

Slovenia & European Standards for the Protection of National Minorities



AVSTRIJSKI INŠTITUT ZA VZHODNO IN JUGOVZHODNO EVROPO



INŠTITUT ZA NARODNOSTNA VPRAŠANJA
INSTITUTE FOR ETHNIC STUDIE



S L O V E N I J A
INFORMACIJSKO DOKUMENTACIJSKI CENTER SVETA EVROPE
NARODNA IN UNIVERZITETNA KNJIŽNICA V LJUBLJANI

SLOVENIA AND EUROPEAN STANDARDS FOR THE PROTECTION OF NATIONAL MINORITIES

Co-publishers:

- Information and Documentation Centre on the Council of Europe
www.idcse.nuk.si & www.coe.int
- Institute for Ethnic Studies, Ljubljana
www.inv.si
- Österreichisches Ost- und Südosteuropa-Institut Wien – Ljubljana
Austrian Institute of East and Southeast European Studies
www.ff.uni-lj.si/asrlo & www.osi.ac.at

Editorial Board:

Dr. Miroslav Polzer – Director, Austrian Institute of East and Southeast European Studies, Branch office Ljubljana
Liana Kalčina, uni. grad. ped. – Director, Information and Documentation Centre on the Council of Europe, Ljubljana
Dr. Mitja Žagar – Director, Institute for Ethnic Studies, Ljubljana

English Language Translation and Editing:

Dean DeVos
Lidija Šega

Published in the Series:

Slovenia and the Council of Europe; no. 21

Series Editor:

Liana Kalčina, uni. grad. ped. - Director, Information and Documentation Centre of the Council of Europe, Ljubljana

This publication was supported by the Co-publishers

Design: Aleksij Kobal, B.F.A

Paintings by Valentin Oman from Carinthia/Austria

Printing:

Printing House SIMČIČ, Ljubljana, June 2002

CIP – Kataložni zapis o publikaciji
Narodna in univerzitetna knjižnica, Ljubljana

341.234(497.4:4)

Slovenija in evropski standardi varstva narodnih manjšin = Slovenia and European Standards for the Protection of National Minorities / [uredniški odbor Miroslav Polzer , Liana Kalčina , Mitja Žagar]. – Ljubljana: Informacijsko dokumentacijski center Sveta Evrope pri NUK: Inštitut za narodnostna vprašanja: Avstrijski inštitut za vzhodno in jugovzhodno Evropo, 2002. – (Zbirka Slovenija in Svet Evrope; št. 21)

ISBN 961-6285-21-1 (Informacijsko dokumentacijski center Sveta Evrope pri NUK)
1. Vzp. Stv. Nasl. 2. Polzer, Miroslav

117139456

CONTENTS

side B

Articles

Walter Schwimmer - Foreword	7
Preface by the editors	8
Miran Komac - Protection of ethnic minorities in the Republic of Slovenia	13
Mirjam Polzer-Srienz – Protection of Roma in Slovenia - a legal analysis with comparative references to the situation of Roma in Austria	67
Mitja Žagar - Some newer trends in the protection and (special) rights of ethnic minorities: European context	77
Ferenc Hajós - Framework Convention for the Protection of National Minorities	105
Dieter W. Halwachs – Romani and its Protection in Europe	111
Miroslav Polzer - The European Union, Protection of National Minorities and Slovenia	119

Council of Europe documents

documents in English	133
1. European Charter for Regional or Minority Languages (ETS 148)	
2. Framework Convention for the Protection of National Minorities (ETS 157)	
3. Protocol No.12 to the Convention for the Protection of Human Rights and Fundamental Freedoms	
documents in Slovenian	side A 113
1. Evropska listina o regionalnih ali manjšinskih jezikih (ETS 148)	
2. Okvirna konvencija za varstvo narodnih manjšin (ETS 157)	
3. 12. Protokol h Konvenciji o varstvu človekovih pravic in temeljnih svoboščin	
documents in Italian	side A 141
1. Carta Europea delle lingue Regionali o minoritaria (ETS 148)	
2. Convenzione Quadro per la Protezione delle Minoranze Nazionali (ETS 157)	
documents in Hungarian	side A 171
1. A REGIONÁLIS VAGY KISEBBSÉG NYELVEK EURÓPAI KARTÁJA (ETS 148)	
2. KERETEGYZMÉNY A NEMZETI KISEBBSÉGEK VÉDELMÉRŐL (ETS 157)	
3. TIZENKETTEDIK KIEGÉSZÍTŐ JEGYZŐKÖNYV AZ EMBERI JOGOK ÉS ALAPVETŐ SZABADSÁGOK VÉDELMÉRŐL SZÓLÓ EGYEZMÉNYHEZ (ETS 177)	
documents in Romani	side A 207
1. Fremuni konvencija pala e protekcia/ arakhipen nacional minoriteturengi (ETS 157)	
documents in Croatian	side A 235
1. Evropska povelja o regionalnim ili manjinskim jezicima (ETS 148)	
2. Okvirna konvencija za zaštitu nacionalnih manjina (ETS 157)	
3. Protokol br. 12 uz Konvenciju za zaštitu ljudskih prava i temeljnih sloboda (ETS 177)	
documents in German	side A 265
1. Europäische Charta der Regional- oder Minderheitensprachen (ETS 148)	
2. Rahmenübereinkommen zum Schutz nationaler Minderheiten (ETS 157)	

AUTHORS

Ferenc Hajós - member of the Advisory committee for the Framework Convention for the Protection of National Minorities

dr. **Dieter W. Halwachs** – ass. prof. at the Institute for Linguistics, University of Graz, co-ordinator of several Romani projects (www.gewi.kfunigraz.ac.at/romani/index.en.html)

Liana Kalčina, uni. grad. ped. - director, Information and Documentation Centre on the Council of Europe

mag. **Vera Klopčič** - researcher at the Institute for Ethnic Studies, Ljubljana; member of the Committee of Experts on the European Charter for Regional or Minority Languages

dr. **Miran Komac** – researcher at the Institute for Ethnic Studies, Ljubljana; associate professor at the Faculty of Social Sciences, University of Ljubljana

dr. **Mirjam Polzer-Srienz**, researcher, Department of Political Science, University of Innsbruck

dr. **Miroslav Polzer** - director, Austrian Institute of East and Southeast European Studies, Branch office Ljubljana (= Austrian Science and Research Liaison Office Ljubljana)

dr. **Walter Schwimmer**, Secretary General of the Council of Europe (www.coe.int)

dr. **Mitja Žagar**, director, Institute for Ethnic Studies, Ljubljana; associate professor at the Faculty of Social Sciences, University of Ljubljana

FOREWORD

The promotion of European standards for the protection of national minorities is a constant concern for all those who are genuinely committed to the protection, throughout Europe, of human rights in general and of national minorities in particular. It is essential, in order to further enhance the progress achieved in this field in recent years, that this issue remain high on the agenda of all governments. It is therefore with great pleasure that I welcome the publication of "Slovenia and European Standards for the Protection of National Minorities," which will undoubtedly help to achieve this objective.

The Council of Europe has never spared its efforts to contribute to developing standards in this field. Evidence of this lies in the Framework Convention for the Protection of National Minorities, which is the first-ever legally binding multilateral instrument devoted to the protection of minorities in general, and now covers 34 States in Europe. Together with the European Charter for Regional or Minority Languages, signed by 15 States, the Convention embodies an important contribution to national minority protection in Europe.

Slovenia is a country with a long tradition of dealing with minority issues and aspiring to closer European integration. It has also shown its commitment to strengthening and enhancing the protection of persons belonging to national minorities. This commitment, demonstrated, for example, through the ratification of European treaties such as the Framework Convention and the Language Charter, is further evidenced by the publication of this analysis which includes essential Council of Europe documents in seven languages, namely Slovenian, English, Croatian, German, Italian, Hungarian and Romani.

This publication, which is very much in the spirit of both the Framework Convention and the European Charter for Regional or Minority Languages with their emphasis on cultural and linguistic diversity and on creating a dialogue on minority issues, will significantly contribute to raising awareness of national minority standards in Slovenia.



Secretary General of the Council of Europe

Walter SCHWIMMER

A handwritten signature in dark ink, which appears to read 'Walter Schwimmer'.

PREFACE BY THE EDITORS

In an era when we discuss at great length ethnic and cultural diversity and the basis and guidelines of multiculturalism and inter-culturalism we can at the same time see in different corners of the world gross violations of human rights and freedoms, outbreaks of violent nationalism, and the appearance of ethnic and racial intolerance and xenophobia, as well as numerous cases and forms of discrimination. Also in Slovenia, which is very often mentioned in the world as a state in which the legal protection of (autochthonous) national minorities is seen as exemplary, the protection of minorities is and will stay an important and current issue. As such, in practice there always exists an inconsistency between normative regulation and factual status, as well as the appearance of new challenges and issues.

The point of view of the editors and authors in this book is that properly ordered and realised minority protection is an important measure of the development of the democracy in modern pluralistic societies and it is always necessary to develop and add to such. For all minorities and their members – traditional national minorities and also for all other minorities in society – it is necessary in democratic pluralistic societies to implement the highest level and standards of protection. Therefore it is also necessary to continually acknowledge ethnic and cultural diversity as a treasure of modern societies, to develop tolerance and equal co-operation and on this basis introduce, develop and implement the basis and policies of multiculturalism and inter-culturalism. All this also demands constant and responsible discussion on the situation and protection of minorities. Minority issues are very sensitive and it is possible to easily abuse them for political purposes especially for nationalistic purposes and rhetoric.

To the delight of the editors the Secretary General of the Council of Europe, Mr. Walter Schwimmer, has written the foreword to this publication 'Slovenia and European Standards for the Protection of National Minorities', in which he emphasises how important minority issues are in an European framework. The choice of the writer of the foreword was not at all a coincidence, as the most important international legal documents for minority protection were adopted in the framework of Council of Europe, which has played the leading role in the implementation and development of human rights and freedoms and democratic principals on this continent since World War II. Therefore, in this book we have published the Council of Europe Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms. By doing this, we wish to introduce these documents to a broader public. We have decided to publish these documents in a number of languages: Slovene, Italian, Hungarian, Romani, Croatian, German and English in order to bring them as near as possible to Slovenes and to national minorities and their members in Slovenia as well as to the citizens of neighbouring states in which Slovene minorities live and to a wider international public.

We believe that only publishing the texts of these listed international documents would not achieve its purpose. Additionally, we also wanted to introduce the protection of national minorities in Slovenia and Europe with this book. Therefore we decided to also publish a number of studies which discuss these themes from different perspectives. Due to the fact that we would also like to introduce these themes to the widest interested public, not only in Slovenia but also throughout Europe, we have decided to publish these studies – or at least their (brief) summaries – in two languages: Slovene and English. We are aware of the fact, that the protection of traditional (autochthonous) national minorities in Slovenia and Europe which is discussed in this book is only a special and relatively narrow part of multiculturalism and inter-culturalism. This book does not deal in detail with the position of immigrants and so called "new (new-era) minorities", it does not discuss

protection for Slovene citizens who originate in other parts of the former Yugoslav Federation, the problems of the German (old-Austrian) minority, intolerance, etc – although these topics are briefly mentioned in some of the articles.

The first and the most extensive article is the study by Miran Komac, who introduces the system of protection of national communities in Slovenia. The author first introduces Slovenia and its ethnic structure and the basis of the constitutional protection of autochthonous national minorities in force. Following that, he discusses in detail the legal protection of both constitutionally defined autochthonous national minority communities, their organisation and functioning and the realisation of individual minority rights. And in the second part of his contribution he precisely analyses the realisation of individual provisions of the European Charter on Regional or Minority Languages. This article is followed by the contribution of Mirjam Polzer - Srienz on the Status of Roma in Slovenia and Austria, in which the author presents the status of 'the most neglected' European minority in both states and also some efforts to improve this position. Mitja Žagar in his contribution briefly presents the historical development of national minorities protection especially from the perspective of the international legal protection of these minorities and analyses some tendencies in the development of minorities protection. The article of Ferenc Hajos focuses on the Framework Convention for the Protection of National Minorities, presents the origin and amending of this document and briefly describes and analyses the convention and its individual provisions, as well as the method of monitoring its realisation. Vera Klopčič in her contribution presents the origins of the European Charter for Regional or Minority Languages. The contribution of Dieter W. Halwachs on Romani and its protection in Europe details the treatment and protection of regional and minority languages in Europe. In this contribution the author lists some of the essential documents and decisions which have been adopted by various European and regional institutions (especially the Council of Europe) and non-governmental organisations and institutions in order to improve the status of the Roma and their language in Europe. The contribution of Miroslav Polzer on European Union, The Protection of National Minorities and Slovenia concludes the series of studies. In his contribution the author shows how the European Union deals with the issue of the protection of national minorities in its processes of deepening and enlarging of the Union. Concerning this, the author argues that there are several promising developments but there is no yet a coherent policy or system of minority protection in the European Union. Although the work of various EU institutions influences the situation of national minorities; minority problems remain primarily an internal matter of the member states. Therefore it seems that the influence of the European Union on the protection of national minorities is stronger in candidate states than in member states.

From the perspective of Slovenia, accession to European Union has the potential for further improvement and stabilisation of the status of national and other minorities within its borders, and especially also for the improvement of the status of Slovene minorities in the neighbouring European Union member states.

The editors of this publication are very much convinced that it is exactly in the development of national minority protection in the European Union, that Slovenia can play a prominent role based on its rich experience.

Mitja Žagar
Liana Kalcina
Miroslav Polzer



THE PROTECTION OF ETHNIC MINORITIES IN THE REPUBLIC OF SLOVENIA

I INTRODUCTION

The territory on which the independent Slovene state was founded at the beginning of the 1990s has never been ethnically homogeneous. The number of ethnic minorities, their extent and their real economic and political power have changed in different historical periods in accordance with changes to the political boundaries. The last redefinition of borders in 1991 left Slovenia a rather colourful collection of non-Slovene ethnic groups which can be divided into two categories: into **"historical" ethnic minorities**¹ (the diction of the Constitution is "autochthonous communities", without any explanation of the adjective autochthonous) and into a collection of the **"newly" emerged minorities**². The latter category consists mainly of the members of former Yugoslav nations who came to Slovenia for different reasons (mainly employment) throughout the whole existence of the common Yugoslav state, namely from the mid-60's on. The category of historical ethnic minorities consists of Italian, Hungarian and Romany ethnic communities. A group which could not be easily classified into one of the two described categories is the German ethnic community. Undoubtedly it is a community which for centuries populated the territory now encompassed within the Slovenian state borders, but in contrast to the Hungarian and Italian ethnic communities, which are in more or less serried form preserved on their autochthonous ground, the maelstrom of war assigned a different fate to the German national community. Its post-war "disappearance" entailed the level and extent of its protection in the post-war period. Only in the final moments before Slovenia reached its independence did the German community begin to show signs of revitalisation. Unfortunately the process began too late³ and the community was not included in the aspiration for constitutional protection of ethnic minorities⁴. Another problem that surfaced during the time that surfaced during the process of its revival were claims for the repayment of the properties confiscated after the war.

¹ The number (according to the 1991 census) of historical ethnic minority members is 11,567 (Italians and Hungarians) or 13,860, if taking into account the number of members of the Romany community.

² This category is composed of 222,321 persons (11.45% of Slovenia's population). Among them there are 54,212 (2.76%) Croats, 47,911 Serbs (2.44%) and 26,842 Bošnjaki (Bosniaks) (1.36%).

³ The Most Svobode International Society, which we could not, without hesitation, define as a society of the "German minority", was officially registered in Maribor on 25th June 1991. The Kočevje aborigines have two societies: the Peter Kozler Kočevje society with its seat in Ljubljana, registered officially on 19th september 1994 and the Kočevar Aborigines Society, with its seat in Občice, officially registered at the administrative unit in Novo Mesto on 11th August 1992.

⁴ While preparing the new Slovene constitution, the Institute for Ethnic Studies held an extensive debate on the problems of safeguarding national minorities in Slovenia. In this debate the members of the Institute also brought to light the problem of safeguarding the members of the nations of the former common state and of the German community. In the publication created for that opportunity we wrote that it is urgent to consider the status of other ethnic communities living autochthonously on the Slovene territory in addition to the Italian, Hungarian and the Romany communities: "The Serbs (on the borderline territory in Bela Krajina), the Croats (on some borderline territories), and the question of the existence of the German ethnic community is also becoming apparent (it has long been believed in Slovenia that it no longer exists)." In: *Narodnost - manjšina ali skupnost. Urejanje, uresničevanje in varstvo pravic narodnosti (narodnih manjšin) v Republiki Sloveniji.* (Uredil Miran Komac), str.133 Razprave in gradivo, INV, Ljubljana, št.24/november 1990

Three different concepts of minority policy correspond to three minority categories: a) the relatively complete legal protection of “historical” ethnic minorities, comprising, apart from constitutional regulations⁵, approximately eighty laws and provisions covering different fields of minorities’ life, b) a selective scope of regulations for the protection of the Romany community⁶ and c) the rudimental (legal) model for the protection of newly-formed national minorities. The Constitution does not contain any additional provisions for the protection of the latter group or the “reviving” of the German-speaking ethnic community. The only constitutional provisions that these communities (the newly emerged and the German) can rely on for preserving their ethnic particularities can be found in articles 61 (profession of national allegiance)⁷ and 62 (the right to the use of language and script)⁸ of the Constitution.

⁵ The Constitution of the Republic of Slovenia, Article 11: “The official language of Slovenia shall be Slovenian. In those municipalities where Italian or Hungarian ethnic communities reside, the official language shall also be Italian or Hungarian.”

Article 64: (Special Rights of the Autochthonous Italian and Hungarian National Communities in Slovenia)

“The autochthonous Italian and Hungarian national community and their members shall be guaranteed the right to use their national symbols freely and, in order to preserve their national identity, the right to establish organisations and develop economic, cultural, scientific and research activities, as well as activities in the field of public media and publishing. In accordance with laws, these two national communities and their members have the right to education and schooling in their own languages, as well as the right to establish and develop such education and schooling. The geographic areas in which bilingual schools are compulsory shall be established by law. These national communities and their members shall be guaranteed the right to foster relations with their nations of origin and their respective countries. The state shall provide material and moral support for the exercise of these rights.

In order to exercise their rights, the members of these communities shall establish their own self-governing communities in the geographic areas where they live. On the proposal of these self-governing national communities, the state may authorise them to perform certain functions under national jurisdiction, and shall provide funds for the performing of such functions. The two national communities shall be directly represented in representative bodies of local self-government and in the National Assembly.

The position of the Italian and Hungarian national communities and the manner in which their rights are exercised in the geographic areas where they live, the obligations of the self-governing local communities for the exercise of these rights, and those rights which the members of these national communities exercise also outside these areas, shall all be regulated by law. The rights of both national communities and their members shall be guaranteed irrespective of the number of members of these communities.

Laws, regulations and other general acts that concern the exercise of the constitutionally provided rights and the position of the national communities exclusively, may not be adopted without the consent of representatives of these national communities.”

⁶ For the protection of the Roma community Article 65 of the Constitution is important (The Status and Special Rights of the Romany Community in Slovenia): “The status and special rights of the Romany community living in Slovenia shall be regulated by law”.

⁷ The Constitution of the Republic of Slovenia, Article 61 (expression of national affiliation): “Everyone has the right to freely express affiliation with his nation or national community be entitled to freely identify with his national grouping or ethnic community, to foster and to give expression to his culture and to use his language and script.”

⁸ The Constitution of the Republic of Slovenia, Article 62 (Right to Use One’s Language and Script): “Everyone has the right to use his language and script in a manner provided by law in the exercise of his rights and duties and in procedures before state and other bodies performing a public function.”

Slovenia's internaties are established also by some multilateral and bilateral agreements. Slovenia has concluded bilateral agreements with Italy and Hungary. Slovenia is bound to protect the Italian minority under the Osimo treaty in the section which states that both sides (Italy and Yugoslavia) "shall preserve the validity of internal measures which were adopted during the implementation of the Statute mentioned (the Special Statute of the Memorandum of Understanding from 1954, note M.K.), and shall, within the framework of its internal legislation, guarantee to the members of the concerned minorities the same level of protection as was provided by the Special Statute which is hereby terminated". After the collapse of former Yugoslavia, Italy recognised independent Slovenia as one of the successor states. The Osimo Treaty is on the list of bilateral agreements to which Slovenia succeeded.⁹ Provisions for the protection of the Italian minority in Slovenia and the Slovene minority in Italy can also be found in the Agreement between the Government of the Republic of Slovenia and the Government of Italy in the Field of Culture and Education. The treaty was signed in Rome on 8th march 2000 but has not yet been ratified. Until its ratification the Cultural Agreement between the Government of the Federative People's Government of Yugoslavia and the Government of the Republic of Italy dating from 3rd December 1960 remains valid.

The protection of the Hungarian ethnic minority in Slovenia (and the Slovenian minority in Hungary) is defined, apart from the Agreement on Friendship and Cooperation between the Republic of Slovenia and the Republic of Hungary¹⁰, also in a Special Bilateral Agreement between the two countries, concluded in 1992¹¹.

And finally, the Agreement in the Field of Culture between the Republic of Austria and the Republic of Slovenia, signed on 30th April 2001, must be mentioned. The statement that the ministries of both countries shall also include in their agendas "projects that benefit cultural, educational and scientific aspirations and the needs of the German speaking ethnic community in Slovenia (such as projects in the field of language learning, scholarships, the protection of cultural heritage)" is extremely important, even vital for the German speaking community. With the official recognition¹² of the existence of this community in the Republic of Slovenia in this international agreement, an additional framework for the development and maintenance of ethnic identity was constructed.

⁹The Act on Notification of Succession of Agreements between Former Yugoslavia and Italy, which includes the Osimo Treaty was published in the Official Gazette of the Republic of Slovenia no.40, dated 14th August 1992, pg.127-128

¹⁰ The Agreement on Friendship and Cooperation between the Republic of Slovenia and the Republic of Hungary. Uradni list RS, MP, p.6 (7.5.1993)

¹¹ Convention on the Providing of Special Rights of the Slovenian Ethnic Minority in the Republic of Hungary and the Hungarian Ethnic Community in the Republic of Slovenia. The Official Gazette of the Republic of Slovenia, MP, no.6/93

¹² It would be incorrect to say that the German speaking community has been officially recognised only with the Slovene-Austrian Agreement on Cooperation in the Field of Culture. Following the interpretation of F. Capotorti, special rapporteur of the Subcommission for the protection of minorities, the minority can be recognised in several ways: with the admission of legal entity status, with the adoption of special measures protecting its identity or with partial ensurance of certain rights. Considering that the state financially supported the cultural activities of the German cultural societies (albeit with modest amounts), at least one criteria for the recognition of the German national community has been legally met. (About the study of F. Capotorti see for example: Danilo Turk, Študija OZN o pravicah pripadnikov manjšin. Razprave in gradivo, INV, Ljubljana, 1979, n.9-10, p.13-30)

Namely, in the first decade after the independence of the Republic of Slovenia, the efforts of the German community to promote their own ethnic identity were often viewed through the accumulated knowledge of the Slovene-German national conflict in the past. Therefore, opinions that promoting German ethnic identity is just a first step toward reviving German (Austrian) influence and power on the Slovene national territory were somehow “logical”.

Among multilateral agreements it is worth mentioning two crucial documents approved by the Council of Europe: the **Framework Convention for the Protection of National Minorities** and the **European Charter for Regional or Minority Languages**. Slovenia signed the Framework Convention on 28th February 1995, ratified it on 23rd March 1998, and it entered into force on 28th July 1998. On the occasion of depositing the charters of ratification of the Framework Convention on 28th March 1998, Slovenia submitted a special declaration stating: “Considering that the Framework Convention for the Protection of National Minorities does not contain a definition of the notion of national minorities and it is therefore up to the individual Contracting Party to determine the groups which it shall consider as national minorities, the Government of the Republic of Slovenia, in accordance with the Constitution and internal legislation of the Republic of Slovenia, declares that these are the autochthonous Italian and Hungarian national minorities. In accordance with the Constitution and internal legislation of the Republic of Slovenia, the provisions of the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia”.

Slovenia signed the European Charter for Regional or Minority Languages on 3 July 1997, it was ratified on 19 September 2000 and it was published in the Official Gazette on 4th August 2000; it covered the period 1st January 2001.

At the time of the deposit of the instruments of ratification, the Republic of Slovenia declared that the Italian and Hungarian languages are considered to be regional or minority languages in the territory of the Republic of Slovenia within the meaning of the European Charter for Regional or Minority Languages. An additional declaration was presented concerning the Romany language: “In accordance with Article 7, paragraph 5, of the Charter, the Republic of Slovenia will apply *mutatis mutandis* the provisions of Article 7, paragraphs 1 to 4, also to the Romany language”. The Romany language is treated as a “non-territorial language”. In the Charter a “non-territorial language” is defined as a language used by nationals of the State which differs from the language or languages used by the rest of the State’s population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof. We can find additional information on the definition of “non-territorial languages” in the Explanatory Report of the European Charter for Regional or Minority Languages, where Yiddish and Romany are cited as examples of non-territorial languages. In light of present dilemmas concerning the position of the German speaking minority in Slovenia it might prove reasonable to solve this problem within the framework of the term “non-territorial language”.

II. THE MODEL

Which elements in the Slovenian model of the protection of ethnic (national) minorities (communities) are worth pointing out? A starting point for the protection of ethnic (national) minorities (communities) in Slovenia is provided by the concept of **ethnically mixed territory** and the system of **collective rights** which the State grants **irrespective of the numerical strength or proportion** of the members of the ethnic minorities on the ethnically mixed territory. Ethnically mixed territory comprises the areas of the settlements in the individual municipality where members of the Italian and Hungarian ethnic minority have lived for centuries. The area of the ethnically mixed territory is specified in the statute of the individual municipalities. According to the Article 11 of the Constitution of the Republic of Slovenia, in ethnically mixed areas the languages of the minorities are also **official languages**, in addition to Slovenian.

Collective rights pertain to ethnic minorities as objectively existing subjects. However, it depends on the individual members of the ethnic communities when and to what degree they will exercise their “granted” special rights. **The absence of a numerical clause** means that the State acknowledges ethnic minorities as particularly important elements in the historical development of a territory that is homeland to several ethnic groups. The concept of ethnically mixed area may remind us of the “reservation” type of minority protection which is often incompatible with the modern mobility needs of individuals, therefore also the members of the minority communities. However, to exceed this model of minority protection, multilingual states would have to be created, which in today’s situation is an almost utopian idea. Namely, the present model for the protection of national minorities allows only an appropriate revaluation of the traditional “reservation” view of minority protection. At least two principles of ethnic minority politics should be implemented if we wish to develop the model described. Firstly, promoting the idea that the **cultural and spiritual inheritance** of an ethnically mixed area is the common property of all its inhabitants, irrespective of their ethnic affiliation and/or the social status they possessed in the various historical periods. And secondly, the definition of those rights which members of ethnic communities can exercise even outside the **ethnically mixed areas**. The Slovenian state has classed as such the following rights: the right of members of the ethnic communities to be listed on a special electoral register of the ethnic groups for the election of a special minority deputy to the National Assembly, even if they do not live in the ethnically mixed area, and the right to learn the language of the ethnic community even outside the ethnically mixed area.

Another very important peculiarity must be underlined: the solutions in the field of the **protection of ethnic minorities do directly concern members of ethnic majority** too. Namely, even members of ethnic majority group are obligated to have, for example, bilingual documents, to learn in public schools the language and culture of the ethnic minority, to “tolerate” the bilingual toponymy, etc.

Which right should be pointed out from the model of the protection of Ethnic Communities in Slovenia? Usually this honour goes to the right of members of the minorities to **use their language** in their private and public life freely and without any restrictions. Several laws prescribe the use of the Italian and/or Hungarian language in visible bilingualism, in the State and municipal administration, in bilingual documents and in the judicial system.

Special attention is further paid to the **right to education** for members of the ethnic communities. Provisions concerning the preservation of the national communities can also be found in the field of **information, cultural development, free relations**, the use of **national symbols** and **economic development**. And finally the system of **political participation** of members of ethnic minorities in decision-making processes should be mentioned.

The right of the ethnic community to freely and publicly use their **national symbols** is guaranteed to the Italian and Hungarian ethnic minority by Article 64 of the Constitution, while more detailed provisions on the use of the symbols of the ethnic communities may be found in the appropriate laws¹³. The use of symbols (hoisting of the flag, playing the anthem) of the ethnic communities in public is deemed to be an acknowledgment by (political) administrators of the territory that the identity of the ethnically mixed area consists of a multitude of (also ethnic) identities, which should be declared openly, honestly and without fear of loss of sovereignty for the majority nation. This anthropological explanation is (usually) acceptable as long as the ethnic community has symbols (primarily the flag) which do not remind one of another state. Concerns and complications usually arise when the symbols of ethnic communities are identical to the symbols of the "parent" nation, that is, the symbols of the *state* of the kin-nation. This very situation was encountered in Slovenia when the Italian and Hungarian ethnic communities chose the Italian and Hungarian national flags respectively for their nationality flags. The flags are identical to the state flags of Italy and Hungary, which may to some members of the majority nation give the impression of a "curtailed" sovereignty of the Slovenian nation in the ethnically mixed area¹⁴. On the basis of these arguments, the National Council submitted a proposal to the Constitutional Court for an evaluation of the constitutionality of those provisions of the Law on the Coat of Arms, Flag and Anthem of the Republic of Slovenia, which relate to the use of symbols of the Italian and Hungarian minorities. These were supposedly unconstitutional, being identical with the symbols of neighbouring states, since they would impinge on the sovereignty of the Republic of Slovenia. The question which the National Council put to the Constitutional Court was: from the viewpoint of the Constitution, may the symbols

¹³ Law on the Coat of Arms, Flag and Anthem of the Republic of Slovenia, and on the Slovenian National Flag. Official Gazette of the RS. No. 67/94, Articles 6, 13, 14 and 21
Decree on the hoisting of the flags in the Municipality of Piran. Primorske novice, Official Announcements, Koper, n.41/2000

¹⁴ Under the previous political system this dilemma did not arise, since a five-pointed red star was added to the Italian and Hungarian (national/state) flag.

of the autochthonous Italian and Hungarian ethnic communities be identical to the symbols of another state? The Constitutional Court found that the use of the nationality symbols of ethnic communities which are identical to the symbols of a neighbouring nation is not unconstitutional. The Constitutional Court based its adjudication on the provisions of the Constitution which state that "both autochthonous ethnic communities and their members have the right to freely use their national symbols (Article 64). The phrase "their national symbols" itself already indicates that it is a matter of symbols of nations of which the Italian and Hungarian ethnic communities are a part, that is, the symbols of the Italian and Hungarian nation. And the content of the Italian and Hungarian national symbols is known and cannot be a matter of choice; the national symbols are such as they have evolved through the history of the Italian and Hungarian nation. The autochthonous Italian and Hungarian ethnic communities and their members thus have the (constitutionally based) right to use as their own the Italian or Hungarian national symbols, irrespective of whether these are identical with the symbols of the Italian or Hungarian state. Only if the Constitution were to stipulate explicitly that an exception existed in the event that the national symbols were the same as the state symbols, could and should the provision of Article 64 be understood differently"¹⁵.

In the international documents which Slovenia signed or inherited, the **economic development** of ethnic communities is dealt with primarily in the sense of a non-discriminatory attitude of the State to members of ethnic communities. Such a provision may be found in the Special Statute¹⁶ of the Memorandum of Understanding from 1954. This level of non-discriminatory attitude has essentially not been improved on even by the Framework Convention on the Protection of Ethnic Minorities¹⁷. A step forward can be found, however, in the Convention on the Providing of Special Rights of the Slovenian Ethnic Minority in the Republic of Hungary and the Hungarian Ethnic Community in the Republic of Slovenia. As provided in this Convention, the ethnic communities are subjects that cannot be bypassed in the shaping of the economic and social development of the area inhabited by the ethnic communities¹⁸.

¹⁵ Constitutional Court. 691. The decision on establishing the constitutionality of paragraph 2 of Article 13, paragraph 3 of Article 14 and paragraph 2 of Article 21 of the Law on the Coat of Arms, Flag and Anthem of the Republic of Slovenia and the Slovenian National Flag. (Official Gazette of the Republic of Slovenia No. 14/1999), pg. 1322

¹⁶ Special Statute of the Memorandum of Understanding (1954), Article 6: "The economic development of the Yugoslav ethnic population on the territory under Italian control and that of the Italian population on the territory under Yugoslav control shall be guaranteed without discrimination and with the fair distribution of the available financial resources."

¹⁷ Framework Convention for the Protection of Ethnic Minorities, Article 15: "The contracting parties guarantee the necessary conditions for the effective participation of members of ethnic minorities in cultural, social and economic life and in public affairs, especially in those which are their immediate concern."

¹⁸ Convention on the Providing of Special Rights of the Slovenian Ethnic Minority in the Republic of Hungary and the Hungarian Ethnic Community in the Republic of Slovenia, Article 7: "The signatories bind themselves to consider in their regional and economic development plans, the special interests of minorities, and to guarantee such economic and social development of areas with autochthonous minority settlement as will promote the social and economic equality of the minorities. The signatories shall, for the benefit of the minorities, support all forms of cross-border cooperation, particularly economic cooperation.

The signatories shall support such economic development as will prevent emigration of the population and a forced change in ethnic structure of the autochthonous territory of the minority".

The arrangement which the state of Slovenia adopted in the area of the economic development of the ethnic communities could be placed in the framework of “positive discrimination”. Slovenia bound itself, in the Law on the Use of Funds Acquired by Purchase According to the Law on the Transformation of Enterprise Ownership¹⁹, to set aside part of these funds (amounting to 2.5% of the accumulated money) exclusively for the creation of an economic foundation for the autochthonous ethnic communities. On the basis of that law, a special ordinance²⁰ was adopted defining in more detail the criteria and procedures for the allocation of funds. The right to apply for funds for the creation of an economic foundation pertains to natural persons - members of the autochthonous ethnic communities, and legal entities that are majority owned by members of the autochthonous ethnic community, or those whose founder is the ethnic community. The resources are distributed proportionally between the two autochthonous ethnic communities and are channelled into the development of farms, auxiliary activities at farms, cooperative organisations, small business and into investments in other production or service facilities and equipment in the economy. One condition for the acquisition of funds in the form of a loan is at least 15% self-participation of the applicant. Applications for loans lodged by members of the ethnic communities are handled by a special committee consisting of representatives of the Ministry for Economic Relations and Development, the Ministry for Agriculture, Forestry and Food, the Ministry for Economic Activities and the Bureau for Minorities of the Republic of Slovenia. Before making a final decision on applications, the committee must obtain the opinion of the Coastal self-governing ethnic community of the Italian minority and the Pomurje Hungarian ethnic community, on the significance of the proposed projects for those communities. Until 1999 three tenders had been advertised for the allocation of funds for the preservation and development of the economic foundation of the ethnic communities.

The Strategy of Regional Development of Slovenia²¹, prepared by the Ministry of Economy does not determine the economic foundation of minority communities as a special development category. In item 4.2 (preferential areas of regional policy) it is written that the Slovene regional policy will be particularly active in the areas “where the Hungarian and Italian national communities and the Romany ethnic group live.”²² The State is to act mainly with “indirect regional incentive”. The State uses the term ethnically mixed territory and not individual national minorities. This is theoretically acceptable. However, the ways in which the minority communities would acquire the development incentives remain undefined. So a real danger exists that the nationally mixed areas will gain the State incentives because of the presence of minority communities, whilst the communities themselves will find it more difficult to obtain such funding.

²¹The Strategy of Regional Development of Slovenia. Poročevalec, n.60 (Ljubljana, July 9th 2001)

²²The Strategy of Regional Development of Slovenia. Poročevalec n.60 (Ljubljana, July 9th 2001), p. 44

At the end of this summary review the problem of **the political participation of national communities** is worth addressing. The correlation between the political participation of members of ethnic communities and the system of special ethnic minority rights may be observed from several perspectives: **firstly**, through the realisation of the right to (or desire for) appropriate representation by members of ethnic minorities in governmental bodies at local and national levels; **secondly**, by analysing the scope and depth of the actual power that elected deputies of ethnic minorities have in representing the interests of ethnic minorities; and **thirdly**, by examining the (political) self-organisation of ethnic minorities in the light of the realisation of the system of special minority rights in Slovenia. These institutions are known as **"Self-governing ethnic communities"**.

When discussing the **participation in decision-making** by members of ethnic communities, we have in mind only one segment of ethnic minority participation in decision-making: their political activities which relates to the realisation of special minority rights. Political activity arising from the "purely" ideological determination of members of an ethnic community belongs in the category of general human rights which pertain to every citizen without distinction. Although one cannot completely separate the two segments, the present discussion uses the term "double political personalities", meaning that the members of national communities participate in politics as either ordinary citizens or, at other times, as citizens with special national attributes. Such methodological distinction is meaningful when the lawgiver raises the minority attributes to the level of constitutive elements of the state. From statements above in this text it may be concluded that this very model was chosen and implemented in Slovenia. Electoral legislation has been designed in accordance with the described model, and it gives to the members of the Italian and Hungarian ethnic communities the right to **cast two votes** in elections for deputies to the National Assembly or in elections for local self-governing bodies (municipalities). The first vote is "used" to choose a candidate according to their ideological political affinity of the individual members of ethnic minorities, and the second vote to elect a special deputy of the ethnic community.

Before analysing the problem of political participation in a more detailed way, another very important provision in the model of the protection of ethnic minorities must be mentioned – in order to properly protect the interests of the ethnic minorities and to avoid the possibility that the legislation concerning strictly minority matters would be adopted against the will of the ethnic communities, the Constitution contains the provision that these laws **"cannot be adopted without the consent of ethnic communities representatives"**²³

²³ Constitution of the Republic of Slovenia, Article 64, par.5

The 1991 Constitution of the Republic of Slovenia²⁴ guarantees to the members of the Italian and Hungarian ethnic communities appropriate representation in the National Assembly and in representative bodies of local self-government. In Article 80, the Constitution defines more specifically that “one deputy of the Italian and one deputy of the Hungarian national communities shall always be elected to the National Assembly”. More importantly, the State authorises the self-governing ethnic communities²⁵ to compile electoral registers of Slovenian citizens who are members of the Italian or Hungarian minorities. The task is performed by a special commission of the respective self-governing ethnic community²⁶. This electoral register is used for the election of representatives ethnic minorities at the local level (municipalities) and for the election of representatives in the self-governing ethnic communities. It is important to mention again that the deputies/representatives of the Italian and Hungarian minorities in the National Assembly are elected by all members of the ethnic minorities who have voting rights, irrespective of whether they live in the ethnically mixed area or elsewhere in Slovenia. In the latter case, members of the Italian or Hungarian ethnic minority are placed on the electoral register of citizens who are members of the Italian or Hungarian minorities at their written request.

The creation of the special electoral register of citizens who are members of ethnic minorities was subjected to a constitutional enquiry at the initiative of the National Assembly. The Constitutional Court of the Republic of Slovenia decided that the Law on the Records of Voting Rights (Official Gazette of the Republic of Slovenia, No. 46/52) is unconstitutional in that it does not define the criteria “according to which the commissions of the Italian and Hungarian self-governing ethnic communities decide which voters to place on the special electoral register of citizens who are members of the autochthonous ethnic communities”²⁷.

²⁴ See article 64 of the Constitution of the Republic of Slovenia.

²⁵ Law on the Records of Voting Rights (Official Gazette of the Republic of Slovenia No. 46/92) Article 19

²⁶ Law on the Records of Voting Rights (Official Gazette of the Republic of Slovenia No. 46/92): Article 20: “The commission mentioned in the preceding article shall consist of a president and two members. The commission for the formation of the electoral register must be established and its president and members appointed at the latest five days after the elections have been called.” Article 21: “The electoral register of citizens who are members of the Italian or Hungarian ethnic community shall be confirmed by the president and members of the commission for the formation of the electoral register, with the hand and seal of the appropriate self-governing ethnic community. The commission submits the electoral register to the competent body for approval within 15 days from the day the elections were called”.

²⁷ Constitutional Court. Decision 844 on establishing the constitutionality of the Law on Elections to the National Assembly, the Law on Local Elections, Article 22 of the Law on the Records of Voting Rights, paragraph 4 of Article 53, Article 134 and paragraph 2 of Article 140 of the Statute of Koper Municipal Council, on establishing an unconstitutional legal loophole in the Law on the Records of Voting Rights, and on the partial rejection of the initiative. Official Gazette of the Republic of Slovenia, No. 20/1998, p.1308

The Constitutional Court declared that autochthony is attributed to the Italian and Hungarian national communities. Therefore, “all special rights with which the Constitution protects the ethnic communities are applied to the members of the autochthonous Italian and Hungarian ethnic communities - and not to all persons declaring themselves to be Italians or Hungarians. Keeping this in mind, it is not enough for the exercising of special rights (in particular the special voting right) that a person declares himself to be Italian or Hungarian. A constitutionally inadmissible situation would arise if a commission of a self-governing ethnic community had to enrol in the special electoral register every adult citizen who declared himself to be a member of the autochthonous Italian or Hungarian ethnic community. The affiliation with the autochthonous Italian or Hungarian ethnic communities is not only a matter of the individual’s will but also a matter of the ethnic community which considers such a person to be its member or not. An arrangement according to which the enrolment into a special electoral register is assured to anyone who declared himself to be a member of the autochthonous Italian or Hungarian ethnic community would not enlarge the protection of the ethnic communities. Rather it would permit uncontrolled misuse, either for exclusively electoral purposes, or with the intention of distorting the true will of the community in its ordinary activities, in elections of its own bodies, etc. Such an arrangement would nullify the special rights of members of the autochthonous Italian and Hungarian ethnic communities.”²⁸ The decision of the Constitutional Court was that “the criteria for the determination of affiliation with the autochthonous Italian and Hungarian national communities should be defined by law (...). The lawgiver was assigned the task of filling this constitutional gap before the calling of the next elections to the National Assembly”²⁹.

The lawgiver fulfilled this “commitment” with the adoption of the Law on the Amendment of the Law on the Record of Voting Right, stating that the “Commission of the self-governing Ethnic Community enrolls the individuals who are members of the autochthon national community into the voting registry of the citizens that belong to the Italian or Hungarian national communities. The affiliation with the autochthonous Italian or Hungarian national communities is determined on the basis of the individuals’ declaration or on the basis of entry in the voting registry of the members of the Italian or Hungarian national communities at the previous election. In the event of doubt concerning the validity of the individual’s statement, a special determination procedure is to be carried out by the commission in accordance with the law governing general administrative procedure. If the conditions for entry are not met, the commission will issue such a provision. The self-governing ethnic community will regulate more detailed

²⁸ Constitutional Court. 844. Decision on establishing the ..., pg. 1313

²⁹ Constitutional Court. 844. Decision on establishing the ..., pg. 1313

measures for meeting the criteria described in the third paragraph of this article”³⁰.

The elected representatives to the National Assembly of the Hungarian and Italian ethnic minorities have a **representative mandate**. When deciding as “ordinary” representatives or when deciding as representatives of the ethnic minority they decide in accordance with their free will.

The **dual voting right** of members of the ethnic communities has been disputed by a group of members of the majority ethnic group. They therefore referred this provision of the electoral legislation to the Constitutional Court for adjudication. The Court has ruled that the provision was not unconstitutional. It has declared in its reasoning of the adjudication that “the special voting right of the members of the ethnic community is a departure from the principle of equality of voting rights. The principle of equality of voting rights demands that every voter have an equal number of votes and that those votes have the same value. Voters who have, apart from their general voting right, also a special voting right have two votes at their disposal - their will is taken into consideration twice: in giving a mandate to a deputy of the ethnic community and in the distribution of the mandates of other deputies. The very right of members of the ethnic communities to elect a deputy irrespective of their number is a departure from the principle of equality of voting rights, and dual voting is a step further away from that principle.”³¹

However, the Constitutional Court states further, “the special voting right of members of ethnic communities is an expression of the constitutionally guaranteed protection of these communities and their members. Although this is a departure from the principle of equality of voting rights, such “positive discrimination” is not unconstitutional, on the contrary: the Constitution places the demand on the lawgiver to institutionalise such measures in the legislation. Seeing that the Constitution itself provides for and demands a departure from the principle of equality of the voting right (positive discrimination), there was no need for the Constitutional Court to weigh the significance of the infringement on the equality of voting right against the significance of the constitutional value which is achieved by this infringement.”³²

Also of interest is the argument of the Constitutional Court on the necessity of the dual voting right for members of the ethnic communities. If the law “allowed the members

³⁰ The Law on the Amendment of the Law on the Voting Registry. (Official Gazette of the Republic of Slovenia, 72/2000 1st article)

Article 1: The council of the Pomurje Hungarian national self-governing national community adopted on ...8.2000 special rules of procedure on the criteria for meeting the conditions for affiliation with the Hungarian national community. In the 2nd paragraph of these rules, the following standards for affiliation were set: the integration of the individual in the activities of the Hungarian national community and; integration and inclusion in other aspects of the social and cultural life of the Hungarian community and appertaining to the Hungarian language and culture.

³¹ Constitutional Court. Decision 844. Decision on the establishment of the constitutionality ... (Official Gazette of the Republic of Slovenia, 20/1998) pg. 1312

³² Constitutional Court. Loco citato, page 1313

of the ethnic communities only one vote and gave them the choice between exercising their general and special right to vote (at elections for a deputy of the ethnic communities and at the elections for all other deputies), one of those two constitutional rights would be taken away from such persons. Considering that the Constitution does not restrict the general voting right of members of the ethnic minorities and at the same time gives them the right to elect a deputy of the ethnic community, the legal establishment of the right to one vote only with the option of choice would result in the fact that the members of ethnic communities would be forced to choose between their two constitutional rights: the general right to vote and the right to be directly represented. By choosing one of those two rights they would automatically forfeit the other. Such an arrangement would be unconstitutional, since it would deprive the members of ethnic communities of one right or the other - according to their own choice."³³ The dual right to vote of members of the ethnic communities means "a double departure from the principle of equality of voting rights, however, such a departure is foreseen and demanded in the Constitution itself as a form of the so-called positive discrimination"³⁴.

What kind of relations are established between the elected representatives of the ethnic minorities to the National Assembly and the Self-governing communities? The question is interesting because we are discussing the relations between two formally independent institutions. The representative which was elected to the National Assembly is not the representative of the Self-governing ethnic community, but the representative of the whole ethnic minority. As such the representative is not bound by the decisions of the self-governing ethnic community. On the other hand, the Self-governing ethnic communities are officially recognised interlocutors with the State in matters regarding different aspects of ethnic minority life. These institutions are able to present the official opinions and suggestions to the State, but in reality they have little political power to realise these proposals: persuasion and arguing, perhaps searching for some kind of "help" from their kin-nation are the only methods of political action of the self-governing ethnic communities. On the other hand, the elected representative of the ethnic minority to the National Assembly is not the exclusive representative of the ethnic minority, but he/she is (in reality) the only one who has the possibility to participate in an active way in the process of decision making – he/she has the possibility to propose amendments and corrections to the proposed legal solutions and in any case, he/she is the only one with the possibility to veto decisions in the National Assembly regarding special ethnic minority rights.

³³ Constitutional Court. Loco citato, page 1313

³⁴ Constitutional Court. Loco citato, page.1313

As an analogy to solutions at the state level, the (dual) voting right of ethnic community members is also granted for elections of ethnic minority members to municipal councils. In article 39, the Law on Local Self-government³⁵ stipulates that “both ethnic communities in ethnically mixed areas inhabited by members of the Italian or Hungarian ethnic community (as defined by law) shall have at least one representative in the municipal council”. Legal provisions on the mandatory presence of ethnic community members in municipal councils are defined in more detail in the statutes of the following municipalities: Izola/Isola³⁶, Piran/Pirano³⁷, Koper/Capodistria³⁸, Moravske Toplice³⁹, Dobrovnik/Dobronak⁴⁰, Hodoš/Hodos⁴¹, Šalovci⁴², Lendava/Lendva⁴³.

The procedure for electing ethnic community representatives to the municipal councils is laid down in the Law on Local Elections. The Law provides that “the right to elect and be elected a member of the municipal council – as a member of the Italian or Hungarian ethnic community - pertains to members of these ethnic communities”⁴⁴. The voting right of ethnic minority members is guaranteed in a “special municipal electoral register of inhabitants - members of both ethnic communities”⁴⁵. Elections for

³⁵ Law on Local Self-government (Official Gazette of the Republic of Slovenia, No. 72/93)

³⁶ Statute of the Isola municipality (Official Bulletin of municipality Isola, 15/1999) paragraph 1 of Article 30: “The municipal council shall consist of 23 members, of which the Italian ethnic minority shall have two.”

³⁷ Statute of the Piran municipality (Official Bulletin, 10/1999) paragraph 2 of Article 15: “The municipal council shall consist of 25 members. On the basis of their special voting rights, Italian ethnic minority members shall elect three of those members of the municipal council.”

³⁸ Statute of the Koper municipality (Official Bulletin 9/95), Article 28: “The municipal council shall consist of 32 members. Italian ethnic minority members shall elect three of those members of the municipal council.”

³⁹ Statute of the Moravske Toplice municipality (Official Gazette of the Republic of Slovenia, 11/1999), paragraph 2 of Article 14: “The municipal council shall consist of 17 members; three of these shall be members of the Hungarian ethnic community.”

⁴⁰ Statute of the Dobrovnik municipality (Official Gazette of the Republic of Slovenia, 34/1999) states in article 21: “The municipal council is elected on the basis of general and equal voting rights with direct and secret voting. Citizens with permanent residents in the municipality have voting rights. Also elected by secret ballot is a representative of the Hungarian national community on the basis of a special voting right. Also elected by secret ballot are the members of the Slovene nation, who represent a minority in the municipality.”

⁴¹ Statute of the Hodoš municipality (Official Gazette of the Republic of Slovenia, 47/1999), Article 14, paragraph 2: “The municipal council consists of seven members. The representatives of the Hungarian and the Slovene national community, since they represent a minority in the municipality, each have one representative in the council. The representative of the Slovene and Hungarian national community in the municipal council have the right to veto when deciding on matters concerning the position of their nationality communities.”

⁴² Statute of the Šalovci municipality (Official Gazette of the Republic of Slovenia, 13/1999) There are no specific provisions in the statute as there are in other statutes of nationally mixed municipalities. However, it may be discerned from paragraph 2 of Article 62, that a representative of the Hungarian national community is elected to the municipal council (Article 62, paragraph 2: “a representative of the Hungarian national community has the right to use his/her mother tongue when working in the municipal council and its agencies.”)

⁴³ Statute of the Lendava municipality (Official Gazette of the Republic of Slovenia, 26/1999), paragraph 2 of Article 15: “The municipal council shall consist of 22 members; two of these shall be members of the Hungarian ethnic community.”

⁴⁴ Law on Local Elections (Official Gazette No. 72/93), Article 6

⁴⁵ Law on Local Elections (Official Gazette No. 72/93), paragraph 2 of Article 8

the municipal council members from the ranks of ethnic minorities are conducted according to the majority principle⁴⁶ in special electoral districts comprising the territory of municipalities⁴⁷. For the election of members of the municipal council – as representatives of the Romany community – a special municipal electoral commission⁴⁸ is appointed, in which at least one member and one deputy member must be members of that ethnic community⁴⁹. Candidates for members of the municipal council – as representatives of the Italian or Hungarian ethnic community – are chosen by at least 15 signatures of the voters – members of the ethnic minority having permanent residence in the municipality.⁵⁰

What kind of a mandate do the elected members of ethnic minorities have? It has been mentioned before that the representatives of minorities elected to the National Assembly have a representative mandate. By contrast the representatives elected at the local level have an **imperative mandate** in matters concerning the special rights of minorities. In spite of being elected by all members of an ethnic minority with a permanent residence in a particular municipality, minority representatives are bound by the decisions approved by Municipal self-governing ethnic communities.

The establishment of **Self-governing ethnic communities** – the central political institutions of the ethnic communities – was enacted by the Constitution (paragraph 2 of Article 64). On the basis of that provision, the special Law on Self-governing Ethnic Communities was adopted⁵¹. That Law defines the purposes and duties of Self-governing communities⁵², the manner and procedures for the realisation of these duties⁵³, the organisation of the self-governing communities, their relationship to bodies of local self-government (municipalities), the relationship with state bodies and

⁴⁶ Law on Local Elections (Official Gazette No. 72/93), paragraph of Article 10

⁴⁷ Law on Local Elections (Official Gazette No. 72/93), Article 23

⁴⁸ Law on Local Elections (Official Gazette No. 72/93), Article 33

⁴⁹ Law on Local Elections (Official Gazette No. 72/93), Article 36

⁵⁰ Law on Local Elections 49 (Official Gazette No. 72/93), Article 49

⁵¹ Law on Self-governing Ethnic Communities (Official Gazette of the Republic of Slovenia No. 65/94)

⁵² Law on Self-governing ethnic communities (Official Gazette No. 65/94), Article 3: "The Self-governing ethnic communities shall accomplish the following tasks:

- in accordance with the constitution and law independently decide on matters in their jurisdiction;
- in accordance with the law, give an accord on matters relating to the safeguarding of special rights of national communities, which are decided together with the agencies of self-governing local communities;
- study and deal with issues concerning the position of national communities, take stands and present suggestions and incentives to the appropriate agencies;
- encourage and organize activities that contribute to the preservation of the national identity of the members of the Italian and Hungarian national community."

⁵³ Law on Self-Governing ethnic communities (Official Gazette No. 65/94), Article 4:

"The Self-Governing ethnic communities fulfil the tasks from the previous article by:

- encouraging and organizing cultural, research, informative, publishing and economic activities for the development of national communities;
- founding organizations and public institutions;
- monitoring and encouraging the development of upbringing and education for the members of national communities and, in accordance with the law, cooperating in the planning and organizing of the educational work and in the forming of educational programmes;
- developing contacts with the kin-nation, the members of national communities in other states and with international organizations;
- in accordance with the law, perform tasks from the state jurisdiction;
- accomplishing other tasks in accordance with the statute.

finally their financing. Of course, the formation of self-governing ethnic communities does not mean that members of ethnic communities have no opportunities for the establishment of other (political) organisations to express their political affinities and will, or to protect and promote their ethnic identity. However, if such organisations are created, they cannot replace the self-governing ethnic communities in their role. Self-governing ethnic communities remain, on the basis of the constitutional provisions and the appropriate laws, the only legal partner in the process of dialogue between the ethnic minorities and the State.

Self-governing ethnic communities have been established in every municipality⁵⁴ inhabited by members of the autochthonous ethnic minorities. The municipal self-governing ethnic communities have then established the "national" self-governing ethnic communities: one for the Italian and one for the Hungarian ethnic minority. These communities are the central partners in the relationship between the national minorities and the State. In accordance with the law, the self-governing ethnic communities present to the National Assembly, the government and other state agencies suggestions, initiatives and opinions on all matters that are under the jurisdiction of the self-governing ethnic communities. The provision of the law stating that that all state agencies must, "when deciding on matters concerning the position of the members of the ethnic minorities, consult beforehand the self-governing ethnic communities,"⁵⁵ is very important.

A similar provision is also valid at the local self-governing level. The self-governing ethnic communities submit to the local self-government suggestions, initiatives and suggestions concerning the position of ethnic minorities and the preservation of the ethnically-mixed areas' particularities. The duty of the self-governing communities is to handle these initiatives and to form an opinion on them. The competences of the self-governing ethnic communities do not, however, include only the formation of opinions and incentives. The provision declaring that the communities must be in accordance with the affairs concerning the national minorities is even more important. This accord must be acquired before deciding on issues concerning the special rights of nationalities "by the representatives of the national minorities that were elected to the councils of the self-governing the local communities".⁵⁶

⁵⁴ The municipalities are required to ensure premises and other financial means necessary for the functioning of the municipal self-governing ethnic communities. Financial means for the functioning of the municipal self-governing ethnic communities are provided in the municipal budget, and financial means for the functioning of the Italian and Hungarian self-governing ethnic communities in the Republic of Slovenia are provided in the state budget.

⁵⁵ Law on self-governing ethnic communities. Official Gazette of the RS, No.65/94, Article 15, 2nd paragraph

⁵⁶ Law on self-governing ethnic communities. Official Gazette of the RS, No.65/94, Article 13

The Law on Self-governing Ethnic Communities mentioned two other important fields of activity: firstly, the right of self-governing ethnic communities to co-operate with "kin-nations and their states, with members of ethnic communities in other states and with international organisations"⁵⁷; and secondly, the right that "members of the self-governing ethnic communities **participate in the preparation of interstate agreements** relating to the status of ethnic minorities and the protection of their rights."⁵⁸ With this provision the circle of areas of political participation of the representatives of national communities, which spans from the regulation of their own status on the local, national and even international level, is completed. It should be mentioned that the members of national communities even have the right to join political parties of the "majority" nation and to stand as candidates, to elect and be elected on the party lists.

III. THE USE OF LANGUAGE

In the model of protecting minority communities the right to use and preserve the minority languages, in both private and public life, represents an essential right of the minorities. This was also recognized in the documents of the Council of Europe. The problem of the usage of the language of national and/or linguistic minorities was treated with utmost attention in the European Charter on Regional and Minority Languages. The Charter was adopted in 1992 and it entered into force in 1998. The states that subscribe to the charter are to pursue **the following objectives and principles** (7th article of the Charter on Regional and Minority Languages, paragraph 1):

- a) the recognition of the regional or minority languages as an expression of cultural wealth;*
- b) the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question;*
- c) the need for resolute action to promote regional or minority languages in order to safeguard them;*
- d) the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;*
- e) the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;*
- f) the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;*
- g) the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire;*
- h) the promotion of study and research on regional or minority languages at universities or equivalent institutions;*
- i) the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.*

⁵⁷ Law on self-governing ethnic communities. Official Gazette of the RS, No.65/94, Article 16

⁵⁸ Law on Self-governing Ethnic Communities. Official Gazette of the RS, No.65/94, Article 17

2. *The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.*
3. *The Parties undertake to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective.*
4. *In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages."*

Slovenia also signed the charter. Like the other states, Slovenia is obligated to prepare a **report** on the implementation of the assumed obligations in the first year after signing the Charter. Slovenia was bound to submit such a report by the end of 2001. In order to make this report accessible to as wide an audience as possible the publishers of the present publication have decided to publish it in an integrated form. In the report certain introductory explanations, that are available elsewhere in this publication, and the Chapter on the Roma community are omitted. Since the report only deals with one aspect of the life of the Roma (the usage of language), the part dealing with this community had to be completed.

How has this report been created? A draft of the report was sent, along with the text of the European Charter on Regional and Minority Languages, the Explanatory Report and the Instructions to Create a First Report, by the Ministry of Foreign Affairs, to the following organisations and institutions:

- the Office of Nationalities of the Republic of Slovenia,
- the Pomurje Hungarian Self-governing National Community,
- the Coastal Self-governing Italian National Community,
- the Association of Roma of Slovenia,
- the Mayors of ethnically-mixed municipalities (Izola/Isola, Piran/Pirano, Koper/Capodistria, Moravske Toplice, Dobrovnik/Dobronak, Hodoš/Hodos, Šalovci, Lendava/Lendva),
- the deputies of national communities in the National Assembly of the Republic of Slovenia,
- the Ministry of Education, Science and Sport,
- the Ministry of Culture,
- the Ministry of Justice,

with a request to review the prepared draft, to evaluate and to suggest appropriate corrections and supplementations. The authors of the report are to be especially mindful of the comments made by

the self-governing national communities. Namely, there was a belief that the preparation of the report could be an appropriate opportunity for an analysis of the existing model of linguistic rights preservation. But this proved to be nothing more than a theoretical desire, since the reaction to the draft of the report, especially from the minority communities, was modest, or more specifically, non-existent! The reasons for this kind of behaviour would best be presented by the representatives of the minorities themselves. The explanations for this behaviour supplied by "laymen" would, of course, be speculative. Perhaps some of them might determine that the safeguarding of national communities is already settled ideally and there is simply no need to continually thank the state for the acquired rights. The amount of legislation would be in favour of these notions. However, responds the critic, that may be true but the implementation of this legislation remains in many areas inconsistent (visual bilingualism, for example). Also, the state allocates scarce amounts of money to the solutions of the problems of the preservation of minorities. Moreover, opinions that the amount of the assigned rights has diminished with new regional laws, for example in the field of economics and especially finance, are also present. Most likely this does not exhaust the list of possible reasons for the restrained reaction of the representatives of the minority institutions. We must address again the fact of the small number of members of these national communities, which practically disables the forming of a civil society within the minority communities. A well-branched system of minority institutions that survives more or less solely on the basis of the state's financial support, absorbs a "mass" of the work-active minority members; while the modest economic base prevents the self-financing of the activities of minorities. Therefore, there are plenty of reasons for directed criticism by the representatives of the minorities.

IV. THE IMPLEMENTATION OF THE EUROPEAN CHARTER ON REGIONAL AND MINORITY LANGUAGES

Slovenia signed the European Charter for Regional or Minority Languages on 3rd July 1997, it ratified it on 19th July 2000, and it was published in the Official Gazette on 4th August 2000. On depositing the ratification instruments, Slovenia stated that the Charter was to enter into force on 1st January 2001.

Upon depositing the ratification instruments of the Charter for Regional or Minority Languages, the Republic of Slovenia informed the general secretary of the Council of Europe, that on its national territory the Hungarian and Italian languages are the regional or minority languages. It was also noted that the provisions of the first through fourth paragraphs of article 7 will apply *mutatis mutandis* to the Romany language. The inhabited area of Italian-speaking citizens includes the ethnically-mixed areas of three coastal municipalities (these are defined in the municipalities' statutes) in the western part of Slovenia: Koper/Capodistria⁵⁹, Izola/Isola⁶⁰, Piran/Pirano⁶¹ (see enclosed map n.1); while Hungarian-speakers live in five municipalities in Prekmurje, in

⁵⁹ Statute of the Koper municipality (the Official Bulletin, n.40/2000), Article 7: "On the nationally mixed area of the municipality encompassing the settlements Ankaran - Ancarano, Barizoni - Barisoni, Bertoki - Bertocchi, Bošamarin - Bossamarino, Cerej - Cerei, Hrvatini - Crevatini, Kampel - Campel, Kolomban - Colombano, Koper - Capodistria, Prade, Premančan - Premanzano, del naselja Spodnje Škofije (Valmarin), Šalara - Salara and Škocjan - San Canzano, where members of the autochthon Italian national community live, the official languages are Slovene and Italian".

⁶⁰ Statute of the Izola municipality (the Official Bulletin, n.15/2000), Article 4, 3rd paragraph: "on the nationally mixed area (bilingual area), encompassing the town of Isola and the settlements Dobrava and Jagodje, the Slovene and Italian language are equal in public and private life".

⁶¹ Statute of the Piran municipality (the Official Bulletin, n.10/1999), Article 3: "On the nationally-mixed area of the municipality encompassing the settlements: Piran, Portorož, Lucija, Strunjan, Seča, Sečovlje, Parecag and Dragonja (the bilingual territory), on which members of the Italian national community live, the Slovene and Italian languages are equal in public and private life".

the border with Hungary: Hodoš/Hodos⁶², Šalovci⁶³, Moravske Toplice⁶⁴, Dobrovník/Dobronak⁶⁵, Lendava/Lendva⁶⁶ (see enclosed map n. 2).

According to the data of the 1991 census (the last census), 9,240 persons declared their mother tongue to be Hungarian (with 7,698 living in the nationally-mixed municipalities), while 4,009 did so for the Italian language (with 3,543 in nationally-mixed municipalities). The mother tongue is chosen entirely subjectively. This principle, which also applies for choosing one's ethnic affiliation, means that the answer given by the questioned person is noted without any additional "testing" (for example, language knowledge).

Slovenia did not assign any non-territorial languages.

⁶³ Statute of the Šalovci municipality (Official Gazette, n.13/1999), Article 2: "A part of the area of the municipality, on which members of the Hungarian national community live, is ethnically mixed. The nationally mixed area of the municipality is the settlement Domanjševci - Domonkosfa.

⁶⁴ Statute of the Moravske Toplice municipality (Official Gazette, n.11/1999), Article 2, 2nd paragraph: "The settlements Čičečka vas - Csekefa, Motvarjevci - Szentlászló, Pordašinci - Kisfalu, Prosenjakovci-Pártosfalva and Središče - Szerdahely are inhabited by members of the Hungarian national community."

⁶⁵ Statute of the Dobrovník municipality (Official Gazette, no.34/1999), Article 2, 2nd paragraph: "the part of the municipality inhabited by members of the Hungarian national community is ethnically mixed. The ethnically mixed area encompasses the settlements Dobrovník - Dobronak and Žitkovci - Zsitkóc."

⁶⁶ Statute of the Lendava municipality (Official Gazette, n.26/1999), Article 1: "the Lendava municipality is a self-governing local community founded by law in the areas of the following settlements: Banuta-Bánuta, Benica, Čentiba-Csente, Dolga vas-Hosszúfalu, Dolgovaške gorice - Hosszúfaluhegy, Dolina pri Lendavi-Völgyifalu, Dolnji Lakoš-Alsólakos, Gaberje-Gyertyános, Genterovci-Göntérhaza, Gornji Lakoš-Felsőlakos, Hotiza, Kamovci-Kámaháza, Kapca-Kapca, Kot-Kót, Lendava-Lendva, Lendavske gorice-Lendvahegy, Mostje-Hidvég, Petišovci-Petesháza, Pince-Pince, Pince marof-Pince major, Radmožanci-Radamos, Trimlini-Hármasmalom, part of Brezovec. The ethnically mixed area of the municipality where members of the Hungarian ethnic community also live comprises the above-named settlements, except for the settlements Benica, Hotiza and part of Brezovec.

Slovenia obligated itself according to the 4th article of the Law on Ratification to use for the Hungarian and Italian languages the following paragraphs and sub-paragraphs from part III of the Charter⁶⁷ :

"From the 8th article:

Paragraph 1 a (i, ii), b (i, ii, iii), c (i, ii, iii), d (i, ii, iii), e (iii), f (iii), g, h, i
Paragraph 2.

From the 9th article:

Paragraph 1 a, b, c, d
Paragraph 2 a, b, c

From the 10th article:

Paragraph 1
Paragraph 2
Paragraph 3
Paragraph 4
Paragraph 5

From the 11th article:

Paragraph 1 a (i), e (i)
Paragraph 2
Paragraph 3

From the 12th article:

Paragraph 1 a, d, e, f,
Paragraph 2
Paragraph 3

From the 13th article:

Paragraph 1
Paragraph 2

From the 14th article:

Paragraphs a, b.

In accordance with the 5th paragraph of the 7th article of the Charter, the Republic of Slovenia will apply the provisions of the first through fourth paragraphs of article 7 mutatis mutandis to the Romany language⁶⁸.

⁶⁷ This chapter is entitled "Measures to promote the use of regional or minority languages in public life in accordance with the undertakings entered into under Article 2, paragraph 2.

⁶⁸ Law on the Ratification of the European Charter on Regional and Minority languages, the Official Gazette, n.17 (4.8.2000), Article 4

Article 8: EDUCATION

Slovenia is obligated to honour the provisions stating that it must

- (i) “make available **pre-school education** in the relevant regional or minority languages; or
- (ii) to make available a substantial part of **pre-school education** in the relevant regional or minority languages”⁶⁹.

With regard to **primary education**, Slovenia chose the provisions stating that the Parties will

- (i) “make available **primary education** in the relevant regional or minority languages; or
- (ii) make available a substantial part of **primary education** in the relevant regional or minority languages; or
- (iii) provide, within **primary education**, for the teaching of the relevant regional or minority languages as an integral part of the curriculum”.⁷⁰

Furthermore it is to ensure appropriate **secondary education** to which item (c) in the European Charter refers. This item binds Slovenia to respect the provisions obligating the Parties to

- (i) “make available **secondary education** in the relevant regional or minority languages; or
- (ii) to make available a substantial part of **secondary education** in the relevant regional or minority languages; or
- (iii) to provide, within **secondary education**, for the teaching of the relevant regional or minority languages as an integral part of the curriculum”.⁷¹

Item (d) of the 8th article refers to the commitments in the area of **technical and vocational education**. The three provisions Slovenia is obligated to fulfill state that the Parties must

- (i) “make available **technical and vocational education** in the relevant regional or minority languages; or
- (ii) to make available a substantial part of **technical and vocational education** in the relevant regional or minority languages; or to
- (iii) provide, within **technical and vocational education**, for the teaching of the relevant regional or minority languages as an integral part of the curriculum.”⁷²

⁶⁹ European Charter for Regional or Minority Languages, Article 8, 1st paragraph, a (i,ii)

⁷⁰ European Charter for Regional or Minority Languages, Article 8, 1st paragraph, b (i,ii,iii)

⁷¹ European Charter for Regional or Minority Languages, Article 8, 1st paragraph, c (i,ii,iii)

⁷² European Charter for Regional or Minority Languages, Article 8, 1st paragraph, d (i,ii,iii)

The commitments in the area of **higher education** are discussed in item (e) of the 8th article. The provision Slovenia is obligated to fulfill states that

(iii) “the Parties must if, by reason of the role of the State in relation to **higher education** institutions, sub-paragraphs i and ii cannot be applied, encourage and/or allow the provision of university or other forms of higher education in regional or minority languages or of facilities for the study of these languages as university or higher education subjects”.⁷³

The charter also refers to **adult and continuing education**. Slovenia chose to comply with the provision stating that

(iii) “if the public authorities have no direct competence in the field of **adult education**, to favour and/or encourage the offering of such languages as subjects of **adult and continuing** education.”⁷⁴

From the first paragraph of article 8 Slovenia also chose to comply with the following items, obligating the parties to:

(g) “make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language;

(h) to provide the basic and further training of the teachers required to implement those of paragraphs a to g accepted by the Party”⁷⁵.

We should also mention item (i), obligating parties “to set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of regional or minority languages and for drawing up periodic reports of their findings, which will be made public”.⁷⁶

In accordance with article 8 of the Charter, Slovenia is also bound to exercise the 2nd paragraph that also offers the possibility of education on territories where regional or minority languages are not traditionally used. The state Parties have obligated themselves to, if that is the case, “allow, encourage and ensure instruction in regional or minority languages or the instruction of regional or minority language instruction on all appropriate levels of education, if this is justified by the number of users of regional or minority languages”.⁷⁷

Under the new Constitution, Slovenia has preserved the basic outline of the educational system for ethnic community members which had shown itself in the post-war era to be the most effective and suitable public medium for the preservation and development of the ethnic identity of ethnic communities, while at the same time

⁷³ European Charter for Regional or Minority Languages, Article 8, 1st paragraph, e (iii)

⁷⁴ European Charter for Regional or Minority Languages, Article 8, 1st paragraph, f (iii)

⁷⁵ European Charter for Regional or Minority Languages, Article 8, 1st paragraph, (i)

⁷⁶ European Charter for Regional or Minority Languages, Article 8, 1st paragraph, (i)

⁷⁷ European Charter for Regional or Minority Languages, Article 8, 2nd paragraph

actively promoting the ideas of tolerance of ethnic differences and peaceful coexistence in ethnically mixed areas. These two elements can be discerned from the provisions of the Law on the Special Rights of the Members of the Italian and Hungarian Communities in the Field of Education and Upbringing. In Article 3 (objectives) it is stated that “upbringing and education in kindergartens and schools where the Italian language is used and in bilingual kindergartens and schools on ethnically-mixed areas include, in addition to the objectives listed in the regulations in the field of upbringing and education, also the following objectives:

the preservation and development of the Hungarian or Italian languages and the culture of the Italian or Hungarian national communities,

- the development of linguistic capabilities and aptitudes in the first and second language (for members of national communities the first language is Italian or Hungarian, and the second Slovene),

- the cultivation of knowledge about the historical, cultural and natural heritage of the Italian or Hungarian national communities and their kin-nations,

- the cultivation of knowledge about the affiliation to the Italian or Hungarian national communities and the preservation of their own cultural traditions,

- the cultivation of respect and understanding of national and cultural diversity, of cooperation between the members of the Slovene nation and the members of the Italian or Hungarian national community and the development of skills required to live and coexist in an ethnically mixed area,

- informing about the position of the Italian or Hungarian national community in neighbouring states and the creation of ties and cooperation with members and institutions of these communities.”⁷⁸

The **compulsory bilingual education system** in the ethnically mixed area of Prekmurje and the **monolingual schools** for members of the Italian ethnic community in the coastal bilingual area have developed as a result of two totally different historical situations. The education system for members of ethnic communities is a constituent part of a unified Slovenian state educational system⁷⁹. This means, among other things, that the State is obliged to ensure the preservation and development of

⁷⁸ Law on the Implementation of the Special Rights of Members of the Italian and Hungarian Nationality in the Field of Education (Official Gazette, 35/2001), Article 3

⁷⁹ Law on the Implementation of the Special Rights of Members of the Italian and Hungarian Nationality in the Field of Education (Official Gazette, 35/2001), Article 2: (integration into the system) “The upbringing and the education for the members of the Italian and Hungarian national community is an integral part of the educational system in the Republic of Slovenia and is based on the regulations covering the field of pre-school education, elementary education, lower and higher secondary vocational education, secondary professional and technical education and technical general education, if this is not otherwise regulated by law.”

educational institutions and their financing, with the active participation of the ethnic communities or their organisations⁸⁰. An important provision of the Law on the Organisation and Financing of Education states that “the Self-governing ethnic community co-establishes public kindergartens and schools which are established for education in the language of the ethnic community or for bilingual education”⁸¹. Provisions on the participation of representatives of national communities (Self-governing ethnic communities) in the establishment and management of schools where teaching is conducted in minority languages can also be found in the proposal of the Law on the Special Rights of the Italian and Hungarian minority communities in the field of upbringing and education, in the 12th (the founding) and 13th (the council’s composition) articles.

On the bilingual area of municipalities of Hodoš, Šalovci, Moravske Toplice, Dobrovnik and Lendava, where the Hungarian national community lives, education is conducted bilingually in kindergartens and primary schools, in both the Slovene and Hungarian languages. These kindergartens and schools are visited together by children (pupils) of both the Slovene and Hungarian nationalities. This method enables the children to be familiarised with the language and culture of the other nation as well as their own. The educational activity is conducted in both languages, and children are divided into groups when lessons in mother tongues are being held, which enables more extensive mother language instruction. Bilingual elementary schools are being attended by 986 pupils in the year 2001/02.

The number of pupils in elementary schools is demonstrated in the following chart:

ELEMENTARY SCHOOL	Number of pupils
1. The Lendava Bilingual Elementary School I	687
the central school	602
the branch school in Gaberje	35
the branch school in Petišovci	10
the branch school in Dolina	0
the branch school in Čentibi	40
2. The Lendava Bilingual School II (elementary school with an adapted programme)	40
3. The Bilingual Elementary School of Vljaj Lajoš in Genterovci	88
4. The Dobrovnik Bilingual Elementary School	84
5. The Prosenjakovci Bilingual Elementary School	87
the central school	72
the branch school in Domanjševci	8
the branch school in Hodoš	7
Total:	986

⁸⁰ Law on Self-Governing Ethnic Communities (Official Gazette of the Republic of Slovenia No. 65/94), item 3 of Article 4

⁸¹ Law on the Organisation and Financing of Education (Official Gazette of the Republic of Slovenia No. 12/96), item 4 of Article 41

On the ethnically-mixed area of Prekmurje the following kindergartens are functioning and the number of children that were attending them in school year 2000/2001 is: the Kindergarten of Lendava, attended by 242 children, the kindergarten class of the Prosenjakovci Bilingual Elementary School, attended by 26 children, 2 classes within the Moravske Toplice kindergarten, attended by 21 children, and 2 classes in the kindergarten of Dobrovnik Elementary School is attended by 27 children.

After elementary school the students can attend the Bilingual High School of Lendava. The pupils that do not attend the Bilingual High School, and wish to continue learning the Hungarian language are guaranteed free education of the mother tongue even outside the bilingual area.

The Bilingual High School of Lendava has 17 class groups attended by 287 students in the school year 2001/2002. The school dedicates 7 class groups to the general university preparatory programme, 6 class groups to the economics programme, 3 class groups to the salesperson programme and 1 class group to the engineering programme.

The Slovene and Hungarian languages are both continuously present in the study process. The material from Hungarian history, culture and geography is added to the appropriate Slovene curriculum. Most school books are bilingual. Administration in bilingual schools as well as relations with the public and with parents of the students are bilingual. Documents issued by the bilingual school institutions are also bilingual. The special rapporteur of the European Council, C  zar B  rzea, who visited Slovenia in November 1995, wrote in his report that "the Slovenian system of education in the ethnically mixed area is unique. It is of great interest not only because it enables total implementation of special minority rights in accordance with international standards, but also because of the manner in which these rights are implemented. Its guideline is interculturalism, stressing true coexistence and a dual cultural identity of the children who attend bilingual schools"⁸².

There are, however, differing views on the system of education in the ethnically mixed area in Prekmurje. The essence of such views is the desire to form in Prekmurje a system of education similar to that in the ethnically mixed area in the Coastal Region. Demands to this effect (under a different legal title) even reached the Constitutional Court of the Republic of Slovenia, which rejected them. In its decision the Constitutional Court stated that "the Constitution gives the State the responsibility for the establishment of bilingual schools. The choice of areas where such schools will be established, and areas where the special rights of the autochthonous minority in the field of education will be guaranteed by the establishment of minority schools, is within the jurisdiction of the legislature. Historical circumstances have dictated the

⁸² A Programme of Case Studies Concerning the Inclusion of Minorities as Factors of Cultural Policy and Action. Bilingual Education in Slovenia. Council of Europe, Strasbourg, 1996, pp. 24

organisation of bilingual education in areas inhabited by the Hungarian ethnic minority, but not in areas inhabited by the Italian ethnic minority. The preservation of the network of bilingual schools means respecting the obligations which Slovenia accepted with ratified international agreements and is not unconstitutional".⁸³

For members of the Hungarian ethnic minority, continuation of education in their mother tongue is difficult, since the demographic situation does not allow for organisation of tertiary instruction in the Hungarian language. Hungarian language and culture may be studied at the University of Maribor and at the University of Ljubljana. At the University of Maribor there are also courses for teachers in bilingual kindergartens and primary schools. As for the desire to study other courses in the mother tongue, "assistance" must be sought at universities in Hungary. The Convention on Providing the Special Rights of the Slovenian Ethnic Minority in the Republic of Hungary and the Hungarian Ethnic Community in the Republic of Slovenia (Official Gazette of the Republic of Slovenia - MP, No. 6/93) allows for such a possibility in Article 2. Opportunities for study by members of the Hungarian ethnic community in Hungary, as well as for members of the Slovenian ethnic community in Slovenia, are also offered by the "Agreement on Cooperation in the Field of Culture, Education and Science between the Republic of Slovenia and the Republic of Hungary", which the two countries concluded in 1992⁸⁴.

The agreement served as a foundation for the preparation of the "Agreement between the Government of Slovenia and the Government of Hungary on the Mutual Recognition of Diplomas and Certificates", that the States signed in 1999. Slovenia ratified it on 10th May 2000 and it was published in the Official Gazette no. 44/2000.

Cooperation with educational institutions of the kin-nation is also foreseen in the Law on the Special Rights of the Italian and Hungarian national communities in the Field of Education. In article 4 (cooperation with the kin-nation's institutions) it is stated: "to fulfil the objectives, set by this law, and in accordance with international agreements, public kindergartens or schools in the language of national communities and bilingual kindergartens and schools (in the following text: kindergartens and schools shall cooperate with appropriate institutions of the kin-nation in neighbouring states".

In accordance with the constitutional provision on the implementation of the special rights of national communities outside the ethnically-mixed area, the members of the Hungarian community are entitled to free Hungarian language instruction in Murska Sobota. The teaching of Hungarian shall be organised, if no less than 7 students are

⁸³ Constitutional Court. Decision on the finding that paragraph 3 of Article 3 of the Law on the Organisation and Financing of Education is not unconstitutional. Official Gazette of the Republic of Slovenia, No. 77/1998

⁸⁴ Agreement on Cooperation in the Field of Culture, Education and Science between the Republic of Slovenia and the Republic of Hungary (Official Gazette of the Republic of Slovenia, International agreements, No. 6/1993).

enrolled in the class. This solution complies with the provision of the 2nd paragraph of Article 8 of the European Charter. In the Law on the Special Rights of the Italian and Hungarian national communities in the Field of Education, Article 9 refers to minority language instruction outside the ethnically-mixed area (the instruction of the minority language outside the ethnically-mixed area). "The students and apprentices that finish an elementary school in the minority language or a bilingual elementary school and enrol in a vocational school, a technical high school or general secondary schools outside the nationally mixed areas, must be provided with the education of the minority language as an extra-curricular activity by these schools, individually or with other schools. The instruction of this language shall be organized, if no less than 5 students or apprentices choose to enrol, and it must be free. A group of students or apprentices can also be formed among the students or apprentices that attend school in different programmes and different schools in the same region."

For members of the **Italian ethnic community**, a monolingual school system was developed. Instruction in kindergartens, primary and secondary schools is conducted in the Italian language, while the study of Slovenian is compulsory⁸⁵. Italian is also the schools' administrative language and the language of communication with parents. The teaching staff and other employees in schools with Italian as the language of instruction are persons whose mother tongue is Italian. The greater part of the teaching staff are Slovenian citizens, some 10% are citizens of the Republic of Croatia, and some 4% are Italian citizens. Instructional material is prepared in Slovenia, and some is imported from Italy. Some material used in the instructional process is suitably adapted to the needs of the Italian ethnic community in Slovenia and is published by EDIT publishers in Rijeka (Croatia).

Schools in the **Italian language** are functioning in the municipalities of Izola, Koper and Piran. In each municipality there is a central elementary school, with branches situated in smaller towns. In the school year 2001/2002 there are altogether 435 pupils attending elementary schools in the Italian language, and the number of students in each school is evident from this chart:

⁸⁵ Statute of the Koper municipality (the Official Bulletin, n.40/2000), Article 111, 1st paragraph: "In all schools in the area of the Koper municipality the study of the Slovene language is compulsory for the members of the Italian national community."

ELEMENTARY SCHOOL	Number of pupils
1. Dante Alighieri Elementary School Isola	102
2. Pier Paolo Vergerio il Vecchio Elementary School Koper	182
the central school	140
the branch school in Semedeli	14
the branch school in Bertoki	12
the branch school in Hrvatini	16
3. The Vincenzo de Castro Elementary School Piran	151
the parent school	61
the branch school in Lucija	49
the branch school in Sečovelje	36
the branch school in Strunjan	5
Total:	435

On the ethnically mixed area of Slovenska Istria, educational activities for members of the Italian national community is conducted in the Italian language. In the school year 2000/2001 such kindergartens were attended by 264 children, namely: the kindergarten of Dante Alighieri Elementary School in Isola had 61 children, the La Coccinella kindergarten in Lucija had 82 children and the Delfino Blu kindergarten based in Koper had 121. The kindergartens have branches in every town where there is an elementary school or any one of its branches.

In Slovenska Istra three Italian language high schools exist, namely two general secondary schools and one technical school. The General Secondary School of Antonio Sema in Piran has 78 students in 4 class groups in the school year 2001/2002, while the General Secondary School of Gian Rinaldo Carli in Koper has 78 students for the same school year. The Pietro Coppo High School in Izola has the following programmes: economics, business secretary studies, salesperson, metallurgy and auto mechanics. In the school year 2001/2002 it was attended by 133 students in 16 class groups.

In continuing their education at university level, students of Italian nationality encounter similar problems as their Hungarian peers. They may study Italian language and literature at the Faculty of Arts and Humanities at the University of Ljubljana and at the Department of Italian Language and Literature at the Faculty of Education at the University of Ljubljana, based in Koper. The same institution also educates teachers for

kindergartens and the first four years of Italian language schools. Members of the Italian ethnic community may then continue their studies at universities in Croatia (Rijeka, Pula) or in Italy. They must also turn to universities in Italy if they wish to use Italian as the language of instruction in other, non-linguistic fields. The Agreement on Mutual Recognition of Degree Certificates which Slovenia and Italy concluded in 1995⁸⁶ is the legal framework which facilitates the study of members of the Italian ethnic community at Italian universities, and analogously also the study of members of the Slovenian minority in Italy, in Slovenia.

Schools with Italian as the language of instruction are not closed institutions strictly limited to members of the Italian minority. Although they are primarily intended for the schooling of children of the Italian ethnic community, children of non-Italian background may also enrol. This option may be an important developmental element for these schools, since they may in the future have difficulty filling their existing capacities, because of the demographic decline of the Italian minority⁸⁷. They will, of course, have to be competitive in quality with Slovenian language schools. And finally, let us repeat the important provision in the Slovenian model of dealing with the "ethnic minority question": in educational institutions in the ethnically mixed area where **instruction is in the Slovenian language, classes in the language of the ethnic community are compulsory**⁸⁸. Studies have shown that such an educational model which offers members of the majority nation and members of the ethnic community at least a receptive knowledge of the language of the other ethnic group is supported by the greater part of the population of the ethnically mixed area⁸⁹.

⁸⁶ Memorandum of Understanding on the Mutual Recognition of Slovenian and Italian Degree Certificates and Professional Qualifications. Official Gazette of the Republic of Slovenia, International Agreements, No. 4/1996

⁸⁷ Research performed in schools with Italian as the language of instruction in Slovenia and Croatia have shown that in those schools there are some 25% of students who are of Italian nationality and whose mother tongue is Italian, 15-20% of the children are of Slovenian or Croatian origin, while for the remainder, ethnic affiliation and mother tongue are not the same. Loredana Bogulin-Debeljuh: *L'Identit  Etnica: Gli Italiani dell'Area Istro-Quarnerina*. Etnia-V, Rovigno. Centro di Ricerche Storiche. 1994

⁸⁸ Statute of the Koper municipality (the Official Bulletin, no. 40/2000), Article 111, 2nd paragraph: "In all Slovene schools in the nationally mixed area of the municipality the study of the Italian language is a compulsory subject."

⁸⁹ See for example the results of the research project *Interethnic Relations and Ethnic Identity in Slovenian Istria: (Koper/Capodistria, Piran/Pirano, Izola/Isola): a comparative analysis of ethnic identity elements of the population in contact areas of the border regions in Slovenia, Austria, Italy and Hungary* (project leader Albina Ne ak-L k), Ljubljana, INV 1996

Article 9: JUDICIAL AUTHORITIES

Another field of use of language of national communities in the European Charter refers to the judicial authorities. Slovenia has bound itself to implement the provisions, stating that it shall, for the districts where the number of national or minority languages users and the position of the individual language justifies the below listed provisions, and where the below listed benefits do not, in the judge's opinion, hinder the regularities of the proceedings:

"(a) in criminal proceedings:

- (i) to provide that the courts, at the request of one of the parties, shall conduct the proceedings in the regional or minority languages; and/or
- (ii) to guarantee the accused the right to use his/her regional or minority language; and/or
- (iii) to provide that requests and evidence, whether written or oral, shall not be considered inadmissible solely because they are formulated in a regional or minority language; and/or
- (iv) to produce, on request, documents connected with legal proceedings in the relevant regional or minority language, if necessary by the use of interpreters and translations involving no extra expense for the persons concerned⁹⁰.

The use of a minority language is also guaranteed in

(b) "civil proceedings:

- (i) The parties shall, note M.K.] provide that the courts, at the request of one of the parties, conduct the proceedings in the regional or minority languages; and/or
- (ii) to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or
- (iii) to allow documents and evidence to be produced in the regional or minority languages, if necessary by the use of interpreters and translations".⁹¹

The use of language is, in accordance with the European Charter, also guaranteed for proceedings before courts charged with administrative affairs. To that effect the parties are obligated

- (i) "to provide that the courts, at the request of one of the parties, conduct the proceedings in the regional or minority languages; and/or
- (ii) to allow, whenever a litigant has to appear in person before a court, that he or she may use his or her regional or minority language without thereby incurring additional expense; and/or
- (iii) to allow documents and evidence to be produced in the regional or minority languages, if necessary by the use of interpreters and translations".⁹²

Concerning the last provision, referring to the use of interpreters and translations, we should also mention subparagraph d of article 9, stating that the assistance of interpreters and translations shall bear no additional costs to the involved persons.

⁹⁰ European Charter for Regional or Minority Languages, Article 9, 1st paragraph, a (i,ii,iii,iv)

⁹¹ European Charter for Regional or Minority Languages, Article 9, 1st paragraph, b (i,ii,iii.)

⁹² European Charter for Regional or Minority Languages, Article 9, 1st paragraph, c (i,ii,iii.)

Slovenia has also bound itself to comply with the second paragraph of article 9, stating that the parties are:

a. "not to deny the validity of legal documents drawn up within the State solely because they are drafted in a regional or minority language; or

b. not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language, and to provide that they can be invoked against interested third parties who are not users of these languages on condition that the contents of the document are made known to them by the person(s) who invoke(s) it; or

c. not to deny the validity, as between the parties, of legal documents drawn up within the country solely because they are drafted in a regional or minority language."⁹³

It is interesting that Slovenia has not bound itself to translate into regional and minority languages the most important internal legal regulations and those, which apply directly to these languages' users.

Although it is true that many regulations of local communities are also published in the national communities' languages (mostly in Italian), it might be reasonable to consider systematically translating legal provisions that refer specifically to the minority communities' members, into the minority languages.

How is the use of minority languages regulated in the activities of judicial institutions in Slovenia?

The Law on Courts (Official Gazette of the Republic of Slovenia, No. 19/94)

stipulates in Article 5 that "in areas where the autochthonous Italian and Hungarian communities reside courts shall operate also in the Italian or Hungarian language, if the party living in this area uses the Italian or Hungarian language. When a court of higher jurisdiction decides on legal remedies in matters in which the court of original jurisdiction used the Italian or Hungarian language as well, it shall issue a decree also translated into the Italian or Hungarian language".

The use of ethnic minority language may also be found in the **Law on Legal Proceedings**⁹⁴, the **Law on the Changes of the Law on Notariat**⁹⁵, **Law on the Office of Public Prosecutor**⁹⁶,

⁹³ European Charter for Regional or Minority Languages, Article 9, 2nd paragraph, a, b, c

⁹⁴ **Law on Legal Proceedings** (Official Gazette, No.26/1999) Article 104, par.1: "Parties and other participants in the proceedings lodge their suits, complaints and other applications in the Slovene language, or in the language of the national community officially in use in the Court. If a party submits a claim in a language that is not in official use in the court, the court shall act according to the provisions in article 108 of this law referring to incomprehensible claims".

⁹⁵ **Law on Amendments to the Law on Notariat** (Official Gazette of the Republic of Slovenia No. 48/94), Article 1: "In the Law on the Notariat ship (Official Gazette, No.13/94) the 2nd paragraph of article 13 shall be changed so that it states: "In areas where the official language is also Italian or Hungarian, notarial deeds shall be drawn up in both official languages if the party uses the Italian or Hungarian languages."

⁹⁶ **Law on the Office of Public Prosecutor** (Official Gazette of the Republic of Slovenia No. 63/94), Article 6: "Offices of the public prosecutor shall operate in the Slovenian language. In areas where the autochthonous Italian and Hungarian ethnic communities reside, the public prosecutor's office shall also operate in Italian or Hungarian if the proceedings are held before the court or another state body in this language or if the party who lives in this area uses this language in his/her dealings with the public prosecutor."

and the **Law on Penal Proceedings**⁹⁷. The provisions on the operation of the judiciary in ethnically mixed areas are regulated by the Rules of the Court in Chapter 5, entitled "Operation of the Courts in areas where the autochthonous Italian and Hungarian ethnic communities reside"⁹⁸. In accordance with those stipulations, the courts are obliged to guarantee the equality of the Italian and Hungarian languages in ethnically

⁹⁷ **Law on Penal Proceedings** (Official Gazette of the Republic of Slovenia No. 63/94), **Article 6**:

"(1) Penal proceeding shall be conducted in the Slovene language.

(2) If, in accordance with the Constitution, the court officially uses the language of the Italian or Hungarian national communities, the penal proceedings can also be conducted in the language of this minority as defined by law."

Article 7:

(1) Charges, complaints and other claims are submitted to the court in the Slovene language.

(2) On the areas, where members of the Italian or Hungarian national communities reside, the members of these communities can submit claims in the Italian or Hungarian languages, if this language is officially used by the court.

(3) A foreigner, who has been deprived of his/her liberty, has the right to submit claims to the court in his own language, and in other cases foreign citizens can submit claims in their own language only when the condition of reciprocity is met.

Article 9: (1) Subpoenas, written orders and other writings are distributed by the court in the Slovene language.

(2) A court that officially uses the Italian or Hungarian language as well, also distributes subpoenas in this language, but only distributes written orders and other writings in this language when the court conducts the proceedings in both official languages. The participants in the procedure can abandon their right to the acquirement of written orders and other writings in the Hungarian or Italian language. The denouncement must be noted in the minutes.

⁹⁸ Rules of Procedure of the Court. Official Gazette of the Republic of Slovenia No. 17/95, Articles 60-69 (operation of the court in an area where the Hungarian and Italian national communities reside):

"Article 60: In an area where the autochthonous Italian and Hungarian national community live and where equality of the Italian or Hungarian languages is guaranteed by constitution or law, the courts must ensure the equality of the Italian or Hungarian languages in accordance with law, if a party residing in this area uses the Italian or Hungarian languages.

Article 61: If only one party is involved in the proceeding or if both parties in the proceeding use the same language, the proceeding shall be conducted only in the language of these parties.

If one of the parties involved in the proceeding uses the Slovene language, and the other the Italian or Hungarian languages, the proceeding shall be conducted in the Slovene and the Italian or Hungarian languages (in the following text: a bilingual proceeding).

The court shall act in this manner also if the claim by which the proceeding was initiated is composed in the Slovene language, and the party declares before the start of the proceeding that he/she uses the Italian or Hungarian language.

When the court establishes by the claim with which the party initiated the proceeding, or by the declaration of the client, that the proceeding has to be conducted in the Italian or Hungarian language or bilingually, it makes an appropriate note and marks the cover of the document ("It." or "Ma.").

If, according to the provisions of the law and the court order, a proceeding would have to be conducted in the Italian or Hungarian language, and the clients state that it should be conducted in Slovene, the proceeding shall be conducted in Slovene. Such a statement from the party has to be noted in the minutes.

Article 62: If a proceeding is conducted only in the Italian or Hungarian language, or bilingually, the clients and other participants are addressed in their own language.

If a participant in the proceeding does not understand the language in which the proceeding is conducted, he/she has to be provided with an oral translation of what he/she or others are saying, and of documents and other written evidential material.

Article 63: If a proceeding is conducted in the Italian or Hungarian language, the minutes shall be recorded in this language. If a participant in the proceeding does not speak the Italian or Hungarian language, his testimony shall be recorded in the minutes in the official language in which the proceeding is conducted.

Article 64: The minutes in bilingual proceedings are recorded in the language that the parties and other participants are using. Any comment, testimony, statement, etc. has to be translated simultaneously and written in the Slovene and Italian or Hungarian language.

Article 65: Judicial written orders in a proceeding conducted in the Italian or Hungarian language and written orders in a bilingual proceeding are always issued in the Slovene and Italian or Hungarian language.

mixed areas, if the party who lives in this area uses the Italian or Hungarian language. The court proceedings may be conducted monolingually if only one party appears in the proceedings, or if both parties in the proceedings use the same language (the proceedings may be conducted in the Slovenian or Italian or Hungarian language only); but if one of the parties uses the Slovenian language and the other Italian or Hungarian, the proceedings must be conducted in the Slovenian and the Italian or Hungarian languages (bilingual proceedings). During the proceedings discussions with the parties are conducted in their language. In the recording of the minutes the same principle is applied: if the proceedings are conducted in the Italian or Hungarian language, the minutes are recorded in that language. The minutes in bilingual proceedings are recorded in the language which the parties and other participants in the proceedings use. Every statement, deposition or declaration must be translated immediately and recorded in the Slovenian and in the Italian or Hungarian language. Irrespective of whether the proceedings were conducted monolingually or bilingually, court rulings are always issued in Slovenian and in Italian or Hungarian. Courts of higher jurisdiction and the Superior Court of the Republic of Slovenia must, when ruling on ordinary or extraordinary legal remedies, in which the court of original jurisdiction conducted proceedings also in Italian or Hungarian language, issue their decisions also translated into Italian or Hungarian. All costs arising from bilingual procedures are the responsibility of the court and not of the client. Bilingual proceedings may only be conducted by a judge or professional worker who has passed an examination in the Italian or Hungarian language. This rule also applies to court officials' participation in bilingual proceedings. The qualification for conducting bilingual proceedings is remunerated with a special bonus⁹⁹.

Article 66: If in a proceeding conducted in the Italian or Hungarian languages or bilingually, an ordinary or extraordinary legal measure is filed, the court on the 1st level ensures the translation of the legal measure and of the entire document in the Slovene language before the deposition of the document.

Article 67: All costs incurred by conducting the proceeding in the Slovene or Italian language or bilingually, are allocated from the funds for the court's operation and cannot be a burden to the clients.

Article 68: The Ministry of Justice is responsible for the education of judges and other personnel for conducting bilingual procedures.

A bilingual procedure can only be conducted by a judge or a professional co-operator that has successfully passed a special exam in the Italian or Hungarian language before a commission of the Ministry of Justice, or if he/she holds a university degree in the Italian or Hungarian language or if he/she is listed in the registry of permanent court translators for one of the two languages.

In courts where there are no judges with an active knowledge of the Italian or Hungarian language, bilingual proceedings are conducted with the assistance of a court translator.

The provisions of this article apply also to the court staff involved in bilingual proceedings.

Article 69: The bonus payment for the qualification of judges and of court staff to conduct bilingual proceedings is determined by the judicial council."

⁹⁹ The use of a minority language is also mentioned in certain municipality statutes:

Statute of the Municipality Koper/Capodistria (Official Bulletin, No.40/2000), article 112: In the nationally mixed area of the municipality, penal and other proceedings are conducted bilingually in accordance with the law.

Proceedings involving several parties of both nations are conducted in the Italian language or bilingually. State bodies, bodies of the municipal administration and other bodies of the municipality, courts and other bearers of public authorities, issuing legal and other acts following legally defined procedures, must issue these acts to the members of the Italian national community in both languages, and to the other citizens upon request.

In cases from the previous paragraph both acts are considered original.

Article 10: ADMINISTRATIVE AUTHORITIES AND PUBLIC SERVICE

The use of the languages of national communities in the activities of administrative agencies and public services is defined in Article 10 of the European Charter. Slovenia is bound to comply with paragraphs 1,2,3,4 and 5, that is to say, it has chosen to comply fully with article 10. Article 10 states:

1. "Within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language, the Parties undertake, as far as this is reasonably possible:

- a.
 - i. to ensure that the administrative authorities use the regional or minority languages; or
 - ii. to ensure that such of their officers as are in contact with the public use the regional or minority languages in their relations with persons applying to them in these languages; or
 - iii. to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages; or
 - iv. to ensure that users of regional or minority languages may submit oral or written applications in these languages; or
 - v. to ensure that users of regional or minority languages may validly submit a document in these languages;
- b. to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions;
- c. to allow the administrative authorities to draft documents in a regional or minority language.

2. In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures specified below, the Parties undertake to allow and/or encourage:

- a. the use of regional or minority languages within the framework of the regional or local authority;
- b. the possibility for users of regional or minority languages to submit oral or written applications in these languages;
- c. the publication by regional authorities of their official documents also in the relevant regional or minority languages;
- d. the publication by local authorities of their official documents also in the relevant regional or minority languages;
- e. the use by regional authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;
- f. the use by local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s)
- g. the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages.

3. With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties undertake, within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible:

- a. to ensure that the regional or minority languages are used in the provision of the service; or
- b. to allow users of regional or minority languages to submit a request and receive a reply in these languages; or
- c. to allow users of regional or minority languages to submit a request in these languages.

4. With a view to putting into effect those provisions of paragraphs 1, 2 and 3 accepted by them, the Parties undertake to take one or more of the following measures:

- a. translation or interpretation as may be required;
- b. recruitment and, where necessary, training of the officials and other public service employees required;
- c. compliance as far as possible with requests from public service employees having a knowledge of a regional or minority language to be appointed in the territory in which that language is used.

5. The Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.”¹⁰⁰

Following the accepted obligations by the European Charter, on the one hand, and legal solutions in the Slovenian national legislation, on the other hand, I have chosen the following model of comparing the two:

a. Bilingual signs

The first (visible) indicator of the implementation of the right to freely express the language, are the solutions concerning visible bilingualism in toponymy, signboards, announcements, notices, warnings, etc. Stipulations on visible bilingualism can be

¹⁰⁰ European Charter for Regional or Minority Languages, Article 10

found in national legislation¹⁰¹ as well as in municipal regulations.¹⁰² And, what is particularly interesting and important, members of ethnic minorities actively participate

¹⁰¹ The Rules of Procedure on Assigning Names to Settlements and Streets and on the Marking of Settlements, Streets and Buildings (Official Gazette of SRS, n.11/80), Article 25: "In the area inhabited by, apart from members of the Slovene nation, members of the Italian or Hungarian national communities, the names of settlements and streets shall be listed in both languages. On the top is the inscription in Slovene, and below it in the minority language. Both inscription are of equal size."

¹⁰² **The Koper/Capodistria Municipality:** Decision on the implementation of bilingualism in the ethnically mixed area. Official Bulletin, 22/1998 (30th June 1998), paragraph 4 of Article 6: "All inscriptions on signposts, signboards, explanation boards of traffic signs, on destination boards, official designations of streets, on public transport stations and stops (bus, taxi, rail, boat and other) and in urban public transport vehicles (shall be bilingual), except names of settlements and other geographic terms which are not in the ethnically mixed area".

The statute of the Koper City Municipality (the Official Bulletin 40/2000) **Article 117:** "Public inscriptions in the nationally mixed area are bilingual.

Also bilingual are the public proclamations on bulletin boards of state bodies, municipal bodies and other local self-governing communities and on those of performers of economic and other public services.

Article 118: The bodies of municipal administration and other bodies of the municipality and of other self-governing communities, public enterprises and institutions performing public authorizations, must use in their activities the names of settlements and streets in the nationally mixed areas in the Slovene and Italian language."

Municipality of Izola/Isola: Decree on the implementation of bilingualism in the ethnically mixed area in the Municipality of Izola/Isola (Official Bulletin, No.3/2001)

Statute of the Piran Municipality (Official Bulletin 10/1999) **Article 75:** "Public inscriptions in the ethnically mixed area shall be bilingual."

Statute of the Lendava Municipality (Official Gazette of the Republic of Slovenia, No. 26/1999) **Article 71:** "In the ethnically mixed area, signboards designating settlements, streets, announcements, notices and warnings and other public signs shall be bilingual. All municipal and state organs, enterprises, economic organisations, private businesses, public institutions, associations and other organisations and communities in the ethnically mixed area must have bilingual signboards. The bilingual signs must ensure the equal appearance of both languages".

Statute of the Moravske Toplice Municipality (Official Gazette of the Republic of Slovenia, No. 11/99), **Article 89:** "In the ethnically mixed area, signboards designating settlements, streets, announcements, notices and warnings and other public signs shall be bilingual. All municipal and state organs, enterprises, economic organisations, private businesses, public institutions, associations and other organisations and communities in the ethnically mixed area must have bilingual signboards. The bilingual signs must ensure the equal appearance of both languages".

Statute of the Šalovci Municipality (Official Gazette of the Republic of Slovenia, No. 13/99), **Article 60:** "In the ethnically mixed area, signboards designating settlements, streets, announcements, notices and warnings and other public signs shall be bilingual. All municipal and state organs, enterprises, economic organisations, private businesses, public institutions, associations and other organisations and communities in the ethnically mixed area must have bilingual signboards. The bilingual signs must ensure the equal appearance of both languages".

Statute of the Hodoš Municipality (Official Gazette of the Republic of Slovenia, No. 47/99), **Article 62:** "On the territory of the Municipality, signboards designating settlements, streets, announcements, warnings and other public signs shall be bilingual. All municipal and state organs, enterprises, economic organisations, private businesses, public institutions, associations and other organisations and communities in the ethnically mixed area must have bilingual signboards. The bilingual signs must ensure the equal appearance of both languages".

Statute of the Dobrovnik Municipality (Official Gazette of the Republic of Slovenia, No. 34/99), **Article 88:** "In the ethnically mixed area, signboards designating settlements, streets, announcements, notices, warnings and other public signs shall be bilingual. All municipal and state organs, enterprises, economic organisations, private businesses, public institutions, associations and other organisations and communities in the ethnically mixed area must have bilingual signboards. The bilingual signs must ensure the equal appearance of both languages".

in the process of bilingual naming of settlements and streets¹⁰³.

b. Use of ethnic minority languages in the administration and in the elected bodies

Minority language use in administrative proceedings is referred to in the Law on Administration (Official Gazette of the Republic of Slovenia, No.67/94), which stipulates in its Chapter 4¹⁰⁴ (language in proceedings) that in municipalities where, apart from the Slovene language, Hungarian and Italian are also official languages, the administrative proceedings shall be conducted in Slovene and also in the language of a national community, if the party submits in this language the claim upon which the procedure was started, or if the party should so demand at any point of the proceedings.

Furthermore, the use of language refers to the right of the minority members to use their own language, in oral or written form, when dealing with administrative agencies, judicial powers and other institutions of a public character and to receive answers in the minority language. A national minority acquires true meaning when it is assigned the

¹⁰³ Law on the Naming and Registering of Settlements, Streets and Buildings (Official Gazette of the Socialist Republic of Slovenia No. 8/80), Article 8:

"The Municipal Assembly shall decide on the naming, renaming, merging, dividing and abolition of settlements and streets and on the definition of the area of a settlement.

In areas inhabited by members of the Slovenian nation and members of the Hungarian or Italian ethnic minorities, the Self-governing Interest Community for Education and Culture of the minority in question shall participate in the decision making process mentioned in the preceding paragraph".

See also:

Statute of the Koper Municipality (Official Bulletin) 40/2000, Article 104, 1st paragraph: "The council of the self-governing national community gives its accord through the members of the municipal council – representatives of the Italian national community – regarding the following acts: - on the naming of settlements, streets and squares on the nationally mixed area of the municipality;"

Statute of the Piran Municipality. Official Bulletin No. 10/99, Article 66

Statute of the Lendava Municipality, Official Gazette of the Republic of Slovenia no. 26/1999, Article 77

Statute of the Šalovci Municipality, Official Gazette of the Republic of Slovenia, no. 13/1999, Article 66

Statute of the Moravske Toplice Municipality, Official Gazette of the Republic of Slovenia, no. 11/1999, Article 95

Statute of the Municipality Hodoš (adopted 15th April 1999) Article 68

¹⁰⁴ Law on General Administrative Proceedings (Official Gazette of the Republic of Slovenia, No.80/1999), Chapter 4 (language in proceedings), Article 62:

1. The administrative proceeding is conducted in the Slovene language. In this language claims are submitted, written orders, decrees, minutes, official notes and other writings are written and all actions in the proceeding are conducted.

2. In the area of municipalities where, besides the Slovene language, the Italian or Hungarian language (in the following text: national community language) are in official use, the administrative proceeding is conducted in the Slovene and the minority language, if the party submits the claim upon which the proceeding is started in the minority language or if the party so demands at any time during the proceeding.

3. If parties involved in the proceeding have not requested the proceeding to be conducted in the ethnic community language as described in the previous paragraph, the proceeding shall be conducted in the Slovene language and in the ethnic community language.

4. When a municipal body decides on a matter in an area where the national community language is, in addition to the Slovene language, also in official use, and without prior interrogation of the party, the written order shall be issued in the Slovene and the nationality community languages, whereas the spoken order is pronounced in a language comprehensible to the party.

5. Members of the Italian and Hungarian national community have the right to use their nationality language in proceedings before bodies outside the area where the Italian and Hungarian language are in official use as well.

status of **official language**. This solution is used by the Slovene constitution¹⁰⁵. And of course, when language use is not limited by a numerical clause. Only in rare cases is the implementation of special rights of minorities not limited by a numerical clause, as is defined in Slovene regulations (Article 64 of the Slovene constitution). Perhaps the extremely important question of **personal name and surname** usage in their original form should be included in the framework of the right to use a minority language, with simultaneous fulfilment of the commitment to preserve their national characteristics.¹⁰⁶

The Law on Administration (Official Gazette of the Republic of Slovenia, No. 67/94) stipulates in Article 4 that the administration conducts business, handles procedures and issues legal and other documents in the Slovenian language and in the language of the ethnic minority if the party who lives in this area uses the Italian or Hungarian language. If an administrative body of first instance conducts a procedure in Italian or Hungarian, the decision of the higher jurisdiction must also be in the same language. **The Law on Employees in State Bodies** stipulates that active knowledge of the Slovenian language is a condition for taking up employment for higher level administrative workers and for those professional technical staff who have direct contact with the public; in areas where the Italian or Hungarian language have equal standing with Slovenian, the same applies to those languages. Knowledge of the language of the ethnic minorities entitles one to additional financial remuneration¹⁰⁷.

¹⁰⁵ **The Constitution of the Republic of Slovenia**, Article 11: "The official language of Slovenia is Slovene. In those municipalities where Italian or Hungarian national communities reside, Italian and Hungarian shall also be official languages."

¹⁰⁶ **The Law on Personal names** (Official Gazette of the Socialist Republic of Slovenia, No. 2/87), Article 3: "The personal name of a member of the Italian or Hungarian ethnic minority shall be entered in the Italian or Hungarian script and form, unless otherwise determined by the member of the minority". Statute of the Koper Municipality (Official Bulletin) No. 40/2000, article 108: "State bodies, bodies of the municipal administration and other bodies of the municipality and of other self-governing local communities, public enterprises and public institutions and other legal and physical persons performing a public activity on the nationally mixed area are obliged to (...) – take into account and use the original names and surnames of the Members of the Italian national community when dealing with the public (...)"

Statute of the Piran Municipality Official Bulletin No. 8/94, Article 79: "Everyone has the duty to respect the original personal name of a member of the Italian ethnic community, and must not change its spelling".

Statute of the Lendava Municipality (Official Gazette of the Republic of Slovenia, No. 26/1999) Article 70: "(...) In their work they have the duty to respect the official names and surnames of members of the Hungarian ethnic community."

Statute of the Hodoš Municipality (Official Gazette of the Republic of Slovenia, No. 47/1999), Article 61: "On the territory of the municipality, the municipal organs and all public services operate in the Slovenian and in the Hungarian language. In the discharge of their duties they must respect the official names and surnames of the members of the Hungarian ethnic community".

¹⁰⁷ Ordinance on quotients for the basic remuneration of officials appointed by the Government of the Republic of Slovenia, and other employees in Slovenian government services, administrative organs and administrative units (Official Gazette of the Republic of Slovenia No. 82/94), Article 10: "On the territory of local communities where the Italian and Hungarian ethnic communities reside, for positions for which the Act on internal organisation and systematisation of positions prescribes knowledge of the language of the ethnic community, the basic salary shall be increased by:

- 6% for active knowledge of the language of the ethnic community;
- 3% for passive knowledge of the language of the ethnic community".

Municipality of Lendava: Regulations on the salaries of municipal officials and remuneration of members of working bodies of the Municipal Council and members of other municipal organs and on the reimbursement of costs (Official Gazette of the Republic of Slovenia, No. 28/1999, paragraph 2 of Article 3: "The mayor shall be entitled to a bilingualism bonus in the amount of 20% of his basic salary, if he has active knowledge of the language of the ethnic community and uses it in his daily work".

A separate subsection of the right to use the minority languages in the administration is the **right of the deputies of the minorities** to use their language in the National Assembly. In accordance with the **Standing Orders of the National Assembly** (Article 5, par.2), the deputies of the ethnic minorities have the right to “submit in oral and written form proposals, initiatives and other submissions in the Italian or Hungarian languages. The speeches and applications shall be translated into the Slovene language”.¹⁰⁸ A similar stipulation applies also to the minutes of meetings of the National Assembly: “Debates of deputies of the Italian and Hungarian ethnic communities in the Italian or Hungarian language shall be recorded in the minutes of the meeting in their language together with the Slovenian translation”¹⁰⁹. Analogically, solutions on the local level (the use of ethnic minority languages by the elected deputies in municipal councils, committees and boards) may be found in all **municipal statutes** or standing orders of municipal councils in ethnically mixed municipalities.

c. Bilingual documents

The use of ethnic minority languages is also guaranteed in some other important laws: in the **Law on the Register of Birth, Death and Marriages**¹¹⁰, the **Law on Personal Identification Cards**¹¹¹ and in the **Law on Passports**¹¹² for citizens of the Republic of Slovenia. Bilingual documents are compulsory for all inhabitants of the ethnically mixed territory regardless of their ethnic affiliation. In addition to the personal identification card (the form is trilingual: Slovene/Italian-Hungarian/English), passports (the document is quadrilingual: Slovene/Italian-Hungarian/English/French) and passes for border control in the border area with Italy and Hungary, the following documents are bilingual: **driver's licenses, vehicle registration documents, medical insurance cards and licenses to carry arms**. The use of a minority language in issuing **army service booklets** is regulated differently. On the grounds of Article 2 of the **Standing Orders on the Army Service Booklets** (Official Gazette of the Republic of Slovenia, n.16/1996) “a bilingual Army Service Booklet is issued to a military serviceman who is a member of the Italian or Hungarian national community, if he so demands”. Also bilingual are the summons to military servicemen and the owners of relevant civilian means (work machinery, vehicles listed by the Ministry of Defence).

¹⁰⁸ Standing Orders of the NA. Official Gazette of the Republic of Slovenia, 40/93, Article 5/2

¹⁰⁹ Standing Orders of the NA. Official Gazette of the Republic of Slovenia, 40/93, Article 321/2

¹¹⁰ Law on the Register of Births, Deaths and Marriages (Official Gazette of the Socialist Republic of Slovenia No. 2/87), paragraph 2 of Article 30: “In areas where members of the Italian or Hungarian ethnic minority reside, registrars shall be obliged to issue extracts and certificates from registers also in the Italian or Hungarian languages”.

¹¹¹ Law on Personal Identity Cards (Official Gazette of the Republic of Slovenia No. 75/97, dated 5th December 1997), article 6: “Personal identity cards shall be printed in Slovenian and in English; and in areas defined by law where members of the autochthonous Italian or Hungarian community live together with members of the Slovenian nation, also in Italian or Hungarian”.

¹¹² Law on Passports for Citizens of the Republic of Slovenia (Official Gazette of the RS, No.65/2000), Article 13: “Passports and visas shall be printed in Slovenian, English and French; in areas defined by the law where members of the autochthonous Italian or Hungarian community live alongside members of the Slovenian nation, documents are also printed in Italian and Hungarian.

The provision that any written record in the minority language must consider the **script** of the Italian and Hungarian writing seems like a natural rounding up of the rights of members of national communities with regard to the usage of their mother tongue.

Perhaps we should, when discussing bilingual operations in state agencies, also mention the provision in the **Law on Census Taking in 2001**, stating that “in the areas of municipalities, where members of the Italian or Hungarian community live, an appropriate number of members of the regional census commissions, regional instructors and census takers must be appointed among the representatives of self-governing national communities that are proposed by the ethnic community, and are fluent in the Italian or Hungarian language. For census taking in the areas of municipalities where members of the Italian or Hungarian communities live, an appropriate number of questionnaires in the Italian or Hungarian language must be provided”.¹¹³

d. bilingual operation in municipal administration

The use of ethnic community languages on the municipal level may be discussed from various perspectives. It may be discussed as an issue of bilingual signs⁶², from the viewpoint of bilingual transactions of the municipal administration in ethnically mixed municipalities; further, as the right of elected deputies of ethnic minorities to use their own language in municipal councils, committees and boards; and last but not least, as the right of members of ethnic minorities to use their mother tongue in bodies of the local community. Provisions on the use of ethnic community languages in the above-mentioned areas may be found in all municipal statutes and/or standing orders of municipal councils and in appropriate municipal decrees. That is why we will not reproduce them here. However, we should mention that in some nationally-mixed municipalities special instructions regarding the use of minority languages were adopted; such is the case in the municipalities of Koper/Capodistria¹¹⁴ and Izola/Isola¹¹⁵. Bilingual operations require additional financial resources, which are provided by the state budget in one manner or another.¹¹⁶ The most important comment that can be discerned from the response of the administration of nationally-mixed municipalities is that the state budget does not provide the fundings necessary to conduct bilingual operations in municipal administrations.

¹¹³ Law on Census Taking in the Republic of Slovenia in 2001. The Official Gazette of the Republic of Slovenia No. 66/2000, article 21

¹¹⁴ Instructions on the Use of the Italian Language with Citizens in the Operations of Municipal Administration Bodies. Municipality of Koper, 15.10.2001, no. KO052-6/01

¹¹⁵ The Decree on the Exercising of Bilingualism on the Ethnically Mixed Area of the Isola Municipality. The Official Bulletin, no. 3/2001 (15th February 2001)

¹¹⁶ Law on the Financing of Municipalities (Official Gazette of the Republic of Slovenia, No. 80/94 and 56/98), paragraph 7 of Article 26: “Irrespective of statements in the previous paragraphs, municipalities in bilingual areas shall be guaranteed funds from the state budget to finance the requirements of bilingualism and for the implementation of the constitutional rights of the Italian and Hungarian ethnic communities”.

Article 11: MEDIA

The field of information is dealt with in the European Charter in Article 11. Slovenia is obligated to fulfil from this article the obligations defined in items a (i) and (e) of the first paragraph and paragraphs 2 and 3. Paragraph 1 a (i) states that:

1. "the Parties undertake, for the users of the regional or minority languages within the territories in which those languages are spoken, according to the situation of each language, to the extent that the public authorities, directly or indirectly, are competent, have power or play a role in this field, and respecting the principle of the independence and autonomy of the media:

- a. to the extent that radio and television carry out a public service mission:
 - i. to ensure the creation of at least one radio station and one television channel in the regional or minority languages".¹¹⁷

And paragraph 1 e (i) states that the Parties are obligated:

- e. (i) "to encourage and/or facilitate the creation and/or maintenance of at least one newspaper in the regional or minority languages."¹¹⁸

And in the second paragraph of article 11 Slovenia is obligated:

2. "to guarantee freedom of direct reception of radio and television broadcasts from neighbouring countries in a language used in identical or similar form to a regional or minority language, and not to oppose the retransmission of radio and television broadcasts from neighbouring countries in such a language. They further undertake to ensure that no restrictions will be placed on the freedom of expression and free circulation of information in the written press in a language used in identical or similar form to a regional or minority language. The exercise of the above-mentioned freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".¹¹⁹

The third paragraph of Article 11 states that:

3. "the Parties undertake to ensure that the interests of the users of regional or minority languages are represented or taken into account within such bodies as may be established in accordance with the law with responsibility for guaranteeing the freedom and pluralism of the media".¹²⁰

¹¹⁷ European Charter for Regional or Minority Languages, Article 11, 1st paragraph a (i)

¹¹⁸ European Charter for Regional or Minority Languages, Article 11, 1st paragraph e (i)

¹¹⁹ European Charter for Regional or Minority Languages, Article 11, 2nd paragraph

¹²⁰ European Charter for Regional or Minority Languages, Article 11, 3rd paragraph

How is the field of minority media settled in Slovenia?

In discussing the right to information of members of ethnic communities, at least three different areas should be addressed: firstly, the opportunities for ethnic groups to create and disseminate information in their own language about themselves and the environment in which they live; secondly, the presence of ethnic community issues in the media which use the language of the majority nation; and last but not least, the possibilities for the free reception of information in the language of the ethnic community from the country inhabited by the majority of the nation to which the ethnic community "pertains", and analogously also the possibilities of transmitting information which the ethnic community creates, into that country.

Mere legal provisions are usually not enough for the realisation of this rather ideal picture. They represent just the framework which needs to be complemented with professionalism on the part of those providing the information and with their ability to succeed in placing the information in the media space of their own ethnic group and that of the majority nation. Of course, an appropriate legal foundation is essential for the development of media space. In the **Law on Media** (Official Gazette of the Republic of Slovenia No. 35/2001) the state of Slovenia bound itself to support media in disseminating information important "for the exercising of the right to public information of the citizens of the Republic of Slovenia, of the Slovene population worldwide, of the members of the Slovene national minority in Italy, Austria and Hungary, of the Italian and Hungarian national communities in Slovenia and of the Romany community living in Slovenia."¹²¹ The law further stipulates that "Slovene should be the language of broadcasting; if the programme is dedicated to the Hungarian or Italian ethnic communities the programme can be broadcasted in the language of the ethnic community."¹²² A similar solution is determined for public advertisements. Such communication are published in the Slovenian language, except in the case when the advertisements are published by the media of the Italian or Hungarian ethnic community.¹²³ In the law on media, further stipulations concerning the Italian and Hungarian national communities can be found in the section entitled "Slovene audiovisual production", where it is stated that "material that is originally produced in the Slovene language, material that is designed for the Italian or Hungarian national communities in their languages and materials of Slovene cultural origin in other fields of art constitute Slovene audiovisual production".¹²⁴ The public service of materials and the dissemination of national radio or television programmes "that are within the public and cultural interest of the Republic of Slovenia, including the radio and television programmes of the Italian and Hungarian national communities and other programmes in accordance

¹²¹ Law on Media, The Official Gazette of the Republic of Slovenia, n.35/2001, Article 4, 1st paragraph

¹²² Law on Media, The Official Gazette of the Republic of Slovenia, n.35/2001, Article 5, 4th paragraph

¹²³ Law on Media, The Official Gazette of the Republic of Slovenia, n.35/2001, Article 51, 2nd paragraph

¹²⁴ Law on Media, The Official Gazette of the Republic of Slovenia, n.35/2001, Article 68, 1st paragraph

with a special law, are performed by the public institution Radiotelevizija Slovenija".¹²⁵ Perhaps it would be relevant to mention here the international legal obligations of the Republic of Slovenia that arise from bilateral treaties. The provisions from the section about the media and national communities can be found in the provisions of the Special statute of the Memorandum of Understanding from 1954¹²⁶ and in the provisions of the special Agreement between the Republic of Hungary and the Republic of Slovenia.¹²⁷

The field of radio and television activities, which are performed as a public service, is managed by the Law on Radio-Television Station Slovenia. The public service is defined by this law as the creation, preparation and broadcasting [among other things, note M.K.] of "one radio or television programme for the Italian or Hungarian community (in the following text: nationality programme)".¹²⁸ With the formation of this programme RTV ensures "the exercising of the constitutional right of the Italian and Hungarian national communities in the field of public radio and television information, the linking of the national communities with the kin-nation and the inclusion of cultural and other achievements of the Italian and Hungarian nations in the nationality programmes."¹²⁹ This activity is ensured by RTV Slovenia "especially through the divisions in Maribor, Koper, Lendava and through the local programmes Murski Val - Murska Sobota (...)"¹³⁰ The ethnic minority programme must be receivable on at least 90 % of the area inhabited by the members of the Italian and Hungarian national communities. Self-produced, co-produced and commissioned productions of informative, cultural, educational and entertainment content must amount to "at least two hours daily, if it is a nationality radio programme or at least 30 minutes daily, if it is a nationality television programme."¹³¹ If the nationality programme or just a part of it is submitted to another RTV organisation or producer it can only be accomplished only with the "agreement of the programme council of the nationality programme"¹³². For

¹²⁵ Law on Media, The Official Gazette of the Republic of Slovenia, n.35/2001, Article 76, 1st paragraph

¹²⁶ The Special Statute (annex II) of the Memorandum of Understanding, item 4a: "(...) the ethnic groups [the Italian in Yugoslavia and the Yugoslav in Italy, note M.K.] shall have the right to their own press in their mother tongue."

¹²⁷ Convention on the Providing of the Special Rights of the Slovenian Ethnic Minority in the Republic of Hungary and the Hungarian Ethnic Community in the Republic of Slovenia (Official Gazette of the Republic of Slovenia No. 6/93), Article 5: "The signatories recognise the right of the minorities to information in their own language in the press, on radio and on television. To this end they shall guarantee to the minorities their own information activities and their development. They shall support the free flow of information in the languages of the minorities and cooperation between the ethnic mass media and those of the majority nations.

The contracting parties shall ensure the reception of local radio and TV stations, as well as radio and TV stations of the parent nation, and for regular and appropriate time slots for radio broadcasts in the mother tongue".

¹²⁸ Law on Radio-Television Station Slovenia (Official Gazette of the Republic of Slovenia, 18/1994, article 3, 1st paragraph

¹²⁹ Law on Radio-Television Station Slovenia (Official Gazette of the Republic of Slovenia, 18/1994, Article 3, 2nd paragraph

¹³⁰ Law on Radio-Television Station Slovenia (Official Gazette of the Republic of Slovenia, 18/1994, Article 3, 3rd paragraph

¹³¹ Law on Radio-Television Station Slovenia (Official Gazette of the Republic of Slovenia, 18/1994, Article 6, 1st paragraph

¹³² Law on Radio-Television Station Slovenia (Official Gazette of the Republic of Slovenia, 18/1994, Article 6, 5th paragraph

the creation, preparation, broadcasting and disseminating of representative. The naming and discharging of directors of nationality programmes, funds are allocated from the state budget. The representatives of national communities (Italian and Hungarian) are also present in the Council of RTV Slovenija, each with one representative. The naming and discharging of directors of nationality programmes and of one third of the members of programme councils for the nationality programme are under the jurisdiction of the Council of RTV. The central agency actively participating in the process of fulfilling the obligations of RTV Slovenia in the field of informing the national communities are the programme councils for nationality programmes. The composition and jurisdiction of this agency are defined by article 22 of the Law on RTV.¹³³

More detailed provisions on the activity of the programme councils for nationalities can be found in the Statute of RTV Slovenia, which is foreseen in article 26 of the Law on RTV Slovenia.

The radio and television station in the Italian language (the situation is similar for the programmes in the Hungarian language) function within the framework of the national radio-television station.¹³⁴ That is why it would seem appropriate to describe the place, status and amount of autonomy of the nationality programmes in this undoubtedly important media institutions. For the ethnic programme within the framework of the Slovenian Radio and Television station there are two channels each headed by a director.¹³⁵ The nomination proposal for the director is submitted by the programme board for the ethnic programme, and the same board also authorises the appointment

¹³³ Law on Radio-Television Station Slovenia (Official Gazette of the Republic of Slovenia, 18/1994, Article 22: "The council of RTV Slovenia shall name programming boards for the nationality programme (in the following text: programming board).

In the programming board from the previous chapter the self-governing ethnic communities in Slovenia shall name two thirds of the members for the period of four years and with the possibility of re-nomination.

The programming board gives its accord to the naming of the chief editor of the nationality programme and on the amount and programme scheme of the programme.

The programming board deals with the realisation of the programme scheme, the comments and suggestions of viewers and listeners, submits initiatives to the RTV council for addressing certain issues related to the nationality programme and performs tasks defined in the statute.

RTV Slovenia must make public the position of the programming board on issues concerning the nationality programme.

¹³⁴ Statute of the Public Institution RTV Slovenia (Official Gazette of the Republic of Slovenia No. 66/95), Article 9: RTV Slovenia includes the following units: (...) the Regional RTV Centre Koper-Capodistria/Centro Regionale RTV Koper-Capodistria

Article 18: "The TV channel Koper-Capodistria and the Radio channel Koper-Capodistria jointly form the Regional RTV Centre Koper-Capodistria which shall create, produce and broadcast the RTV programme in Slovenian, the RTV programme for the Italian ethnic community, the RTV programme for the Slovenian minority in Italy and produce broadcasts for the state RTV programmes".

Article 19: "The RTV programmes mentioned in the preceding article shall be produced by the editors of the regional RTV programme and the editors of the Italian RTV programme. (...)

The production of the RTV programme in the Italian language shall be coordinated by the director and the editors responsible for the programmes for the Italian ethnic community."

¹³⁵ Statute of the Public Institution RTV Slovenia (Official Gazette of the Republic of Slovenia, No. 66/95), Article 40: "The programme directors are senior officers of RTV Slovenia for the areas of radio and TV programmes. RTV Slovenia shall have programme directors for the following programming areas: for the TV programmes of RTV Slovenia; for the radio programmes of RTV Slovenia; for the TV and radio programme for the Italian ethnic community; for the TV and radio programme for the Hungarian ethnic community".

of editors responsible for the ethnic minority programmes.¹³⁶ Among the conditions listed for the position of the editor responsible for the ethnic programme is his/her active knowledge of the Italian or Hungarian language respectively.¹³⁷ Important institutions within the framework of the state radio and television station are also the programming boards for the ethnic programmes: 1. the Programming Board for radio and TV programmes for the Italian ethnic community; 2. the Programming Board for radio and TV programmes for the Hungarian ethnic community. Both bodies have a wide range of activities, with some competencies similar to the competencies of elected deputies of the minority in the legislative branch of the government¹³⁸. The assurance that the programming boards shall represent the legitimate interests of the ethnic communities is given in Article 54 of the Statute of RTV Slovenia. The programming boards are established by the Board of RTV Slovenia. They have seven members, five of which are appointed by the self-governing ethnic communities, and two by the Board of RTV Slovenia directly.

The first step towards informing the members of the **Hungarian ethnic minority** in their mother tongue was made in 1956 when a supplement in the Hungarian language entitled "Népújság" was added to the local newspaper Pomurski vestnik. Since 1958 Népújság has been published as an independent weekly. It has a circulation of some 2000 copies, and there are approximately 1600 subscribers. Every year (since 1960) the editors also prepare an almanac entitled Naptár. In 1986 the first edition of a special literary and cultural supplement to the weekly Népújság was published by the name of "Muratáj", which in 1988 became an independent literary magazine of the same name. The publisher of all these is the "Institute for Information Services of the Hungarian Ethnic Minority", which was founded in 1993. Results of research carried out in 1996¹³⁹ show that most readers are members of the Hungarian ethnic community, only some 10% of regular readers are from the majority nation, and an additional 9% stated that they read the Hungarian language papers from time to time.

¹³⁶ Statute of the Public Institution RTV Slovenia (Official Gazette of the Republic of Slovenia, No. 66/95), Articles 41,47

¹³⁷ Statute of the Public Institution RTV Slovenia (Official Gazette of the Republic of Slovenia No. 66/95), Article 48

A similar provision can be found in the 1st paragraph of article 19 of the Law on Media (Official Gazette 35/2001), stating that the "a person, with (...) certificate proving active knowledge of the Italian or Hungarian national language, can become chief editor of a medium of Hungarian or Italian national community."

¹³⁸ Statute of the Public Institution RTV Slovenia (Official Gazette of the Republic of Slovenia, No.66/95), Article 53: The programming boards deal with the realisation of programming concepts, authorize the scope and programming concept of the ethnic programme, deal with comments and suggestions of viewers and listeners where those relate to the ethnic programmes, offer initiatives to the Board of RTV Slovenia concerning ethnic programme issues, deal with initiatives, opinions and proposals of journalists and editors concerning the production and broadcasting of ethnic minority programmes, propose the appointment and discharge of the editor responsible for ethnic minority programmes and deals with other ethnic minority issues.

¹³⁹ Interethnic relations and ethnic identity in the town Lendava/Lendva: a comparative analysis of ethnic identity elements of the population in contact areas of the border regions in Slovenia, Austria, Italy and Hungary (project leader Albina Nečak-Lük), Ljubljana, INV 1996

The radio programme in the Hungarian language was established in 1958 as part of Radio Murska Sobota. The beginnings were humble: a ten-minute broadcast on Sunday nights. Today broadcasts in the Hungarian language are transmitted from a studio in Lendava, which is included as a separate unit in the system of the state Radio and TV service¹⁴⁰. The Hungarian language programme lasts 8 hours except on Sundays (7 hours). It has been broadcast from the studio "in Lendava since 1983, and since 1992 they have broadcast on their own UHF frequency 87.6 MHz and MW frequency 648 kHz (...)" In 1978 the TV station in Ljubljana began broadcasting a programme called *Hidak-Mostovi* (Bridges). A half-hour programme grew from the original 15 minutes, and it was broadcast twice a month. From January 1983 to April 1985 it was called *Hidak-Mostovi-Ponti* and it targeted members of the Hungarian and Italian ethnic communities. Neither the Italians nor the Hungarians were happy with it. The viewers perceived the dual subtitles (in Hungarian and in Italian) as intrusive. The Italians said that the Koper-Capodistria TV station provided sufficient information in Italian, and they did not need a joint programme with the Hungarians. Members of the Hungarian ethnic community on the other hand voiced criticism concerning the content and technical realisation. The management of the TV station found that the members of the ethnic communities did not support the programme, therefore they returned to the original concept of *Mostovi-Hidak*. Since January 1995 the half-hour programme has been broadcast twice a week.

Apart from current affairs, the programme presents a range of cultural, political, ethnographic and other news items from the life of the ethnic minority¹⁴¹. In 1993 a new radio and TV transmitter was built in Dolnji Lakaš, enabling better reception of Hungarian stations. Those programmes are widely viewed and listened to among the members of the Hungarian ethnic minority, while there are relatively few listeners among the majority population (this was established by research conducted by the Institute for Ethnic Studies). In the ethnically mixed area it is possible to buy books, magazines and newspapers printed in Hungary, particularly in Lendava, where a book shop was opened in 1998 that sells such materials.

¹⁴⁰ Statute of the Public Institution RTV Slovenia (Official Gazette of the Republic of Slovenia No. 66/95), Article 9: RTV Slovenia includes the following units: (...) Regional RTV Centre Maribor with two studios for the Hungarian programme in Lendava - Magyar Nemzetsegi Műsorok Lendvai Szerkesztőség.

Article 20: The Regional RTV Centre in Maribor creates, produces and broadcasts the regional TV and radio programme, the TV and radio programme for the Hungarian ethnic community, the TV and radio programme for the Slovenian minority in Austria and Hungary, and it produces broadcasts for state radio and TV programmes and broadcasts in foreign languages.

Article 21: The radio and TV programmes mentioned in the preceding article are produced by the editors of the regional radio and TV programme and the editors of the Hungarian radio and TV programme (...).

The production of the TV and radio programme in the Hungarian language is coordinated by the director and the editors responsible for the Hungarian ethnic community programmes. The management office of the radio and TV programme for the Hungarian ethnic community is in Lendava.

¹⁴¹ Katalin Munda-Hirnök: The public media in the ethnically mixed area in Lendava. Interethnic relations and ethnic identity on the Slovenian ethnic territory. INV, Ljubljana, 1998, pg. 127

A radio station in the Italian language was established in 1949. The radio station transmits fourteen hours of broadcasts in the Italian language. In 1971 a TV station was added. The TV station provides information for the Italian population in Slovenia and Croatia. It broadcasts eleven hours of programming daily, ten hours in Italian and one hour in Slovenian. The results of research conducted by the Institute for Ethnic Studies in 1996 show that the Italian language programme is listened to (regularly or often) by almost 60% of the members of the Slovenian majority population and almost 90% of members of the Italian ethnic community. The area along the Slovenian-Italian border offers an extremely dynamic choice of media. The signals of many radio and TV stations from Italy may be easily received all over the ethnically mixed area, which of course strengthens the "ties" of members of the Italian minority with the Italian language territory. The same is true also of members of the Slovenian nation.

In addition to electronic media, the Italian ethnic community also has at its disposal printed means of mass communication. The main publisher is EDIT, established in 1952. The seat of the institution is in Rijeka, and the coastal municipalities in Slovenia are covered by a special correspondence office in Koper. Its chief publication is the daily "La voce del popolo" which has a circulation of approximately 3,750 copies. About 300 of this number are distributed in Slovenia. EDIT also publishes the weekly "Panorama" in a circulation of approximately 2,200 copies, 600 of which are distributed in Slovenia; the quarterly literary magazine "La Battana" (circulation of 1,000 copies, 50 distributed in Slovenia) and a children's newsletter "Arcobaleno" (circulation of 2,500 copies, 350 distributed in Slovenia). Since 1992 the newspaper "La voce del popolo" is sold together with the Trieste daily paper "Il Piccolo" in a "sandwich" arrangement - two papers for the price of one. In addition to these activities there is a range of publications issued occasionally (or in conjunction with other local media) by cultural associations in the ethnically mixed area. The Republic of Slovenia supports the publishing of printed media with suitable financial grants. The amount represents 20% of the sum which is allocated for these activities in the Republic of Croatia.

Article 12: CULTURAL ACTIVITIES AND INSTITUTIONS

The field of cultural activities is defined in article 12 of the European Charter. Slovenia is bound to respect the provisions of items a,d,e,f from the 1st paragraph and provisions of the 2nd and 3rd paragraphs. The assumed obligations concern:

1. "With regard to cultural activities and facilities – especially libraries, video libraries, cultural centres, museums, archives, academies, theatres and cinemas, as well as literary work and film production, vernacular forms of cultural expression, festivals and the culture industries, including *inter alia* the use of new technologies – the Parties undertake, within the territory in which such languages are used and to the extent that the public authorities are competent, have power or play a role in this field:

- a. to encourage types of expression and initiative specific to regional or minority languages and foster the different means of access to works produced in these languages;
- d. to ensure that the bodies responsible for organising or supporting cultural activities of various kinds make appropriate allowance for incorporating the knowledge and use of regional or minority languages and cultures in the undertakings which they initiate or for which they provide backing;
- e. to promote measures to ensure that the bodies responsible for organising or supporting cultural activities have at their disposal staff who have a full command of the regional or minority language concerned, as well as of the language(s) of the rest of the population;
- f. to encourage direct participation by representatives of the users of a given regional or minority language in providing facilities and planning cultural activities.”¹⁴²

In the second paragraph it is written:

2. “In respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage and/or provide appropriate cultural activities and facilities in accordance with the preceding paragraph.”¹⁴³

And the 3rd paragraph states that the

3. “the Parties undertake to make appropriate provision, in pursuing their cultural policy abroad, for regional or minority languages and the cultures they reflect.”¹⁴⁴

The culture policy in the field of minority culture policy pursues the following objectives:

- “the encouragement of the developed cultural pluralism,
- the encouragement of the cultural activity of minority communities and immigrants,
- the encouragement of tolerance and cohabitation in the field of these communities’ cultures,
- the development of linguistic competencies of the members of these communities and
- the safeguarding of cultural rights to culture of all Slovenia’s inhabitants.”¹⁴⁵

Similar stipulations can be found in the proposal of the Slovene national cultural programme stating the “preferential areas of financing constitutionally recognized minority communities:

- the preservation of cultural heritage (in cooperation with the national institutions dealing with the preservation of cultural heritage);
- the founding of proper cultural organisations to preserve and develop the cultural/ethnic particularities of a minority community;
- publishing and contacts with the kin-nation in the field of culture.

¹⁴² European Charter for Regional or Minority Languages, Article 12, 1st paragraph a,d,e,f

¹⁴³ European Charter for Regional or Minority Languages, Article 12, 2nd paragraph

¹⁴⁴ European Charter for Regional or Minority Languages, Article 12, 3rd paragraph

¹⁴⁵ Cultural Policy in Slovenia. (1997) FDV, Ljubljana, p.200

The provisions safeguarding the cultural heritage are within the jurisdiction of the administration for cultural heritage and are aimed at protecting the cultural heritage in the way described in the convention on safeguarding cultural and natural heritage (1972). The damaging or loss of any artefact of cultural heritage (including the cultural heritage of the minority community) constitutes an impoverishment of the world heritage and particularly the cultural heritage of the ethnically mixed area, as such the cultural heritage of ethnical minorities deserves professional attention. Therefore, within the institutions safeguarding the cultural heritage the Republic of Slovenia, special attention is dedicated in the sense of programmes, personnel and otherwise to the cultural and natural heritage of the national communities.”¹⁴⁶

The Republic of Slovenia has included the cultural heritage and present-day cultural production of both minorities in the common heritage of the Slovenian state, and safeguards them in a similar manner as it does the cultural production of the majority nation; this can be seen from the **Law on the Realisation of Public Interest in the Area of Culture**¹⁴⁷. In the **Law on the Protection of the Cultural Heritage**¹⁴⁸, the state of Slovenia has bound itself to protect all ethnological monuments on its territory, irrespective of their ethnic origin. Provisions dealing with the cultural activities of the ethnic communities may also be found in the **Law on the Fund of the Republic of Slovenia for Amateur Cultural Activities**¹⁴⁹, the **Law on Librarianship**¹⁵⁰ and also in the **Law on Institutions**¹⁵¹. To coordinate the implementation of different

¹⁴⁶ The Slovene National Cultural Programme: proposed/published by the Ministry of Culture of the Republic of Slovenia. (2000) Nova Revija, p.44

¹⁴⁷ Law on the Realisation of the Public Interest in the Area of Culture (Official Gazette of the Republic of Slovenia No. 75/94)

¹⁴⁸ Law on the Protection of the Cultural Heritage (Official Gazette of the Republic of Slovenia, No. 7/99), paragraph 6 of Article 6: “Ethnological monuments shall be areas, buildings, groups of buildings, objects of everyday use and artefacts which bear witness to the life and work of Slovenes, members of the Italian and Hungarian minority and other peoples on the territory of Slovenia.”

¹⁴⁹ Law on the Fund of the Republic of Slovenia for Amateur Cultural Activities (Official Gazette of the Republic of Slovenia No. 1/96), paragraph 2 of Article 5: “The Fund may, on the basis of a contract with the local self-governing community or the self-governing community of the autochthonous Italian and Hungarian ethnic communities in Slovenia, perform on its behalf the functions mentioned in the preceding paragraph.”

¹⁵⁰ Law on Librarianship (Official Gazette of the Republic of Slovenia No. 87/2001), Article 25: (general libraries in ethnically mixed areas): general libraries in ethnically mixed areas shall ensure the library activity designated for the members of the Italian or Hungarian national community and the Roma community. These libraries ensure to the members of these communities communication in their own language.

The general libraries from the previous chapter shall prepare their programme of activities in accordance with the representatives of national communities.

Article 33 (the national library), 2nd paragraph: the national library performs within the framework of public library services, in addition to the activities from article 2 of this law, also the following tasks: - it collects, processes, keeps and makes available the fundamental national collection of all library materials in the Slovene language, about Slovenia and Slovenes, Slovene authors, Slovene publishing companies, members of the Italian or Hungarian national communities, Roma community and other minority communities in Slovenia (Slovenika) and fundamental foreign literatures; shall attend particularly to the professionalism and organisation of library activities provided for members of the Italian and Hungarian ethnic communities”.

¹⁵¹ Law on Institutions (Official Gazette of the Republic of Slovenia, No. 12/91), paragraph 4 of Article 3: “The self-governing ethnic community has the right to co-establish or establish of its own accord, a public institution for performing activities important for the realisation of the rights of the minorities”.

“Department for The Culture of National Communities, Romany Communities, Immigrants and Other Ethnic Minority Communities,” was founded. The department prepares, in cooperation with experts, a professional foundation for the decision-making on cultural policy toward Slovenia’s minorities, cooperates with international organisations (in this manner in 2000 it organised, together with the Council of Europe, an international seminar on the instruments of public authority in the field of safeguarding the cultural rights of minorities), establishes direct contacts with the representatives of minority communities, counsels them, helps them in the exercising of their rights and funds their cultural activities based on the criteria, that is co-determined by the representatives of the minority communities.

The Hungarian self-governing ethnic community has founded the “Institute for the Culture of the Hungarian Ethnic Minority” with the purpose of promoting Hungarian culture. The Institute coordinates and directs the work of twenty-two cultural associations of the Hungarian minority. The cultural associations are active in many areas of the creative and the performing arts - from ethno-folkloric to original artistic achievements. The cultural production of the Hungarian ethnic community is often presented in Hungary.

Library activities are also included in the system of cultural activities. Material in the Hungarian language is collected and kept in libraries in Murska Sobota and Lendava. Within the Regional and Study Library in Murska Sobota a division for Hungarian Studies is operational. The collection of material in the Hungarian language amounts to 30,000 items, representing 13% of the total material of the library. No less important is the activity of Lendava Library /Konyvtar Lendva. The library is an independent institution with its seat in the ethnically mixed area. Its founder is the municipality Lendava and the co-founder the Hungarian national self-governing community of the Lendava municipality. The number of items in the library is 96,000, 40% of which are in Hungarian. On the nationally mixed area there are, next to the parent library in Lendava, also 5 local libraries: Dolina (about 4,000 items of library material, 2,100 in Slovene and 1,900 in Hungarian), Dobrovnik (8,400 units, 3,900 in Slovene, 4,500 in Hungarian), Gaberje (3,800 units, 2,400 in Slovene, 1,400 in Hungarian), Genterovci (7,000 units, 2,700 in Slovene, 4,300 in Hungarian), Petišovci (3,900 units, 2,300 in Slovene, 1,600 in Hungarian).

The central library in Slovene Istria procuring book material in the Italian language is the Central Library of Srečko Vilhar in Koper/Biblioteca centrale Srečko Vilhar Capodistria. The library has a department of Italian studies. It carries out activities connected with the acquisition and dissemination of materials in the Italian language for libraries in Slovene Istria and for institutions and schools of the Italian minority in the bilingual area. Library material in the Italian language is also kept in the Piran City Library/Biblioteca Civica di Pirano and the Izola Central Library/Biblioteca civica di Isola. In the ethnically mixed area in the Coastal Region there are six Italian cultural associations; however, there is no umbrella institution similar to the Institute for the Culture of the Hungarian Minority. Two important institutions of the Italian ethnic community have their headquarters in Croatia: the Centre for Historical Research in Rovinj, and the Italian Drama in Rijeka. The Slovenian state provides a proportionate financial contribution to support the activities of these two institutions.

Article 13: ECONOMIC AND SOCIAL LIFE

This segment of minority language use is defined in article 13 of the European charter. Slovenia is obligated to comply with both paragraphs in this article. The first paragraph of article 13 states that:

1. "with regard to economic and social activities, the Parties undertake, within the whole country:

- a. to eliminate from their legislation any provision prohibiting or limiting without justifiable reasons the use of regional or minority languages in documents relating to economic or social life, particularly contracts of employment, and in technical documents such as instructions for the use of products or installations;
- b. to prohibit the insertion in internal regulations of companies and private documents of any clauses excluding or restricting the use of regional or minority languages, at least between users of the same language;
- c. to oppose practices designed to discourage the use of regional or minority languages in connection with economic or social activities;
- d. to facilitate and/or encourage the use of regional or minority languages by means other than those specified in the above sub-paragraphs".¹⁵²

And in the second paragraph of Article 13 it is stated that:

2. "with regard to economic and social activities, the Parties undertake, in so far as the public authorities are competent, within the territory in which the regional or minority languages are used, and as far as this is reasonably possible:

- a. to include in their financial and banking regulations provisions which allow, by means of procedures compatible with commercial practice, the use of regional or minority languages in drawing up payment orders (cheques, drafts, etc.) or other financial documents, or, where appropriate, to ensure the implementation of such provisions;

¹⁵² European Charter for Regional or Minority Languages, Article 13, 1st paragraph

- b. in the economic and social sectors directly under their control (public sector), to organise activities to promote the use of regional or minority languages;
- c. to ensure that social care facilities such as hospitals, retirement homes and hostels offer the possibility of receiving and treating in their own language persons using a regional or minority language who are in need of care on grounds of ill-health, old age or for other reasons;
- d. to ensure by appropriate means that safety instructions are also drawn up in regional or minority languages;
- e. to arrange for information provided by the competent public authorities concerning the rights of consumers to be made available in regional or minority languages".¹⁵³

Article 14: TRANSFRONTIER EXCHANGES

This field is dealt with in article 14 of the European charter. Slovenia is obligated to comply with both paragraphs. It is written in article 14 that:

"the Parties undertake:

a. to apply existing bilateral and multilateral agreements which bind them with the States in which the same language is used in identical or similar form, or if necessary to seek to conclude such agreements, in such a way as to foster contacts between the users of the same language in the States concerned in the fields of culture, education, information, vocational training and permanent education;

b. for the benefit of regional or minority languages, to facilitate and/ or promote co-operation across borders, in particular between regional or local authorities in whose territory the same language is used in identical or similar form".¹⁵⁴

Slovenia is bound by its constitution (Article 64, par.1) to give not only moral but also material support to the members of ethnic communities for the preservation and development of free relations, particularly with the 'kin-nations', i.e. nations of origin, and their countries. This commitment was defined in more detail in regional laws. The Law on Self-governing Ethnic Communities states that resources for the preservation of free relations of the ethnic communities at various levels shall be provided from the funds of "self-governing local communities (municipalities) from the budget of the Republic of Slovenia and from other sources".¹⁵⁵ The provision which could be classed as "Transfrontier exchanges" may also be found in the "Law of the Special Rights of the Italian and Hungarian Ethnic Communities in the field of Education"¹⁵⁶, which states in article 4 that "for the realisation of goals arising from this law, and in accordance with international agreements, public kindergartens or schools educating in the language of the national community, and bilingual kindergartens and schools shall cooperate with the appropriate institutions of the kin-nation in the neighbouring states."

¹⁵³ European Charter for Regional or Minority Languages, Article 13, 2nd paragraph

¹⁵⁴ European Charter for Regional or Minority Languages, Article 14

¹⁵⁵ Law on Self-Governing Ethnic Communities (Official Gazette of the Republic of Slovenia, n.65/94) Article 18, 2nd paragraph

¹⁵⁶ Official Gazette of the Socialistic Republic of Slovenia, n. 12/82

THE PROTECTION OF ROMA IN SLOVENIA - A LEGAL ANALYSIS WITH COMPARATIVE REFERENCES TO THE SITUATION OF ROMA IN AUSTRIA

I INTRODUCTION

The Roma have been confronted with violence and severe discrimination on Central European soil for centuries. The sad high point of this long-term discrimination was achieved during the Second World War. The Roma in western and south-eastern Europe were the first victims of Nazi violence. One reason for this was the lifestyle of the Roma, which was in contradiction to the Nazi rulers' policy while another cause of Nazi violence was the non-Aryan and non-European origin of the Roma. The majority of the older generation of Roma did not survive the violent work camps and concentration and death camps.¹ And it was the generation of grandparents that was the bearer of the cultural heritage of the Roma. With this generation a great part of the centuries-old culture of the Roma was therefore destroyed.

Disillusion after the Second World War, however, did not halt the discrimination - on the contrary: those returning were confronted with postwar maelstroms. Roma settlements were often devastated. Instead of the compensation for experienced systematic persecution and destruction settling, the Roma again experienced exclusion and being cast out to the edge of society. Negative stereotypes, exclusion, discrimination, violence and racial attacks remain factors which even nowadays impede the real improvement of the Roma status.

It was not until the eighties that in a majority of states the continuous violation of the fundamental human rights of the Roma led to a gradually changed relation to Roma issues, as also leading experts for minority issues such as Ermacora and Veiter in Austria did not recognize minority status to Roma due to their lack of a connection to a defined residential area, ("fehlende Bodenständigkeit").² Therefore, Austria and Slovenia like the majority of western states, does not have a long tradition of protecting the Roma community. It was only in the nineties that recognition of the Roma as a special ethnic group which also needs special protection came into effect.

¹ See Rose/Weiss, Sinti und Roma im "Dritten Reich" – Das Programm der Vernichtung durch Arbeit, Göttingen 1991. The authors describe in this book in which camps the "prisoners" worked. Furthermore, they also uncover which companies (as for example Siemens and Steyr-Daimler-Puch AG) employed workers through forced work.

² Ermacora, Grundriß der Menschenrechte in Österreich, 247; Veiter, Das österreichische Volksgruppenrecht seit dem Volksgruppengesetz 1976, Vienna 1979, 36

A comparison of the legal status, however, is not simple, as the system of minority protection in Austria is essentially different from the system of minority protection in Slovenia. Minority protection in Austria is based on individual rights. Minorities are not recognized as a group and legal entity. Due to this, rights which are drafted as collective rights, as for example bi- or multilingual topographic signs, are not suitable for the minority. The minorities in Austria do not have the possibility of effective legally guaranteed representation in legislative bodies, either in the municipal councils or in the parliament. This is especially delicate for Roma, due to the fact that they are dependant on the good mood of the ruling parties. Representation and participation, which have a special integrative role, enable cooperation in all matters and especially in those which especially bear upon the minorities.

Legal status

II SLOVENIA - constitutional regulations

In the year 1989 it was determined in constitutional amendment LXVI³ that an act must regulate the legal position of the Roma. But the draft constitutional from the year 1990 did not contain special rights for the Roma.⁴ In the year 1991 the Slovene parliament then concluded a catalog of proposals in connection with the regulation of the position of the Roma. Point 3 determines the requirement that: "the constitution should determine that the rights of Roma must be regulated by an act".⁵ This act should be the basis for the protection of the members of the Roma community, for the use of the mother tongue, care of their own culture and other ethnic specialties as well as the concern of the Republic of Slovenia for the improvement of the material status of the Roma.

Therefore, with Article 65 of the 1991 Constitution⁶ Slovenia recognized the Roma as an autochthonous community. Although this provision has more of a programmatic character and refers to the implementation act, it is nevertheless especially important firstly because the Roma community was recognized as an ethnic group, secondly the protection is guaranteed in the Constitution itself, it follows the integrated system in Chapter II of the Constitution, "Human Rights and Basic Freedoms" and thirdly Article 65 follows Article 64, which precisely regulates the special rights of the autochthonous Italian and Hungarian national communities. Therefore it is obvious that the protection of the Roma follows the system of minority protection in Slovenia which is based on the positive concept. The minority has individual and collective rights, therefore it is

³Official Gazette of the Republic of Slovenia, no. 32/89

⁴Poročevalec 17/1990

⁵Poročevalec 13/1991

⁶Official Gazette of the Republic of Slovenia, no. 33/1991

recognized as a group and the state has a special role in the realization of the rights.⁷ But the protection also follows the tradition of minority protection in the majority of western states, which guarantee special minority rights only to autochthonous ethnic groups. In terms of content, it is questionable what kind of concrete rights the Roma have. Article 64 of the Constitution precisely regulates the rights of the Italian and Hungarian national communities. The special article for the protection of the Roma community enables the interpretation that the Roma community should not have the same special rights which the Hungarian and Italian national communities have, otherwise the Roma rights would be guaranteed together with the rights of the Italian and Hungarian national communities. The Constitution, however, with the introduction of the special article emphasizes the special status of the Roma ethnic community which also needs special regulation adapted to the needs of the Roma community. Until now only in individual laws can be found the provisions implementing Article 65 of the Constitution which refer to the special rights of the Roma due to the fact, according to the predominate opinion, that it is not possible to cover the entire extensive field of effective protection in one single act. The lacking implementing provisions, however, make improvements in the field of minority protection difficult, and therefore the demand also becomes greater for an implementing act that would systematically and entirely cover the rights of Roma.⁸

Until the adoption of implementing provisions or an implementing act, the basic rights which are also important for the Roma community are determined in the Constitution. Article 14 ensures equal human rights and fundamental freedoms irrespective of, amongst other characteristics, also nationality. Article 61 ensures the right to freely express affiliation with one's own nation, meant as an ethnic category and national community, Article 62 ensures the use of one's own language, but until now the implementing provision for the use of the Romany language has still not been adopted. Article 63 strictly prohibits any kind of incitement to national, racial, religious or other discrimination and prohibits the inflaming of national, racial, religious or other hatred and intolerance.

Regulation by statute

Implementing provisions for Article 65 of the Constitution in the field of pre-school and school upbringing and education are contained in the Organization and Financing of

⁷therefore, also the Constitutional Court in Decree U-I-416/98-38, B.-II. p. 5 22.3.2001 "The positive protection which is recognized by the majority nation to national, ethnic, language and other communities (minorities), expresses the preparedness of the state to promote and realize the rights of the listed communities as a component part of the democratic development of the entire society (state)."

⁸See the ECRI report (European Commission against Racism and Intolerance) on Slovenia 1997, chapter I.B.3: "It is hoped that the special law setting out the rights and the situation of the Roma/Gypsy community will be passed as soon as possible", <http://www.ecri.coe.int/en/00/01/03/33/02.htm>, 11.3.2002; Perič Tatjana, Insufficient: Governmental programmes for Roma in Slovenia, in: Roma Rights 2-3, 2001 also on the web pages European Roma Rights Center ERRC, http://errc.org/tr_nr2-3_2001/field_report.shtml#20-rev, 11.3.2002

Education and Schooling Act, the Nursery School Act and Primary School Act.⁹ The programme of primary schools for Roma children", which is the basis for teaching Roma children.¹⁰

Legal representation for the Roma in the National Assembly is not foreseen, however, the Local Self-government Act¹¹ regulates the representation of the Roma in municipal councils in the areas where the Roma live autochthonously. The municipal statutes should concretize this right as well as the direct representation of the Roma in other municipal bodies. In the framework of their competencies, municipalities should regulate by special acts issues which concern the realization of minority rights as well as the financing of the groups. The direct representation of the Roma has until now been regulated by the statute of the Murska Sobota municipality¹² and since the year 1999, also by the statute of the Rogašovci municipality.¹³

Specific deficiencies of the Local Self-Government Act were ascertained by the Constitutional Court in decision U-I-416/98-38. This Act is not in conformity with the Constitution due to the fact that it does not define the concept of the autochthonousness and also does not set the deadline by which the municipalities are obliged to realize the listed statutory provisions. This imperfect regulation by statute, however, entails a violation of the principle of a state governed by the rule of law as per Article 2 of the Constitution.¹⁴ The Constitutional Court also ascertains that the statute of the urban municipality of Novo Mesto is not in conformity with the Local Self-Government Act due to the fact that it does not provide that the Roma community which autochthonously resides in the area of urban municipality have a representative on the town council and also ascertains that the municipality could also already on the basis of the present regulation realize its legal obligations from the fifth paragraph of Article 39 of the Local Self-Government Act and enable the Roma community to elect a representative to the municipal council.¹⁵

The election of municipal councils members is regulated by the Local Elections Act¹⁶, which defines active and passive voting rights for the allocation of representatives of the Roma community, the supervising, constituencies, establishment and composition of special electoral committees, etc.

Furthermore, the committees for national community issues should be of an integrated character on the basis of the Local Self-Government Act (Article 39(4)). Additionally,

⁹All three Acts are published in the Official Gazette of the Republic of Slovenia, no. 12/96

¹⁰On educating and schooling Roma children, see for example Tancer Mladen, Vzgoja in izobraževanje Romov na Slovenskem, Maribor 1994

¹¹Official Gazette of the Republic of Slovenia, no. 72/93, in amended form 70/2000

¹²Official Gazette of the Republic of Slovenia, no. 23/99

¹³Official Gazette of the Republic of Slovenia, no. 66/99

¹⁴decision U-I-416/98-38, B.-II, p 9

¹⁵decision U-I-416/98-38, B.-II, p 9

¹⁶Official Gazette of the Republic of Slovenia, no. 72/93 the Local Elections Act and the Local Self-Government Act are currently in the process of being amended

the Nationalities Office, which was established by the Slovene Government and which also has an office in Murska Sobota and the Committee for the protection of the Roma ethnic community of the Government of the Republic of Slovenia should encourage the cooperation of state institutions with Roma on the state level.

Concerning the use of one's mother tongue in administrative procedures, neither the Administration Act¹⁷ nor the Court Act¹⁸ contain special definitions for the use of Roma language for official purposes. Therefore, Roma currently do not have the right to use the Roma language for official purposes and before administrative bodies.

Also the Act on Public Media¹⁹ and the Act on RTV Slovenia²⁰ do not contain special provisions for the Roma community.

The protection of Roma is also ensured by the Framework Convention for the Protection of National Minorities²¹ and the European Charter on Regional and Minority Languages²² of the Council of Europe. However, only the Italian national community/Italian language and Hungarian national community/Hungarian language are, in accordance to the declaration of the Republic of Slovenia, minorities in the sense of the Framework Convention and Charter on Regional and Minority Languages. In accordance with the Constitution, however, the provisions of the Framework Convention should also be used for Roma community and the Article 7, paragraphs 1-4 of the Charter should be also used for Roma language.

The Government of the Republic of Slovenia issued a "programme of measures for the protection of Roma in the Republic of Slovenia" already in the year 1995. The Nationalities Office coordinates the execution of the programme, as, in accordance with its fields of work, different ministries execute this programme. Different projects in the field of the education and schooling of Roma children, the employment of Roma, the regulation of Roma settlements, health care, informing the Roma and supporting the cultural activity and functioning of non-governmental organizations should therefore be introduced. In the year 2000 the Ministry of Labour, Family and Social Affairs extended the initiative to a programme for equal employment opportunities for the Roma.²³

III AUSTRIA

In the year 1993 Austria indirectly recognized the Roma and Sinti across Austria as an autochthonous minority with a decree of the federal government on the establishment

17Official Gazette of the Republic of Slovenia, no. 67/94

18Official Gazette of the Republic of Slovenia, no. 19/94

19Official Gazette of the Republic of Slovenia, no. 18/94

20Official Gazette of the Republic of Slovenia, no. 18/94

21Official Gazette of the Republic of Slovenia, no. 4/98 valid from 1.1.1998

22Official Gazette of the Republic of Slovenia, no. 17/00 valid from 1.1. 2001

23The employment programme of Roma in Slovenia, http://www.gov.si/mddsz/pdf/program_r.pdf, (11.3.2002)

of a co-council for the Roma community.²⁴ The Roma have the same rights as other minorities, which are acknowledged as autochthonous national communities in the Republic of Austria. Minority rights in Austria contain, among others, regulations dating from the time of the Austro-Hungarian Empire such as Article 19 of the basic state law and regulations from the time after World War I, such as the provisions of the state treaty from St. Germain. The newest provision, Article 8 of the Federal Constitution, which emphasizes the special concern of the Republic of Austria for the development and protection of minorities, was introduced in Austrian constitutional law in the year 2000.²⁵ The best known provision of minority protection in Austria is Article 7 of the Vienna State Treaty which however, is valid only for Croats and Slovenes in Burgenland, Steiermark and Kärnten, which therefore does not cover the Roma, but is, however, the measure for the protection of the Roma. In Austrian constitutional law, the Roma are not explicitly mentioned. This is the essential difference compared to Roma protection in Slovenia.

On a legislative level, the Act on National Communities dating from the year 1976²⁶ regulates provisions for the realization of constitutional provisions. The Act concretizes the right to an official language and to topographic signs. It also regulates the establishment and functioning of national communities co-councils. Each minority recognized indirectly in the decree of the federal government on the establishment of co-councils, has its own co-council established at the office of the federal chancellor. The co-council is an advisory body in which not only minority members are represented but also representatives of parties, who should also be members of the minorities. The Co-council plays an important role in the allocation of financial funds. The Co-council is the only institute in which the Roma are directly represented, but the co-council is not a representative body of minorities, but an advisory body of the government. The majority of provisions of the Act on National Communities are still not realized for Roma, such as the right to use one's own language for official purposes and topographic signs.

The Act on Minority Schooling for Burgenland for the first time considers the national community of Roma, although only the provision of language education in the Romany language is foreseen for the Roma from Burgenland. The Romany language is therefore seen as a foreign language. The University of Graz (the project leader is Dr. Dieter Halwachs) has devoted much attention to the Roma language, researched it and also written it down. As such, books in the Romany language have been created, which are also appropriate for lessons. In any case, success in the field of schooling is dependent on the cooperation of the Roma, especially the successful operation of those projects for which the Roma make the initiative themselves or which were prepared and executed in close cooperation with the Roma.

24BGBl. (Federal Official Gazette of the Republic of Austria) 323/1993

25BGBl.I.68/2000

26BGBl.396/1976

The amendment to the Act on Austrian Radio and Television from the year 2001²⁷ introduced special instructions for the provision of the languages of those national minorities which have a co-council. This is the first time that the Act on Austrian Radio and Television contains provisions to the benefit of national minorities.

Austria also signed and ratified the Framework Convention for the protection of national minorities²⁸ and the European Charter on Regional and Minority Languages²⁹ of the Council of Europe. In the Declaration to the Framework Convention, Austria recognized that the minorities covered by the Convention are all minorities recognized by the Act on National Communities. In the Declaration to the European Charter, Austria also stated that the minority languages covered by the Charter are, amongst others, also the Romany language.

In various fields, including, for example, the fields of education and schooling, employment and the ordering of settlements, there exist various projects executed in cooperation with Roma associations.³⁰ What is especially encouraging is that the Roma are making more and more initiatives, which is an example, which shows that the Roma associations function very successfully. In the year 1995, for example the cultural association of Austrian Roma established a fund for Roma, which supports projects in the field of education.

IV CONCLUSION

This short description of the Roma status in the Republic of Austria and in the Republic of Slovenia proves that both states are not inactive, however, for a long time they have not introduced all statutory provisions, which are important for effective protection and for the improvement of the status of the Roma. It is especially necessary to call attention to the fact that the standard of legal and real protection that the other autochthonous minorities have, has for long remained unachieved by the Roma.

Protection on both sides of the border is still not sufficient. The Committee for Elimination of all Forms of Discrimination (CERD) of the United Nations therefore in the year 1999 criticized the lack of legislation in force for the Roma in Austria which is different from the implemented legislation for other minorities in Austria. The insufficient or completely lacking legislation for new minorities in Austria is an important point, which was also criticized by CERD. CERD also recommended the introduction of the act on

27BGBl 379/1984 in amended form BGBl. 83/2001

28BGBl.III 120/98 valid from 1.7.1998

29BGBl.III 216/01 valid from 1.10.2001

30 see best practise projects in various fields at <http://www.roma-net.at/index2.html>, (11.3.2002)

the prohibition of discrimination, which would also contain the prohibition of discrimination between citizens and non-citizens.³¹

CERD similarly criticized also the legislature of Slovenia in connection with the Roma and emphasized the difference between the protection of the Italian or the Hungarian national minorities in the year 2000. The differentiation of the Roma into autochthonous or non-autochthonous is clear also in Slovenia.³² This differentiation sharpens the especially bad position of non-autochthonous Roma, as many non-autochthonous Roma do not have Slovenian citizenship and are as a result deprived of the freedom of movement, access to health care and other social services and employment.³³ This is also criticized in the last report by the European Roma Rights Center (ERRC), which refers in its criticism mostly to the position of non-autochthonous Roma in Slovenia.³⁴ Also the European Commission in the section of the progress report on Slovenia joining the European Union in the years 2000 and 2001, emphasizes that Slovenia has realized all the policies of the Copenhagen criteria in the field of protection of minorities, but it notes the necessity of additional measures concerning the Roma position.

In Slovenia the legal basis in the Constitution and on the legislative level, therefore, has to be urgently implemented on the level of act and statute. Although there are a number of dispersed successful activities, especially in the field of education, schooling and employment in Austria and Slovenia, it is urgently needed for the significant improvement of the Roma position that such matters in the state should be raised to the second level of action. Declarative and programmatic acts were very important due to the fact that they strongly contributed to the sensitivity of the Roma position for the majority population as well as for the Roma themselves. The realization of this recognition is currently also necessary.

Slovenia has already taken a step further and created Governmental programmes with various measures for the improvement of the Roma situation. Experiences are positive and also negative, and are very important for future planning. The systematic programme of measures in Slovenia is positively drafted, although the measures are still not effective in all fields.

31 See European Roma Rights Center (ERRC), UN Committee rebukes Austria, Czech Republic, Finland, Italy and Portugal for treatment of Roma, in: Roma Rights no 1/99, http://errc.org/rr_nr1_1999/snap04.shtml (7.6.2001)

32 See ECCR, United Nations Committee on the Elimination of All Forms of Racial Discrimination and the Committee against Torture express concern about Roma Rights in Slovenia, in: Roma Rights no 3/2000, http://errc.org/rr_nr3_2000/snap27.shtml, (7.6.2001)

33 Monitoring the EU accession process. Minority Protection, Budapest: OSI 2001, p. 69

34 ERRC, Perić, Insufficient: Governmental programmes for Roma in Slovenia, in: Roma Rights nos. 2-3/2001, http://errc.org/rr_nr2-3_2001/field_report.shtml, (11.1.2002)

The specialty of Slovene legal regulation is explicit Roma protection in the Constitution and the right of the Roma to direct representation in municipal councils. Cooperation and co-deciding in the state bodies entails the legal integration of the Roma in the state. Roma representatives in municipal councils actually contribute to better mutual understanding. Furthermore, the Government Office for Nationalities and the Commission of the Republic of Slovenia for Roma Issues encourage better mutual understanding and cooperation.

It is of essential importance, and this is the positive experience of Austria, that the Roma develop their self-initiative and vehemently strive for their rights. The establishment of an advisory body, although only one of the possibilities for institutionalized cooperation between the minority and state authority, has been a great success for the Roma and Sinti community in Austria.

The integration of the Roma must first be guaranteed by the state on the institutional level with respect to the special position of the Roma minority, which has been exposed to the most severe forms of discrimination for centuries. The protection of the Roma therefore can not only concern the improvement of their social position. Only a complete plan³⁵ which extends to social development, which guarantees human rights and special minority rights and also effectively opposes discrimination and racism can be successful. That is why the cooperation of the Roma as well as the majority population is necessary.

The representation and participation of the minority in state authorities, i.e., cooperation and co-decision-making in structures which regulate issues and conflicts in a democratic manner, is of essential importance, as it entails actual integration. Due to this fact, representation and participation should not be the empty, mere shell of a word. It is now apparent that the integration of minorities is the only possible way to decrease persistent and negative stereotypes, prejudices, racism and xenophobia. And integration is above all a task for the majority population, as it has the authority to realize the rights of minorities.

³⁵ Also the international organizations are again aware of the meaning of a complete approach to regulating the Roma status. Therefore in the year 1998 in the framework of the implementation meeting on human dimension issues under the auspices of ODIHR OSCE announced a new level of Roma policy which needs systematic combining of the methods of sociology, the implementation of minority rights and protection from discrimination and violence. An international comparison shows a similar picture. Measures if they exist at all mostly do not have the desired effect. Especially individual actions without long-term planning and without the cooperation of the Roma, are insufficient for guaranteeing the human and minority rights of the Roma. Therefore statutory measures alone do not improve the position of the Roma, also special rights are insufficient if the state authorities, the civil society and Roma do not cooperate.

SOME NEWER TRENDS IN THE PROTECTION AND (SPECIAL) RIGHTS OF ETHNIC MINORITIES: THE EUROPEAN CONTEXT¹

I. INTRODUCTION: ARE THERE ANY SPECIAL RIGHTS OF (ETHNIC) MINORITIES?

Recent historic developments, especially the tragic wars in the territory of the former Yugoslavia in the 1990s or current events in the Middle East, show the possible impact of (inter)ethnic relations and conflicts on peace and stability in individual pluralistic societies and in the world. The actual situation and/or the perception of the position, protection and special rights of national and other minorities can play crucial roles in this context and can contribute to the escalation of conflicts in pluralistic societies.

The reports (opinions) of the Badinter Arbitration Commission (in 1991 and 1992) established the dissolution of the former Yugoslavia.² These opinions determined also the principle that the adequate protection of national minorities is one of the criteria for a modern democracy and a precondition for the international recognition of new states.³ This principle is (more or less) generally accepted in Europe by now. In the European context, other major turning points include the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, prepared and adopted within the Council of Europe. In my opinion, these legally binding international documents mark the beginning of a new era in the international protection of national minorities. At least in Europe, there should be no doubt that the special rights of national minorities do exist.

¹ This text is based on: Mitja Žagar (1997), "Rights of ethnic minorities: Individual and/or collective rights? Some new(er) trends in the development and the (universal) nature of human rights - The European perspective." *Journal of International Relations*, Vol. 4, No. 1/4, pp. 29-48.

² For more on the legal issues of the dissolution of the former Yugoslavia, see, e.g., Roland Rich (1993), "Recognition of States: The Collapse of Yugoslavia and the Soviet Union." *European Journal of International Law*, Vol. 4, No.1, <http://www.ejil.org/journal/Vol4/No1/art4.html#TopOfPage> (12 December 2001); Danilo Türk (1993), "Recognition of States: A Comment." *European Journal of International Law*, Vol. 4, No.1, <http://www.ejil.org/journal/Vol4/No1/art5.html#TopOfPage> (12 December 2001); etc.

³ See, e.g., Alain Pellet (1992), "The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples." *European Journal of International Law*, Vol. 3, No.1, <http://www.ejil.org/journal/Vol3/No1/art12.html#TopOfPage> (12 December 2001). For the texts of Opinions 1-3, see: Alain Pellet (1992), "The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples - Appendix: Opinions of the Arbitration Committee." *European Journal of International Law*, Vol. 3, No.1, <http://www.ejil.org/journal/Vol3/No1/art13.html#TopOfPage> (12 December 2001); for the texts of Opinions 4-10, see: Danilo Türk (1993), "Recognition of States: A Comment. - Annex 3: Opinions No. 4-10 of the Arbitration Commission of the International Conference on Yugoslavia." *European Journal of International Law*, Vol. 4, No.1, <http://www.ejil.org/journal/Vol4/No1/art5.html#TopOfPage> (12 December 2001); etc.

This contribution briefly presents some controversies that exist regarding the protection of national minorities and the special rights of persons belonging to national minorities and/or national minorities as collective entities. It begins with a presentation of some definitions of ethnic and national minorities and discusses different concepts of the protection and (special) rights of national minorities and persons belonging to them. Here the issue of the individual or collective nature of these rights deserves special attention.

The following sections present the historic development of the protection of ethnic minorities, its main turning points, changing concepts and the main characteristics of different phases. This is the basis for the discussion of the possible future (trends of) developments concerning the special rights and the protection of minorities.

The concluding section offers a few possible scenarios for future developments and some practical proposals for the promotion and development of Human Rights and the protection of ethnic minorities. It reflects my belief that there is a need for the promotion of the ideology of Human Rights and for the existence and development of the special protection and rights of (ethnic and other social) minorities. In other words, I am an advocate of the special rights of (ethnic) minorities that should be in their nature both individual and collective.⁴

II. DEFINITIONS OF ETHNIC/NATIONAL MINORITIES AND SOME KEY CONCEPTS

There is no generally accepted legal definition of ethnic minorities.⁵ International political and legal documents, constitutions and the (internal) legislation of different

⁴ I believe that scholars should do more than just research all different dimensions of Human Rights as objective and passive observers. Most of all, they have to inform the public about their research and views – especially about their critical observations. However, in my opinion scholars should be actively involved in the promotion and development of Human Rights and the ideology of Human Rights.

⁵ It is extremely difficult to build a necessary consensus concerning the politically sensitive and tricky issue of the acceptable definition of “ethnic minority”. Among many attempts, I am citing Article 1 of the proposal for the Additional Protocol to the European Convention on Human Rights for the Protection of Human Rights and Fundamental Freedoms, concerning persons belonging to national minorities that defines a **national minority** as:

“...a group of persons in a state who: (a) reside on the territory of that state and are citizens thereof; (b) maintain long-standing, firm and lasting ties with that state; (c) display distinctive ethnic, cultural, religious or linguistic characteristics; (d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; (e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language”. (Article 1 of the proposal for an additional protocol to the Convention for the Protection of Human rights and Fundamental Freedoms, concerning persons belonging to national minorities, in Recommendation 1201 (1993) on an additional protocol on the rights of minorities to the European Convention on Human Rights, adopted on 1 February 1993.)

Although probably this text (prepared by the Parliamentary Assembly of the Council of Europe) will not be accepted anytime soon and it is not yet legally binding, this definition indicates certain newer trends in the theory of international law. (See also: “Report on an additional protocol on the rights of minorities to the European Convention on Human Rights” (1993), Rapporteur: Mr. Worms, France Socialist; Parliamentary Assembly, Council of Europe: ADOC 6742. 1403-15/1/93-2-E, 19 January 1993, pp. 4-5.)

(nation-)states have traditionally avoided this issue for a number of reasons.⁶ On the other hand, social scientists and (legal) theoreticians developed several definitions of ethnic and/or national minorities. These definitions that were developed for the purpose of their research usually focused on different aspects of these ethnic communities. Although they have many similar elements, they might differ in certain specific elements considering the specific interests or approaches of every author. Most frequently cited is the definition of Professor Francesco Capotorti, who describes (ethnic) minority as 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.⁷

However, for the purpose of this contribution I have developed the following working definitions that distinguish among different types of (ethnic) minorities. In framing these definitions I considered especially a specific legal status of diverse minority communities. The broadest is the definition of an **ethnic minority** that is defined as:⁸

- (a) a specific and formed - distinct - group of persons
- (b) that is (usually) numerically smaller than the rest of the population of a state⁹ and
- (c) lives as a distinct community in a non-dominant position within a certain society.
- (d) Persons belonging to this distinct community are citizens of the state on which territory they reside.¹⁰
- (e) They possess ethnic, religious, cultural and/or linguistic characteristics differing from those of the rest of the population of the state.
- (f) They developed a distinct (ethnic) identity and are motivated to preserve together their common identity, religion, culture, traditions and language.

⁶ See, e.g., Florence Benoit-Rohmer, Hilde Hardeman (1994), *The Minority Question in Europe: Towards the Creation of a Coherent European Regime*. CEPS Paper No. 55, Brussels: Centre for European Policy Studies, 1994, pp. 25-29.

⁷ Francesco Capotorti (1991), *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. New York: United Nations, 1991, p. 96.

⁸ See, e.g., Mitja Žagar (1995), "Ali so Slovenci na Hrvaškem narodna manjšina: Splošna terminološka vprašanja in pravna zaščita." ("Are Slovenes in Croatia a National Minority? General terminology and legal protection.") – in Vera Kržišnik-Bukić, ed., *Slovenci v Hrvaški. (Slovenes in Croatia.)* Ljubljana: Inštitut za narodnostna vprašanja (Institute for Ethnic Studies), 1995, p. 334.

⁹ When a distinct group, although numerically larger, is in a non-dominant position and/or oppressed we could describe it as a "social minority". In such cases a numerically inferior group in power usually monopolizes and (mis)uses the nation-state and its mechanisms of repression to rule and suppress numerically superior groups. A situation in the South African Republic during the era of Apartheid could be mentioned as a typical example.

¹⁰ This is the main characteristic that differentiates between persons belonging to ethnic minorities and (im)migrants. Recent immigrants usually do not have the citizenship of the country where they reside with the legal status of resident aliens.

- (g) Such a community became an ethnic minority as a consequence of a specific historic (political and administrative) development in the territory/region of their traditional settlement.¹¹

The analysis of different national (constitutions, laws) and international legal documents shows that certain additional criteria (characteristics) are required before minority protection is granted to a certain distinct ethnic community.¹² Special rights and the protection are usually granted to persons belonging to **“typical (traditional) national minorities.”**¹³ Deriving from the above (working) definition of an ethnic minority, the following three elements should be added to the definition of a typical (traditional) national minority:¹⁴

- (h) This distinct community autochthonously lives (usually condensed) in a certain territory of its traditional settlement.¹⁵
- (i) A typical national minority ethnically belongs to a “kin-nation” that has a nation-state of its own.¹⁶ This is usually a neighboring country to the country of citizenship of persons belonging to a typical national minority.¹⁷

¹¹ There are also ethnic minorities whose members (persons belonging to these distinct communities) live dispersed in the whole territory or several regions of a state. Jewish communities in European and American cities could be mentioned as examples of such minorities.

¹² The Students' Research and Training Project “Democratization and ethnic relations: Management of ethnic relations and conflict”, cosponsored by the US Congress /USIS - Small Grants for Democracy Program, analyzed more than 130 constitutions of countries of the world regarding the regulation of ethnic relations and the protection of (ethnic/national) minorities. (On this project and its results see, e.g., Mitja Žagar (1996a), “Exploring Ethnicity: Constitutional Regulation Of (Inter)Ethnic Relations - New Approaches to Multicultural Education.” <http://www.unisa.edu.au/lavskis/zagar/detailex.htm> (12 December 2001); Mitja Žagar, Aleš Novak (1999), “Constitutional and international protection of national minorities in Central and Eastern Europe.” – in Mitja Žagar, Boris Jesih, Romana Bešter, eds., *The constitutional and political regulation of ethnic relations and conflicts: Selected papers*. Ethnicity 2. Ljubljana: Institute for Ethnic Studies, 1999, pp. 177-214.) The research project “Ethnic dimensions of integration processes and tolerance in multiethnic societies: Management and resolution of conflicts” analyzed several documents of the UN, CSCE/OSCE, Council of Europe, European Communities/European Union, documents of other regional organizations, more than thirty bilateral treaties and more than a hundred constitutions of the countries of the world. This research project was financed by the Ministry of Science and Technology/Ministry of Education, Science and Sport of the Republic of Slovenia (See, Mitja Žagar (1996), “Evolving concepts of the protection of minorities: International and constitutional law.” *Razprave in gradivo / Treatises and Documents*, No.31/1996, pp. 143-164.)

¹³ See, Ernest Petrič (1977), *Mednarodnopravno varstvo narodnih manjšin*. (The Protection of Ethnic Minorities by International Law.) Maribor: Založba Obzorja, 1977, pp. 89-92.

¹⁴ See, Žagar (1995), pp. 334-335.

¹⁵ Autochthonous settlement indicates a considerable duration of settlement of a distinct ethnic community in a certain territory and its integration in a pluralistic society. Usually, autochthonous communities contribute to the cultural, social and economic life of their environment. However, there are no objective criteria to establish the autochthonous settlement of a certain community. In particular, there are no objective criteria to determine the required considerable duration of the settlement. The decision on the necessary duration of settlement is always primarily a subjective and political decision. The Minority Rights Group, for example, decided for national/ethnic minorities that two generations of permanent settlement (40 to 50 years) should be enough to consider a certain group an autochthonous (ethnic) community. (See, *World Directory of Minorities*. (1990) Longman international reference. Edited by: Minority Rights Group. UK: Longman, 1990, p. xiv.)

¹⁶ Sometimes the terms “mother-nation” and “mother-state” are used as synonyms for the terms “kin-nation” and “kin-state”.

¹⁷ The term “kin-nation” (or “mother-nation”) refers to a nation (ethnic community) with which a

- (j) A typical national minority has several (cultural, social, economic, political) links with a kin nation and its nation-state. Protection of ethnic minorities and cooperation between a national minority and its kin-nation could become important issues in bilateral relations between a country of citizenship of persons belonging to a certain ethnic minority and a neighboring nation state of their kin-nation.¹⁸

Especially the criterion of the autochthonous settlement in connection with the citizenship of the country of permanent residence might be problematic. In some cases we might find the second, third or (even) fourth generation of immigrants who were born in the country of their permanent residence, but are still citizens of the country of origin of their parents or predecessors. There could be different reasons why they do not have the citizenship of the country of their permanent residence (e.g., laws on citizenship/nationality, tradition, ownership of property in the country of origin of their parents, etc.).¹⁹ In any case, immigrants who are not citizens of the country of their residence are excluded from the political process (even if they are the third generation in a certain country), and they could not obtain the status and protection guaranteed for persons belonging to traditional ethnic/national minorities.

In addition to typical national minorities, we could also define "**atypical traditional national minorities**". These minorities live as distinct communities autochthonously in a certain territory (criterion **h**). However, these minorities do not have *kin-nations* outside the country of their permanent residence or their *kin-communities* do not have nation-states of their own (criterion **i**).²⁰

Typical and atypical traditional national minorities account for only a small fraction of all distinct ethnic (cultural, linguistic) communities in existing pluralistic societies. However, these are the only distinct ethnic minority communities whose members according to international law enjoy certain minority protection and special minority rights. Usually, states do not want to grant minority status to diverse immigrant communities. Consequently, persons belonging to these immigrant communities who are not citizens of the states of their permanent residence in most cases do not enjoy minority rights or special minority protection.

¹⁸ Cultural, linguistic, educational, social, economic, etc. links, contacts and cooperation of ethnic minorities with their *kin-nations* and states have to be peaceful and should not infringe the principles of territorial integrity and sovereignty of states.

¹⁹ See, e.g., Eric Bockstael, Otto Feinstein (1991), "Ethnic Conflict and Development: A Belgian Case Study," United Nations Research Institute for Social Development - UNRISD: photocopied paper for the "Workshop on Ethnic Conflict and Development", Dubrovnik (Yugoslavia, Croatia), 3-6 June 1991.

²⁰ Some authors argue that atypical traditional ethnic minorities should be treated as equal constituent nations of states where they live, regardless of their size, in order to assure their equality. This would require the transformation of concerned (one/single) nation-states into multi-national-states. (See, e.g., Bojko Bučar (1994), "Co-operation on Culture and Education and the Problem of Minorities." Photocopied paper for The 6th European Conference of Frontier Regions, Council of Europe, Parliamentary Assembly, Congress of Local and Regional Authorities of Europe, Ljubljana (Slovenia), 13-15 October 1994.)

II.2. Minorities in Pluralistic Societies: Nation-states and National Minorities

States are usually very reluctant when they have to officially recognize the existence of ethnic pluralism and minorities within their borders. In every country the decision to grant a formal (national minority) status, legal protection and special rights to a certain distinct ethnic community and/or its members (persons belonging to this distinct community) is always – and above all – a complex political decision. This is conditioned also by the perception of the concept of modern nation-states.

Nation-states are products of a very specific historical development in Europe that was enabled by the introduction and rapid development of capitalism (capitalist ways of production). European nation-states have developed simultaneously with the formation of modern (ethno)nations²¹ since the sixteenth and seventeenth century on.²² In this process states acquired their ethnic dimension and identity: Dominant ethnic communities (nations) within certain territories usually determined the ethnic identity of nation-states.²³ They became nation-states.²⁴ States are understood as specific or (even) the only means and mechanisms that can assure the realization of the specific (national) interests of

²¹ A **nation** is “a stable, historically developed community of people with a territory, (specific) economic life, distinctive culture, and language in common”. (*Webster’s New Universal Unabridged Dictionary*, (1983) Deluxe Second Edition. USA: Dorset & Baber, 1983, p. 1196.) The existence of a specific “national identity”, as one of the strongest collective (group) identities, shall be added to this definition: the consciousness and will of an individual shall exist to be a member of a certain nation, and an individual shall be recognized by other members of such an ethnic community as its member. (See, e.g., Philip Schlesinger (1987), “On National Identity: Some Conceptions and Misconceptions Criticized.” *Social Science Information/Information sur les sciences sociales* (London, Paris), Vol. 26, No. 2, 1987, pp. 219-264.) The formation of **modern nations** or **ethno-nations** was possible with the introduction of capitalism. The emergence of modern nations as specific ethnic communities was often conditioned on the existence of nation-states, and sometimes *vice versa*. (See, e.g. Ernest Gellner (1983), *Nations and Nationalism*. Ithaca & London: Cornell University Press, 1983, pp. 6-7, 53-58.)

²² The turning points in this process were the (Peace) Treaties of Westphalia of 1648 that laid foundations for a new international (European) community, the legal status of states and principles of relations among them.

²³ Definitions of a (nation-)state in international law do not include its ethnic dimension and nature. (E.g. L. (Lassa) Francis Lawrence Oppenheim (1948), *International Law: A Treatise, Vol. I: Peace*; 7th edition edited by H. (Hersch) Lauterpacht. London, New York, Toronto: Longmans, Green and Co., 1948; J. G. Starke (1989), *Introduction to International Law*. 10th edition. London: Butterworths, 1989.) Article I of The Montevideo Convention on Rights and Duties of States (of 1933) provides the classic legal definition of states as persons of international law: “*The State as a person of international law should possess the following qualifications: a) permanent population; b) defined territory; c) government; and d) capacity to enter into relations with other states.*”

²⁴ The fact that the process of formation of modern nation-states in Europe went hand in hand with the process of formation of modern European nations has produced and still is reflected in a terminological problem in some languages. The same term “**nation**” is used to describe a **specific ethnic community** and a **state** as a specific social organization and structure. I use the term “nation” only to describe a specific ethnic community.

(ethno)nations.²⁵ European states were established and are still perceived as nation-states of certain nations - we could say "single-nation-states."²⁶ This concept could be explained by a simple equation: "***State = nation = people***".²⁷

Following this logic, nation-states and their populations were believed to be ethnically and culturally homogenous entities. As the result, a myth of ethnic homogeneity was born that strengthened the belief that a nation-state belonged to a certain (ethnic) nation. The myth of ethnic homogeneity was a powerful force in building a common collective, ethnically based identity in the territory of a certain state. This myth is the basis for the political ideology of nationalism and often exploited by nationalist movements and politicians.²⁸ However, as is often the case with myths, the myth of ethnic homogeneity of nation-states does not correspond to reality:²⁹ ethnic plurality has always been the reality of most territories and states.³⁰ Furthermore, a general trend in the Twentieth Century is increasing ethnic, cultural, linguistic and social diversity. Intensified communication, (economic) cooperation and interdependence in the world, developed transportation and increased mobility of population are some key factors further contributing to this increasing diversity.³¹ However, constitutions and political systems of nation-states

²⁵ A state is not just a form of organization of a society, but as Max Weber pointed out, a state is (above all) an agency within society, which possesses a monopoly over legitimate violence. (E.g., Max Weber (1989), *The Protestant ethic and the spirit of Capitalism*. Translated by Talcott Parsons; introduction by Anthony Giddens. London: Unwin Paperbacks, 1989; Max Weber (1922), *Wirtschaft und Gesellschaft*. Bearbeitet von Max Weber. Tübingen: J. C. B. Mohr / P. Siebeck, 1922.) On the other hand, a modern state in the European tradition of the twentieth century became also a (public) service of its citizens that should provide certain necessary social infrastructure and assure the realization of certain social needs of its citizens (e.g. education, social security, health care and services, etc.).

²⁶ Sometimes also the term "*one-nation-state*" is used to describe this model and concept. (For more on nation-states see, e.g., C. A. Macartney (1934), *National States and National Minorities*. London: Oxford University Press, Humphrey Milford, 1934; Hough Seton-Watson (1977), *Nations and States*. London: Methuen / Boulder, Colorado: Westview Press, 1977; Rudolfo Stavenhagen (1990), *The Ethnic Question: Conflicts, Development, and Human Rights*. Tokyo, Hong Kong: United Nations University Press, 1990, p. 31, 20-35; Mitja Žagar (1995a), "Constitutions in Multi-Ethnic Reality." *Razprave in gradivo / Treatises and Documents*, No. 29-30/1995, pp. 144-157.)

²⁷ Eric J. Hobsbawm (1990), *Nations and Nationalism since 1789: Programme, Myth, Reality*. Cambridge, London, New York, New Rochelle, Melbourne, Sydney: Cambridge University Press, 1990, p. 23.

²⁸ As a political ideology and principle, **nationalism** demands that members of a certain nation have "the political duty... to the polity which encompasses and represents... (this) nation." This political duty "overrides all other public obligations, and in extreme cases (such as wars) all other obligations of whatever kind." In this context, nationalism is the most demanding form of ethnic or group identification. (Hobsbawm, 1990, p. 9.) Nationalism, by definition, is exclusive and/or hegemonic, and is usually hostile to others. Hostile to diversity and pluralism, nationalism is **incompatible with democracy**.

²⁹ See, e.g., Gellner (1983), p. 1; Anthony D. Smith (1991), *National Identity*. Harmondsworth, London: Penguin, 1991, p. 49-98.

³⁰ A certain level of ethnic plurality (diversity) has always existed also in countries that were traditionally perceived as ethnically homogenous nation-states (e.g., France). Factors, such as natural disasters, including climate changes, diseases and famine, economic underdevelopment and hardship, the faster economic development of certain regions, administrative changes in the territory and borders of nation-states, wars, etc. have contributed to the ethnic diversity and changing ethnic structure of the population in its history.

³¹ See, e.g., Gerold Ambrosius, William H. Hubbard (1989), *A Social and Economic History of Twentieth-Century Europe*. Translated by Feith Tribe and William H. Hubbard. Cambridge, Mass., London, England: Harvard University Press, 1989, pp. 28-42, 84-86.

Following this logic, nation-states and their populations were believed to be ethnically and culturally homogenous entities. As the result, a myth of ethnic homogeneity was born that strengthened the belief that a nation-state belonged to a certain (ethnic) nation. The myth of ethnic homogeneity was a powerful force in building a common collective, ethnically based identity in the territory of a certain state. This myth is the basis for the political ideology of nationalism and often exploited by nationalist movements and politicians.²⁸ However, as is often the case with myths, the myth of ethnic homogeneity of nation-states does not correspond to reality:²⁹ ethnic plurality has always been the reality of most territories and states.³⁰ Furthermore, a general trend in the Twentieth Century is increasing ethnic, cultural, linguistic and social diversity. Intensified communication, (economic) cooperation and interdependence in the world, developed transportation and increased mobility of population are some key factors further contributing to this increasing diversity.³¹ However, constitutions and political systems of nation-states are still based on the concept of a single-nation state and people still believe that the myth of ethnic homogeneity is true.³² Furthermore, they believe that this myth is consistent with (the concept of) modern democracy.

The existence of pluralism is a precondition of democracy. Everybody agrees that permanent political monopolies and unjust forceful limitations of political pluralism are incompatible with the modern understanding and concept of democracy. To prevent the possible abuse of democratic principles and institutions, democratic constitutions introduced different safeguards in the form of democratic procedures and different limitations on simple majority rule.³³ However, people do not realize that ethnic pluralism is just one segment of social diversity and pluralism in modern societies.³⁴ They do not perceive the existing ethnic diversity as a possible comparative advantage; much less do they see the recognition of ethnic pluralism as a precondition of developed democracy in a pluralistic society. Believing in the myth of ethnic homogeneity, they consider the existing ethnic diversity a problem and a possible obstacle to the successful functioning of democratic

³² Children in schools all over the world are still taught this myth. It is being promoted also by the mass media, which are presenting it to their audiences in almost all countries. We have to recognize that the myth of ethnic homogeneity is a powerful force in modern societies. Even in countries where ethnic plurality is recognized (constitutionally and legally) and the existence of ethnic diversity is accepted by the official policy and most politicians, many politicians and state authorities often see the existing ethnic diversity rather as a problem than as a normal situation or even a comparative advantage.

³³ These democratic procedures, limitations and mechanisms include free democratic elections that should offer equal opportunities to the (political) opposition, democratic procedures, institutions and mechanisms, systems of checks and balances, voting by qualified majority, etc. (See, e.g., Norberto Bobbio (1989), *Democracy and dictatorship: The nature and limits of state power*. Oxford: Polity Press, 1989; Norberto Bobbio (1987), *The future of democracy: A defence of the rules of the game*. Oxford: Polity Press, 1987; Robert A. Dahl (1989), *Democracy and its Critics*. New Haven & London: Yale University Press, 1989; Giovanni Sartori (1987), *The Theory of Democracy Revisited. Part one: The Contemporary Debate; Part two: The Classical Issues*. Catham, N.J.: Catham House Publishers, Inc., 1987.)

³⁴ Pluralism in modern societies exists in all spheres of our life: economics, politics, culture, language, ethnic and social structure of population, etc. Its expression is the existence of (social) diversity. In this context, most often the discussed political pluralism - usually reduced to the existence of several political parties that represent different political options - represents only a specific dimension and a small fraction of the present (social) pluralism.

institutions and systems. Because of this myth sometimes they cannot even realize the existence of ethnic pluralism in their societies. For this reason they also do not see the myth of ethnic homogeneity and the concept of nation-states based on this myth as possible forceful limitations of ethnic pluralism. In this context, the concept of single-nation-states as tools for the realization of the national interests of dominant (ethnic) nations, often at the expense of other distinct communities (minorities) in a state, has not been seriously challenged and/or changed.³⁵

However, present models of nation-states could and should be observed (also) as possible generators of nationalism and ethnic conflict in modern plural societies.³⁶ They could generate conflicts between ethnic communities that dominate (or are believed to dominate) states and ethnic groups that do not want to accept such domination.³⁷ In such situations distinct ethnic communities that are unhappy with arrangements within the existing states often seek solutions in the secession and creation of their own nation-states. This shows the importance and power of the existing concept of nation-states in the present international community and in the perception of people worldwide.³⁸

III. CONSTITUTIONAL, LEGAL AND INTERNATIONAL PROTECTION OF NATIONAL (ETHNIC) MINORITIES: HISTORIC DEVELOPMENT AND PRESENT SITUATION

National (ethnic) minorities as we know them today are a consequence of the formation, development and existence of modern nation-states and borders between them. Developed communication, increased mobility and migrations are factors that continue to increase ethnic diversity in modern societies and contribute to the emergence of migrant communities and new ethnic (immigrant) minorities. From a historical perspective, the development of the (constitutional, legal, international) protection of national minorities was a long, slow and often painful historical process. The adequate protection of migrants and immigrant communities has yet to be developed.

³⁵ For more on the concept of nation-states see, e.g., Michael MANN, ed. (1990), *The Rise and Decline of the Nation State*. Oxford, Cambridge (Mass.): Basil Blackwell, 1990.

³⁶ See, e.g., Gellner (1983), pp. 3-5; Hobsbawm (1990), pp. 9-12.

³⁷ It is not necessary that domination actually exists in a pluralistic society. The mere perception of domination or of a subordinate (unequal) position of a certain distinct community could provoke different conflicts (that could turn into ethnic conflicts) and their possible escalation.

³⁸ Even minorities in the existing states perceive the model of a "nation-state" as the only proper tool for realizing the national interests of the dominant (ethnic) nation. That is why they often demand the creation of a nation-state of their own - to realize their own specific national interests. (See, e.g., Michael Keating, John McGarry (2001), *Minority Nationalism and the Changing International Order*. Oxford, New York: Oxford University Press, 2001; James. G. Kellas (1998), *The Politics of Nationalism and Ethnicity*. 2nd revised and updated edition. Basingstoke, London: Macmillan; New York: St. Martin's Press, 1998; Stavenhagen, (1990).) Although they are deprived of distinct communities (minorities) in the existing nation-states, their nationalist politicians in their (political) programs demand the formation of their ethnically homogenous nation-states. In this context, they consider the possible ethnic minorities and other distinct communities in their future state a serious problem. These possible future minorities are often used as scapegoats when they encounter problems in the realization of their (nationalist) programs. On the other hand, politicians of the existing minorities do not pay much attention to the (constitutional/legal) status and protection of possible ethnic minorities in their future nation-state.

When we analyze the historical development of the protection of national (ethnic) minorities we could divide it into **three main phases**:

- (1) from the Peace Treaties of Westphalia (of 1648) to WWI;
- (2) from WWI to WWII; and
- (3) after WWII – with a specific sub-phase after 1989.

III.1. From The Peace Treaties of Westphalia to WW I

The first phase in the historic development of the protection of traditional (national) minorities lasted almost three hundred years.³⁹ The development was slow and often partial. The main characteristics of this phase were:

- (i) The protection of minorities was limited only to religious minorities. It was especially concerned with religious freedom and equality. In some cases it also included a certain level of religious and local self-government. It was only in one case that the protection of an ethnic minority was explicitly mentioned but not precisely regulated.⁴⁰
- (ii) The protection of minorities was proclaimed by a few international agreements and documents, but there was no international mechanism that would have assured the realization of existing provisions.⁴¹ The realization of rights of minorities was usually left to individual sovereign states themselves.
- (iii) Existing provisions on the protection of minorities were very seldom realized in practice.⁴²

³⁹ Although a few international documents had included provisions on religious freedom before (e.g., the Peace Treaty of Vienna of 1609, which guaranteed religious freedom to Protestants in Transylvania), The Peace Treaties of Westphalia of 1648 marked the beginning of this phase of the modern development of rights of religious and ethnic minorities. (Petrič (1977), p. 24.) These treaties introduced the principle of freedom of conscience and religion and established the obligation of states to grant toleration and self-government to distinct religious communities. States, as the high contracting parties, recognized the existence of religious minorities and stipulated granting of a certain level of (initially religious and later also local) self-government to Protestants in Catholic states and to Catholics in Protestant states. These principles replaced the previously existing principle "*cuius regio, eius religio*" that determined (automatically) the religion of the population on a certain territory by the religion of its ruler. (Salo W. Baron (1985), *Ethnic Minority Rights: Some older and newer trends*. The tenth Sacks Lecture delivered on 26th May 1983. Oxford, England: Oxford Centre for Postgraduate Hebrew Studies, 1985, p. 3)

⁴⁰ Although the Final Document of the Congress of Vienna of 1815 mentioned Poles as an ethnic minority, it did not establish any kind of (special) protection. The high contracting parties, Austria, Prussia and Russia agreed to grant certain ethnic rights (that were not specified) to Poles who lived under their jurisdiction.

⁴¹ In addition to the Peace Treaties of Westphalia, in Europe there were several documents assuring also the protection of religious minorities, e.g., the Oliva Peace of 1660, the treaties of Nijmegen (1678), Rijswijk (1697) and Vienna (1815). We could mention also the Paris Peace of 1763 between France and the United Kingdom, which regulated the protection of Catholics in Canada. In the time of the decay of the Turkish Empire a certain protection of religious and ethnic minorities was established by the treaties of Paris (1856) and Berlin (1878). (E.g., Petrič (1977), pp. 24-27; Petra Roter (1995), "Razvoj mednarodnopravnega varstva manjšin od 17. stoletja do obdobja Društva narodov" ("The Development of the International Protection of Minorities from the 17th Century until the League of Nations' Period"). *Razprave in gradivo / Treatises and Documents*, No. 29-30/1994-1995, pp. 194-202.)

⁴² See, e.g., Petrič (1977), pp. 24-28; Roter (1996).

- (iv) There was no specific constitutional protection of ethnic minorities, except for a general proclamation of equality and in some cases, the prohibition of discrimination on grounds of race or religion.⁴³

III.2. From WW I to WW II

This phase was much shorter and characterized by a rather dynamic development. The following characteristics marked the second phase:

- (i) The concept of the protection of minorities expanded and included also the protection of racial, ethnic and linguistic minorities in addition to religious minorities. "Special" rights of persons belonging to ethnic, racial, linguistic and religious minorities were added to the general concept of human rights.⁴⁴
- (ii) The protection of minorities was regulated by international agreements and documents, within and outside the League of Nations as the central institution at the level of the international community. The Peace Treaties after WWI were central documents in this context that served as the basis for all other documents.⁴⁵

⁴³ This conclusion was confirmed by preliminary findings of the "Constitutional Project" within the Students' Research and Training Project: "Democratization and ethnic relations: the management of ethnic relations and conflict." (See also: Albert P. Blaustein, Jay A. Sigler, ed. (1988), *Constitutions That Made History*. Edited, compiled and introduction by: A. P. Blaustein, J. A. Sigler. New York: Paragon House Publishers, 1988.)

⁴⁴ Professor Petrič (1977, pp. 37-38) lists the following nine (groups of) rights of minorities that were guaranteed to persons belonging to ethnic minorities by international documents:

- (1) The right to the citizenship of the state where persons belonging to a certain ethnic minority live. In some cases when the administrative status of a certain territory was changed, the inhabitants were given the right to opt for the citizenship of their choice;
- (2) the right to life, liberty of person, and freedom of religion;
- (3) the right to equality before law, and equality in civil and political rights;
- (4) the right to equal access to public services and offices, honors and functions, and equality at (professional) work;
- (5) the right to establish, manage and maintain their religious and social associations and institutions, schools;
- (6) the right to free use of their language;
- (7) the right to use their language before courts;
- (8) the right to education in their language in primary schools in the communities where a considerable proportion of persons belonging to a minority live. The official language of a state should also be taught compulsorily;
- (9) the right to adequate participation in public finances for educational, religious and similar purposes in the communities where a considerable proportion of persons belonging to a minority live.

⁴⁵ The issues of the right of peoples to self-determination and protection of ethnic, linguistic and religious minorities were raised already during WWI. New principles started to emerge in this context that were further developed after WWI, especially within the League of Nations (e.g., resolutions of the Council of the League of Nations based on the special report on **Protection of Linguistic, Racial or Religious Minorities**, the so-called Tittoni's Report adopted by the Council on 22 October 1920). In this context we should mention the Peace Treaties after WWI that bound the states defeated in the war and new states to respect certain rights of minorities, e.g., the treaties of: Saint-Germaine with Austria of 10 September 1919 (Art. 54-60); Neuilly with Bulgaria of 29 November 1919 (Art. 49-57); Trianon with Hungary of 4 June 1920 (Art. 54-60); Sevres with Turkey of 10 August 1920 (Art. 37-45), etc. (See, e.g., Petrič (1977), pp. 28-49)

- (iii) The second phase marked the beginning of the modern constitutional protection of minorities, and set certain standards by adopting some solutions from the existing international documents and practice.⁴⁶ However, most constitutions, based on the concept of (single) nation-states, did not include provisions on the protection of minorities.
- (iv) There was no adequate and efficient mechanism at the international level or within individual states that would have assured the realization of the existing constitutional/legal protection of minorities.
- (v) There were several problems in the realization of the protection of minorities and the “special” rights of persons belonging to minorities provided by international law and a few constitutions⁴⁷; nevertheless the protection and position of minorities improved in comparison with the previous phase.⁴⁸

III.3. After WW II

The third phase of the historic evolution of the protection of ethnic minorities has been and is the most dynamic so far. In this process we should especially stress the importance of several international organizations and integrations, such as, for example, the United Nations,⁴⁹ The Council of Europe,⁵⁰ the Conference/Organization on Security

⁴⁶ The following constitutions should be mentioned in this context: the Constitution of the Russian Socialist Federal Soviet Republic of 1918, the German (Weimar) Constitution of 1919, and the Constitution of the Estonian Republic of 1920, which established the highest standards of the protection of ethnic minorities. (See, e.g., Blaustein, Sigler, ed. (1988), pp. 337-398.)

⁴⁷ The first Soviet Russian, Estonian and German constitutions were all short lived and abolished in practice soon after WW I. (E.g., Blaustein, Sigler, ed. (1988).)

⁴⁸ More on these issues, see, e.g., Capotorti (1991), p. 25; Inis L. Claude (1955), *National Minorities: An International Problem*. Cambridge: Cambridge University Press, 1955, pp. 17, 35-36; Petrič (1977), pp. 32, 44-49; Roter (1995), pp. 208-209.

⁴⁹ The Charter of the UN (1945) and the Universal Declaration of Human Rights (GA Res. 217 A(III) of 10 December 1948) do not provide any special protection for minorities directly, but they define the framework of UN Human Rights regulation. The most important UN documents regarding ethnic minorities are, e.g.: the resolution “The Fate of Minorities” (GA Res. 217 C (III) of 10 December 1948); International Covenant on Civil and Political Rights - Article 27 (GA Res. 2200 A (XXI) of 16 December 1966; entered into force on 23 March 1976); the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (GA Res. 47/135 of 18 December 1992); The Vienna Declaration and Programme of Action of the World Conference on Human Rights adopted on 25 June 1993 - Paragraph 19 (*World Conference on Human Rights: The Vienna Declaration and Programme of Action, June 1993*. (1993) With the Opening Statement of the United Nations Secretary-General Boutros Boutros-Ghali. New York: UN Department of Public Information, 1993, pp. 34-35); etc.

⁵⁰ The main documents of the Council of Europe regarding ethnic minorities are: recommendations and decisions of the Parliamentary Assembly and the Committee of Ministers, the declaration of the Heads of State and Government of the member States of the Council of Europe at the Vienna summit conference (8-9 October 1993), but especially the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages presented in this volume. (See also, e.g., Benoît-Rohmer, Hardeman (1994).)

Although the European Convention on Human Rights of 4 November 1950 (with the official title The Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force in 1953) and the European Social Charter of 18 October 1961 (which came into force in 1965) did not establish any special rights and protection of minorities, they laid the foundations of the European system of Human Rights. From the perspective of the protection of minorities we should mention Article 14 of the European Convention on Human Rights, which prohibits any form discrimination in the exercise of human rights and fundamental freedoms guaranteed by this treaty. (See, *Human Rights: A continuing challenge for the Council of Europe*. (1995) Strasbourg: Council of Europe Press, 1995, p. 5, 20.)

and Cooperation in Europe,⁵¹ European Communities/Union,⁵² sub-regional integrations,⁵³ etc. The protection of minorities remained also an important content of multilateral and bilateral treaties.⁵⁴ This period was characterized also by the process of decolonization that was based on the realization of the principle of self-determination that is in many ways controversial.⁵⁵ The creation of new (nation) states in Africa and Asia after the collapse of colonial Empires changed the world's political map. This process resolved certain minority problems that existed within the colonial Empires, but - at

⁵¹The main CSCE/OSCE documents regarding the protection of ethnic minorities are, e.g.: The Helsinki Final Act (Principle VII of the "Declaration on Principles Guiding Relations between Participating States, Para. 4) of 1975; the Copenhagen Document (Part IV) of 1990; the Vienna Human Dimension Mechanism of 1989; etc. CSCE/OSCE documents are usually political documents that are legally non-binding. Most attempts to develop measures and mechanisms to improve the implementation of CSCE commitments concerning minorities have failed to produce adequate results. The office of the **CSCE/OSCE High Commissioner on National Minorities** as a specific early-warning instrument for the prevention of conflicts that involve national minorities at the earliest possible stage was established in 1992 to improve the situation. This institution offered a common ground for cooperation in promoting human rights and the protection of minorities in Europe. (See e.g., Benoît-Rohmer, Hardeman (1994), pp. 6-9.) The High Commissioner on National Minorities authorized the Foundation on Inter-Ethnic Relations, a nongovernmental organization established in 1993 to support the activities of the High Commissioner, to prepare recommendations that would improve the position and protection of national minorities. This resulted in the Hague Recommendations regarding the Educational Rights of National Minorities (1996), the Oslo Recommendations regarding the Linguistic Rights of National Minorities (1998) and the Lund Recommendations on the Effective Participation of National Minorities (1999). (See, e.g., <http://www.osce.org/hcnm/documents/recommendations/index.php3> (15 January 2002).)

⁵²The EC/EU has failed to create a binding legal instrument on the protection of ethnic minorities. Nevertheless, several EC/EU documents underline the importance of minority rights (e.g., the Badinter report, resolutions of the European Parliament). The protection of minorities is present also in the EC/EU international relations as an important political issue or a yardstick of democracy. (See also, e.g., Benoît-Rohmer, Hardeman (1994), pp. 16-19.)

⁵³In response to existing problems in the Baltic region, the Council of Baltic Sea States (CBSS) decided in March 1993 to establish the office of a CBSS Commissioner for Human Rights and Minority Questions. (See e.g., Benoît-Rohmer, Hardeman (1994), pp. 21-22.) The Central European Initiative (CEI), founded in 1989, adopted its Instrument for the Protection of Minority Rights in 1994, which establishes principles for the protection of national minorities in member states. (At present the CEI comprises the following 17 Member States: Albania, Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Hungary, Italy, Macedonia, Moldova, Poland, Romania, the Slovak Republic, Slovenia, Ukraine and the Federal Republic of Yugoslavia.) Although this document is not a binding international document, it represents an important step in the (sub)regional development of the protection of minorities. (See, http://www.ceinet.org/view/01/01_01.htm (20 January 2002).)

The Alps Adriatic Working Community has a Working Group on Minorities within its Commission III on Culture and Society. This Working Group is responsible for the collection of data concerning ethnic minorities in the region, for the creation of a map of minorities, for the stimulation of communication and cooperation between minorities and especially for the promotion of youth contacts between minorities. (See, e.g., http://www.alpeadria.org/attivita/attivita_e.htm (20 January 2002).)

⁵⁴In this context I should mention: the Gruber-Gasperi Agreement of 1946 (annexed to the Peace Treaty of 10 February 1947) between Austria and Italy, which guarantees a range of minority rights and broad autonomy to the German-speaking (Austrian) minority in South Tyrol; the quadripartite memorandum of agreement, the so-called London Memorandum, concerning the Territory of Trieste, signed by the governments of Italy, the United Kingdom, USA and Yugoslavia on 5 October 1954, which was replaced by the Treaty of Osimo of 1976 between Italy and Yugoslavia succeeded to by Slovenia and Croatia after its disintegration; the agreement between the Federal Republic of Germany and Denmark of 1955; a number of bilateral agreements concluded after the collapse of Communist regimes and disintegration of multiethnic states in Central and Eastern Europe, such as: treaties on neighboring relations that Germany concluded with Poland (in 1991), Hungary (in 1992) and with Czechoslovakia (in 1992); treaties between Hungary and Ukraine (of 1991), Hungary and Slovenia (1992), etc.

⁵⁵See, e.g., Morton Halperin, David J. Scheffer, Patricia L. Small (1992), *Self-Determination in the New World Order*. Washington, D.C.: Carnegie Endowment for International Peace, 1992.

the same time - it created or transformed these problems in new states. The principle of and right to self-determination were called upon and used again in the beginning of the 1990's when new states emerged from the former (communist) multiethnic states/empires in Central and Eastern Europe (Czechoslovakia, the Soviet Union, the former SFR Yugoslavia).⁵⁶

The post WW II period also brought substantial (national, regional) diversity in the perception and regulation of the (national and international) protection of rights of minorities.⁵⁷ The following main characteristics describe this phase:

- (i) The concept of human rights has further developed in this phase, which influenced also rights and protection of ethnic minorities. Some new special rights have emerged, and a dual, both individual and collective, nature of minority rights is slowly being recognized.
- (ii) The rights and protection of minorities are regulated by a number of international documents, with the UN and other international organizations playing a central role in the development of the international law. A new concept for the protection and rights of minorities has slowly been established by new international documents. Besides binding treaties and international agreements, there are also legally non-binding documents (resolutions and declarations). Some principles proclaimed by these documents have become or might become customary international law based on the practice of the international community and states⁵⁸ and/or *ius cogens* when they are included in new international treaties.⁵⁹ In most cases so far, the realization of minority rights provided by international documents depends only on the political commitment of states to respect the provisions of these documents.
- (iii) The reluctance of governments of modern states that at least subconsciously still perceive their countries as ethnically homogenous (single) nation-states, has often slowed or even blocked further development of the protection and rights of minorities in international law. Due to the reluctance and opposition of some states, it is rather unlikely that already existing international standards for the protection of minorities will be translated into the national legislation of these states anytime soon.

⁵⁶ E.g., Mitja Žagar (1994), "National Sovereignty at the End of the Twentieth Century: Relativization of Traditional Concepts; The Case of Slovenia" - in Bojko Bučar, Stein Kuhnle, eds., *Small States Compared: the Politics of Norway and Slovenia*. Bergen: Alma Mater, 1994, pp. 243-248.

⁵⁷ E.g., Stavenhagen (1990), pp. 129-141; Patrick Thornberry (1990), *International Law and the Rights of Minorities*. Oxford, England: Clarendon Press / New York: Oxford University Press, 1990; Patrick Thornberry (1991), *Minority and Human Rights Law* (1991), A Minority Rights Group Report. London: MRG, 1991; *World Directory of Minorities* (1990); etc.

⁵⁸ This is the case with the Universal Declaration of Human Rights and some other UN documents.

⁵⁹ See, e.g., Starke (1989).

- (iv) Although there was certain progress in the field of the constitutional protection of minorities, most constitutions, still deriving from the concept of (single) nation-states, did not include special provisions on the rights and protection of minorities. Some newer constitutions have followed international standards of minority rights and the protection of minorities, but standards of constitutional protection are still lower than existing international standards in most cases.⁶⁰ This gap is to a certain extent bridged by the legislation in some countries, but this legislation is often inadequate.
- (v) Different mechanisms at the international level (mostly within existing international global and regional organizations) or within individual states that should assure the realization of the rights and protection of minorities are being established (and have already been mentioned in the footnotes). Beside the protection of rights before the courts within the state, different international institutions and courts exist that can be addressed also by affected individuals and minority organizations/associations concerning the violation of minority rights as provided by international treaties.⁶¹
- (vi) There are still several problems in the realization of the protection of minorities and the “special” rights of persons belonging to minorities provided by international law and constitutions. This is sometimes conditioned also by the “ethnic policies” of states that fail to recognize even the very existence of ethnic pluralism within their borders.

Within this phase we can also detect a special sub-phase that began in 1989-1990 and continued into the 1990s. After the collapse of the former communist regimes in Central, Eastern and South Eastern Europe countries from this region expressed their interest in joining the (Western) European integration (the EU) and started their transitions from communism. In this context, also following the mentioned recommendations of the Badinter commission, the adequate protection of minorities became an important criterion for accession. Simultaneously, in the 1990s an important development took place at the international level with the adoption of several international documents, including the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages that represented the first two specific legally binding international documents on the protection of (national) minorities.

⁶⁰ See, e.g., Baron (1985); Catherine Brolmann, Rene Lefebvre, Marjolaine Zieck, eds. (1992), *Peoples and Minorities in International Law*. Dordrecht, Boston: M. Nijhoff, 1992; Thornberry (1990); Ben Whitaker, ed. (1984), *Minorities: A Question of Human Rights*? Oxford, New York, Toronto, Sydney, Paris, Frankfurt: Pergamon Press, 1984; Žagar, Novak (1999); etc.

⁶¹ E.g., such a system is provided by the European Convention on Human Rights. If their rights are violated, individuals could bring – in accordance with the European Convention on Human Rights – complaints and their cases before the European Commission on Human Rights, which screens most complaints, and before the European Court of Human Rights. (See, e.g., A. LeRoy Bennett (1995), *International Organizations: Principles and Issues*. Sixth Edition. Englewood Cliffs, N.J.: Prentice Hall, 1995, pp. 209-210)

IV. INDIVIDUAL AND/OR COLLECTIVE RIGHTS: DO MINORITY RIGHTS EXIST AT ALL?

The concept of **(special) rights of ethnic minorities** has often been disputed. Some authors and politicians deny the very existence of special minority rights. In their view, special rights are a form of unacceptable legal discrimination. They insist on absolute formal equality of everyone before the law and consider so-called, “positive discrimination” with measures of “affirmative action” an unacceptable violation of the principle of the equality of everyone before the law. They usually reject also the existence of collective rights and claim that all rights are exclusively individual.⁶²

On the other hand, international law, the official documents of most states, most politicians and scholars recognize the existence and importance of the special rights of (national) minorities.⁶³ Nevertheless, there are several differences regarding the understanding, interpretation and nature of these special rights.

Special minority rights⁶⁴ were developed to assure equality of rights and opportunities for individuals belonging to distinctive groups and/or in some cases for these distinctive groups (as collective entities) who are objectively in a less favorable position in a certain society. Therefore, these special rights should be aimed at enabling these individuals and groups to realize their constitutionally guaranteed rights. Usually defined as individual rights, with their realization special minority rights also establish the protection of minority communities.⁶⁵ I think that rights of minorities have a **dual nature** - they are at the same time both **collective** and **individual** rights. If we analyze the rights of national (ethnic) minorities in their complexity, we discover that as collective rights they belong to ethnic minorities as distinct communities, and as individual rights they belong to every member of a certain ethnic minority.⁶⁶

⁶² Tibor R. Machan (1989), *Individuals and their rights*. La Salle, Illinois: Open Court, 1989.

⁶³ See, e.g., Capotorti (1991); Iván Gyurcsík (1993), “The New Legal Ramifications to the Minority Question.” Paper for the 12th Annual Conference of the Institute for EastWest Studies “Minority Rights and Responsibilities: Challenges in a New Europe”; Lake Bled, Slovenia, May 21-23, 1993; Will Kymlicka (1999), *Multicultural Citizenship: A liberal theory of minority rights*. Reprinted in paperback. Oxford: Clarendon, 1999; Will Kymlicka, ed. (1996), *The Rights of Minority Cultures*. Oxford, New York: Oxford University Press, 1996; etc.

⁶⁴ Some authors use the phrase “rights of minorities” in the context of “equality of rights and opportunity for individuals belonging to minority groups”, and the phrase “minority rights” to refer “to the rights of minority peoples (*as groups* - *M.Ž.*) who wish... to cultivate their own culture and control their schools, welfare agencies, and other communal institutions.” (Baron (1985), pp. 3-4) I use both term as synonyms.

⁶⁵ See, e.g., Vernon Van Dyke (1985), *Human Rights, Ethnicity, and Discrimination*. Westport, Conn.: Greenwood Press, 1985, pp. 14-15, 44-45.

⁶⁶ E.g., the right of minorities to education – in languages of minorities, about the culture and history of these minorities – is realized as a collective right of a certain minority by establishing adequate autonomous educational systems and programs; as an individual right it is realized by giving every individual belonging to a minority community the possibility of attending a bi-lingual school or educational program in the language of a certain minority.

The concept of collective rights is becoming more acceptable, but most official documents and politicians still perceive minority rights as individual rights of members of certain distinct ethnic communities.⁶⁷ There are only a few national and/or international documents and/or constitutions that explicitly define the rights of minorities also as collective rights of these distinct ethnic communities.⁶⁸

This dispute regarding individual and/or the collective nature of the rights of (ethnic) minorities could be observed as a reflection of the Western – more specifically, European and North American – culture and ideology based on individualism, Christianity and the concept of (liberal) democracy that have dominated the development of the international community and law in the past centuries. Often, the Western culture and ideology differ substantially from traditional local cultures and ideologies that are usually less individual and more collectively oriented. Not only do traditional local cultures recognize the existence, specific social roles and importance of the collective subjects (collectivities) within every society, they often put collective interests and needs of diverse communities before the specific interests and needs of individuals. The currently existing international system of human rights simply follows the Western traditions and somehow ignores the mentioned cultural differences. This practice could lead to severe problems endangering the (general) acceptance and respect of human rights and respective standards defined by international law in certain societies when certain human rights conflict with traditional and/or generally recognized concepts and values.

⁶⁷ E.g. Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities (A/RES/47/135) adopted by the General Assembly of the United Nations on December 18th, 1992 defines the rights of persons belonging to minorities mostly as individual rights, although it stresses that "(p)ersons belonging to minorities may exercise their rights, including those set forth with the present Declaration, individually as well as in community with other members of their group, without any discrimination." (Article 3/1.)

⁶⁸ E.g. the Constitution of the Republic of Slovenia (of 1991) defines the rights of traditional ethnic minorities as collective and individual rights of autochthonous ethnic communities and their members. (E.g. Article 65) It is interesting to mention, that the Constitution of the Republic of Slovenia (of 1991) on the initiative of representatives of ethnic minorities in the Constitutional Commission replaced the term "ethnic/national minority" with the term "autochthonous national communities" to avoid the possible negative connotations of the term "minority". The Council of Europe's Framework Convention for the Protection of National Minorities states in its Article 1: *"The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation."* Nevertheless, the framework convention guarantees rights and freedoms explicitly to persons belonging to minorities. The dual nature of minority rights is - somewhat - more present in the European Charter for Regional or Minority Languages. (For more detailed information on these issues see also, e.g., Romana Bešter (2001) *Primerjava nekaterih vidikov ustavne zaščite manjšin v državah članicah Sveta Evrope: Manjšinsko varstvo v Svetu Evrope in ustavna ureditev manjšinskega varstva v državah članicah Sveta Evrope. (Comparison of some aspects of the constitutional protection of national minorities in Member States of the Council of Europe: Minority protection of the Council of Europe and the constitutional regulation of the minority protection in Member States.)* Magistrsko delo. Ljubljana: Univerza v Ljubljani – Fakulteta za družbene vede, 2001.)

However, also in these cases the existing minimal international Human Rights standards should not be abolished and/or violated. All necessary attempts should be made that these standards be observed and realized. On the other hand, the further development of human rights and especially the special protection and rights of (ethnic and other) minorities should take into account specific traditions, concepts and cultures in every society and the traditional position of distinct communities within it. In my view, this would often lead to the strengthening of the collective dimension(s) of human rights, especially the (special) rights of (ethnic) minorities without reducing or endangering their individual dimension.

IV.1. Concepts of the Protection of Minorities

Following Jellinek's classification of human rights⁶⁹, the rights of minorities could be defined usually as "rights of negative status" (negative rights). In this context I would describe the existing concept of the protection of minorities and the prevailing practice in the world as the **"negative concept of the protection of minorities."** When states guarantee certain minority rights they usually define and establish them as individual (negative) rights of persons belonging to minorities. States do not have a direct obligation to assure their realization. They react only when these rights are (directly or sometimes indirectly) violated – usually upon the request of members of minorities. Individual persons belonging to minorities and, in some cases, minority organizations (associations) can sue violators before courts and request that states prevent further violations of minority rights.⁷⁰

The alternative concept that has been developed mainly as a theoretical model could be the **"positive concept of the protection of ethnic minorities."**⁷¹ This theoretical

⁶⁹ Based on status, Georg Jellinek classified human rights into four groups:

- **negative status rights:** the state should not interfere unless they are violated (basic rights and liberties of an individual, e.g. personal rights, privacy, etc.);
 - **positive status rights:** an individual, usually the citizen has the right to demand a certain activity by the state (cultural, social and economic rights);
 - **active status rights:** political rights and liberties, that enable democratic participation of a citizen;
 - **passive status rights:** the state (society) can demand that an individual citizen perform certain public functions (e.g. an obligation to perform an elected or public function).
- (Georg Jellinek (1963/1905), *System der subjektiven öffentlichen Rechte*. (Reprint of the 1905 edition.) Darmstadt: Wissenschaftliche Buchgesellschaft, 1963, pp. 86f.)

⁷⁰ In my view, constitutional/legal systems should establish the general obligation of the state to prevent violations of human rights as a general principle that applies also for the special rights of ethnic minorities; such provisions could be – at least in some cases – interpreted as the obligation of the state to undertake certain preventive activities before the actual violation takes place.

⁷¹ When presented in public, the positive concept of the protection of ethnic minorities is accepted well and advocated by most members and representatives of ethnic minorities, organizations (associations) of ethnic minorities, some experts and scholars. On the other hand, this concept provokes usually negative reactions of (official representatives of) states and different politicians - especially members of nationalist political parties.

model developed in the early 1990s:⁷²

- (i) establishes minorities (as distinct communities) and their members (as individuals) as active and equal subjects in a pluralistic society and its political system. It provides for their participation and decisive role in political decision-making;
- (ii) requires the active role of the state in the protection and realization of the (special) rights of minorities.⁷³ The very fact that the state would not act would establish a violation of the constitution and law by the state and its moral and legal responsibility for consequences.

Although this concept has been developed mainly as a theoretical model, the Republic of Slovenia declared this model to be the basis for its regulation regarding the protection of national minorities and to a large extent introduced it with its constitution in 1991.⁷⁴ This was not surprising considering that some elements of this model had existed already in the former Yugoslavia and that certain elements were preserved also in some other successor states. However it is more important that some elements of the positive concept of the protection of minorities have been fragmentally introduced in the legal systems and practice of some other states.⁷⁵

V. INSTEAD OF CONCLUSION: POSSIBLE SCENARIOS OF FUTURE DEVELOPMENT

The historic evolution of minority rights was characterized by the gradual expansion and introduction of new rights, although there were several setbacks and even occasional reverse trends. Minority rights have become an important segment of human rights. International law has established some general principles and (minimal) standards. Although there was recognition that the obligation of states to protect ethnic minorities was established by international law, there was hardly anything done to countries that violated it. Minority policies and the protection of ethnic minorities

⁷² See, e.g., Mitja Žagar (1990), *Sodobni federalizem s posebnim poudarkom na asimetrični federaciji v večnacionalnih državah. (Modern Federalism and Elements of Asymmetrical Federation in Multi-Ethnic States.)* Doktorska disertacija (Ph.D. Dissertation). Ljubljana: Univerza Edvarda Kardelja v Ljubljani, Pravna fakulteta, 1990; Mitja Žagar (1992), "Position and Protection of Ethnic Minorities in the Constitution of The Republic of Slovenia: Basic information." *Razprave in Gradivo/Treatises and Documents*, No. 26-27/1992, pp. 10-11.

⁷³ In this context states should: prepare and adopt the appropriate legal regulation of minority rights; assure their realization and protection; prevent the violations of minority rights, establish appropriate mechanisms for the prosecution of their possible violators; provide for necessary (pre)conditions, including the necessary finances, and infrastructure for the realization of minority rights in education, culture, publishing, etc.

⁷⁴ See, e.g., Article 64 (Special Rights of the Autochthonous Italian and Hungarian National Communities in Slovenia) and Article 65 (Status and Special Rights of the Romany Community in Slovenia) of the Constitution of the Republic of Slovenia (1991). For more on these issues, see also in the contribution of Miran Komac.

⁷⁵ Some elements of this concept have been introduced in legal systems and in political practice in Belgium, Canada and Spain. Some other states might sometimes use certain elements of a "positive concept" in their minority policy - mostly in the field of the education of members of minorities (in their own language in order to preserve and develop their distinctive culture). We could also mention the "affirmative action" legislation and programs in the USA as possible specific cases of the use of certain elements of this concept. (See also, e.g., *World Directory of Minorities*, 1990.)

have been generally considered internal affairs of every state. States are still reluctant to expand the existing rights and/or to introduce new minority rights, although they often do not meet the international standards. They claim that such an expansion would be costly and would further complicate the existing political systems.

Although the Badinter Commission stressed the importance of the adequate protection of national minorities for modern democracies and established it as a criterion for the EU accession of new states, the protection of national minorities remains in the sphere of the internal affairs of modern states. The very existence of the concept of (single) nation-states that dominates the present international community sets the limits. In this context states and many of their citizens perceive minorities and the existing ethnic diversity rather as a problem than the normal state of affairs and possible comparative advantages. However, we can still expect that in cases of major humanitarian crises and gross violations of minority and other human rights, the possibility of humanitarian intervention exists, especially if certain interests of great powers are threatened simultaneously.⁷⁶ For this reason it is extremely important that information on violations of human rights, including rights of minorities, in a specific environment exists. If there are intense public reactions, outrage and demands to stop such crimes the likelihood of international humanitarian interventions also increases. Hopefully, the fear of international humanitarian intervention and possible prosecution of perpetrators of such crimes before international courts can put pressure on political regimes in all countries to refrain from genocidal policies and “ethnic cleansing.”

Considering everything that has been said, we can not expect that any time soon the existing (single) nation-states will transform into ethnically neutral “bodies politic” with political systems built on the principles of inclusion, tolerance, cooperation, and the recognition of the ethnic, cultural and social plurality and diversity of its population. However, people have to be informed about the multi-ethnic and multi-cultural structure and nature of their societies. They have to know as much of different cultures as possible, and they should especially be taught to acknowledge and respect differences. It is important to create channels and ways of communication and cooperation among different distinct communities that will take into account cultural differences and the specific nature of every individual culture. This includes the creation of informal mechanisms for the management and resolution of conflicts.

I know that it is very difficult or impossible to predict future developments; social scientists and politicians often fail in such attempts. However, our future is an important and attractive subject that we cannot avoid. This is why I have chosen a more literary approach and developed three hypothetical scenarios of the future developments of the protection of

⁷⁶ For some critical accounts see, e.g., William J. Buckley, ed., (2000), *Kosovo: Contending Voices on Balkan Interventions*. Grand Rapids, MI, Cambridge: Wm. B. Erdmans Publishing Co., 2000.

minorities – as I see them considering the present situation, its complexity and diversity, and detected (sometimes conflicting) present trends of development. I am taking into account also the events of the 11th September 2001, which could have negative and restrictive effects on the future development of minority protection if we judge first reactions. On the other hand, the future might be brighter if people realized that the promotion of multiculturalism and interculturalism, democratic inclusion, the introduction and realization of the adequate protection of minorities could improve ethnic relations and contribute to stability in pluralistic societies thereby strengthening democracy and reducing tensions that could lead to terrorism.

V.1. Scenario 1: “Status Quo” – Nothing New on the Front

In my view the most likely scenario, at least in the near future, predicts no major developments that would lead to the better and more comprehensive protection of (national and other) minorities. The international community, still the community of (single/one) nation-states, will continue to underline the importance of the existing standards for the protection of ethnic minorities, but there will be several problems concerning their realization. New rights and higher international standards will not be introduced, because states will block such attempts. They will consider the further development of minority rights too costly and unrealistic in given circumstances.

If the economic situation does not improve soon, politicians and people might continue to see the existing multi cultural reality and ethnic diversity as an obstacle to the successful development of their country.⁷⁷ In such a situation it might become difficult to preserve even the existing level and standards of the protection of ethnic minorities, although states would want to avoid the negative international publicity caused by the possible reduction of minority rights. However, certain reductions of the existing minority rights are not impossible.

I hope that gross violations of human rights, including minority rights, in individual countries will continue to generate protests by the public and international community. The “humanitarian intervention” is a threat to the possible perpetrators of such criminal activities, but I expect that the international community will use it very selectively. The international community will react when this might seem necessary and convenient to the large powers. Additionally, limited practical results of such attempts and the general lack of determination to execute proclaimed principles and policies can put the credibility of such measures, and of the international community, at stake.⁷⁸

⁷⁷ This is happening in many countries, but especially Belgium and Canada could be cited as examples. Such problems led even to the disintegration of certain multiethnic states, e.g., the former Czechoslovakia, Soviet Union and Yugoslavia.

⁷⁸ See, e.g., Koen Koch (1993), “Not a Deus ex Machina, but a Baron Von Munchhausen: Some Thoughts About the Instruments of the International Community and Forms of Intervention in the Field of Minority Rights Protection.” Paper for the 12th Annual Conference of the Institute for EastWest Studies “Minority Rights and Responsibilities: Challenges in a New Europe.” Lake Bled, Slovenia, May 21-23, 1993, pp. 3-5.

Although immigrants and immigrant communities in many ways resemble traditional national minorities, there is hardly any protection of these individuals and groups that represent new immigrant ethnic minorities. The existing international standards and level of their protection are rather low, and states are rather reluctant to implement even these standards.⁷⁹ It is not likely that the existing minority protection will include also these categories. Taking into account some recent developments, the practice of states, and growing xenophobia in several countries, one might fear that the situation and protection of immigrants in these countries might even worsen.

V.2. Scenario 2: The “Dark” Scenario – the Victory of Xenophobia

If the negative perception of “others” intensifies (which might be a consequence of September 11th in some environments) and if the economic and social situation further deteriorates in the world, xenophobia will increase in many countries. Everyone who is different, especially ethnic minorities, migrants and immigrant communities, could easily be made scapegoats. Politicians will be tempted to use nationalism to generate public support for their political options and to promote hatred against “them” who are different and should be blamed for “our problems”. Such a new political climate might lead to the reduction or even abolition of some minority rights or the existing model of minority protection. Additionally, there might be no guarantees and will that the existing minority protection is enforced.

Should such a development happen in just individual countries, there is the possibility that the international community would react to prevent the violation of the existing international principles and minimal standards. Gross violations of human rights might even provoke humanitarian intervention in a certain country. A global political, security, economic and/or social crisis, on the other hand, could paralyze the international community. Unable to intervene in such a situation, the international community would not be able to prevent the reduction and/or abolition of minority rights. The reduction of minority rights would become a trend in such a phase of development.

The impact of such a development would be universal: nationalism(s) and xenophobia could become the characteristics in several societies. This would influence the international community and we could expect initiatives to reduce the existing protection of ethnic minorities and immigrants in almost every country. We could expect that minority protection would decrease in almost every country in such a situation. The

⁷⁹ See, e.g., Jacqueline Costa-Lascoux (1990), “Anti-Discrimination Legislation: Belgium, France, Netherlands, Committee of Experts on Community Relations.” (MG-CR (90) 2), (Report prepared by Jacqueline Costa-Lascoux.) Council of Europe / Conseil de l’Europe, Strasbourg 9 January 1990.

consequences of such a development could not be predicted, but we could expect that it would lead to ethnic conflicts. The idea of the “final solution” might become attractive in certain multi-cultural environments, which might lead to the discrimination or “ethnic cleansing” of these territories and/or genocide.

Although I do not like this scenario, it is not completely impossible. We could detect at least certain elements of this scenario in several countries. We should be especially aware that no society is immune to nationalism and xenophobia.

V.3. Scenario 3: The “Positive” Scenario – “All Different - All Equal”

I would hope for a positive scenario that would continue the further development and expansion of minority rights and the protection of minorities. Taking into account the impact of existing nationalism and xenophobia, the present social and economic situation in the world, this development could be slow - both at the national and international level. It will take some time and a lot of effort (of minorities, social activists and favorable public, nongovernmental organizations, public institutions, etc.) to translate the already existing international standards into the national legislation on the minority protection in several states. It will take even longer before states are willing to further develop and increase the international standards.

Multiculturalism, as an ideology based on tolerance, peaceful and equal cooperation is slowly being developed. This will require the active involvement of all relevant factors, including schools and educational systems, public institutions and services, mass media, associations and social movements, ethnic minorities and their organizations, immigrants, immigrant communities and their organizations, etc. The existing model of nation-states will need to be transformed in this context: The nation-state should become a state, an ethnically neutral “body politic” that recognizes and promotes the existence of ethnic and cultural pluralism. Its political system should be built on the principles of inclusion, tolerance, cooperation, and the recognition of ethnic, cultural and the social plurality and diversity of its population. Such a political system should recognize the possibility of different conflicts, and provide channels for expression, coordination and the realization of different specific interests. This political system should provide mechanisms for the protection and participation of distinct communities. It also has to develop different institutions, mechanisms and procedures for the prevention and management of possible conflicts (including ethnic conflicts), and offer different peaceful and democratic means and ways for the resolution of existing conflicts.⁸⁰

⁸⁰ Mitja Žagar (2000), “Ali je možno razkleniti začaran krog? Strategije in koncepti za upravljanje in razreševanje etničnih konfliktov.” (“Breaking the Vicious Circle: Strategies and concepts for the management and resolution of ethnic conflicts.”) *Razprave in gradivo / Treatises and Documents*, No. 36-37/ 2000, pp. 11-32.

We can only hope that - at least - some rights that the international law and national legislation already provide for traditional ethnic (national) minorities will be granted to **other distinct communities** and minorities, such as immigrant communities.⁸¹

In any case, the future development of human rights and the protection of ethnic minorities will have to consider the existing diversity and different historical and cultural traditions in the world. The collective nature of minority rights will have to be strengthened in this context without reducing or endangering their individual dimension.

V.4. What can be done?

Although I am not able to predict the future and was only able to present three – in my view – possible scenarios of the future development of the protection of minorities, I do have some ideas what can be done to promote and improve human rights and the protection of minorities. I argue that we need to promote knowledge of human rights, including the (special) rights of minorities, the existing ethnic and cultural diversity, tolerance, mutual understanding, coexistence and cooperation, etc. in modern pluralistic societies. We should realize that myths of ethnic homogeneity contradict the existing ethnic and cultural diversity that can also be a comparative advantage and not just a problem. We should be shown that the existing concept of (single) nation-states is not just an ideal goal of every distinct ethnic community, but also a possible source of ethnic conflicts. People should be convinced that the best way to realize their specific interests and to preserve our own identities is equal cooperation with others. We need to develop the ideology of equal cooperation that will supplement and in some cases replace the prevailing ideology of competition. The basis of such an ideology and the adequate protection of minorities should be human rights, cooperation and democracy. However, we have to also take into account the different content and nature of these concepts in different cultures present in a certain society. Therefore we have to find the common and universal elements of these cultures, and build on consensus and compromise to prevent even the feeling and fear of inequality and domination. Hopefully, not only the protection of national minorities will be improved, but also adequate protection of migrants and immigrant minorities will be developed that will follow the mentioned principles.

⁸¹ E.g., new standards for the **protection of migrant workers** and immigrant communities are being developed (at the international level, especially within the European Community/Union). Some questions in this context include problems of the integration of migrants in an immigrant community, citizenship and the political participation of migrants at least at a local level, the special collective rights of migrant communities as groups to enable them to preserve their culture and identity, etc. (See e.g. Costa-Lascoux (1990); Žagar (1990), pp. 292-294.)

However, before such goals are realized reactions and protests of people and the international public against violations of human rights, the rights of ethnic minorities and immigrants can be powerful factors in the process of the formulation of democratic and inclusive ethnic policy based on equality in every state. Additionally, public pressure for the collective international humanitarian intervention in the case of gross and systematic violations of human rights might at least in some cases deter governments and regimes from nationalistic policies hostile to minorities. The fear of international intervention and increased likelihood that perpetrators of genocidal policies and "ethnic cleansing" would be prosecuted can put pressure on political regimes, xenophobic and nationalist politicians to refrain from such practices.

REFERENCES:

- Gerold Ambrosius, William H. Hubbard (1989), *A Social and Economic History of Twentieth-Century Europe*. Translated by Feith Tribe And William H. Hubbard. Cambridge, Mass., London, England: Harvard University Press, 1989.
- Salo W. Baron (1985), *Ethnic Minority Rights: Some older and newer trends*. The tenth Sacks Lecture delivered on 26th May 1983. Oxford, England: Oxford Centre for Postgraduate Hebrew Studies, 1985.
- A. LeRoy Bennett (1995), *International Organizations: Principles and Issues*. Sixth Edition. Englewood Cliffs, N.J.: Prentice Hall, 1995.
- Florence Benoît-Rohmer, Hilde Hardeman (1994), *The Minority Question in Europe: Towards the Creation of a Coherent European Regime*. CEPS Paper No. 55; Brussels: Centre for European Policy Studies, 1994, pp. 25-29.
- Romana Bešter (2001) *Primerjava nekaterih vidikov ustavne zaščite manjšin v državah članicah Sveta Evrope: Manjšinsko varstvo v Svetu Evrope in ustavna ureditev manjšinskega varstva v državah članicah Sveta Evrope*. (Comparison of some aspects of the constitutional protection of national minorities in Member States of the Council of Europe: Minority Protection of the Council of Europe and the Constitutional Regulation of the Minority Protection in Member States.) Magistrsko delo (M.A. Thesis). Ljubljana: Univerza v Ljubljani – Fakulteta za družbene vede, 2001.
- Albert P. Blaustein, Jay A. Sigler, ed. (1988), *Constitutions That Made History*. Edited, compiled and introduction by: A. P. Blaustein, J. A. Sigler. New York: Paragon House Publishers, 1988.
- Norberto Bobbio (1989), *Democracy and dictatorship: The nature and limits of state power*. Oxford: Polity Press, 1989.
- Norberto Bobbio (1987), *The future of democracy: A defence of the rules of the game*. Oxford: Polity Press, 1987.
- Eric Bockstael, Otto Feinstein (1991), "Ethnic Conflict and Development: A Belgian Case Study." United Nations Research Institute for Social Development - UNRISD: photocopied paper for the "Workshop on Ethnic Conflict and Development", Dubrovnik (Yugoslavia, Croatia), 3-6 June 1991, 12 p.
- Catherine Brolmann, Rene Lefebvre, Marjoleine Zieck, eds. (1992), *Peoples and Minorities in International Law*. Dordrecht, Boston: M. Nijhoff, 1992.
- William J. Buckley, ed., (2000), *Kosovo: Contending Voices on Balkan Interventions*. Grand Rapids, MI, Cambridge: Wm. B. Eerdmans Publishing Co., 2000.

- Bojko Bučar (1994), "Co-operation on Culture and Education and the Problem of Minorities." Photocopied paper for The 6th European Conference of Frontier Regions. Council of Europe, Parliamentary Assembly, Congress of Local and Regional Authorities of Europe, Ljubljana (Slovenia), 13-15 October 1994, 7 p.
- Francesco Capotorti (1991), *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. New York: United Nations, 1991.
- Inis L. Claude (1955), *National Minorities: An International Problem*. Cambridge: Cambridge University Press, 1955.
- Jacqueline Costa-Lascoux (1990), "Anti-Discrimination Legislation: Belgium, France, Netherlands, Committee of Experts on Community Relations." (MG-CR (90) 2), (Report prepared by Jacqueline Costa-Lascoux.) Council of Europe / Conseil de l'Europe, Strasbourg 9 January 1990.
- Robert A. Dahl (1989), *Democracy and its Critics*. New Haven & London: Yale University Press, 1989.
- Ernest Gellner (1983), *Nations and Nationalism*. Ithaca & London: Cornell University Press, 1983.
- Iván Gyurcsík (1993), "The New Legal Ramifications of the Minority Question." Paper for the 12th Annual Conference of the Institute for EasWest Studies "Minority Rights and Responsibilities: Challenges in a New Europe"; Lake Bled, Slovenia, May 21-23, 1993.
- Morton Halperin, David J. Scheffer, Patricia L. Small (1992), *Self-Determination in the New World Order*. Washington, D.C.: Carnegie Endowment for International Peace, 1992.
- Eric J. Hobsbawm (1990), *Nations and Nationalism since 1789: Programme, Myth, Reality*. Cambridge, London, New York, New Rochelle, Melbourne, Sydney: Cambridge University Press, 1990.
- Human Rights: A continuing challenge for the Council of Europe*. (1995) Strasbourg: Council of Europe Press, 1995.
- Georg Jellinek (1963/1905), *System der subjektiven öffentlichen Rechte*. (Reprint of the 1905 edition.) Darmstadt: Wissenschaftliche Buchgesellschaft, 1963.
- Michael Keating, John McGarry (2001), *Minority Nationalism and the Changing International Order*. Oxford, New York: Oxford University Press, 2001.
- James. G. Kellas (1998), *The Politics of Nationalism and Ethnicity*. 2nd revised and updated edition. Basingstoke, London: Macmillan; New York: St. Martin's Press, 1998
- Koen Koch (1993), "Not a Deus ex Machina, but a Baron Von Munchhausen: Some Thoughts About the Instruments of the International Community and Forms of Intervention in the Field of Minority Rights Protection." Paper for the 12th Annual Conference of the Institute for EasWest Studies "Minority Rights and Responsibilities: Challenges in a New Europe." Lake Bled, Slovenia, May 21-23, 1993.
- Will Kymlicka (1999), *Multicultural Citizenship: A liberal theory of minority rights*. Reprinted in paperback. Oxford: Clarendon, 1999.
- Will Kymlicka, ed. (1996), *The Rights of Minority Cultures*. Oxford, New York: Oxford University Press, 1996.
- C. A. Macartney (1934), *National States and National Minorities*. London: Oxford University Press, Humphrey Milford, 1934.
- Tibor R. Machan (1989), *Individuals and their Rights*. La Salle, Illinois: Open Court, 1989.

- Michael MANN, ed. (1990), *The Rise and Decline of the Nation State*. Oxford, Cambridge (Mass.): Basil Blackwell, 1990.
- L. (Lassa Francis Lawrence) Oppenheim (1948), *International Law: A Treatise, Vol. I: Peace*; 7th edition edited by H. (Hersch) Lauterpacht. London, New York, Toronto: Longmans, Green and Co., 1948.
- Alain Pellet (1992), "The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples." *European Journal of International Law*, Vol. 3, No.1, <http://www.ejil.org/journal/Vol3/No1/art12.html#TopOfPage> (12 December 2001).
- Ernest Petrič (1977), *Mednarodnopravno varstvo narodnih manjin*. (The Protection of Ethnic Minorities by International Law.) Maribor: Založba Obzorja, 1977.
- Roland Rich (1993), "Recognition of States: The Collapse of Yugoslavia and the Soviet Union." *European Journal of International Law*, Vol. 4, No.1, <http://www.ejil.org/journal/Vol4/No1/art4.html#TopOfPage> (12 December 2001).
- Petra Roter (1995), "Razvoj mednarodnopravnega varstva manjšin od 17. stoletja do obdobja Društva narodov" ("The Development of the International Protection of Minorities from the 17th Century until the League of Nations' Period"). *Razprave in gradivo / Treatises and Documents*, No. 29-30/1994-1995, pp. 193-216.
- Giovanni Sartori (1987), *The Theory of Democracy Revisited. Part one: The Contemporary Debate; Part two: The Classical Issues*. Catham, N.J.: Catham House Publishers, Inc., 1987.
- Philip Schlesinger (1987), "On National Identity: Some Conceptions and Misconceptions Criticized." *Social Science Information/Information sur les sciences sociales* (London, Paris), Vol. 26, No. 2, 1987, pp. 219-264.
- Hough Seton-Watson (1977), *Nations and States*. London: Methuen / Boulder, Colorado: Westview Press, 1977.
- Anthony D. Smith (1991), *National Identity*. Harmondsworth, London: Penguin, 1991.
- J. G. Starke (1989), *Introduction to International Law*. 10th edition. London: Butterworths, 1989.
- Rudolfo Stavenhagen (1990), *The Ethnic Question: Conflicts, Development, and Human Rights*. Tokyo, Hong Kong: United Nations University Press, 1990.
- Patrick Thornberry (1990), *International Law and the Rights of Minorities*. Oxford, England: Clarendon Press / New York: Oxford University Press, 1990.
- Patrick Thornberry (1991), *Minority and Human Rights Law* (1991), A minority Rights Group Report. London: MRG, 1991.
- Danilo Türk (1993), "Recognition of States: A Comment." *European Journal of International Law*, Vol. 4, No.1, <http://www.ejil.org/journal/Vol4/No1/art5.html#TopOfPage> (12 December 2001).
- Vernon Van Dyke (1985), *Human Rights, Ethnicity, and Discrimination*. Westport, Conn.: Greenwood Press, 1985.
- Max Weber (1922), *Wirtschaft und Gesellschaft*. Bearbeitet von Max Weber. Tübingen: J. C. B. Mohr / P. Siebeck, 1922.
- Max Weber (1989), *The Protestant Ethic and the Spirit of Capitalism*. Translated by Talcott Parsons; introduction by Anthony Giddens. London: Unwin Paperbacks, 1989.
- Ben Whitaker, ed. (1984), *Minorities: A Question of Human Rights?* Oxford, New York, Toronto, Sydney, Paris, Frankfurt: Pergamon Press, 1984.

- World Conference on Human Rights: The Vienna Declaration and Programme of Action, June 1993.* (1993) With the Opening Statement of the United Nations Secretary-General Boutros Boutros-Ghali. New York: UN Department of Public Information, 1993.
- World Directory of Minorities.* (1990) Longman international reference. Edited by: Minority Rights Group. UK: Longman, 1990.
- Mitja Žagar (1990), *Sodobni federalizem s posebnim poudarkom na asimetrični federaciji v večnacionalnih državah.* (*Modern Federalism and Elements of Asymmetrical Federation in Multi-Ethnic States.*) Doktorska disertacija (Ph.D. Dissertation). Ljubljana: Univerza Edvarda Kardelja v Ljubljani, Pravna fakulteta, 1990.
- Mitja Žagar (1992), "Position and Protection of Ethnic Minorities in the Constitution of The Republic of Slovenia: Basic information." *Razprave in Gradivo/Treatises and Documents*, No. 26-27/1992, pp. 5-20.
- Mitja Žagar (1994), "National Sovereignty at the End of the Twentieth Century: Relativization of Traditional Concepts; The Case of Slovenia" - in Bojko Bučar, Stein Kuhnle, eds., *Small States Compared: Politics of Norway and Slovenia*. Bergen: Alma Mater, 1994, pp. 235-252.
- Mitja Žagar (1995), "Ali so Slovenci na Hrvaškem narodna manjšina: Splošna terminološka vprašanja in pravna zaščita." („Are Slovenes in Croatia a National Minority? General terminology and legal protection.") – in Vera Kržišnik-Bukić, ed., *Slovenci v Hrvaški. (Slovenes in Croatia.)* Ljubljana: Inštitut za narodnostna vprašanja (Institute for Ethnic Studies), 1995, pp. 323-353.
- Mitja Žagar (1995a), "Constitutions in Multi-Ethnic Reality." *Razprave in gradivo / Treatises and Documents*, No. 29-30/1995, pp. 143-164.
- Mitja Žagar (1996), "Evolving concepts of protection of minorities: International and constitutional law." *Razprave in gradivo / Treatises and Documents*, No.31/1996, pp. 143-164.
- Mitja Žagar (1996a), "Exploring Ethnicity: Constitutional Regulation Of (Inter)Ethnic Relations - (New Approaches to Multicultural Education)." <http://www.unisa.edu.au/lavskis/zagar/detailx.htm> (12 December 2001)
- Mitja Žagar (1997), "Rights of ethnic minorities: Individual and/or collective rights? Some new(er) trends in development and the (universal) nature of human rights - The European perspective." *Journal of International Relations*, Vol. 4, No. 1/4, pp. 29-48.
- Mitja Žagar (2000), "Ali je možno razkleniti začaran krog? Strategije in koncepti za upravljanje in razreševanje etničnih konfliktov." ("Breaking the Vicious Circle: Strategies and concepts for the management and resolution of ethnic conflicts.") *Razprave in gradivo / Treatises and Documents*, No. 36-37/2000, pp. 11-32.
- Mitja Žagar, Aleš Novak (1999), "Constitutional and international protection of national minorities in Central and Eastern Europe." – in Mitja Žagar, Boris Jesih, Romana Bešter, eds., *The constitutional and political regulation of ethnic relations and conflicts : Selected papers*. Ethnicity 2. Ljubljana: Institute for Ethnic Studies, 1999, pp. 177-214.

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

I INTRODUCTION

The Council of Europe has been actively concerned with the issue of the protection of national minorities since its very first year of existence (1949). In the field of international law, their activities have resulted in two outstanding documents: the European Charter for Regional or Minority Languages of 5 November 1992 which entered into force on 1 March 1998, and the Framework Convention for the Protection of National Minorities which entered into force on 1 February 1998 after having been signed by 12 member States of the Council of Europe.¹

Many rather extensive and complex discussions were held in the Council of Europe at various levels before the adoption of the Framework Convention. The decisive step forward was made when the Heads of State and Government of the Council of Europe's member States met at the summit in Vienna² and decided that the national minorities which the upheavals of history have established in Europe had to be protected and respected as a contribution to peace and stability. They established an ad hoc Committee for the Protection of National Minorities (CAHMIN)³ which was assigned the task to draft a framework convention pursuant to the decisions taken in Vienna.⁴ In October 1994, CAHMIN submitted the draft framework convention to the Committee of Ministers, which adopted the text at the 95th Ministerial Session on 10 November of the same year. The Framework Convention was opened for signature by the Council of Europe's member States on 1 February 1995.

The Framework Convention is not the first instrument of the Council of Europe for the protection of national minorities, but it is the most extensive and comprehensive document in this field. Most important in this context is the fact that the Framework Convention is the first multilateral instrument devoted to the protection of national minorities that is legally binding. It is clearly stated in the text of the Framework Convention that it forms an integral part of the international protection of human rights, and as

¹ Article 28, paragraph 1 of the Framework Convention for the Protection of National Minorities (hereafter referred to as: Framework Convention)

² On 8 and 9 October 1993

³ By decision of the Committee of Ministers of the Council of Europe of 4 November 1993

⁴ Explanatory Report to the Framework Convention

tion that it forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.⁵

II FUNDAMENTAL FEATURES AND CONTENT OF THE FRAMEWORK CONVENTION

The Framework Convention contains the Preamble and 32 Articles structured in 5 Sections.

The main characteristic features of the Convention are its programme-type provisions. This, of course, does not mean that the instrument only exerts a declaratory effect; to the contrary, it obliges the States signatories to the Convention to adapt their national legislation and make it compatible with the principles set in the Framework Convention. The provisions of the Convention, however, are not directly applicable due to the principal and programme-oriented nature of the text.

The next characteristic feature to be mentioned is the fact that the Framework Convention contains no definition of the national minority. In the preparatory work on the text it was impossible to reach the agreement on a definition that would gain support of the majority of Council of Europe member States. Even otherwise in the international law, we face the situation that there is no universally accepted definition of the notion of national minority. In spite of that, the Framework Convention contains a number of provisions which by their wording based on compromise and pragmatic approach leave the notion in a certain sense to be defined in their own discretion by the bodies monitoring the implementation of the Framework Convention.

Section I of the Framework Convention contains some general principles, including the above mentioned principle that the protection of national minorities forms an integral part of the international protection of human rights. The provisions of the Convention shall be applied in good faith and in a spirit of friendly relations and co-operation between States. Every person belonging to a national minority is free to choose to be treated or not to be treated as such. Although the Convention provides that the guaranteed rights shall be exercised individually, they may likewise be exercised in community with others. Nevertheless, the majority of experts share the opinion that the Framework Convention does not recognize collective minority rights, as they are recognised by the Constitution of the Republic of Slovenia.⁶

⁵ Article 1 of the Framework Convention

⁶ Article 63 of the Constitution of the Republic of Slovenia

Section II comprises principles which the States signatories to the Convention are obliged to implement in their national legislations: the principle of equality before the law and in all areas of economic, social, political and cultural life;⁷ freedom to develop their own culture;⁸ tolerance and intercultural dialogue;⁹ freedom of association;¹⁰ the right to manifest his or her religion or belief;¹¹ free access to the media and use thereof;¹² a series of language freedoms, such as the right to use the minority language in private and public life;¹³ the right to use his or her surname and first names in the minority language and the right to display signs and inscriptions of a private nature and other topographical indications in the minority language;¹⁴ the right to education and the right to learn his or her minority language;¹⁵ the right to effective participation in cultural, social and economic life and in public affairs;¹⁶ prohibition of forced assimilation¹⁷ and the right to transfrontier contacts.¹⁸

As already mentioned, those are mainly programme-type provisions and shall be enacted in the national legislation of each and every State signatory to the Framework Convention and implemented by adequate measures of their Government policy. In addition, the provisions of the Framework Convention may be implemented by way of bilateral and multilateral agreements, since the Parties to the Conventions have undertaken to conclude such agreements in particular with neighbouring States in order to ensure the protection of persons belonging to the national minorities concerned.¹⁹ Slovenia has signed and ratified all important international instruments on human rights, including the rights of national minorities, and in addition, a bilateral agreement with the Republic of Hungary on the protection of the Slovene minority in the Raba Region and the Hungarian minority in Slovenia has been signed and ratified.

Section III contains a number of relevant principles regarding the interpretation of the Convention provisions. The activities pertaining to the implementation of the Convention must be in accord with the national legislation of the State in which the minority lives and with the principles of international law, and may not jeopardize the territorial integrity and political independence of the States concerned. Nothing in the Convention shall be construed as restricting any rights of persons belonging to national minorities guaranteed by international acts or national legislation.²⁰

⁷ Article 4 of the Framework Convention

⁸ Article 5 of the Framework Convention

⁹ Article 6 of the Framework Convention

¹⁰ Article 7 of the Framework Convention

¹¹ Article 8 of the Framework Convention

¹² Article 9 of the Framework Convention

¹³ Article 10 of the Framework Convention

¹⁴ Article 11 of the Framework Convention

¹⁵ Articles 11-14 of the Framework Convention

¹⁶ Article 15 of the Framework Convention

¹⁷ Article 16 of the Framework Convention

¹⁸ Article 17 of the Framework Convention

¹⁹ Article 18 of the Framework Convention

²⁰ Articles 21-23 of the Framework Convention

Section IV contains provisions on the monitoring of the implementation of this framework Convention. In parallel with the basic aspects of that mechanism it seems appropriate to illustrate in brief the development of practice in this domain and, in particular, to highlight the work of the Advisory Committee.

Giving legally binding opinions on the adequacy of the implementation of the Framework Convention is the responsibility of the Committee of Ministers assisted by the Advisory Committee.²¹ The composition of the Advisory Committee was determined by the Committee of Ministers in the Resolution (97) 10 of 1997, and its Rules of Procedure were adopted in 1998.²²

The Advisory Committee consists of 18 ordinary members elected by the Committee of Ministers from the list of experts submitted by member States. The members of the Advisory Committee shall have recognised expertise in the field of the protection of national minorities; they shall be independent and impartial, which means that they are not representatives of the Governments that have proposed them.²³ Nevertheless, the so-called "national members" of the Committee are excluded from deciding on the report submitted by their own State. Within one year following the entry into force of the Framework Convention, all Contracting Parties are obliged to transmit to the Secretary General of the Council of Europe a report on the implementation of the principles set out in the Framework Convention. Thereafter, the Parties to the Convention shall transmit their reports to the Secretary General on a periodical basis within five years after their last report and whenever the Committee of Ministers so requests.²⁴

The main task of the Advisory Committee is to consider the State reports and to prepare the opinion on the measures taken by the Contracting Party concerned to fulfil its obligations under the Framework Convention; it transmits its opinion to the Committee of Ministers.²⁵ The Committee of Ministers then decides on the adequacy of the adopted measures; it may also adopt recommendations, and set to the Party concerned a time limit for the submission of information on their implementation.²⁶

The Advisory Committee shall normally first request additional information from the Party whose report is under consideration,²⁷ but it also may receive information from nongovernmental organizations or from individuals.

²¹ Articles 24 and 26 of the Framework Convention

²² Council of Europe Document ACFC/INF (98) 2.

²³ The following are the present members of the Advisory Committee: S. Bartole (Italy), G. Bíró (Hungary), M. Domini (Croatia), T. Ellul (Malta), D. Gelev (Macedonia), F. Hajós (Slovenia), R. Hofmann, President (Germany), A. Jacovides (Cyprus), D. Jilek (Czech Republic), M. Lauristin (Estonia), J. Marko (Austria), V. Mitsik (Ukraine), J. Motoc (Romania), K. Myntti (Finland), S. Nunez de Prado y Clavel (Spain), A. Phillips (UK), J. Sivak (Slovakia) and E. Smith-Asmussen (Denmark)

²⁴ Article 25 of the Framework Convention and Rule 21 of Resolution (97) 10

²⁵ Rule 23 of Resolution (97) 10

²⁶ Rule 24 of Resolution (97) 10

²⁷ Rule 29 of Resolution (97) 10

Draft opinions are prepared by working groups which normally consist of four Committee members, in cooperation with the Secretary of the Advisory Committee. A very useful practice has developed in the form of visits to Contracting Parties by the working group dealing with the State concerned and one member of the Secretariat. Such visits provide excellent opportunity to talk to Government representatives, line ministries and other authorities, and to meet and hear the representatives of minorities, nongovernmental organizations and civil society in order to get information needed for the submission of an exhaustive and objective opinion. The Advisory Committee adopts its final opinion at the plenary session by the majority of all members of the Committee.²⁸

The Framework Convention for the protection of national minorities has to date been signed and ratified by 32 member States of the Council of Europe, 8 further States have signed it, but not ratified it yet. There are only three member States of the Council of Europe: Andorra, France and Turkey who have not signed the Convention so far. Two non-member States acceded to the Convention: Bosnia and Hercegovina and the Federal Republic of Yugoslavia. The first reports to the Council of Europe have been submitted by 26 States; the Advisory Committee adopted its opinion on the reports of 13 member States and the Committee of Ministers adopted decisions and recommendations addressed to 4 States.

III CONCLUDING THOUGHTS

A large number of States which have signed and ratified the Framework Convention for the protection of national minorities proves the broad recognition of its importance. Less and less scepticism with regard to the Convention has been evidenced in the civil society, which is in line with the level of public awareness of the Convention itself and of the activities connected to it. The Council of Europe, however, cannot yet be satisfied with the hitherto achievements. It shall be noted that the implementation of the Convention provisions depends to a large extent on effective monitoring. In this context, much remains to be done. Great damage would be done not only to the protection of minority rights but also to the trustworthiness of the Council of Europe if the current situation would be regarded satisfactory. The visits to various States have additionally convinced the members of the working groups that many justified aspirations are related to this Framework Convention which is expected not only to contribute to peace and stability in Europe but also to bring about consistent implementation of human rights in general, and of national minorities' rights in particular.

The Committee of Ministers has the responsibility to monitor the implementation of the Framework Convention.²⁹ The role of the Advisory Committee in the execution of this

²⁸ Rule 34 of the Rules of Procedure of the Advisory Committee

²⁹ Article 24, para. 1, of the Framework Convention

very important task has not been precisely defined in any legal document; the provision of the Convention stating that the Committee of Ministers should be assisted by an advisory committee, however, allows for a broader interpretation of the provision indicating that the Advisory Committee may also assist in monitoring. Such reasoning was further supported in the hitherto adopted decisions and recommendations of the Committee of Ministers, which mandate the Advisory Committee to participate in the execution of the task. It needs mentioning that the Advisory Committee, given its composition and activity, is formally not subordinated to the Committee of Ministers; it is politically independent and reports to the Committee of Ministers only on the basis of explicit statutory provisions.

Despite some initiatives in the Council of Europe to provide for judicial supervision over the implementation of the Framework Convention provisions, no such control has been established so far. In my opinion, the Advisory Committee could, considering their professional expertise and political independence, successfully perform this task. Due to the complexity and sensitivity of the issue, and because the situation and circumstances pertaining to the protection of minorities differ not only from one State to another but even within one and the same State, it seems most appropriate to avoid conflicts and to resolve problems in a constructive dialogue between the monitoring body and the Government, including non-governmental and minority organizations. And, for reasons stated above, I am convinced that, for such mode of work, the Advisory Committee would be the most appropriate body.

The Framework Convention for the protection of national minorities represents, regardless of certain deficiencies and incompleteness, a great achievement in the domain of international law. It constitutes a solid basis for further development and implementation of solutions acceptable for both the States concerned and the national minorities, thus contributing to the assurance of internal stability and peace, and to the improvement of relations between the majority and minority nations in the States in which such minorities live, as well as to the stability and security in Europe at large.

ROMANI AND ITS PROTECTION IN EUROPE

I INTRODUCTION

Gypsies or Roma – the second denomination being the less pejorative one – are neither a regional minority nor an immigrant minority; they are – like Germans, Hungarians, Russians, Sami, etc. – one of the ethnic groups of Europe. Just like all other ethnic groups the Roma have a common history, a common language, a common lifestyle and a shared set of values. Even if single Roma groups are almost completely assimilated to their respective majority population they have conserved at least traces of common cultural characteristics. On the one hand the common history of the Roma refers to their origin and their migration from India to Europe and on the other hand it regards stigmatisation, discrimination and persecution up to genocide in Europe. Romani, the common language of the Roma, the Sinti, the Kale and of all further European population groups summarised by the pejorative denomination ‚gypsies‘, belongs to the Indo-Aryan branch of the Indo-European language family and may be described as a heterogeneous cluster of varieties without any homogenising standard.

1 The Socio-linguistic Situation of Romani

Romani is a language that until recently has not existed in a written form and has exclusively been passed on orally. It has not developed a codified standard and, as a consequence, no prescriptive norms. This linguistic situation reflects the socio-political situation of the Roma: politically, economically and culturally marginalized, ethnically stigmatised, discriminated against and persecuted up to the Genocide, the Roma could only survive in small groups, that led to the geographical and social heterogeneity that still exists today. Consequently, the people concerned have been in no position to build large political-economic structures or to get their share of political and economic power. Considering the fact that the development of standard varieties generally follows the development of political and economic power structures, it becomes clear why Romani does not have a codified standard and also that it will not be able to develop a generally accepted standard in the near future. For most Roma their respective Romani variety is reduced to intra-group-communication and thus limited to certain domains. Romani primarily functions as intimate variety. The majority of its speakers are bi- or multilingual and use the language of the respective majority population for inter-group-communication in public and most often also in partly public domains. As a result, no social stratification can be found within Romani. Compared to the use of Romani, the dominance in the use of the respective majority language shows in the abstracted collective repertoire:

ACROLECT	MAJORITY LANGUAGE(S)	Public diatypes that are used in public formal domains when dealing with authorities, at school, in the media etc.
MESOLECT	MAJORITY LANGUAGE(S) Romani	Diatypes of the social macrocosm that are used in partly public informal domains with acquaintances, at work, etc.
BASILECT	MAJORITY LANGUAGE(S) ROMANI	Diatypes of the social microcosm that are used in private informal domains in the family and when in contact with friends, etc.

This repertoire displays the full range of functions as, for example, in Kalderaš-Romani which dominates the internal communication and is also used when in contact with speakers of other Vlax varieties. More frequently, however, Romani does not function as mesolectal diatype but is only used as equal basilectal diatype or as intimate variety, respectively.

These limitations in the functional dimensions together with the lack of a standard and a written language are the major reasons for the fact that Romani has not only very little prestige with the majority population, but also that some Roma consider it inferior as compared to the language of the respective majority population.

The low prestige of the language, reduced domains, multilingualism and the pressure to assimilate on the part of the majority culture make Romani a dominated language whose relationship to the contact languages has never been bilateral but always asymmetric. As a result various phenomena of language contact and language loss occur ranging from lexical borrowings from the majority language to monolingualism. Para-Romani varieties are an intermediate stage on the way to language loss. They are non-standard varieties of the respective majority language containing elements of Romani in their lexicons and – more infrequent – in their morphology: among others the Spanish *Caló*, *Anglo-Romani*, the *Skando-Romani* varieties of the Resande, and the Armenian *Lomavren* are considered Para-Romani varieties.

The final step of language disintegration is language loss. In this way, some Roma groups have given up Romani without, however, losing their ethnic awareness. Today, Roma living in Romania, Greece Hungary, and Serbia have Romanian as their mother tongue but still feel as Roma. Of course, there are also groups whose ethnic awareness was also lost when language loss occurred.

2 Language Attitude & Self-Organisation

The decrease in the use of the language is one reason for changes in the attitude to their language of some Roma groups. As long as Romani dominates the group-internal communication it is perceived as a matter of course and therefore almost not consciously considered an identity factor. Romani is attributed a conscious status at most as a secret language which must not be revealed to group outsiders; this attitude to language is very distinctive within the Sinti. If the use of Romani decreases due to a strong pressure for assimilation fromput on by the dominantte culture, such a develop ment is only perceived consciously only when the group self-organisation takes place according to the guidelines of the majority population. It is via this self-organisation that the common definition criteria of ‘nation’ or ‘ethnos’ (?ethnic group’) is takenn over and language becomes the primary identity factor.

As a consequence of this development also the decrease in the useage of Romani is perceived as a loss and as a further consequence as a threat to the continued existence of the group. The decrease in the useage of Romani, however, is not the striking factor for Romani becoming the primary identity marker. In fact, the primary identity factor is the self-organisation in line with the guidelines of the dominant culture, which may be described as emancipation by means of organisational assimilation. In the course of this organisational assimilation also the socio-cultural concepts of values of the majority are taken over/adopted and according to the European nation state ideology becomes the primary identity factor of the respective Roma group. In the context of self-organisation Romani plays a key role: in the meantime, the Roma themselves as well as the institutions of the majority population attribute to Romani a much higher standing, in contrast to the standing of Romani only a few decades ago. It is true that this development was provoked by the self-organisation but today it is determined by an interplay of 'inside' and 'outside': on the one hand there are the endeavours/attempts and requirements of the Roma and on the other hand there are the support and the requirements of the majority population. As a consequence the internal status and the external status of Romani are in permanent interaction which is expressed not only in terms of language policy but also determines (and has also determined) the linguistic development of Romani over in the last decades.

2.1 Internal Status

As far as the internal status is concerned, Romani has developed from a little/slightly perceived language to maybe the most important cultural parameter of the Roma. As such the Romani determines the group internal as well as the group external ethnic identity. This change in the socio-cultural status has resulted in the endeavour/attempt to bring the Romani in line with the European national languages. A consequence of these endeavours/attempts are the codification and the expansion of Romani in its functional dimensions,¹ which is paralleled by a pragmatic expansion.

Up to a few decades ago Romani was primarily used as intimate variety. Only with the self-organisation according to the ideal of the majority culture was this limitation perceived as a shortcoming/lack. At the same time the first attempts to use Romani as language in the media were launched, which nurture the necessity of expanding into formal domains. This expansion is most best evident on the lexical level as an enormous amount of technical designations are missing in Romani. The lack of these definitions has not created a communicative problem until the attempt to change consciously the status of Romani. Romani disposes of a strong integration morphology which renders it possible to adopt/take over each word from the respective majority language and to integrate it morphologically into Romani. This advantage of Romani is considered/felt as a disadvantage in view of the attempts of emancipation of the language resulting in 'purity demands'.

¹ For codification and expansion of Romani see Halwachs (1998) and Matras (1998 & 1999).

mous amount of technolectal designations are missing in Romani. The lack of these definitions has not created a communicative problem until the attempt to change consciously the status of Romani. Romani disposes of a strong integration morphology which renders it possible to adopt each word from the respective majority language and to integrated it morphologically into Romani. This advantage of Romani is considered as a disadvantage in view of the attempts of emancipation of the language resulting in 'purity demands'.

In parallel to this lexical expansion Romani has also experienced changes on the pragmatic level. Due to the new internal status as primary identity marker beside the communicative function, the emblematic function and the mobilising function come to the foreground for the written use of Romani.

Emblematic function on a micro level is attributed to Romani single words in texts in the majority language. In this context it is worth mentioning the numerous names of newspapers and magazines in Romani, such as the Austrian magazine *Romano Kipo* 'Roma picture' which is quarterly published and which – apart from the title – almost exclusively is written in German.

On the macro level of emblematic texts there are Bible translations and among others the translation of the *Ramayana* by *Leksa Manuš* into Latvian *Xaladitka* Romani. Such translations have their effects on the external world and demonstrate to the majority population that Romani is suitable for long complex texts; on the other hand they also have their effects on the internal world, on the Roma, to whom such translations demonstrate the value of Romani. This consequently strengthens the identification with their own language and culture. The primary and from most translators main intention to give the addressees reading pleasure is mostly prevailed by the emotive-emblematic function.

As mobilising-rallying functions defines Matras (1999: 496) "the shaping of a text in such a way that would demonstrate ideological commitment and political allegiance and identification."

The use of a "Design-Romani" after its recognition as official Romani standard in the context of the Fourth Romani World Congress in April 1990 in Warsaw has shown its mobilising-rallying function. In the years after, the proponents of this decision have used the conventions defining the criteria for the implementation of a written language set by the Warsaw decision and also the neologisms in publicly obtainable publications, such as the *Rromani Uniaquoro Lil*, the newspaper of the Romani union which is published irregularly. But this "Design-Romani" is also used for internal purposes as the minutes of meetings of Romani delegates at international conferences, etc. By using these conventions, ideological commitment as well as political allegiance and identification with the Romani union, its resolutions and its decision bearers is demonstrated.

2.2 External Status

The changes within the pragmatic functions of Romani, the lexical expansion and the codification initiatives effect the external status, the public status which the institutions of the majority population grant Romani. Conversely, positive changes push forward the language internal dynamics and the internal status. Negative developments or a stagnation in the development of the external status, on the other hand, stop and impede these dynamics.

Until the second half of the 20th century Romani – apart from philologists and linguists – was of interest only for police and justice. This fact explains to a certain extent the status of a secret language of Romani. Only self-organisation and the resulting opening towards the world of non-Roma, as well as changes within the internal status, initiated a positive development in view of the external status. Romani is perceived by the majority population as the primary cultural identity factor and always more often the public opinion attributes it the status of a language. The previously dominating opinion that regarded it as gibberish, as jargon of fringe groups and as idiom of crooks is slowly losing strength. This change in opinion results, among others, in a moderate official attention attributed to Romani as a European minority language.

Romani is – and how could it be different – no official language in the European Union and only a few states – among them Austria – have recognised it as an official minority language. Some international institutions have aided Romani and have expressed their support for its general recognition.²

- In 1981 the Standing Conference of Local and Regional Authorities in Europe called upon the governments of their member states to recognise Roma and other specific nomadic groups such as Sami as an ethnic minority and consequently grant them the same status and advantages as other minorities may enjoy; in particular concerning respect and support for their own culture and language.
- In 1983 the Council for Cultural Cooperation recommended that the Romani language and culture should be used and accorded the same respect as regional languages and cultures and those of other minorities.
- In 1989 the Council of Europe and the Ministers of Education stated that the culture and language of the Roma and Travellers have formed part of the Communities cultural and linguistic heritage for over 500 years; their aim was at stimulating teaching methods and teaching materials with consideration for the history culture and languages

² The following list is based on Bakker 2001.

of Gypsies and Travellers and encourage research on the culture, history and language of Gypsies and Travellers. In the same year the Council of Europe adopted a resolution on school provision for Gypsy and Traveller children.

- In 1990, during the Copenhagen meeting of the Conference on the Human Dimension of the CSCE the participants explicitly recognised the particular problems of the Roma. They stated further that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue.
- In 1992 the *Charter for Regional and Minority Languages* was approved by the Council of Europe. It specially mentions non-territorial languages. In the Explanatory Report Romani is explicitly mentioned as an example of a non-territorial language.
- In 1993 the Parliamentary Assembly of the European Parliament approved a recommendation on Gypsies in Europe in which it was stated that as a non-territorial minority, Gypsies greatly contribute to the cultural diversity of Europe, among others through their language.
- In 1996 the *Universal Declaration of Linguistic Rights* was approved by a host of institutions and NGOs. Article 1.4 considers nomade peoples within their historical areas of migration and peoples historically established in geographically dispersed locations as language communities in their whole territory; the territory of the Roma and Romani can be understood in this sense as the whole of Europe.
- In 2000 the Committee of Ministers of the Council of Europe stated that in the countries where the Romani language is spoken, opportunities to learn in the mother tongue should be offered at school to Roma children.

Perhaps the most important document is the European Charter for Regional and Minority Languages of 1992 which is now operative in the states that ratified it. The Charter has been signed by 27 states up to now. Not all states mention Romani in the list of languages to which the Charter applies. Some countries with a sizeable Roma minority do not mention Romani at all.

3 Conclusions

Summarising the results of the changes in the political status of Romani a continuous but slow and dragging development towards the positive can be noted. The question whether this development may fundamentally contribute to the conservation of Romani as one of the languages of Europe has not yet been answered. The question, whether the changes in status of Romani as a whole guarantees the conservation and consequently the emancipation of Romani is still to be answered, too. It has to be argued that Romani – as all other minority languages and cultures – has no chance to emancipate and survive as long as the European ideology of national states is in power. As long as this ideology dominates all charters and political resolutions in favour of minority languages and cultures remain paper or lip service and the future survival of Romani and all other minority languages highly endangered.

But considering this background and the extreme extent that Roma and, consequently, also Romani are pressured into assimilating into today's consumers' society, Romani and its various varieties still display an astonishing vitality. This vitality together with the changes in its internal as well as in its external status raises hopes that Romani will continue to contribute to the linguistic and, consequently, also to the cultural diversity of Europe. For this goal to be achieved, it is absolutely necessary that its speakers will finally be granted equal rights and treatment, which they have been denied for centuries.

REFERENCES

- BAKKER, Peter (1998) The Northern Branch of Romani: Mixed and Non-mixed varieties, in: Halwachs / Menz: 172–209.
- BAKKER, Peter (2001) Romani in Europe, in: Extra / Gorter: 293–313.
- EXTRA, Guus / GORTER, Dirk (eds.) (2001) *The other languages of Europe*, Clevedon: Multilingual Matters.
- HALWACHS, Dieter W. / MENZ, Florian (eds.) (1998) *Die Sprache der Roma. Perspektiven der Romani-Forschung im interdisziplinären und internationalen Kontext*, Klagenfurt/Čelovec: Drava.
- HALWACHS, Dieter W. (1998) Romani in Österreich, in: Halwachs / Menz (eds.) 112–146.
- MATRAS, Yaron (1998) Sprachplanung und Spracheinstellung im Romanes, in: Halwachs / Menz (eds.) 95–111.
- MATRAS, Yaron (1999) Writing Romani: The Pragmatics of Codification in a stateless language, *Applied Linguistics* 20/4: 481–502.

THE EUROPEAN UNION, PROTECTION OF NATIONAL MINORITIES AND SLOVENIA

I INTRODUCTION

When Slovenia became independent and in the following years, the view of the European Communities and the European economic area, and later (after 1992) of the European Union, was a kind of beacon and goal that gave orientation to Slovenia in a wide range of social and economic transformation processes.

Slovenia is currently preparing for full membership in the EU. In order to obtain this membership, Slovenia must adopt the legal order of the European Union, the so named 'acquis communautaire'. Besides this a successful integration into EU demands also an acceptance of those value systems of the EU, which are the basis of the internal and foreign policies of the European Union.

One conclusion of this article is that the standards of protection of national minorities in the EU are not some kind of static goal which Slovenia should achieve. The European Union itself is still seeking a common approach to this subject and some lowest common denominators. Perspectives on the protection of national minorities in the European Union are changing. With the deepening and widening of the European integration process, the question of the legal regulation of the relations between the different ethnic/ national communities – majorities and minorities – is becoming increasingly important. With Central and Eastern European candidate countries joining, the number of members of national minorities in the European Union will increase sharply. For this reason common standards for the protection of minorities will be an important question for the preservation of the internal cohesion and stability of the European Union in future.

In this article the author would like to introduce to readers the basis and development of European Union policies concerning national, regional and linguistic minorities and clarify the meaning of the issue of the protection of national minorities in the process of Slovenia's integration into the EU.

II. The EU and the protection of national minorities

II.1. General

Scarred by the horrors of the First and Second World Wars, after 1945 European states began to form common structures to prevent the outbreak of new wars and strengthen the economic power of the cooperating states. The first such organization

was established in 1948, the OEEC (the Organization for European Economic Cooperation), the precursor of the present OECD (the Organization for Economic Cooperation and Development). In May 1949 the Council of Europe was established, which pledged to help develop a democratic and pluralistic society, protect human rights and stimulate the development of European cultural identity and diversity and similar. In addition, during this time common defense structures were established, such as NATO (the North Atlantic Treaty Organisation) in 1949, and WEU (the West European Union) in 1954.

On the basis of the recognition that these structures and their related forms of cooperation between states were still not enough to prevent new wars, in 1951 a treaty was signed on the establishment of the European Coal and Steel Community, the precursor of the current European Union. The basic idea was to prevent future wars by having member states place essential raw materials for war, namely coal and steel, under common supervision. In 1957 the European integration process gained important new scope with the establishment of, the European Economic Community and Euratom (the European Atomic Energy Community). Various extensions and intensifications especially in the field of economic cooperation followed. In 1992 the so named Maastricht treaty was signed – the Treaty on the European Union – with which the above mentioned three European communities were not abolished, but rather on that day with European union there came to be only a new and more extensive framework for broader cooperation between the member states with the goal of establishing not only economic but also political union.¹

This introduction to the history of the European Union is for this reason somewhat more extensive, because it shows that the original task of the European Union was that it preserve peace in Europe, and that through its entire history this community of states has been developing forward, and growing – both as concerning the number of states as well as concerning the subjects that it deals with.

For Slovenia this means that the process of European integration will not be finished on the day accession is granted, but that the European Union will also in the future search for and find common approaches to various issues. That is why also in the field of the protection of national minorities it is essential to analyze the hitherto developments of European Union policies with an aim to anticipate future development and actively cooperate in the formation of future developments.

¹ See: Europäische Kommission, **Die Europäische Einigung. Die Entstehung und Entwicklung der Europäischen Union**, Luxemburg, 1995

II.2. The EU and the Protection of National Minorities²

II.2.1. Basic Tendencies

In comparison with other international organizations, such as, for example, the Council of Europe, the United Nations or the Organization for Security and Cooperation in Europe, the European Union has until now been relatively little occupied with the question of the protection of national minorities. The reasons for such are numerous, amongst others:

1. The integration process of the European Communities was until the establishment of the EU limited primarily to the economic field. For this reason the treaties on the establishment of these communities did not provide a legal basis for the functioning of the institutions of the European Communities in the field of the protection of national minorities.
2. Due to the fact that the EU is a supranational institution, the legislation of which is partly valid also directly in member states, individual states with restrictive comprehension of the protection of minorities are afraid to transfer the competence for this issue to the community, because they expect that their comprehension of the protection of national minorities will not be in accordance with the comprehension of the protection of minorities from the side of EU institutions. Concerning this, of very great significance is the functioning of the Court of Justice of the European Communities, which with its decisions concretizes and builds up the legal order of the EU, and could in the field of the protection of minorities decide against the member states and their bodies.

In spite of the above mentioned difficulties, the European Union already in various fields of its internal and foreign policies touches upon the issues of ethnic/national minorities. For example:

1. The Maastricht Treaty (1992/1993) in Chapter IX introduced the field of culture as a field within the competency of the EU. It recognizes that no member state is culturally homogenous. For this reason it calls on member states to respect their national and regional diversity.
2. The political criteria for gaining membership in the EU that were determined by the European Council in Copenhagen in 1993 also contain the position 'respect for and protection of national minorities'.
3. Article 13 of the Treaty of Amsterdam (1997/1999) provided the legal basis to the European Council such that on the basis of proposals of the European Commission and after consultation with the European Parliament it has the competence to introduce appropriate measures against discrimination on the basis of sex, racial or ethnic origin, religion, disability, age or sexual orientation. On the basis of this article, two directives of the European Council were issued in the year 2000, the first on the 'implementation of the principle of equal treatment of all persons irrespective of

² A very precise review of EU efforts for minorities is offered by Gabriel Toggenburg in **A Rough Orientation Through a Delicate Relationship: The European Union's Endeavours for (its) Minorities**, European Integration online Papers (EioP), Vol. 4 (2000) Nr. 16; [<http://eioP.or.at/eioP/texte/2000-016.htm>]; This article was the primary basis for the creation of this chapter.

racial or ethnic origin' and the second on 'the general framework of equal treatment in employment and work'.³

4. The conflict between the Republic of Austria and other member states after the appointment of the new Austrian Federal Government in the spring of the year 2000 was settled with the assistance of an expert group which in its evaluation of democracy in Austria with respect to its new Federal Government, also evaluated the status of minorities in Austria.

In addition to the above mentioned developments in the legal field, it is also necessary to mention the great efforts of the European Union in the fight against racism, xenophobia and anti-Semitism, as well as in the field of the protection of human rights in the world, which is expressed in numerous declarations, programs, announcements, the 1997 'European Year Against Racism', the establishment of the European Monitoring Centre on Racism and Xenophobia (EUMC)⁴ and similar.

The European Council in Amsterdam in Article 6 of the Treaty on the European Union placed the legal basis for stronger consideration of the issue of human rights within the Union.⁵

".. Article 6 (ex Article F)

1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States..."

In December of the year 2000 the European Council in Nice in Article 7 of the Treaty on the EU determined the procedure which should become valid if member states violate the basic principles of the European Union stated in Article 6 (one reason for including this article in the treaty on the European Union were undoubtedly the conflicts or the so-called 'measures' of other member states in relation to the formation of the Federal Government in Austria which also included the rightwing freedom party).⁶

Also the fact that the European Union (the presidents of the European Parliament, the European Commission and the European Council) in December 2000 in Nice signed and proclaimed the 'Charter of Fundamental Rights of the European Union'⁷, means

³ Council Directive 2000/43/EC (29.06.2000) and Council Directive 2000/78/EC (27.11.2001)

⁴This Centre offers a wide range of information on the internet: www.eumc.at

⁵ Official Journal C 340, 10.11.1997, pp. 145-172

⁶ Official Journal C 80, 10.03.2001

and proclaimed the 'Charter of Fundamental Rights of the European Union'⁷, means that the EU has included now also the field of human rights and the field of fundamental rights in an integral approach in its legal system. In this document national minorities are mentioned only with reference to the prohibition of discrimination in Article 21, however we can expect that further legal development on the basis of this document, for example in connection with Article 22, which determines that the Union should respect cultural, religious and linguistic diversity, will undoubtedly advance to the benefit of national and ethnic minorities.

In order to round off this chapter on general tendencies in relation to national minorities in the EU, a presentation of the main findings of the Eurobarometer special public opinion research from the year 2000 on the relation of people in the EU to minorities and immigrants here follows.⁸ Table 1 shows that many people (14% on average in the EU 15) in the member states of the EU are intolerant towards minorities and immigrants. If we also total those who are ambivalent, that is, undecided, there is potentially a huge number of people (39% in the EU 15) who would in unfavourable circumstances (for example in a serious economic crisis and under the influence of agitating political leaders) threaten the public order and enter into conflict with national minorities and immigrants in the European Union.

country	intolerant	ambivalent	passive tolerant	active tolerant
Belgium	25	28	26	22
Denmark	20	17	31	33
Germany	18	29	29	24
Greece	27	43	22	7
Italy	11	21	54	15
Spain	4	18	61	16
France	19	26	31	25
Ireland	13	21	50	15
Luxembourg	8	32	33	28
Netherlands	11	25	34	31
Portugal	9	34	44	13
United Kingdom	15	27	36	22
Finland	8	21	39	32
Sweden	9	15	43	33
Austria	12	30	37	20
EU 15	14	25	39	21

Table 1 Typology of attitudes towards minorities and immigrants in the EU¹

⁷ Official Journal C 364, 18.12.2000

⁸ SORA, **Attitudes Towards Minority Groups in the European Union. A Special Analysis of the Eurobarometer 2000 survey on behalf of the European Monitoring Centre on Racism and Xenophobia**, Vienna, March 2001

⁹ This table is the result of a cluster analysis of the particular data from several items of the above mentioned study.

This data is provided here also in order to show that racism and intolerance are not just a problem of post-communist states in Eastern Europe, but also a catalyst for social unrest in all the states of Europe, and as such a threat to the success of the European integration process.

II.2.2. The European Parliament

The European Parliament is the institution of the European Union that has for the longest time been occupied with the issue of the protection of minorities and it had already issued numerous resolutions in relation to such at a time when it actually did not have yet a legal basis in the establishing treaties (for this reason these resolutions were also not obligatory) to deal with this theme.

In October 1981 the European Parliament on the basis of the so-called Arfé-report concluded a resolution on regional languages and cultures and the rights of ethnic minorities, which, amongst other matters, called on national, regional and local authorities to support the learning and development of the languages and cultures of minorities.¹⁰ In February 1983 the European Parliament concluded a second resolution in support of linguistic and cultural minorities. In this resolution the European Parliament called on the European Communities Commission to continue and accelerate its efforts in this field. In this resolution also the European Council was called on to ensure that the principles of this resolution are given consideration also in practice.¹¹ In 1987 and 1994 two more resolutions followed in relation to linguistic minorities in the European Community and the EU respectively, in which the European Parliament again demanded progress in the field of regional and minority languages and cultures and proposed that financial means for these activities also be provided by the European Commission.¹²

Furthermore, the Intergroup on Lesser Used Languages (a group of members of the European Parliament from various parties) was established and a charter on the rights of ethnic groups (the Stauffenberg-Report, 1988) was prepared, but the European Parliament did not take a decision on it. The Stauffenberg-Report was followed by the Alber-Report, which the EP also did not resolve due to the fact that it wanted to wait to see how the European Charter on Regional and Minority Languages of the Council of Europe would develop.

The European Parliament also emphasized in resolutions on human rights and in reports on the political situation in Third countries the significance of minorities and their rights. The European Parliament thus had a pioneering role in the formation of consciousness concerning the issue of the protection of minorities in EC/EU institutions.

¹⁰ OJ 1981 No. C 287, page 106

¹¹ OJ 1983 No. C 68, page 103

¹² OJ 1987 No. C 318, page 160 in OJ 1994 No. C61, page 110

II.2.3. The European Commission

The European Commission can function only in the fields where it was assigned competence in the scope of the Treaties on the European Communities or in the Treaty on the European Union.

The European Commission does not have legally assigned direct competence in the field of the protection of national minorities. As mentioned in chapter II.2.1. 'General Tendencies', in recent years

- through the chapter on 'Culture' in the Maastricht Treaty,
- through the Copenhagen membership criteria,
- some other developments in the common foreign and security policy and
- through the anti-discrimination Article 13 of the Amsterdam Treaty,

indirect doors have been opened for the European Commission through which it can also function to the benefit of national minorities.

A list of some important activities of the European Commission that support linguistic or national minorities here follows:

- The Commission is the main financer of the European Bureau for Lesser Used Languages (EBLUL), which was established in the year 1982.¹³
- In the year 1983 the B3-1006 budget line was opened in support of lesser used regional or minority languages.
- Since 1994 the Commission coordinates the MERCATOR network for the study of the languages of minorities (different studies on their status, educational opportunities, media, legal regulations and similar).¹⁴
- In the framework of its 'education and youth competence' different activities were carried out, which also benefited the languages of minorities.
- In the field of culture three programs were available in the past which offered possibilities for supporting minorities' cultures: in the framework of the ARIANE program, contemporary literary works were translated into the languages of minorities; in the framework of the RAPHAEL program for the preservation of regional cultural heritage, also minorities received support for their culture; the KALEIDOSKOP program enabled the study of the languages of minorities. These three programs are now joined into one common program, CULTURE 2000.¹⁵
- There exists great possibilities for including national minorities in the framework of the programs for regional development or cross-border cooperation. (With their multi-lingual capabilities and their knowledge of cultures from both sides of the border, minorities can significantly enrich this cooperation.)

¹³ www.eblul.org

¹⁴ <http://www.mercator-central.org/>

¹⁵ http://europa.eu.int/comm/culture/culture2000_en.html

II.2.4. The Court of Justice of the European Communities

This institution provides for the correct and consistent implementation of EU legislation. It is the final arbiter of conflicts which derive from the establishing treaties or secondary legislation.

We can expect the future decisions of the Court of Justice of the European Communities in relation to the above mentioned Charter of Fundamental Rights of the EU and in relation to the anti-discriminatory directives, to strongly influence the development of the legal protection of national minorities in the member states of the EU.

II.3. The Protection of Minorities and EU Foreign Relations

One of the first instances in which the European Community in its foreign relations raised the subject of national minorities was the refusal of the application of Turkey for membership due to inter alia the considerations of the European Parliament concerning the treatment of the Kurdish minority by Turkey.

National minorities became even more important for the foreign relations of the European Community in connection with the disintegration of the Socialist Federative Republic of Yugoslavia. One of the central conditions of the international community for recognition of the newly established states was the guarantee of the rights of ethnic and national minorities in accordance with the commitments subscribed to in the framework of the Conference for Security and Cooperation in Europe. The positive evaluation of the international commission under the leadership of French lawyer Robert Badinter concerning the status of the protection of national minorities in Slovenia in the context of disintegration of SFRY has great significance for independence of Slovenia. That is why we can say that the existence of the independent Republic of Slovenia is closely related to the positive regulation of the protection of national minorities within its borders.¹⁶

But let us return to the question of the protection of national minorities in relation to the foreign relations of the EU and especially in relation to the process of EU enlargement.

¹⁶ We can find a very detailed description of the history of Slovenia becoming independent in an article by **Repe Božo, Slovenia od medvojne federalne enote preko povojne jugoslovanske republike do samostojne države** [Slovenia, from Interwar Federal unit through post-war Yugoslavian Republic to Independent State], in: Arhiv Republike Slovenije, **Od sanj do resničnosti. Razvoj slovenske državnosti** [From Dreams to Reality. The Development of Slovene Nationhood], Ljubljana 2001, pp. 121-207.

The European Union desires stability and peace inside the Union and in its neighbourhood, in which we can count almost the entire world in these days of globalisation. One key factor for achieving this peace and stability is, however, a good balance of different interests, as for example the divergent interests of national majorities and national minorities. With its special financial aid programs, by offering the perspective of accession, by means of the so called stabilization and association agreements and similar in its foreign relations, the European Union clearly shows that it wants peace, stability and economic development in the whole of Europe.

The terrible wars of the last decade in the Balkans proved that the aggressive nationalistic mentality which does not care about hundreds of thousands of dead and which we thought was exterminated in Europe, has not been defeated entirely and also probably never completely will be.

The European Union has opened itself up to its eastern and south eastern neighbours, but the fact is that the European Union has imported a great deal of potential conflict by doing so.

The following is a quote from the report of a group of experts of the European University Institute in Fiesole/Florence and experts from the European Commission that tried to evaluate the long term implications of EU enlargement:¹⁷

“.. Enlargement of the European Union to the East has raised in a new way the question of increasing diversity as a challenge and a potential threat to the coherence of the Union and its capacity to sustain in the momentum of integration. Previous enlargements were readily welcomed as a means of strengthening the European Community. The inevitable increase in diversity among the member states was not seen as an insurmountable problem but as a source of revitalisation, a stimulus to new efforts to achieve the goal of an ‘ever-closer Union’. By contrast, the prospect of enlargement to the East has evoked unprecedented fears of unmanageable conflicts of values and interests which could paralyse the Union and jeopardise its ability not only to move forward but even to sustain its achievements hitherto..”

Minority issues are in this context an important potential of conflicts and the question of how the European Union will succeed in including all this diversity that the candidate states bring with them raises some fears inside the EU.

¹⁷ Amato, Giuliano; Batt Judy: **The Long-Term Implications of EU Enlargement: The Nature of the New Border** (Final Report of the Reflection Group), European University Institute, San Domenico di Fiesole, 1999, page 11

That is why the above mentioned Reflection group in a special report discussed also this question. In its report it ascertains that the issue of the rights of minorities has become an important part of the foreign policy of the European Union with regard to its relations to the new democracies in central and eastern Europe. The Reflection group points out also the problem that the EU demands from candidate states such protection of minorities that its own member states do not offer to their minorities.¹⁸

The enlargement of the EU will not allow these double standards, in the opinion of the authors of this report, because :

1. new members will bring with them minority problems that will later have to be solved internally.
2. immigration inside the EU and from outside will result in the need for clear common standards.
3. the special position of the Roma, who are the largest trans-national European minority, and who reside in all member states of the EU , demands direct measures by the EU, due to the fact that this minority is especially marginalized and the Roma often are not in the position to effectively exercise their rights.

One more quote concerning this:¹⁹

".. Enlargement will alter the EU's internal politics and the policy agenda in this field, as new members bring with them different interests in, and approaches to, minority issues at home and abroad .."

The European Union is therefore aware of the significance of the protection of national minorities. That is why the EU included this issue also in the conditions that the states which want to become EU members have to fulfil.

In addition to meeting the economic criteria and having the capabilities to assume the obligations of membership in the EU, the European Union determines for candidate states, in the framework of the political criteria for membership, that:²⁰

"...Membership demands from the candidate states the establishment of institutions which insure democracy, legal order, human rights and respect and protection of minorities..."

¹⁸ Amato, Giuliano; Batt Judy; **Minority Rights and EU Enlargement to the East** (Report of the First Meeting of the Reflection Group on the Long-Term Implications of EU Enlargement: the Nature of the New Border), RSC Policy Paper, No 98/5, [<http://www.iue.it/EF/Amato98-PP.htm>]

¹⁹ *ibid*, page 3

²⁰ European Commission, **Making a success of Enlargement: Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate countries**, November 2001, page 7

“...Membership demands from the candidate states the establishment of institutions which insure democracy, legal order, human rights and respect and protection of minorities...”

Every year in November the Commission submits a public report on the progress of individual candidate states. These reports and other important information related to the enlargement of the EU are available on the internet:

<http://www.europa.eu.int/comm/enlargement/overview.htm>

In November 2001 the European Commission in its report concluded that except for Turkey, all 12 candidate states fulfil the above mentioned political criteria for EU membership.

Concerning minorities, the European Commission in its common evaluation is of the opinion that there are perceptible essential improvements, but however there are still specific problems in Estonia and Latvia in connection with the integration of non-citizens (Russians); an important issue is the implementation of existing legislation; and that especially in Bulgaria, Slovakia and Romania minorities play an important role in the internal political life. The essential problem in all candidate states, however, is that the status of Roma is especially difficult, which it is necessary to improve with the help of the EU.²¹

III. Relations between Slovenia and the EU

In the year 1993 an Agreement on Cooperation between the European Communities and the Republic of Slovenia was signed.²² With the “Association Agreement” (‘Europe Agreement establishing an association between the European Communities and their Member States, acting within the framework of the European Union, of the one part, and the Republic of Slovenia, of the other part’)²³ Slovenia became an associate member of the European Union. With the signing of this so-named ‘Europe Agreement’, Slovenia also applied for full membership.

Thereafter the European Commission issued the “Commission Opinion on Slovenia’s Application for Membership of the European Union.”²⁴ On the basis of this positive evaluation, in which the Commission stated that the rights of minorities are guaranteed and protected, Slovenia was accepted by the EU as a potential future member.

²¹ *ibid*, page 8

²² Uradni list RS [*Official Gazette*], Mednarodne pogodbe, (Treaties) 12th August 1993

²³ Uradni list RS [*Official Gazette*], Mednarodne pogodbe, 44/97

²⁴ **Agenda 2000 - Commission Opinion on Slovenia’s Application for Membership of the European Union**, Brussels, 15th July 1997

As was already mentioned in the previous chapter, the European Union also concluded that Slovenia satisfies the political criteria for membership, although in its reports it still warns of some lesser deficiencies especially regarding the status of Roma.

In its report for the year 2001 in the chapter on national minorities, the commission marked the position of the Hungarian and Italian nationalities 'as good and the protection of their rights as comprehensive', while it sees larger deficiencies concerning the position of Roma. The report mentions the problems of the Roma in local elections, the existence of examples of discrimination, deficiencies in the implementation of legislation, problems related to the difference between autochthonous and non-autochthonous Roma, and the fact that the majority of Roma are dependent on social support without opportunities for employment.²⁵

The status of non-autochthonous minorities, such as Croatians, Serbs and other immigrants from other republics of former Yugoslavia was not reviewed by the European Union in its progress reports. Furthermore, it did not raise the issue of the German speaking population in Slovenia. This issue some political bodies in Austria (especially the Provincial Assembly and the Provincial Governor of Carinthia) tried to bring on the agenda of Slovenia's accession negotiations but they did not find support for this on the side of the European Commission.

Parallel to the opinion of the European Commission, in 2001 the Open Society Institute in the framework of the EUMAP program evaluated the fulfillment of the political criteria for EU membership by candidate states.²⁶ On the homepage of this program one can examine a very detailed analysis of the status of national minorities in candidate states. The report is divided into chapters:

I. The laws and practice of the protection of minorities (A. protection from discrimination in various fields (education, employment, health care and other forms of social protection, housing and other public goods and services and criminal justice), B. protection from racially motivated violence, C. minority rights (identity, language, education, media, participation in public life)

II. Institutions for the protection of minority rights (official bodies and civil society)

III. Recommendations to the government

The EUMAP report on the position of national minorities in Slovenia essentially confirms the findings of the European Commission that the status of the Hungarian and Italian nationalities is very good, while the status of the Roma is deficient. One of the significant merits of this report is that it is documented in great detail concerning in which areas there are deficiencies and forms of discrimination in Slovenia.

²⁵ Commission of the European Communities, **2001 Regular Report on Slovenia's Progress towards Accession**, Brussels, 13.11.2001, SEC(2001) 1755, page 21

²⁶ www.eumap.org

The recommendations of the study for Slovenia are:²⁷

1. Adopt legislation, as foreseen in the Constitution, setting forth the rights of the Roma community. The law should secure for Roma all rights to which other minorities are entitled.
2. Adopt mechanisms to ensure that non-citizens are treated in an equal manner by police and other official bodies, and to sensitise law enforcement officers to the situation of foreigners, refugees and non-citizens.
3. Speed up naturalisation of non-citizens and ensure that non-citizens enjoy non-discriminatory access to employment, education, health care, and other goods and services.
4. Clarify laws concerning Roma representation on local councils and support the introduction of councillors for Roma issues in areas of the country inhabited by Roma.

IV. Concluding Thoughts – Challenges for Slovenia

As the author of this article, I hope that I have succeeded in expressing my conviction that the protection of national minorities is a quite dynamic and interesting issue, especially also from the perspective of the development of the European Union.

I would like to conclude with two thoughts:

1. Slovenia can gain much if it joins the processes of searching for new common solutions to the protection of national minorities in the European Union. An important area where a combined effort with partner states from the European Union will be necessary is the status of the Roma. Although there exist in Slovenia numerous examples of good practice concerning co-existence with Roma, Slovenia in this field is still far from having fully appropriate answers, but this is true also for almost all other states in Europe.
2. Slovenia can also contribute a great deal to the process of searching for new common solutions for the protection of national minorities in the European Union:
 - The position of the Italian and Hungarian ethnic communities is regulated on an extraordinary high level – with this example of good practice other European states can learn much.
 - Slovene minorities live in two or, after Hungary will have joined, three European Union states – it would be good to collect and contribute to European debates the knowledge of these Slovene minorities concerning what is good for minorities and what not.
 - Slovenia has a great opportunity to mediate modern views on the protection of national minorities in the states of south-eastern Europe, where great inter-ethnic conflicts exist. The European Union wants peace and stability in this part of Europe. Slovenia can help here a lot. An

²⁷ Open Society Institute - EU Accession Monitoring Program, **Monitoring the EU Accession Process: Minority Protection**, page 527 [<http://www.eumap.org/reports/content/10>] (18.02.2002)

Slovenia has a great opportunity to mediate modern views on the protection of national minorities in the states of south-eastern Europe, where great inter-ethnic conflicts exist. The European Union wants peace and stability in this part of Europe. Slovenia can help here a lot. An example how know how transfer in the field of protection of national minorities can work is the 'International Center for Inter-Ethnic Relations and Minorities in South-Eastern Europe', which was established in the framework of the Stability Pact for South-Eastern Europe at the Institute for Ethnic Studies in Ljubljana.

On the level of the European Union, therefore, there exist numerous opportunities for accepting and transferring knowledge and for the co-formation of important developments – let us take advantage of these opportunities!