Poland lasted until 1990, just 30 years ago* (Ibid. 2-3). Descriptions similar to this characterise many of the EU

[79] The author uses Polish word 'narodowościowym', meaning 'nationally' but in English, using this context I decided to use the word 'ethnically'.

[80] Data from 2011 census.

member states, where ideas democracy and self-determination are still relatively new. Analysing the democracy, we have to remember about the memory that the society carries. On the other hand, as established earlier, identities are created on the us-them dichotomies. Nations like Polish have recently been minorities in another states and can easily repeat the behaviours they have received.

That said let's go back to what was said in the earlier parts – minority rights development is parallel to big events influencing societies and minorities, like Second World War or events in Yugoslavia.

Post-communist states written their laws in the point when minority rights were on the international agenda. Willingness to catch up with the Western Europe, plans to enter European Union meant that the law-makers in Easter Europe had to take into account what has already been developed in regard to minority rights. The collapse of USSR influenced the academic world. After 1989 minorities in Poland gained interest as a research area. The publications regard both particular minorities and their general situation (Łodziński, Szmeja and Warmińska 2014, 10). Łodziński, Szmeja and Warmińska state that the reason behind this was a global trend but more importantly an organic reaction to a thesis that Polish society is ethnically homogenous (Ibid., 10). In Poland, as well as in other state which got their independency back after the fall of the USSR, the freedom of association was established. With it, new possibilities for minorities.

Hanna Bojar emphasises the problem of exclusion of the minorities[81] (Kamusella 2008, 15), focuses on the way these groups reacted to democratisation of Poland and how they institutionalised and articulated their needs in the new political reality.

Bojnar, interested in the problems of exclusion of the minorities in their political activities and legal rights, mentions the anti-communist collectivism – creating a society in a collective-national categories and the category of post-communist egalitarianism. According to the Author, due to the communist past there is very little space in Polish society for accepting diversity. As Bojar states pluralism in Poland is understood as tolerating different minorities rather than accepting their equality (Ibid., 15).

[81] The Author analysed minorities in a broader sense as all types of minorities – national, ethnic, religious, sexual, etc.

As per other researchers, Berlińska and Sakson analyse the beginnings of German minority recognition. Both Authors mention the political democratisation and a new possibility of expressing the nationality up to the point not recognised by the state (Krasnowolski 2011, 4-5).

Kamussela quotes another Author – Antonina Kłoskowska – who analysing national cultures, national identity and identification, brings up minorities' issues focusing on the majority's attitude toward minorities.

According to Kłoskowska, healthy relation between a majority and a minority is only possible when the stronger partner[82] is able to auto-reflect and look critically and their own values. She states the accepting other cultures' values is possible without neglecting one's own values when it is based on mutuality. The Author emphasizes that this should not be a rule only in law but also in a daily life and relations between the members of minority and majority (Kamusella 2008, 16).

Małgorzata Budyta-Budzyńska who researches minorities' political activity and conflict resolving believes that laws, especially the Constitution and electoral law, helps minorities rebuilt their national awareness, auto-organisation and auto-institutionalisation, which all help preserving the ethnicity (Ibid., 16).

Kamusella notices that there is a visible swift in researchers' approach towards minorities in Poland. As reported by Kamusella researches about groups' identity are being replaced with researches about significant issues, often regarding minority's past. He quotes Szmeja, who sees group's different past experience as factor which rapidly gains popularity as a base to receive new status (Ibid., 16).

As an example, to that, the Author points out that the past different to the one the majority had, is an important aspect of Silesian identity. Kamusella notes that even though Silesians are not recognised by Polish legal system, they are often included in academic research and become a topic of para-encyclopaedic publications (Ibid., 17).

[82] According to Kłoskowska, both sides can do it, but it is easier for a majority as it is not taking risk. The majority in a democracy will always be in an easier situation.

Post-Communist history

David J. Smith notices that the institutional legacies have strongly influenced *debates over the political management of ethno-diversity both within post-Communist central Europe and within the new states established following the demise of the USSR* (Smith 2013, 31).

Poland is one of the European post-communist states which formed a new democracy in the nineties. As we have seen in the last part, the development of the minorities rights was a long process, influenced by big events. Poland and other post-communist states were creating their minority related laws after certain changes have already been made in the way we see and treat minorities. Smith notes that there are certain *trends towards the ethnicisation of politics within a post-Communist setting* while the nineties brought Europe bloody conflicts in both former Yugoslavia and parts of the former USSR. Those events had been a centre of minority-related discussions at the time including minority protection within the OSCE, the Council of Europe, and the European Union (Ibid., 31).

Smith notes a relation between the minority rights agenda and three main concerns:

- promoting democratisation,

- social justice,

- equal opportunities to participate in public life (especially concerning Roma) (Ibid., 31-32).

Meanwhile, the agenda of nation-building processes was giving a priority to *stability, standardisation, and strong central authority over devolution and cultural pluralism* (Ibid., 32). The author sees it as a reason why autonomous regions are more popular in Western than Eastern Europe. De-territorialisation of minority demands was supposed to make it easier to keep the territorial integrity, which after what happened in Yugoslavia was high on the list of priorities of the international agenda. As Smith states it – *boosting minorities' representation and participation in public life has arguably been a secondary consideration* (Ibid., 32).

Smith sees the non-territorial autonomy as a tool that can be used by a state to build loyalty of minorities towards itself bringing up Russia as an example.

On the other side, Krasnowolski in his analysis prepared for Polish Senate in 2011, cites Stanisław Łodziński stating that the documents created in the nineties, in some extend, have caused the regress of ethnic awareness in Europe and the world (Krasnowolski 2011, 4).

Krasnowolski reminds the reader about the distinguishment between different groups – national, regional and ethnic minorities. He agrees that the most important feature for all of those groups is an origin different to the majority group (Ibid., 4). He reminds the reader that while these terms seem to be clear and intuitive the difference between national and ethnic minority in Polish law is the fact if the groups identify with an existing state other to the one, they live in.

Krasnowolski admits that such a distinction is not popular and has its cons. As an example, he brings the situations of Kurds and Roma that are unable to be recognised as a national minority. He shares former Ombudsman Janusz Kochanowski's opinion. Kochanowski believed that difficulties with nationality opposed to citizenship are caused by very personal character of self-identification (Ibid., 4).

Advisor to the Parliamentary Commission for National and Ethnic Minorities agrees that putting the term *national minority* into the legal brackets brings controversies among the researchers and lawyers. He adds that most of the international laws regarding minorities do not use any specific definition leaving this task to States (Ibid., 4).

Andrzej Sadowski underlines that the system transformation in Poland did not solve but started an effective process of solving problems of minorities living within its territory. Poland has formally admitted the existence of said minorities and given recognised minorities *a limited right to cultural autonomy and basic rights based on a democratic transformation, consequently the recognised minorities play role in a political life of the state* (Sadowski 2014, 33).

The author reminds that institutionalisation of minorities is an ongoing process and that the 2005 legislation - Act of 6 January 2005 on national and ethnic minorities and on the regional languages - was a breaking point in creating a framework for minority protection in Poland (Ibid., 33-34).

Sadowski brings up Sławomir Łodziński's theory of two stages, that can be distinguished that illustrate the evolution of Polish policy towards national minorities (Ibid., 33). The first period lasted until 1990s and is associated with *the shaping of their subjectivity in the institutional sphere, in law*

and politics. On the other side, the second stage can be characterised underlines the issues of *socializing the young generation in order to maintain the ethnic identity of the group, as well as efforts to achieve equal recognition in the social sphere - problems of discrimination and discussions about the 'bill of wrongs' from the past* (Ibid., 33). Sadowski comments, that the proposed categorization suggests that during the 1990s, the focus primarily revolved around addressing minority issues within the realm of institutions and laws. However, since the early XXI century, the core challenges have shifted towards social, cultural, and identity-related aspects specific to individual minority groups, as well as their acknowledgment not only through legal means but also by the prevailing ethnic majority in Poland. When it comes to institutional and legal remedies, considerations arise regarding the extent and potential boundaries of such measures concerning national minorities, ensuring they do not compromise the political and territorial sovereignty of the Polish state (Ibid., 33).

The Author argues, that the issues pertaining to the well-being, equality, and safety of national minorities within the ethnic fabric of the Polish state, as well as the social acceptance of national minorities as equal and unrestricted citizens of the shared nation, are considerably intricate. Despite significant advancements in granting rights within the state, national minorities continue to face limitations in terms of their agency and the ability to organize socially. Naturally, there arises a question regarding the boundaries of agency for national minorities and how to effectively uphold the principles of equality and freedom in relation to ethnic and national minorities within a democratic society (Ibid., 33-34).

The analysis presented by Sadowski and Łodziński could be also referred to other states with shared history, including Bulgaria.

Minorities in Poland

There are several minorities in Poland, each of them with deferent background. In the North-East Poland there are Belarussians, Lithuanians, Russians, Ukrainians, and Tatars. They represent Islam and two branches of Christianity – Catholicism and Orthodox (Bieńkowska-Ptasznik 2007, 15). Bieńkowska-Ptasznik notices that this area is mostly analysed in the context of borderland – the

mentioned groups occupy a bigger territory on both sides of the frontier. Tatars in this case are an exception. The group settled in the Polish–Lithuanian Commonwealth, specifically the Grand Duchy of Lithuania in XIV century. The migration took place until XVII century.

Bieńkowska-Ptasznik adds that when analysing borderland areas, scholars focus on social and cultural aspects of phenomenon that take place there. They point out the artificial character of frontiers and the way the groups divided by them influence on one another (Ibid., 16). The author brings up after Grzegorz Babiński that while the frontier has an artificial and dividing character, borderland's character is closer to natural state and represents spontaneous range of cultures, ideas, values, and ethnos (Ibid., 16).

In Southern Poland the main minorities are Germans and Silesian (the biggest and still unrecognised minority group).

Legal framework

The 2004 EU enlargement was the second EU enlargement after the introduction of the Copenhagen Criteria. Polish legal system regarding the minority rights is therefore strongly influenced by the EU requirements. Gwendolyn Sasse notices that *minority rights have been both a prominent and paradoxical issue during the EU's eastward enlargement*, which has not been an important case before. She underlines the importance of the Copenhagen Criteria, which *enshrined "the respect for and protection of national minorities" as a condition for accession, and the Commission's Opinions of 1997 and the Regular Reports 1998–2003 have monitored compliance with this criterion* (Sasse 2004, 61).

What is characteristic for Polish legal framework concerning minorities is a division between national and ethnic minorities introduced in the Act of 6 January 2005 on National and Ethnic Minorities and on the Regional Languages.

Agata Kleczkowska points out that legal records regarding cultural, religious and ethnic identity can be found in different legal acts within Polish legal system. She names Articles 53 (about

freedom of conscience and religion), 25 (about equality of all Churches) and 35 (about national and ethnic minorities) of Polish Constitution as the most important ones (Kleczkowska 2013, 105).

The Constitution

Poland (with its constitution written in 1997) is one of 16 EU Member States that establish minority rights in their Constitutions. Other states are Austria (1920), Bulgaria (1991), Croatia (1991), Czech Republic (1993), Denmark[83] (1953), Estonia (1992), Finland[84] (1999), Hungary[85] (2011), Italy[86] (1947), Latvia (1922), Lithuania (1992), Portugal[87] (1976), Romania (1991), Slovak Republic (1992), Slovenia (1991), Sweden (1974). As we can see Eastern-European states that wrote their constitutions in the 1990's all contribute to the minority rights in them. The only Western states mentioning minority rights in their constitutions are Denmark, Finland*, Italy, Portugal and Sweden. Although the Western states tend to only partially establish these rights – Denmark only mentions the minority right to establish their voting rights, Finland recognises Swedish and Sami as a minority and Italy only gives rights to linguistic minorities.

Belgian Constitution mentions the division of the state to regions speaking different languages.

Albi and Bardutzky in their collection of reports about European Constitutions point out that states such as Poland, the Czech Republic, Slovakia, Slovenia, Estonia, Latvia, Lithuania, Romania, Bulgaria and Croatia, which later became the *new Member States*, had all developed *strict constitutional safeguards as a reaction to the human rights violations and abuses of public power* after they have previously experienced socialist and communist regimes and their arbitrary exercise of power (Albi and Bardutzky 2019, 14).

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[83] only regarding elections

[84] Only about Swedish minority and Sami

[85] Nationalities, not minorities

[86] Linguistic minorities

[87] *Minorities shall possess the right to democratic opposition, as laid down by this Constitution and the law*.

1989 was a beginning of a new chapter in Polish constitutionalism. The state has decided to get rid of the 1952 constitution imposed by the communist regime and create a new one for a new-born Third Republic. The new Constitution was to reflect the upcoming changes leading towards a democratic state and a market economy – the political and economic transition. The principle of the sovereignty of the Nation has been restored while another principle – of a democratic state ruled by law – was introduced (Kawczyńska and Biernat 2019, 747).

Kawczyńska and Biernat in their report The Role of the Polish Constitution (Pre-2016): Development of a Liberal Democracy in the European and International Context point out that the experiences with the Constitution from 1952 had strong influence on the founders of the new Polish Constitution. They have decided to put an emphasis on the provisions regarding issues such as human rights, citizens' rights and freedoms and how to protect those. The authors note that all of that is placed before the provisions on the functioning of the state and its organs (Ibid., 748). Moreover, those provisions make 25% of the whole Constitution (Ibid., 749).

The authors agree that those solutions confirm state authorities' *subsidiary role in relation to the individual*. They also ought to establish *the highest guarantee and respect for individual rights and freedoms* (Ibid., 749).

As the Polish Constitution is one of the youngest in Europe, it has been influenced by acts like the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966) and the European Convention on Human Rights (1950) and the constitutions of other states (Ibid., 759-760).

Kawczyńska and Biernat notice that it is the Article 30 that contains the most fundamental principle (Ibid., 759), stating that:

> [t]he inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities.

The role of international institutions in shaping the new Polish Constitution, was not direct, but significant. In 1991 Poland has signed Europe Agreement establishing its relations with

European Communities and its Member States. The new Constitution had to contain a legal basis for the future accession to the European Union (the so-called ‘European clause’ or ‘integration clause’ became Article 90) (Kawczyńska and Biernat 2019, 749). It is worth noticing that having in mind the possible accession it had also have correspond with the EU standards. Regardless that, some observers consider the current provisions insufficient pointing out further developments of EU’s legal framework, especially the Treaty of Lisbon (Ibid., 752).

Although we can see the international institution’s influence, Crepaz points out that EU’s focuses human rights protection and anti-discrimination system rather than minorities themselves. (Crepaz 2014, 74).

Analysis

Kleczkowska discusses the importance of various provisions in the Polish Constitution related to issues of diversity, culture, and religion. She notes that Article 53 guarantees freedom of conscience and religion, and is closely tied to Article 25, which establishes the equal rights of all churches and religious associations.

Article 53 of the Polish Constitution guarantees freedom of conscience and religion to everyone. It allows individuals to practice their religion publicly or privately, or to not have a religion at all. The article also limits the freedom to express one's religion or beliefs when it endangers public safety, order, health, or morals, or the rights and freedoms of others. Additionally, no one can be forced to reveal their religion or beliefs, except when required by law. Finally, the article prohibits persecution for one's beliefs or religious practices and provides legal recourse for those who suffer persecution for defending freedom of conscience or practicing their religion.

Article 35 also ensures the freedom of Polish citizens belonging to national and ethnic minorities to preserve and develop their own language, customs, and culture. Additionally, Article 32 prohibits discrimination in political, social, and economic life for any reason, and Article 27 establishes Polish as the official language but also notes that this does not violate the rights of national minorities under ratified international agreements. Kleczkowska concludes that while these constitutional provisions are important, the most extensive protections for minority rights can be

found in legislation, which includes numerous clauses prohibiting discrimination based on ethnic or religious origin and addressing specific principles and values relevant to each group (Kleczkowska 2013, 105-106).

We can assume that if the Polish lawmakers had not have in mind entering the international institutions, minority languages would not have been protected by Constitution. Ryszard Chruściak comments, that even though Polish Constitution establishes Polish as an official language which might not be the perfect solution for minorities, it also established in the Article 27 that it cannot violate ratified international laws (Chruściak 2010, 103).

Some parts of the Constitution are not directly related to minorities but either way can help them pursue their rights. For example, Article 12 does not mention the minorities but gives all the citizens the right of association, with exception provided by Article 13. The freedom of association is an important aspect for minorities to preserve their traditions and culture. Same goes to Article 25, which assures all citizens have a freedom of choosing their believes and that all churches are equal (while giving special status to Roman Catholic Church). Article 37 establishes that anyone who's under *the authority of the Polish State can enjoy the freedoms and rights ensured by the Constitution*.

Kawczyńska and Birnat point out that Articles 30 to 37 contain provisions devoted to general principles (Kawczyńska and Biernat 2019, 749). Article 32 can be interpretate regarding national minorities. It states:

> 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.
>
> 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

This type of antidiscrimination statement is included in most of the European Constitutions and is rather vague with possibilities for interpretation. Article 35 on the other hand refers directly to national and ethnic minorities. It reads:

> 1. The Republic of Poland shall ensure Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture.

2. National and ethnic minorities shall have the right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity.

Taking a quick look back at the Constitution as whole we can see sections of Articles referred to different topics. Articles 57 to 63 refer to political freedoms and rights, another aspect crucial for minorities, with Article 58 guaranteeing everyone the freedom of association. Articles 64 to 76 relate to economic, social and cultural freedoms and rights, Articles 77 to 81 establish means for the defence of freedoms and rights, while Articles 82 to 86 ensure obligations. Further provisions concerning rights and freedoms of the individual can be also found in the Preamble, and in Chapters I, IV and XI (Kawczyńska and Biernat 2019, 749)

Other Legal Acts

The laws on minority protection - Act of 6 January 2005 on national and ethnic minorities and on the regional languages and on the school system from 2007, *were under the influence of the accession process, and the EU was seen as a catalyst for the law on the protection of national minorities, which had been discussed since early 1990s* (Crepaz 2016, 160). The law was introduced after the state has undergone the EU accession process.

Act of 6 January 2005 on national and ethnic minorities and on the regional languages

Act of 6 January 2005 on national and ethnic minorities and on the regional languages is a main act after the Constitution regulating the situation of national and ethnic minorities in Poland. It contains 43 Articles and introduces the division between national and ethnic minorities specific for Poland. The definition is provided by Article 2, which states:

Article 2

1. A national minority, as defined by this Act, shall be a group of Polish citizens who jointly fulfil the following conditions:

1) is numerically smaller than the rest of the population of the Republic of Poland;

2) significantly differs from the remaining citizens in its language, culture or tradition;

3) strives to preserve its language, culture or tradition;

4) is aware of its own historical, national community, and is oriented towards its expression and protection;

5) its ancestors have been living on the present territory of the Republic of Poland for at least 100 years;

6) identifies itself with a nation organized in its own state.

2. The following minorities shall be recognized as national minorities:

1) Byelorussians;

2) Czechs;

3) Lithuanians;

4) Germans;

5) Armenians;

6) Russians;

7) Slovaks;

8) Ukrainians;

9) Jews.

3. An ethnic minority, as defined by this Act, shall be a group of Polish citizens who jointly fulfil the following conditions:

1) is numerically smaller than the rest of the population of the Republic of Poland;

2) significantly differs from the remaining citizens in its language, culture or tradition;

3) strives to preserve its language, culture or tradition;

4) is aware of its own historical, national community, and is oriented towards its

expression and protection;

5) its ancestors have been living on the present territory of the Republic of Poland for

at least 100 years;

6) does not identify itself with a nation organized in its own state.

4. The following minorities shall be recognized as ethnic minorities:

1) the Karaim;

2) the Lemko;

3) the Roma;

4) the Tartar.

This Act, while giving protection to some minorities, neglects the rights of other groups which identify as minorities. Minorities not included in the Act are not recognised by the state and therefore cannot claim the rights given by Act. Silesians attempted several times to change this law and be added to it but with no lack.

Kleczkowska points out that group rights protecting ethnicity are usually *legally guaranteed programs funded by public money and aim to recognize and promote ethnic, religious, linguistic, and other groups and their contributions to the political life of the community.* As examples she mentions:

- the Program for the Integration of the Roma Community in Poland for the years 2014-2020,
- (earlier) Program for the Roma Community in Poland,

and other legal acts:

- the Minority Rights Act, including provisions protecting regional language (chapters 2 and 4),
- the Education System Act [Journal of Laws 1991 No. 95 item 425, as amended], including provisions relating to promoting knowledge about minorities and schools

for national and ethnic minorities (Article 13(7), Article 15(2a), and Article 62(5c)) (Kleczkowska 2013, 106).

As ‘special representational rights’, which aim is to help minorities to have a political representation, the Author mentions:

- Sections of the Electoral Code [Journal of Laws 2011 No. 21 item 112], which

> (…) allows voters associated with registered organizations of national minorities to form electoral committees (Article 95, Paragraph 2). According to Article 197, Paragraph 1 of the Electoral Code, such committees can benefit from exemption from the requirement to obtain at least 5% of valid votes nationwide for candidate lists (Ibid., 106-107).

- the Law on Guarantees of Freedom of Conscience and Religion [Journal of Laws 1989 No. 29 item 155]:

> (…) its provisions not only guarantee the respect for religious diversity in Poland but also relate to other branches of law. For example, Article 42, Paragraph 1 guarantees that "Persons belonging to churches and other religious organizations whose religious holidays are not statutory days off from work may, at their own request, be granted leave from work or study for the time necessary to celebrate these holidays, in accordance with the requirements of their religion." The phrase "in accordance with the requirements of their religion" may raise interpretational doubts, as different religions may distinguish between obligatory, compulsory, and recommended holidays, each with different levels of participation (Ibid., 107).

Jarosław Sułkowski names all the rights given to the minorities by Polish law naming their sources (Sułkowski 2015, 100):

The right	**The legal source**
the freedom of sustaining and development of one’s language	Article 35 (1) of the Constitution Article 8 and Chapter 4 of the Act on National and Ethnic Minorities and Regional Language

freedom to maintain customs and traditions, and to develop their own culture –	Article 35 (1) of the Constitution, Articles 1–7 of the Act of 17 May 1989 on the Guarantees of the Freedom of Conscience and Faith, Chapter 3 of the Act on National and Ethnic Minorities and Regional Language;
the right to establish their own educational and cultural institutions, as well as institutions aiming at the protection of religious identity	Article 35 (2) of the Constitution, Article 13 of the Act of 7 September 1991 on the System of Education Act on the Guarantees of the Freedom of Conscience and Faith;
the right to participate in the resolution of matters pertaining to their national identity –	Article 35 (2) of the Constitution, Articles 23–30 of the Act on National and Ethnic Minorities and Regional Languages;
the right to use their minority language freely in private life and in public –	Article 2 of the Act of 7 October 1999 on the Polish Language, Chapter 2 of the Act on National and Ethnic Minorities and Regional Language;
the right to spell their given and last names according to the spelling rules of their minority language	Article 7 of the Act on National and Ethnic Minorities and Regional Language;
the right to have access to the public media	Article 54 of the Constitution Article 21 (2) (9) of the Act of 29 December 1992 on Radio and Television Broadcasting;

the right to unrestricted performance of religious practices	Article 53 of the Constitution Act on the Guarantees of the Freedom of Conscience and Faith
the right to partake in public life and to electoral privileges for election committees of minority organisations	Article 197 of the Act of 5 January 2011 – the Electoral Code;
the right of association	Article 58 of the Constitution and Article 1 of the Act of 7 April 1989 on Associations

Source: own elaboration. Based on Jarosław Sułkowski's paper *On Some Rights of National Minorities in Poland* (Ibid.).

Article 4 of the Law on the transposition of certain provisions of EU law regarding equal treatment of 3 December 2010[88] (Dz. U. No 254, item 1700), in its consolidated version (Dz. U. of 2016, item 1219) ('the Law on equal treatment') protects people regardless their: sex, race, ethnic origin, nationality, religion, creed, belief, disability, age or sexual orientation. Article 8(1)(2) of that law states *The unequal treatment of individuals on the basis of sex, race, ethnic origin, nationality, religion, creed, belief, disability, age or sexual orientation shall be prohibited with respect to (…)*.

ACFC

On 21 October 2020, the Advisory Committee for the Framework Convention for the Protection of National Minorities adopted a resolution concerning Poland. The resolution noted some positive developments in the protection of national minorities in Poland, but also identified several concerns.

The resolution highlighted the need for greater respect for the rights of national minorities, including the right to use minority languages in public life, access to education in minority

[88] Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania z dnia 3 grudnia 2010 roku. Dz.U. 2010 nr 254 poz. 1700.

languages, and participation in decision-making processes. The Advisory Committee recommended that Poland take several measures to address these issues, such as increasing the availability of education in minority languages and promoting diversity in the media.

The resolution also expressed concern over incidents of hate speech and discrimination against national minorities in Poland, and called for stronger measures to combat these phenomena. The Advisory Committee recommended that Poland increase efforts to prevent and prosecute hate speech and hate crimes, and promote intercultural dialogue and tolerance.

Overall, the resolution emphasized the importance of protecting the rights of national minorities in Poland, and called for concrete steps to be taken to address the concerns raised by the Advisory Committee. The resolution also called for increased cooperation between the Polish authorities and minority communities, and for the establishment of a national strategy for the protection of the rights of national minorities.

In the resolution concerning Poland adopted by the Advisory Committee for the Framework Convention for the Protection of National Minorities on 21 October 2020, the right to self-identification was identified as an important issue in the protection of national minorities.

The resolution noted that the right to self-identification is a fundamental right recognized under international law and is essential to the protection and promotion of the identity of national minorities. The Advisory Committee expressed concern that the rights of national minorities to self-identify and express their identity were not fully respected in Poland.

The resolution recommended that Poland take measures to ensure that national minorities are able to exercise their right to self-identification, including through increased access to education in minority languages and the promotion of diversity in the media. The Advisory Committee also emphasized the importance of promoting the effective participation of national minorities in decision-making processes.

The resolution further highlighted the need to combat hate speech and discrimination against national minorities in Poland. The Advisory Committee recommended that Poland strengthen its efforts to prevent and prosecute hate speech and hate crimes, and promote intercultural dialogue and tolerance.

In conclusion, the resolution concerning Poland underlines the importance of protecting the right to self-identification of national minorities and calls for concrete measures to be taken to ensure that this right is respected and protected in practice. It emphasizes the need for greater respect for the rights of national minorities and the promotion of diversity, tolerance, and intercultural dialogue.

As ACFC sums it up, the fundamental difference between national and ethnic minority (according to The Act on National and Ethnic Minorities and on Regional Language of 6 January 2005) is *the existence of a "kinnation" organised in its own State, which is a necessary attribute of a "national" minority as compared to an "ethnic" minority* (Article 3, Second round compilation, 61). It is important to note that when ratifying the Convention, Poland made two declarations. One about the understanding of a minority – Polish state considers it to be national minority according to its law while citizens of Poland. Meanwhile, the Commission states:

> The Advisory Committee underlines that, in the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their state. The position of the Polish Government is therefore deemed to be the outcome of this examination (Council of Europe 2011, 56).

The Advisory Committee noted an improvement as Polish States has recognised Kashubians not as a minority but a group of Polish nationals speaking a regional language (which is also under a special protection according to the Act). The Committee took a note of Silesians trying to be recognised as a minority and actions the members of a group taken to make that happen (Article 3, Second round compilation, 61).

> The Advisory Committee further urged the Polish authorities to continue their dialogue with the Silesians and to ensure that persons claiming to belong to the Silesian group are able to express their identity (Article 3, Second round compilation, 61).

List of other legal acts

- Act on National and Ethnic Minorities and on the Regional Languages - This act regulates the rights of national and ethnic minorities in Poland and the use of regional languages in certain regions of the state.
- Act on Equal Treatment - This act prohibits discrimination on various grounds, including national or ethnic origin.

- Act on Polish Citizenship - This act regulates the acquisition and loss of Polish citizenship, including provisions for individuals belonging to national and ethnic minorities.
- Act on Broadcasting - This act regulates broadcasting in Poland, including provisions for broadcasting in regional and minority languages.
- Act on National Council of Radio Broadcasting and Television - This act establishes the National Council of Radio Broadcasting and Television, which is responsible for regulating and overseeing the public broadcasting sector, including provisions for broadcasting in minority languages.

Self-identification in Practice

Sadowski discusses the concept of a policy of difference and its implementation in practice. The author argues that while there are calls for such policies, there is often a lack of clarity on what they actually entail. In practice, policies that aim to promote and protect the cultural identity of minority groups may actually end up forcing individuals to publicly declare their ethnic or national identity, which can be stigmatizing or even dangerous in certain contexts. He writes:

> In practice, there are many examples of forcing representatives of national minorities to express their ethnic identity (local elections, censuses, and others), and motivating those who have long chosen other national affiliations to be active in the development of the culture of national minorities. Referring to the policy of difference also involves pressuring individuals to disclose their national-ethnic or religious affiliations, and any other choices made by representatives of national minorities are stigmatized as an expression of shame or as an ongoing fear of revealing their national identity. I should add that in this case, objective criteria are usually used as indicators of national affiliation (native language, religion, place of birth, etc.), while criteria related to their authentic self-identification with a nationality are overlooked. Therefore, a very important value is violated in the form of creating the opportunity for freedom of choice of one's own community and ethnic identity, the value of choosing one's national affiliation. In real socio-political conditions, where the declaration of national affiliation determines the citizen's actual position in the ethnic structure of dominance and order, the statement "I am Polish" or "I am Belarusian" or "I am Ukrainian" carries different weight and significance because it marks the declarant's position in the ethnic structure of society, which can be higher or lower. In the first case, it emphasizes the privilege of being a member of the dominant community, while in the second case, it often requires courage to designate one's place in the subordinate group (Sadowski 2014, 35).

The author notes that objective criteria such as language or religion are often used to determine an individual's ethnic identity, while their self-identification is ignored. This can undermine the freedom of individuals to choose their own identity and their sense of belonging. In societies where ethnicity determines one's position in the social hierarchy, publicly declaring one's identity can have significant consequences, either positive or negative (Sadowski 2014, 35).

The census in 2011 was the first census since Poland joined the European Union. Consequentially it was different to the censuses that took place in Poland earlier as it had to follow EU's restrictions.

In fact, in 2011 for the first time it was possible to choose nationality different to a nationality related to a state.

There were two questions regarding identity:

1. To which nationality do you belong?
2. Do you also identify with another nationality or ethnic group?

With this solution respondents were allowed to choose more than one nationality or ethnic group. This was also the first time that Silesian ethnicity was included on the list. There were claims however that people were being discouraged from choosing this option.

When it comes to ethnic data collection, all around the European Union, the equality bodies collect complaints data. Additionally in Poland they also collaborate with Ombud and NGOs in order to improve data collection (Farkas 2017, 20).

BULGARIA

According to the 2011 Bulgarian census, approximately 10.5% of the state's population belongs to national and ethnic minorities. The largest minority groups in Bulgaria are the Turkish minority (8.8% of the population) and the Roma minority (3.2% of the population). Other significant minority groups include the Armenian, Russian, and Ukrainian minorities. It's important to note that these numbers are based on self-identification, and not all individuals may choose to identify themselves as belonging to a specific minority group. Smaller groups include: Armenians, Aromanians, Jews, Karakachani Greeks, Romani, Romanian and Vlachs.

The ethnic structure of Bulgaria was strongly shaped by the events of the beginning of the XX century, which Lucian Boia calls a form of ethnic cleansing – *expulsion, or preferably exchange, of populations* (Boia 2001, 145).This practice functioned between, Greece and Turkey, Romania and Bulgaria, Greece and Bulgaria, Romania and Turkey (Ibid., 145). This practise was repeated in 1980s when, when *The assimilation policy of the communist regime, intensified towards the end of the 1980s, pushed 300,000 Turks to emigrate from Bulgaria (...)* (Boia 2001, 145-146).

According to Marko Valenta and Sabrina P. Ramet in places like Bulgaria, Montenegro, Romania, and Croatian Istria, inter-ethnic cooperation is not as problematic and in other Balkan areas, especially the post Yugoslavia. The authors believe in Bulgaria ethnic minorities who are an integrated and respected part of local communities can be found (Valenta and Ramet 2016, 4-5).

Although the aspiration to join the European Union was a factor for South European states to implement rights guaranteeing minority protection due to requirements imposed by the EU, *ethnic minority parties and non-governmental organizations (NGOs) representing the interests of minority groups have struggled to improve the implementation of the new legal frameworks, and struggled to improve the general position of their respective ethnic groups* (Ibid., 5).

The authors note that in certain instances, these efforts have elicited negative reactions from members of the ethnic majority group. According to Valeta and Ramet, even though ethnic relations remain tense in regions that have previously experienced violent ethnic conflicts, there are numerous positive examples of enhanced social, cultural, and political positions for ethnic

minorities. This progress is evident through the presence of educational institutions, bilingual signage, newspapers, local radio stations, and cultural clubs representing various ethnic minorities. The authors emphasise that it is not uncommon for ethnic minorities in specific regions to hold significant roles, including significant political influence, as in some countries, they have even formed coalitions within the government, and their substantial political influence is expected to continue in the future (Ibid., 5).

In the Balkans, Bulgaria alongside with Albania, Slovenia, Serbia, are the countries with a moderately ethnically heterogeneous population with the biggest ethnic group making up between 83 percent and 85 percent of the population (Ibid., 9). Minorities in these countries do not make up very big groups, as the authors point out, out of the mentioned states, Bulgaria has the biggest minority as Turks make 9 percent of the entire population (85 percent being Bulgarian and only 6 percent other minorities) (Ibid., 9). Turks in Bulgaria live mostly in the Kardzhali province that borders with Greece.

Bulgaria became independent from Ottoman Empire in 1908 after having a territorial autonomy within it. Andor Végh points out that after becoming independent with their fresh nationalist movements, both Bulgaria and Greece focused on turning from heterogenous to homogenous. These actions caused conflicts, migration and ethnic cleansing (Végh 2012, 85). Nitsiakos underlines that nationalism in the Balkans has different history:

> (…) contrary to what happened in the rest of Europe, where nationalism was quite successful in one way or another and irrespective of the question which came first, the nation or the state (Llobera 1987; Just 1989; Woolf 1995), in the Balkans nationalism has a different history. It was not only imported, but also created the "Balkan phenomenon" itself (Nitsiakos 2008, 357).

By citing Maria Todorova, Nitsiakos underlines the problem of identity in the Balkans and the observation that Europeanisation became a threat to Balkan identity (Ibid., 357). According to Todorova, nationalism in the Balkan countries was *constructed first of all based on linguistic and religious identity* (Hysa 2008, 340). Todorova points out that ninetieth and XX century phenomena like "Europeanization", "Westernization", "Modernization" meant also *the spread of rationalism and secularization, the intensification of commercial activities and industrialization, the formation of a bourgeoisie and other new social groups in the economic and social sphere, and above all, the triumph of the bureaucratic nation-state* (Nitsiakos 2008, 357). Nitisiakos continues:

> The modern image of the Balkans has been created by Europe itself through the process of their incorporation in the European world. This process, though, did not lead to an even inclusion in the European reality but to the construction of an internal "other" (Ibid., 357).

Natalia Butusova and Stojko Stojkov observe that in Bulgarian authorities do not guarantee minorities their right to self-identification. They explain:

> The official Bulgarian state has been to deny the objective fact of the very existence of Macedonians in Bulgaria for decades. The modern Bulgarian national ideology and national policy is actually based on the statement of the dictator T. Zhivkov from sixty years ago, "There is no Macedonian nationality and cannot be". Since then, the Macedonians in Bulgaria have been referred to as "the so-called Macedonian nation." This political and ideological attitude remains in force even after the change in the social and political system of Bulgaria. The biggest "theoretical digression" in the Bulgarian official ideology in the field of national relations, made in recent years under external pressure, was the position: "There are Macedonians, but there is no Macedonian minority." (Butusova and Stojkov 2020, 228-229).

The Authors later explain that in 1990, the Bulgarian Parliament denied in the official statement recognition of the Macedonian within its borders which had been requested by Yugoslavia. Moreover, the Authors claim that there has not been a change in Bulgarian authorities' position since (Ibid., 229). They explain the historical reasons behind this:

> The denial by Bulgaria, Serbia and Greece of the existence of the Macedonian nation after 1913 was a way to ensure the safety of the received territories. After the creation of the Macedonian Republic within Yugoslavia in 1944, Bulgaria and Greece gradually began to view it as a threat to their territorial integrity, and the Macedonian minorities on their territory as a potential "fifth column". After the collapse of Yugoslavia in the new political realities, this fear has lost all real foundation, but it continues to play an important role in shaping the ideology and policy of Bulgaria and Greece (Ibid., 234-235).

The Macedonian minority in Bulgaria was recognised by the state authorities in 1944 but this status was denied after less than two decades (Ibid., 235). During the communist regime, the group was repressed as supporters of Tito and the change came with the fall of regime:

> The fall of the communist regime in 1989 stopped the massive repression against Macedonians, but discrimination continued and the official state ideology and policy in the field of ethnic relations is still based on the statement of T. Zhivkov that the Macedonian minority in Bulgaria does not and could not exist. Discrimination against Macedonians remains, but its forms are changing, often becoming more sophisticated, ultimately aimed at assimilating Macedonians and isolating them from the cultural and political life of the Bulgarian state (Ibid., 235).

The biggest Bulgarian minority – Turks, were also repressed during the communist regime. 250,000 Turks migrated to Turkey in 1968 as the intense campaign for the Bulgarian nationalism rose (Spizzamiglio and Tahir 2011, 196). This migration was not the end of the repressions. The communist party, collaborating with Politburo, introduced new plan for the national minorities – *In the beginning of 1980's all the religious applications were abolished by the communist party being perceived as a threat to the unification of the society* (Ibid., 196).

Janusz Bugajski points out that since the fall of communism, there haven't been any major ethnic conflicts in Bulgaria since its officials had put an effort in improving state's minority polices and underlines the fact, the minority became much smaller after 300 000 Turks were forced to flee the country in 1980s due to repressive government campaigns (Bugajski 2016, 33).

> In December 1989, the government renounced forcible assimilation, allowing Muslims the freedom to choose their own names, practice Islam, observe traditional customs, and speak their native language. In March 1990, the country's major political forces agreed to pass a "Bulgarian Citizens' Names Law" that allowed all victims of forcible assimilation to return to their old names. In January 1990, the National Assembly recommended the adoption of a special statute for minority rights.
>
> Thousands of ethnic Turks returned to Bulgaria but faced new problems of adjustment as most had lost their jobs and sold their houses for less than their true value. Many demanded appropriate reparations. Ahmed Dogan, the political leader of Bulgaria's Turks, demanded a legal resolution that would restore property to victims of the exodus. A law was adopted in July 1992 stipulating that all Turks were to be given back their property for the low price at which it had been sold. Those who proved unable to buy back their former homes would be given low- interest- rate credits toward the purchase of alternative housing (Ibid., 33-34).

Spizzamiglio and Tahir confirm the improvement and indicate the reason - round table discussions, which had minority policies in their agenda, condemned the previous assimilatory campaigns. by referring to various international documents such as Universal Declaration of Human Rights (Spizzamiglio and Tahir 2011, 196). They add that due to state's lack of recognition of other minorities, during the 1990s minority rights were only discussed with the Turks (Ibid., 198).

Even though Bulgarian lawmakers were improving minority rights, some of them appeared to be controversial, especially language use, education, and access to the mass media (Bugajski 2016, 34). Bugajski mentions two main cases of language discrimination 1) Bulgarian language was the only official language in 1991 Constitution. 2) Due to the fear of ultranationalist reactions, the Parliament was reluctant to implement Turkish-language programs in secondary schools (after the decision of a consultative council in 1991 stating that teaching of Turkish as part of the secondary school curriculum was constitutional, the parliament decided to guarantee a state-controlled Turkish program in all public schools with a higher percentage of minority enrolment) (Ibid., 34).

Language discrimination was not the only type of discrimination experienced by minorities in Bulgaria. Bulgarian constitution prohibits creation of political parties based on ethnic, racial, or religious lines (Ibid., 34). The topic is further analysed in the part dedicated to Bulgarian constitution.

The Movement for Rights and Freedoms (MRF), the main Turkish organization in Bulgaria, initially faced obstacles in participating in general elections due to the ban on its political wing, the Rights and Freedoms Party. However, the MRF itself and other Turkish cultural and social organizations continued to function. In the second general elections, the MRF competed legally, gained parliamentary seats, and became the third strongest party in Bulgaria, forming a coalition with the centre-right government. Spizzamiglio and Tahir note that MRF's attitude paid an important role as *it never demanded the recognition or the existnce of national miorities in Bulgaria. Moreover its demands were very modest rights to the Turkish minority in Bulgaria to continue its survival* (Spizzamiglio and Tahir 2011, 199).

The MRF, known for its moderate approach, focused on cultural and religious rights and the defence of Turkish economic interests. It resisted separatist demands within the Turkish community and expanded its membership to include non-Turks. On the other hand, nationalist groups like the

ATAKA party emerged, mobilizing anti-Roma sentiments and exploiting public dissatisfaction with the economy.

In the parliamentary elections of 2013, the GERB party won but failed to form a government without a coalition partner. The BSP and MRF, together with support from ATAKA, formed a government. Traditional centre-right parties did not enter parliament. The coalition between the Socialist Party and the Turkish MRF, supported by ATAKA, raised concerns about anti-minority policies. ATAKA may resort to populist tactics targeting minorities if political polarization deepens and protests against the government intensify (Bugajski 2016, 34-35).

Bulgaria was criticised by the Council of Europe and some human rights groups *for its alleged political discrimination against the Macedonian minority* (Ibid., 35). The Bulgarian authorities have rejected the recognition of Macedonians as a legitimate minority and instead categorize them as Slavic Bulgarians sharing the same language and history as the rest of the state. Bulgarian leaders argue that there is no Macedonian minority in the Pirin region of western Bulgaria, disregarding the actions of local radicals who advocate for regional autonomy or unification with the independent state of Macedonia. An organization called Ilinden, openly identifying as Macedonian, was formed in the Pirin area and sought official registration, but their application was denied (Ibid., 35-36).

Protests carried out by supporters of Ilinden have been suppressed, and Bulgaria's Supreme Court has ruled that the organization violated the unity of the Bulgarian nation. Ilinden's statutes advocated for the recognition of a sovereign Macedonian minority, which was seen as evidence of their intention to establish a united Macedonian state. As a result, Ilinden was ordered to disband, but it continued to operate covertly, arguing that the decisions of Bulgarian courts violated international law. In November 1998, the local court in Blagoevgrad reversed its previous decision and allowed the registration of a Macedonian organization, OMO Ilinden-Pirin, headquartered in Blagoevgrad. There are also irredentist pan-Bulgarian groups active in Bulgaria, advocating for closer social, economic, and political ties with Macedonia, with the ultimate goal of incorporating it back into Bulgaria. Similarly, there are autonomist pan-Macedonian organizations operating in western Bulgaria, advocating for the separation of the Pirin region from Bulgaria and its integration into an expanded Macedonia (Ibid., 36).

Vassilis Nitsiakos observes that when it comes to European integration and building European identity, the Balkans do not fit in homogenous nation=state picture. Nowadays and historical Balkans are much more ethnically diverse than Western Europe with traditions of multi-ethnical Byzantine and Ottoman Empire (Nitsiakos 2008, 356).

> In the Balkans multiethnic empires such as the Byzantine and the Ottoman were superseded by the new national states, which were initially formed in principle along mono-ethnic lines. This made any ethnic or cultural diversity a difficult problem to deal with and created a general negative approach to cultural difference, since any difference was treated as a threat to national cohesion and a potential incentive for territorial claims on the part of other neighboring nation states. Also, the difficulty to draw borderlines in such a way as to make ethnic boundaries to coincide with national borders, led many times to arbitrary decisions and, as a result, islands of otherness or even national minorities were created, which became a source of continuous rivalries and friction among the nation states involved (Ibid., 356-357).

Integration with Europe brings also the topic of Catholic-Orthodox dichotomy (Ibid., 358) as EU is predominantly Catholic/Protestant.

Legal framework

Bulgaria joined the Council of Europe on 7th of May 1992 later and started complying with human and minority rights set up by international institutions, this according to Spizzamiglio and Tahir, can be the date that marks the beginning of the Bulgaria's European Integration process.

According to the Authors another date important event marking the changes in Bulgaria, was the decission of the Constitutional Court on the constitutionality of the MRF – after years of repressions on minorities, the administration legalised a Turkish minority political party. Bulgaria joined the Council of Europe 16 days later and started complying with human and minority rights set up by international institutions (Spizzamiglio and Tahir 2011, 197).

Spizzamiglio and Tahir divide the process of development of minority rights in Bulgaria in two:

- Internationalization – process began with signing the 1990 Catalogue of the Rights of Minorities (OSCE). The principles of this documented strongly shaped the new Bulgarian Constitution. Internationalization is also understood as adoption of international standards regarding the protection of human rights; signing and ratifying important international conventions regarding the topic.
- Europeanization process (Ibid.).

The Constitution

The Bulgarian Constitution was first published in 1991; the amendments were added in 2003, 2005, three times in 2006 and for the last time (as for 2021) in 2007. Evgeni Tanchev and Martin Belov point out it was at the beginning of the transition from the totalities to democracy and call it 'reactive', as it:

> marks a radical legal and political break-up from both of the previous stages of Bulgarian constitutional development – the period of constitutional monarchy (1879–1947) and the period of a Soviet-type people's democracy (1947–1991). Hence, it aims at introducing a genuinely new political model based on different concepts about the individual and the state. This new legal model lays down the foundations of legally defensible human rights and of the powers of state institutions, and makes the Constitution a substantial part of the valid and enforceable law (Tanchev and Belov 2019, 1098).

Authors underline that legal and constitutional culture in Bulgaria is a mix of continental European, post-Soviet and United States influences (Ibid., 1099):

> More precisely, moderate paternalistic views with regard to the role of the state and its relations with the citizens are intertwined with more recent liberal and even libertarian influences. This mixture enriches the Bulgarian constitutional culture, but also makes it rather eclectic. Hence, the non-cohesive amalgamation of quite different political concepts in the ideal constitution is one of the explanations for the disfunctionality of the 1991 Constitution in political practice (Ibid., 1099).

Importantly, as Tanchev and Belov point out, the 1991 Constitution encompasses both the state-oriented dimension and the human rights and societal dimension, aiming to establish the authority of the state based on the principle of popular sovereignty. One of its primary objectives is to create an effective apparatus for social management. The current Bulgarian Constitution provides the normative framework for the functioning of key state institutions and local self-government bodies. In addition, the 1991 Constitution places significant emphasis on the rule of law, the protection of human rights, and the limitation of state institutions to their constitutionally defined areas of competence. It includes comprehensive provisions on human rights and fundamental freedoms, along with mechanisms for their safeguarding. As a result, the constitutional objectives of authoritative, efficient, and responsive governance are balanced with the principles of limited and accountable government (Ibid., 1099).

The amendments made to the current Bulgarian Constitution were all related to the EU accession. We can see that as the Bulgarian Constitution was created very early after independence, unlike Polish Constitution, it was not yet shaped with the idea of joining the EU in the future.

Analysis

The preamble of the Bulgarian Constitution states as follows

> We, the Members of the Seventh Grand National Assembly, guided by our desire to express the will of the people of Bulgaria, by pledging our loyalty to the universal human values of liberty, peace, humanism, equality, justice and tolerance;
>
> by holding as the highest principle the rights, dignity and security of the individual;
>
> in awareness of our irrevocable duty to guard the national and state integrity of Bulgaria,
>
> hereby proclaim our resolve to create a democratic and social state, governed by the rule of law, by establishing this CONSTITUTION.

Article 2. (1) prohibits existence of any autonomous territorial formations. Article 6. (1) refers to equality and mentions among others, ethnicity, origin and religion as the grounds that should not restrict it

> Art. 6. (1) All persons are born free and equal in dignity and rights. (2) All citizens* shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status.
>
> * The term "citizens" refers to all individuals to whom this Constitution applies.

Bulgarian Constitution prohibits the existence of political parties based on ethnicity in Art. 11. (4) – *There shall be no political parties on ethnic, racial or religious lines, nor parties which seek the violent seizure of state power***.** Article 44 guarantees the freedom of association and underlines that *(2) The organization/s activity shall not be contrary to the state's sovereignty and national integrity, or the unity of the nation, nor shall it incite racial, national, ethnic or religious enmity or an encroachment on the rights and freedoms of citizens; no organization shall establish clandestine or paramilitary structures or shall seek to attain its aims through violence.*

The act also refers directly to the right of self-identification:

> Art. 54. (1) Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own culture in accordance with his ethnic self-identification, which shall be recognized and guaranteed by the law.

In their report regarding EU accession, the Open Society Institute refers to Article 5 of the Bulgarian Constitution. Article 5(4) specifies that any international agreements ratified through the established constitutional process, promulgated, and enforced in Bulgaria shall be considered as part of the state's domestic legislation. Such agreements will have precedence over any domestic legislation that contradicts them. However, individual complaints cannot be made to the Constitutional Court. Article 5(2) of the Constitution, on the other hand, states that its provisions have direct effect and can be enforced in domestic courts (Open Society Institute 2001, 53).

Bulgarian constitution bans political parties from being created based on ethnic, racial or religious lines, which is limiting minorities in their fight for equal rights.

> Art. 11. (4) There shall be no political parties on ethnic, racial or religious lines, nor parties which seek the violent seizure of state power.

Janusz Bugajski comments that such legal solution gave nationalists a new argument to undermine the rights of minorities – *Nationalist organizations capitalized on Bulgarian fears of alleged Turkish subversion and applied pressure on government organs to outlaw ethnic-based associations on the grounds that they were politically motivated and therefore "antistate."* (Bugajski 2016, 34)

Article 13 which should be guaranteeing the freedom of religion, also leaves an opportunity for discrimination. It states:

> Art. 13. (1) The practicing of any religion shall be unrestricted. (2) Religious institutions shall be separate from the State. (3) Eastern Orthodox Christianity shall be considered the traditional religion in the Republic of Bulgaria. (4) Religious institutions and communities, and religious beliefs shall not be used to political ends.

From one side it separates religion from state and gives a freedom of choosing and practicing any religion, on the other side it puts Eastern Orthodox Christianity above other religions and does not allow politics to be mixed with religion. This discriminates Bulgarian minorities like Turks and Pomaks as their identity is strongly associated not only with ethnicity but also with religion. This article can be used as an argument against minority institutions.

Other Legal Acts

Although, the Advisory Committee has shown its gratitude towards the Bulgarian authorities for its assistance before, during and after Committee's country visit, Bulgarian authorities did not actually show much investment in the process submitting their report with 24-months delay regarding the due date (1 September 2015). Moreover, the Advisory Committee's third opinion has not been translated either into Bulgarian or into minority languages *(The website of the National Council for Co-operation on Ethnic and Integration Issues (hereinafter the National Council) refers only to the corresponding Resolution of the Committee of Ministers of the Council of Europe, but not to the*

text of the Advisory Committee's Opinion). The Advisory Committee regrets that the Opinion was not presented to the stakeholders and that Bulgarian Authorities did not organize a follow-up meeting with the Advisory Committee during the monitoring cycle (4th opinion).

In its Fourth Opinion on Bulgaria adopted on 26 of May in 2020, the Advisory Committee has criticized Bulgaria for the lack of development of the legal framework concerning cultural, linguistic and participation rights of persons belonging to national minorities but has also recognized the improvements in non-discrimination legislation.

On 13 January 2021, the Advisory Committee for the Framework Convention for the Protection of National Minorities adopted a resolution concerning Bulgaria. The resolution stated that while Bulgaria had made some progress in protecting the rights of national minorities, there were still concerns regarding discrimination, hate speech, and the lack of effective participation of minorities in public and political life.

The Advisory Committee recommended that Bulgaria take several measures to address these issues, including improving access to education in minority languages, combating hate speech, promoting diversity in the media, and enhancing the participation of minorities in decision-making processes.

The resolution also called for increased cooperation between the Bulgarian authorities and minority communities, and for the establishment of a national strategy for the protection of the rights of national minorities.

Overall, the resolution emphasized the importance of ensuring the full and effective protection of the rights of national minorities in Bulgaria, and urged the government to take concrete steps to address the concerns raised by the Advisory Committee.

The Framework Convention for the Protection of National Minorities, which Bulgaria has ratified, recognizes the right to self-identification as an important aspect of protecting the rights of national minorities. The Convention calls on states to respect the right of persons belonging to national minorities to identify themselves as such and to promote the conditions necessary for them to maintain and develop their culture, language, and traditions.

In the resolution concerning Bulgaria, the Advisory Committee expressed concerns regarding the effective participation of minorities in public and political life, and recommended measures to

enhance their participation. The right to self-identification is closely linked to this issue, as it enables individuals to express their identity and participate in public life on an equal footing with others.

The Advisory Committee called on Bulgaria to take concrete steps to ensure that national minorities are able to exercise their right to self-identification, including by improving access to education in minority languages and promoting the participation of minorities in decision-making processes. The Committee also emphasized the importance of combating hate speech and discrimination, which can have a negative impact on the ability of individuals to freely express their identity.

In conclusion, the right to self-identification is a crucial aspect of protecting the rights of national minorities, and it is important that states take measures to ensure that this right is respected and protected in practice.

Other examples of legal acts protecting minorities in Bulgaria:

- Law on Protection of the Rights of Persons Belonging to National Minorities: This law sets out the legal framework for the protection of the rights of national and ethnic minorities in Bulgaria, including their right to use their native language and script, to participate in public life, to receive education in their mother tongue, and to form organizations.
- Law on the Bulgarian Academy of Sciences: This law recognizes the importance of research on national and ethnic minority issues, and mandates the Bulgarian Academy of Sciences to conduct such research.
- Law on the Ombudsman: The Bulgarian Ombudsman is an independent institution responsible for protecting the rights of citizens, including those belonging to national and ethnic minorities.
- Law on Bulgarian Citizenship: This law regulates the acquisition and loss of Bulgarian citizenship, and recognizes the right of national and ethnic minorities to apply for and obtain citizenship.
- Law on the Bulgarian Orthodox Church: This law recognizes the Bulgarian Orthodox Church as the traditional religion of the majority of the Bulgarian people, but also recognizes the rights of other religions and religious communities in Bulgaria.

Self-identification in Practice

One of the recommendations given to the Bulgarian authorities by the Advisory Committee on the Framework Convention for the Protection of National Minorities was – *(…) ensure that the right to free self-identification of persons belonging to national minorities is strictly respected in the upcoming 2021 population census and that they are consulted on its methodology* (ACFC 2020, 49).

The concepts and definitions of racial and ethnic origin are intricate, but when applied and understood with care, they can accurately reflect this complexity.

In terms of the law, the distinctions between racial, ethnic, and national origin, as well as minority religion, language, and cultural traditions have not been clearly delineated. Instead, they are recognized as inherently interconnected. In its Advisory Opinion no 17, the Permanent Court of International Justice defined a (minority) community as:

> (…) a group of persons living in a given state or locality, having a race, religion, language, and traditions of their own and united by this identity of race, religion, language, and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race, and rendering mutual assistance to each other (Farkas 2017,9).

This interpretation has had an impact but has not been consistently followed in the case law of the European Court of Human Rights (ECtHR) or in national legislation and case law (Ibid., 9).

Farkas arguments it by bringing example of the case of *Orsus and Others v Croatia*, where the ECtHR interpreted the Romani language as not being an integral part of Roma ethnic origin. She concludes thats the finding was that distinctions based on this ethnic minority language were neutral in terms of racial or ethnic origin. She later points out that cases involving the use of minority languages, such as Kurdish in Turkey (in election campaigns and civil registries) or French in Belgium (in education), have not necessarily been examined in the context of discrimination based on racial or ethnic origin. Farkas later compares two cases involving Roma. The ECtHR, in cases like Timishev v. Russia and various Roma cases, held that discrimination based on ethnic origin

constitutes a form of racial discrimination, which is a particularly reprehensible form of discrimination. In the Roma cases, particularly in D. H. and Others v the Czech Republic and Yordanova and Others v Bulgaria, the interpretation was broadened (Ibid., 9).

In the part of her report regarding key issues in data collection, Farkas points out that in 2015, the Ministry of Regional Development released an official statement regarding the quantity of illegally constructed buildings that were scheduled for demolition based on final demolition orders. Among these buildings, 530 were reported to be owned by Roma individuals out of a total of 6,080 buildings. Farkas describes the method of collecting this information as not disclosed. The Bulgarian Regional Inspectorates responsible for education gather data on the ethnic background of students in each school. She sums up by stating that this information is only accessible to the relevant educational departments within the municipalities and may not be disclosed upon official request. Concerns have even been raised at times regarding the collection of census data related to ethnic origin (Farkas 2017, 31).

In the 2011 census the respondents were asked about ethnic group (question number 10) and mother tongue (question number 10). Both questions were voluntary and had 5 possible answers:

1. Bulgarian
2. Turkish
3. Roma
4. Other …….
5. Not stated

The official results of the 2011 census regarding 'Ethno - cultural characteristics' state:

Ethnic structure

The established demographic tendencies and increased emigration during the last 20 years influence the number of all ethnic groups in the country, resulting no significant on the change in the ethnic structure of the population in the years between the last two censuses:

• The Bulgarian ethnic group comprises 5 664 624 persons or 84,8% of persons who declared their ethnic identity on a voluntary basis.

• The Turkish ethnic group is the second highest number - 588 318 persons. It represents 8.8% of the population.

• The Roma ethnicity is traditionally the third one numbering 325 343 persons, with a relative share of 4.9%.

• The population with Bulgarian ethnicity identity is significantly more urbanized in comparison to the other two ethnic groups. 77.5% of Bulgarians live in urban areas, compared to 37.7% of Turkish and 55.4% of Roma.

• The persons who identify themselves to the Turkish ethnicity are located in several districts – Kardzhali, Razgrad, Targovishte, Shumen, Silistra, Dobrich Ruse, Burgas, where 63.7% of the population of this ethnic group lives.

• The persons from the Roma ethnic group are distributed in all districts. The biggest share of Roma ethnicity is in districts Montana - 12.7% and Sliven - 11.8%, followed by Dobrich - 8.8% and Yambol - 8.5%, compared to the total for the country - 4.9%.

• The persons who do not identified themselves to a given ethnic group are 53 391 - 0.8%. Among them, the share of the youngest people under 19 years of age is 51.7%.

When it comes to census and the Macedonian minority, we can observe a decrease in numbers. Butusova and Stojkov note that after 1963 (the beginning of opressions against the minority) there was no longer a possibility to declare Macedonian nationality in the census. According to the Authors, this had led to *an artificial underestimation of their number. Thus, according to the results of the 1965 census, the number of the Macedonian population decreased from 187,787 to 9,632* (Butusova and Stojkov 2020, 236). Unfortunately, the change of the system did not make the situation better:

> After the change in the socio-political system, but with the preservation of the old national policy, the number of Macedonians, according to the data of each subsequent census, continued to artificially decrease:
>
> - in 1991 there were 10,803 registered Macedonians.
>
> - in 2001there were 5071 registered Macedonians.
>
> - in 2011there were 1603 registered Macedonians.
>
> The results of the last census, in which about 10% of the population of Bulgaria did not indicate their ethnicity, and 10.4% - their mother tongue. Because of it the results were rejected by the

> National Statistical Institute of Bulgaria itself as unrealistic. And, in preparation for the census in September 2010, Prime Minister Boyko Borisov fired 5 high-ranking officials at the National Institute of Statistics of Bulgaria because they allowed the subcategory for "non-existent ethnic groups" in the forms in the pilot census (among them, the Macedonians occupied the main place). The subcategory was removed (Ibid., 236-237).

Although the lack of option 'Macedonian' could have caused the decrease in numbers, the answer 'Other' was clear. Another question is how the census was conducted, if the responders had been allowed to fill in the form themselves and if they were discouraged from choosing different options (as issues like this were claimed to happen in Poland in 2011).

The he independent expert on minority issues from United Nations Human Rights Council agree how important is recognition for Macedonian. In their report presented during UN's general Assembly in 2011, they state:

> Ethnic Macedonians consider it of crucial importance that their ethnic identity and distinctiveness be officially recognized. Community representatives strongly dispute census findings reflecting very low and declining numbers of Macedonians, 39 and claim that the true population is many times higher. The Macedonian language is not recognized or taught in schools and Macedonians are not represented on the National Council for Cooperation on Ethnic and Integration Issues.[89]

They have similar views on the situation of Pomaks:

> Representatives of Pomak communities, many of whom live in the Rhodope Mountains region, described the historic lack of recognition of Pomaks as a distinct ethnic and religious minority. The history of the Pomaks is disputed, and different groups who identify as Pomak may also identify as being of Turkish origin. Representatives described historic attempts to assimilate them into Bulgarian society through the requirement to change their Turkish-Arabic names to Bulgarian names, and forced conversion to the Christian Eastern Orthodox Church.[90]

[89] UN Human Rights Council. 2011. Report of the independent expert on minority issues. Addendum. Mission to Bulgaria (4 to 11 July 2011). A/HRC/19/56/Add.2. p.17

[90] (Ibid., 17)

CONCLUSIONS

The analysis carried out shows that different solutions concerning the right to recognition (a collective right) and the right to self-identification (an individual right) have been applied in different European Union states.

France rather than protecting its minorities with specific rights dedicated only to them tries to offer all of its citizens equal rights and protection under human rights. French policies are based on the principle of secularism and republican values. As an EU founding member, France did not have to adjust its laws according to the minority rights development. The ‘old’ member states bypass the nation state and lobby for their rights directly on the supranational level. In this regard they are much more active than ‘new’ member states. It is also worth noting that France did not sign the Council of Europe’s Framework Convention for the Protection of National Minorities.

As shown in the part about Greece, the conflict with Turkey directly influences the situation of minorities in Greece. Above all the Turkish minority in Western Thrace, but also other Muslim minorities in the region (like Pomaks and Roma) and other minorities within the state. Looking closer at the timeline of events during Greece-Turkey conflict, we can see the corelation between the conflict and the treatment the minority receives. For example, just after the Declaration of Independence of the Turkish Republic of Northern Cyprus in 1983, the minority noted an increase in problems, like the situation with the elections of Muftis which started in 1985. Bad relations with other states can negatively influence the way state treats minorities.

The decentralisation of Spain gives regions the power to introduce rights and initiatives protecting their culture on its own. Regionalisation is an attempt of filling the gap between two very different systems – unitary system and federal system. Decentralization guarantees more self-determination to minorities and helps them protect themselves.

Poland's minority protection laws, similarly to other human rights laws were shaped and developed in the nineties with the lawmakers having in mind the process of Europeanisation. States that have been on the Eastern side of the Iron Curtain, well aware that the only way for them not to fell under the influence of Russia again, was to get closer to the West and enter international institutions like NATO and EU. Moreover, the timeline could not have been more perfect to add the minority protection as after the events in the south-east of Europe, minority rights were once again brought to the attention and agenda of the international institutions. The process of democratisation was another leverage for the minorities to remind states about their rights, but without the possible EU accession as an argument, they might not have been successful. Some authors point out that due to the communist past, there is not much space for diversity in Polish society.

Bulgarian situation regarding the communist past and creating minority protection with a future EU accession in mind is very similar to Poland but with some important differences. Although Bulgaria is one of the most ethnically homogenous states in Balkan, its Turkish minority makes up almost 10% of the entire population. The state was a part of ethnically diverse Ottoman Empire and this can still influence its approach to minorities. Being a part of Balkan region together with its recent history influenced the perception of different ethnic groups. Besides its biggest minority is not only ethnic but also a religious minority. EU solutions towards minorities' protection can shape state's legislation and practices and even create minority protection in a state.

After looking closer at selected case studies, we can go back and try to answer the main questions asked at the beginning of this study. **How is built the European legal system concerning the right to recognition (a collective right) of ethnic minorities and the right to self-identification (an individual right)?** European legal system does not offer a binding law that would allow the minorities to ask for their recognition or the right to self-identification. Although regulations adopted at the European level can provide guidance in researched aspects, even after signing and ratifying laws like FCNM, the state can decide to obey or not.

The next main question was as follows: **Is there a relation between recognition of a national minority and protection of the right to self-identification of a person belonging to the**

national minority? Recognition of a minority can be seen as a step towards the right to self-identification. It is hard to imagine a situation in which a minority is allowed to self-identify without a state recognizing it first.

The subject of the research was also to find the answer to the question: **Are there systems of protection of collective and individual identities developed in selected EU states?** The answer is that there are legal solutions protecting collective and individual identities in analysed states, but at this moment it is hard to see an entire system created to protect the right to self-identification.

Finally: **How do minority protection systems differ in studied EU states?** Special tendencies in minority protection systems across the EU can be observed. However, particular solutions differ significantly. They depend on legal traditions, geopolitical situation and conflicts, state's past, the level of regionalisation and the moment in history when the state was developing its minority protection system. Not all EU states protect minorities. International laws are not enough to protect minorities. Some states do not protect their minorities, which results from their interpretation of state's responsibilities towards its citizens.

My main hypothesis states that formal belonging to the structures of the European Union forces its member states to develop legal solutions that allow their citizens to exercise the right to recognition (a collective right) and the right to self-identification (an individual right). Moreover, the later accession to the structures of the European Union forces the state to adapt to the increasingly developed Community legislation on these issues. This hypothesis has been proved correct as we can clearly see that 'new' member states offer their citizens more legal solutions of minority protection, including the right to recognition and the right to self-identification. This however does not mean that minorities in new member states are better protected than minorities in the 'old' states. 'Old' member states tend to protect minorities based on general human rights and not on the basis of privileges belonging to groups granted to groups distinguished by significant differences.

The presented research results concern the European reality after 1945, and in particular the period after two censuses: 2011 and 2021. However, this does not mean that the topic has been closed. The issues raised in the dissertation will probably be of significant importance for potential future enlargements of the European Union. Currently, eight states have official candidate status: Turkey (since 1999), North Macedonia (since 2005), Montenegro (since 2010), Serbia (since 2012), Albania (since 2014), Bosnia and Herzegovina, Moldova and Ukraine (since 2022). It opens the field for further research in this area.

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