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DISCLOSING AND DISMANTLING THE “MINORITY PROBLEM”

The experience of the German linguistic minority in Italy

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ABSTRACT

Contemporary societies are comprised of diverse, varied and heterogeneous entities at local, subnational, regional, national and international level. Minorities are part of that diversity. However, these groups have traditionally been perceived as a threat for the homogeneity, stability and unity of societies. Their official recognition has been neglected and the right of persons belonging to minorities have not been effectively guaranteed.

This thesis outlines the reasons for this negative attitude towards these groups and presents some mechanisms and strategies that can be useful to dim the “minority problem”. An effective legal and political framework is fundamental to protect the rights of minorities and persons belonging to them. The participation of a greater number of actors involved in the accommodation of their needs and rights in diverse societies is also a key element for achieving this task, so both elements will be succinctly analysed.

The experience of the German linguistic minority in Italy is offered as a model for demonstrating that minorities are not inevitably a burden and how effective legislation and policies to protect their rights can contribute to building and consolidating the pacific coexistence in diverse societies.

ACRONYMS

CERD	International Convention on the Elimination of all Forms of Racial Discrimination
CPPCG	Convention on the Prevention and Punishment of the Crime of Genocide
CRC	Convention on the Rights of the Children
ECHR	European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)
ECRML	European Charter for Regional or Minority Languages
FCPNM	European Framework Convention for the Protection of National Minorities
HCNM	High Commissioner on National Minorities
ICESC	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-governmental organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organisation for Security and Cooperation in Europe
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNDM	United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
UNESCO	United Nations Educational, Scientific and Cultural Organization

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INTRODUCTION

Diversity is a reality of contemporary societies and should not be ignored; in most cases it cannot be hidden. Every day we run across people with experiences, history, culture, languages and several other distinct features from our own. These particular features configure the identity of each person and group. They are an occasion to share with others our knowledge and experiences as well as to expand the way we perceive the world. However, there have been, and still are, places wherein such differences have been deemed as an insuperable element of division. Places where those who do not have the same characteristics or elements of identity are pigeonholed as “the others”, the different, the strangers.

This thesis contributes to those studies, campaigns and voices coming from the civil society, states and the international community, which have struggled to demonstrate that the otherness does not necessarily mean or lead to conflict, violence, discrimination, exclusion or indifference. The otherness is an opportunity to appreciate the others’ values and differences that enrich us all, to consider them as neighbours, somebody who needs me and whom I need, whom I can help and from whom I can learn and enrich myself.

These ideas will be referred to as the ‘minority question.’ Minorities exist in almost all states, particularly in Europe, where the boundaries between countries have changed much in the last century, bringing about the emergence of new entities whose identity elements differ from those of the majority populations they live with and among.

The lack of a comprehensive character, understanding and definition of minorities has contributed to the situation where individuals, particularly the more nationalistic ones, states, and even the international community perceive minorities as a problem, a reality to be ignored rather than a fact of life, and a source of enrichment.

This thesis will explain how and why this perception arose and by which means it can be dimmed, in order to devise a new picture of minorities. The example of one linguistic minority in Italy, the German-speaking population in South Tyrol will be used as a model to demonstrate that minorities are not inevitably a burden for the states and how effective

legislation and policies to protect their rights can contribute to building and consolidating a pacific coexistence in diverse societies.

The first Chapter analyses some reasons of these misunderstandings. The lack of a legally binding definition is one of them. In order to fill this gap and to delimitate the extent of this thesis, an approach to the concept of minority will be drawn. The notion drafted is far from being an all-encompassing or universal one. It will take into account the elements provided by attempts to define these complex conceptual and practical entities. The last section of this chapter is devoted to explaining how the “so-called” minority problem arose and why it is still a very current topic.

There are several different types of minorities. However, as this work addresses the minority question in Europe, mostly it will refer directly or indirectly to national minorities that are pointed out in the instruments on the protection of minorities in Europe. Nevertheless, it must be said that the ideas, studies and proposals outlined in this research are intended to be applied also to other types of minorities, including the migrant minorities, whose analysis is not undertaken in this research.

The second chapter lays out two mechanisms that can be useful to dismantle the minority problem and to contribute widely to deal with diversity and integrate minorities in society. Firstly, Diversity Management, whose outlook and affordable proposals for fostering the maintenance, preservation and protection of minorities, will be analysed in depth.

In the context of Diversity Management those ideas that may be applied to minority issues will be considered, principally those about the necessity of a multidisciplinary approach to face minorities’ issues and the importance of including all the actors involved, e.g. international bodies, states, civil society, NGO’s, independent experts, majorities, and the minority groups themselves. This will be done in order to display minorities as entities having particular characteristics that can coexist with those of the majorities and enrich them. The dynamism of all these elements is also a factor that Diversity Management suggests to take into account for achieving its purposes.

Secondly, the Legal and Political Framework on Minorities protection will be presented. The principal standards and mechanisms created by the United Nations and other international, particularly European, organisations to ensure that minorities are recognised and granted adequate legal and effective protection will be sketched out.

The thesis will not analyse the international and regional jurisprudence on minorities concerns, nor the debate about whether minorities are the subject of collective and/or individual rights, as this falls beyond the scope of the present work. What will be explained is the creation and functioning of some specialised bodies that have contributed to the management of diversities and improvement of relations between states and their minorities as well as among states.

Having disclosed the minority problem and the mechanisms to improve the perception about these groups, as well as to an appropriate legal framework, the Third Chapter focuses on the linguistic minorities. This thesis pays special attention to the significance of the language for these groups and to the specific rights of minorities, more precisely of persons belonging to minorities. It presents the measures that have been adopted or suggested by the international and regional mechanisms to guarantee these rights.

The last chapter presents the case of the German-speaking minority in Italy, which has been generally considered to be one of the most successful examples of how it is possible to grant effective protection to minority groups into a non-homogeneous nation and how, by doing so, a harmonious coexistence between majority and minority groups is possible.

Despite the particular context of being a minority at a national level but a majority at the local one, this case was selected because this group challenged the state over discriminatory policies adopted in the past and achieved, with the support and protection of the kin state, Austria, a very high degree of protection. It is undeniable that presenting this model with the highest standards of protection may be thorny. However, it is not presented as a case that must be followed in all environments, but as an example that might help to demystify the minority problem.

Consequently, the hypothesis tested in this thesis is that an adequate model of the protection of minorities and its successful implementation through effective legislation, policies and measures can contribute to inclusion, integration and harmonious relations between minorities and majorities in plural societies.

Admittedly, each minority has its own history and context. The direction and future of each one depends on a number of particular historical, cultural, political, social and economic reasons. There are not infallible parameters nor universal solutions; however, certain minimal universal standards of the rights and protection of minorities should be followed. Accordingly, common elements might be determined analysing different cases that can be used as a reference in addressing minority issues in other environments. To achieve the best results, the best practices and models should be studied. Different environments, such as the South Tyrolean one, have obtained the best results and demonstrated that minorities are not entities condemned to be perceived as a tricky problem to deal with it, but rather constituent components of plural societies that can contribute to their development and harmonious relations between minorities and majorities.

CHAPTER I DISCLOSING THE MINORITY PROBLEM

1.1 The blurred notion of “minority”

The existence of groups with specific characteristics that distinguishes them from the society they live in, is an undeniable reality. In the history of mankind, there have always been populations with particular attributes that mark them as a group and differentiate them from others. When such a group is numerically inferior, it's said that it constitutes a minority, with its own tradition, culture, language, religion or other distinctive characteristic not possessed by the majority population.

After the World Wars and the decolonization movements, the number of minority groups increased considerably as a result of the state-formation and nation-building processes as well as increased migration. The new borders in Europe and the emancipation and independence of many countries in Africa, Asia and America brought about the search and redefinition of new identities, and by doing that, there were - and still are - some individuals and groups that are not included into the new drawn states.

The same is applicable for the pre-existing states. Consequently, it can must be said that whenever a specific identity exists or is being created, it is possible to speak of a distinct community that is different from other –majority and minority- communities in a certain environment.

Nowadays there are minority groups in almost every country and continent. Minorities have become a more visible reality, and claims asking for their recognition and protection have emerged. There are even promising systems and mechanisms for international and regional protection of minorities. Different standards of minority rights and protection that are most frequently geographically, particularly continentally conditioned, have arisen. Within the United Nation system certain arrangements and standards have been determined universally. Nevertheless, there is still no unanimously agreed definition of “minority”.¹

¹ European Commission for Democracy through Law (Venice Commission), *Report on Non-Citizens and Minority Rights*, p. 4, Venice, December 2006

Despite the growing number of minority groups, specialised research and the development of instruments and mechanisms to address issues concerning minorities, there exists no binding definition of the term “minority”, there is not a consensual approach to the concept itself, neither at the international level nor in any regional context.

This lack of a legally binding definition is one of the reasons why the notion of “minority” is blurred. Therefore, it is necessary to analyse the reasons for not having a consensual notion. Why has it not been possible to agree on a definition of what a minority is? Why is so difficult to describe what should be the essential elements in such a definition? And who could be the organism or entity authorised to formulate a definition of minority?

Does the globalised world wants all individuals to be part of a global community in which differences are not relevant in a unified society? Or is the reluctance of states to recognise formally diversity and the existence of minorities in their territory a result of their fear that by their recognition, they would accept additional obligations and responsibilities so that the states avoid giving these minority groups the protection they require?

What are the reasons for the absence of this essential notion? The complexity of classifying groups as minorities, the intention to protect everyone under the international systems and mechanisms already existing, or the unwillingness of states to warrant specific rights for these groups?

Answering these questions is fundamental for the purpose of this research, since the numerous different replies, lack of consensus among the states and scholars as well as the reluctance of states to recognise the existence of minorities officially and grant them a special (minority) status and rights and adopt an internationally binding definition, have also contributed to the current situation in defining minorities.

Regarding the complications of defining a group as a minority, they can stem from the fact that minorities live in a variety of circumstances: some minorities live together in well-defined areas, detached from the dominant part of the population, while others are scattered throughout the country. Some minorities have a solid sense of collective identity based on

their history, whereas others retain only a fragmented notion of their common legacy.² These differences also make it challenging to decide on which elements to include in a definition.

There are also other circumstances that can impede the process of identifying minority groups: First, there are ethnic groups without their own territory or state that cannot be identified simply by citizenship criteria, because their ethnic identity differs from the identities of the ethnic majority and other groups in a certain state.³ Second, there are cases of communities that are a part of the majority population but have some characteristics that distinguish them from it, so they constitute a minority group within their own dominant collective. These groups present a specific situation, being at the same time part of a majority and a minority group.

It is understandable that these complex situations don't facilitate the outlining of an unequivocal concept of minorities. Fundamentally, the variety of situations further swaddle the notion of minority and the understanding of concepts of minorities.

Concerning the role of the international community trying to protect all humans under the international legal framework already exists, it is necessary to say that the existing rules and standards of international law might not be sufficient and can be considered bias and risk for minorities as well as for states and the international community while an adequate concept of universal citizenship has not been developed.

This is so because there have existed theories about a new just and globalised order that aimed to replace the traditional one of a nation-state system. Pursuant to this modern conception, it was expected that a global culture would emerge and that the hegemony of national identities would be substituted by more complex and multiple ones; it was hoped that allegiances to nation-states would be transcended by allegiances to larger communities and nation-states would be absorbed by the new supranational restructuring of the world.⁴

² UN, Office of the High Commissioner for Human Rights, *Minority Rights: International Standards and Guidance for Implementation*, pp. 2-3, February 2011

³ National identity or citizenship is by many considered a mandatory precondition to be recognised as a minority as it will be analysed below. The most widely cited definitions of "minority" included the nationality criterion

⁴ Keating, Michael & Mc Garry, John, *Minority Nationalism and the Changing International Order*, pp. 1-10, Oxford, 2004

However, these expectations have not materialised; some claim that such system would be hazard for minority groups that have their own traditions, culture and other specific characteristics that cannot be neglected.

All attempts to adopt a universally acceptable and legally binding definition of a minority have failed. In a way it could be said that the term “minority” as well as the perception of minorities remained blurred. Additionally, some may perceive minorities as reluctant groups that do not want to be part of the globalised world or the majority population in a certain environment and consequently, a difficult issue to address.

The unwillingness of states to acknowledge and recognise formally a distinct group that actually exists might be considered primordial and based on the expected - and feared - threats, cost and difficulties that the potential recognition and granting of minority rights might represents. They fear that the official recognition implies the obligation to grant them a special minority status as well as collective protection, which states want to avoid. Consequently, as much as they can, states prefer to deny or, at least, neglect the existence of minorities. A number of reasons for such a position can be summarised.

Firstly, minorities are seen as a danger for states’ territorial integrity and national sovereignty,⁵ which could threaten the states’ unity and homogeneity; moreover, states fear a possible escalation of conflicts with minorities that could eventually lead to a territorial fragmentation.⁶ Secondly, states fear the cost of elaborate minority protection policies and legislation, as well as the infrastructure required for their implementation. Thirdly, states believe that a homogeneous society is more affordable and makes the functioning of the system more efficient, fearing that conciliation between autonomy and diversity is not an easily attainable challenge. Fourthly, states believe that it is less complicated to deal with individuals whose rights are recognised and protected individually than handling collective rights and protection of minorities.⁷ Fifthly, regardless of all problems that can be detected when diversity is handled this way, states still consider that a forced assimilation of minorities

⁵ Kugelmann, Dieter, *The Protection of Minorities and Indigenous Peoples respecting Cultural Diversity*, in Max Planck Yearbook of United Nations Law, Vol. 11, p. 233-263, The Netherlands, 2007

⁶ Henrard, Kristine, *Devising and Adequate System of Minority Protection*, pp. 218-225, The Netherlands, 2000

⁷ *Ibidem*

and persons belonging to them is better and cheaper opinion for them than fulfilling the international legal obligations regarding minority protection. Last but not least, it is not easy for states to reconcile two demands: on the one hand, ensure legal and political framework that minorities are placed in every respect on an equal footing with other nationals of the state and on the other hand, ensure suitable means for the preservation of their peculiarities and characteristics that constitute their specific identities.⁸

Due to such reasons, states generally are reluctant to reach an agreement on the definition of minority and they attempt to confine the potential scope of their responsibilities concerning these groups. Consequently, they prefer a blurred notion of minority to a legally binding one. Ironically, ignoring the fact that the reluctance of states is the main reason for the absence of a binding international definition of minorities, some states claim that the very absence of a such definition is the main reason that they do not or cannot ensure adequate protection of minorities.

1.2 An approach towards a concept of Minorities

There are divergent opinions regarding whether an agreed definition of “minority” is necessary.⁹ On the one hand, those who call for a definition argue that it is essential to identifying the persons and groups which are entitled to minority protection. Furthermore, they claim that a definition is a *sine qua non* requirement to make the international protection of minorities a workable regime in practice. Finally, they are convinced that a precise definition may serve to reduce controversy by drawing the limits in a clear fashion, thus fitting the rights to undeniable claimants.¹⁰

On the other hand, there are those who uphold that it is not necessary or even desirable to formulate a minority definition,¹¹ given that the existence of minorities is a question of fact

⁸ Kugelmann, 2007, p. 233-263

⁹ There are two schools of thought on this issue: those who emphasize that the absence of a universally accepted definition is an impediment which appears insurmountable, so a precise definition is imperative for theoretical and practical reasons. In opposition, those for whom the absence of a notion does is not a problem as they are using a common sense conception of the term. For further information, see Uddin Khan, Borhan, *Protection of Minorities: a South Asian Discourse*, p. 7-8, Dhaka, July 2009

¹⁰ Shaw, Malcom N., *The Definition of Minorities in International Law*, in Yoram Dinstein and Mala Tabory (eds.), *The Protection of Minorities and Human Rights*, pp.1-2, London 1992

¹¹ *Report on Non-Citizens and Minority Rights*, 2006, p.5

and not of law, definitions¹² or any decision by the state¹³. Accordingly, they claim that the enjoyment of minority rights requires no formal legal recognition of a group by the state,¹⁴ since the instruments to protect minority groups may function perfectly well without precisely defining the term.¹⁵

For this work it is important to determine some discernible elements that describe a group as a minority,¹⁶ in order to identify persons and groups as minorities. A working definition of minority is instrumental to recognise the features that characterise a minority and such a working definition can be developed upon existing, particularly more prominent definitions that have been proposed notions and definitions of minorities in scholarly literature and documents.¹⁷

In the past decades several attempts have been made in the international scope to develop a common agreement on the meaning and use of the concept “minority”. Predominantly they based on the notions and concepts of “state” or “nation”.

In 1979, the former Special Rapporteur of the United Nations Francesco Capotorti defined 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”.¹⁸

¹² Permanent Court of International Justice, Advisory Opinion No. 17 “*The Greco/Bulgarian Communities*”, The Hague, July 1930

¹³ UN, Human Rights Committee, *General Comment 23, Article 27*, n. 5.2, April 1994

¹⁴ UN, Office of the High Commissioner for Human Rights. *United Nations Guide for Minorities, Pamphlet No. 9, The High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe*

¹⁵ UN, *Report of the Working Group on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities*, UN DOC E/CN.4/1991/53, n. 9, March 1991

¹⁶ As it has been shown in the first section, it is not easy to reach a definition of a minority, so the aim of this work is to find some components of a working definition of minority

¹⁷ In any case, it should be noted that in view of the rather onerous considerations of evaluating both the objective and subjective elements – they are not always being interpreted in the same way -, identification of a minority group might prove to be a difficult task

¹⁸ Capotorti, Francesco, *Study on the rights of persons belonging to ethnic, religious and linguistic minorities*, pp. 5-15, New York, 1979

Afterwards, in the course of deliberations that led to the adoption of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereinafter, UNMD), Jules Deschênes, a member of the Sub-Commission on Human Rights, proposed a new definition of minority: “a group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law.”¹⁹

In 1993, Asbjørn Eide, a former Chairperson-Rapporteur of the Sub-Commission on Prevention of Discrimination and Protections of Minorities, described minorities as “any group of persons resident within a sovereign State which constitutes less than half the population of the national society and whose members share common characteristics of an ethnic, religious or linguistic nature that distinguish them from the rest of the population.”²⁰

Although there are some differences between these concepts, all express the view that any definition of minority has to include both objective and subjective criteria.²¹ The objective factors refer to the existence of a shared ethnicity, culture, language or religion²² and the subjective elements imply that individuals identify themselves as members of a minority group²³ and have, at least, the explicit or implicit intention to preserve its distinguishing characteristics and its identity.²⁴

¹⁹ UN, Former Working Group on Minorities, Proposal concerning a definition of the term ‘Minority’, submitted by Mr. Jules Deschênes, E/CN.4/Sub.2/1985/31, May 1985

²⁰ UN, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Report of the Sub-Commission on Prevention of Discrimination and Protections of Minorities*, E/CN.4/Sub.2/1993/34, August, 1993

²¹ UN, Office of the High Commissioner for Human Rights, *Promoting and Protecting Minority Rights. A Guide for Advocates*, p. 7, Geneva and New York, 2012

²² Council of Europe, *The protection of minorities*, collected texts of the European Commission for Democracy through Law, Collection Science and Technique of Democracy, No. 9, p. 51, Germany, 1994

²³ It does not imply the right to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably related to objective criteria. Council of Europe, *Explanatory Report to the Framework Convention for the Protection of National Minorities*, p. 35, Strasbourg, February 1995

²⁴ Guliyeva, Gulara, *Defining the Indefinable: A definition of ‘Minority’ in EU Law*, in *Minority Governance in and beyond Europe*, p. 196, The Netherlands, 2014

The proposed definitions show how the definition of minority has been historically bound to the idea of nationality, citizenship, territory and statehood. Especially in Europe²⁵, where the notions of (traditional) national minorities has been outlined during the nation-states' building and consolidation processes, mainly emphasising the idea of a single "nation."

Nevertheless, the current developments of nation-states and the existence of ethnic diversity show that the traditional national concept, including the concept of national minority is falling short.²⁶ The traditional concept fits just a fraction of the existing ethnic diversities and diverse groups, which are steadily increasing in their number and forms and are more mobile. Collectives that don't fall within that traditional definitions have been excluded and unprotected.²⁷

Nowadays there are other criteria beyond the idea of "nation" that need to be taken into account. They elucidate how changing and dynamic the concept of minorities is and how minority issues are more and more sensitive.

Therefore, this thesis will consider the preceding objective and subjective elements (numerical inferiority, nationality, distinguishing ethnic, religious, cultural or linguistic characteristics and collective will) to approach and define the concept of minority, without restricting the concept to the "nation" or "citizenship" criteria.²⁸ The idea of cultural diversity will be pivotal, since acknowledging cultural diversity between states or within the state encourages a different view on the perception and protection of minorities²⁹ and on perception of different and diverse minorities.

²⁵ The notion of a "national minority" is important in the European instruments, but not in the universal context

²⁶ Some criticisms can be found in Rehman, Javaid, *International Human Rights Law*, pp. 434-438, England, 2010

²⁷ It is the case of minorities that, traditionally, are not part of the national community (immigrants), the dispersed minorities (Jews) and minorities within a minority that is in the majority in a particular territory (Roma). For further information, see Grewe, Constance, *Making minorities more influential in public life: opportunities provided by existing constitutional arrangements and their limitations*, in Science and Technique of Democracy "The participation of minorities in public life", No. 45, Strasbourg, 2011

²⁸ The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, inspired by article 27 of the International Covenant on Civil and Political Rights, extend its application scope to persons that form part or belong to a minority in one country disregarding whether they are citizens or the country or not

²⁹ Kugelmann, 2007, p. 234

Consequently, for the purpose of this research, a minority will be defined as a group numerically inferior to the rest of the population, whose members are endowed with ethnic, cultural, religious or linguistic characteristics that differ from those of the majority, and with an interest in preserving their characteristics and identity.³⁰

Even though the minorities that will be studied fall within the traditional national minority definition, this thesis will use a more encompassing concept to test the hypothesis that these groups could and should have a constructive role in diverse societies as well as in relations between these societies if all relevant tools of Diversity Management, including the rights and protection of minorities are adequately applied. Building upon theories and practices of Diversity Management it is possible that the regulation and policies of minority protection should be applied to all minorities, considering a popular perception that minorities are difficult issues to deal with.

1.3 The (so-called) “minority problem”

This section intends to explain the causes of the perception that minorities are a threat to the majority and to the dominant nation within states.³¹

Despite their different origins and different contexts, facts and processes of their evolution, generally minorities have been perceived as a danger for the states’ sovereignty, security and integrity. What are the reasons and motives of such idea and perceptions? The very concept of national minorities and their negative perceptions as well as fears of and from minorities appeared with the emergence of the modern nation-state and continue to exist.

Differences between and within groups have been always existed. Homogeneous communities have rarely been found, especially after the Westphalian Peace in 1948,³² the

³⁰ This conception is not exhaustive nor is intended to be used beyond the purpose of this research, since is not an all-embracing or infallible definition and can be subject of criticism. This approach is just a working definition no a determinate resolution of a challenging conceptual and practical issue

³¹ Roter, Petra, *Minorities, states and international security: The contribution of the Bolzano/Bozen Recommendations to managing the “minority problem”*, in *National Minorities in Inter-State Relations*, pp. 45-62, Leiden-Boston, 2011

³² Peace Treaties of Westphalia recognised the existence of religious pluralism and granted a certain protection to religious minorities (namely, the Protestants in the Catholic countries and the Catholics in the Protestant countries). It was not until much later that the myth of ethnic homogeneity was created and the concept of

international community started to evolve into the community of nation-states and many states that had transformed into or had been established as nation states - absolutely convinced in the myth of ethnic homogeneity- began to conceive the world in terms of ethnicity, more precisely in terms of nations. Belonging to a homogeneous (ethnic) group and sharing the same language, culture, politics, economy or whatever characteristic considered by the majority as an identity marker was fundamental. Anyone who did not share the same traits was considered as a danger to the unity, uniformity and homogeneity of the states and nations as specific ethnic communities.

With the introduction of myths of ethnic homogeneity and concepts of (single) nation-states (as ethnically homogenous states of titular nations) the concept of national minorities emerged that usually were described as the “minority problem”. The “minority problem” is the result of a narrow perception of minorities as, firstly, a result of understanding the world exclusively on an ethnic basis and secondly, by considering the interest of the majority as inevitably irreconcilable with any others.

The preceding facts were exacerbated after the two World Wars and the Cold War, as well in the period of decolonisation, when the new frontiers and situation changed the reality, consequently impacting some identities. State formation, preservation and consolidation became the most important for the new nations that were expecting to rule themselves. Some states that had lost part of their territories wanted to defend the remaining territories at whatever cost –or even recover the lost ones. New states that had been established had the opportunity to build their own statehood and identities, particularly identities of new (titular) nations. In any case, they had to deal with new borders and changing compositions of populations that determined their new reality that impacted their sovereignty, security and stability.

The purported in compatibility of interests between the majority group and the minority ones that might have endangered the authority and monopolies of the majority brought about the so-called “minority problem”. The main interest of a group in a non-dominant position is to

nation-states introduced; the evolution of nation-states can be, undoubtedly followed since the 18th and 19th century, while 19th and 20th centuries are sometimes described as centuries of nationalism and nation-states.

preserve its different and specific characteristics even by asking the support of the majority groups. Consequently, by the majority groups, minorities were seen as a hardship that complicates reality, especially in Europe.

The minorities' formation has its own course in Western and Eastern Europe. In the West, minorities emerged during the state-formation process whereas in the East it happened throughout the course of nation-building.³³

When the idea of nation-building came up in Western Europe, the historic states already had their own structure based on their historically delineated territory. Most of the inhabitants within states were supposed to have the same traditions, values and identity as they were governed by the same. But there were also some minority groups which had lived within the same territory keeping their identities and had not been previously imperilled.

Nonetheless, when nationalism appeared and spread in Western Europe, proclaiming the idea of creating a united and ethnically homogeneous nation within the geographic area, numerically inferior groups, usually called national minorities with different characteristics were expected to assimilate and melt into the new entity, majority (titular) nation. As persons belonging to majorities also persons belonging to national minorities had been citizens of that territory (at that time usually called the subjects of the ruler of this territory) and had lived there when the state-building process began, and had not had stronger bonds with any other state or entity.

In the Western nation-building process, any minority group aiming to preserve its identity found itself in a conflict situation because it did not assimilate and meet expectations of the majority; nobody stood up for its protection and they could not count on any external support. From the perspective of the majority, the only opinion of persons belonging to minorities as well as of national minorities (as collective entities) was to be assimilated or expelled; the option of preserving these groups and their identities was not contemplated. Accordingly, nation-states refused to recognise the existence of ethnic pluralism and diverse ethnic

³³ Roter, Petra, *Locating the 'Minority Problem' in Europe: A Historical Perspective*, in *Journal of International Relations and Development*, pp. 221-249, United Kingdom, September 2001

societies, including national minorities (as specific collective identities) officially and did not grant them any minority rights.

In turn, the history of Eastern Europe had been marked by the presence of multi-ethnic empires which had existed without the intention of homogenizing different identities that had been maintained. When nationalism gained ground, the practise started to change, ethnicity, ethnic identity and nationalism gained the importance and contributed to redrawing of borders aiming to create new states based on (exclusive) ethnicity rather than on (inclusive) citizenship. Consequences of such developments were important and can be summarised as follows.

Firstly, national minorities (as ethnically unified group) were perceived by the majority as belonging to other nations. The former were part of the new ethnically homogeneous nation whereas the latter were associated with other ethnic groups in a neighbouring state with whom they shared common elements and that can become their kin state.³⁴

Secondly, communities with the same trait, regardless of their location, even if living far away were conceived somehow a part of the nation. This means that ethnic communities, including nations, can extend beyond and across state borders and that they can encompass not just the dominant ethnic group inside a nation-state but also its kin minorities settled in neighbouring states.

Last but not least, minority groups who had their distinct identity - possibly, they had been ethnically-nationally conscious before they found themselves within a nation state with different ethnic identity - were dwindled to nothing by the new conception of nationality and nation-states determined by ethnic lineages. Whichever group with distinct ethnic characteristics to the nation-state, more precisely different than its titular nation, was seen as an obstacle to its formation and development as an ethnically homogeneous entity and could have been forcibly excluded or expelled.

³⁴ A kin state is a state where co-ethnics of minority groups living in another state live and form the majority of the population. The role of kin-states is to protect its minorities.

These facts show that the existence of minorities usually was not denied in Eastern Europe, but it was considered problematic because the Eastern European nation-states often would not allow for the inclusion, even by assimilation, of groups with different ethnic lineage.

As shown above, in many ways the minorities' fate was the same in Eastern and Western Europe, their identities were neither respected nor protected; annihilation, expulsion, exclusion, neglect, assimilation or whatever measure addressed to eliminate or marginalise their distinctiveness were the prevailing reaction of nation-states, that resulted in their stigma as risky entities.

Undoubtedly, the creation of new nation-states contributed to the occurrence of the so-called minority problem and influenced the prevailing perception of these groups. Nevertheless, the drawing of new frontiers and the consolidation of new identities would not have to inexorably provoke that result.

Historically, minorities have lived in peace with majorities, or at least they were not a “detonator” factor of conflicts. It was only when ethnic elements started to be the predominant criteria defining nations and nation-states that minorities began to be marginalised and perceived as an inherently problematic reality.

Notwithstanding, diversity and the presence a variety of characteristics do not need to have a fateful connotation; differences and distinct interests themselves do not mean to have a conflict. However, a conflict emerges when such characteristics and concerns are intended to be imposed over others. Particularities are not a problem *per se*, but the fact that their separate identity is as important to minorities as it is threatening to the dominant majorities, they have perpetuated such situation.

The so-called minority problem is still a very current topic. The presence of any minority within the borders of a state generally has implications in the state and beyond its geographical limits determined by borders. The problem has increased in recent years because local and international societies are becoming more and more diverse and dynamic. Additionally, the fear of the interventionist aspirations or real interferences of kin states into

internal affairs of other states to protect their kin minorities contributed to the perception of minorities as problems.³⁵

Kin states have argued for a special relationship and responsibility to protect their kin minorities living abroad. They are concerned about their subsistence, social well-being, economy and culture, as well as about the preservation of their identity. However, this well-meaning intention could have adverse effects for minority groups.

Firstly, it may happen that the kin state's intervention is being interpreted as an interference in internal affairs by the host nation-state. Secondly, the relationship between kin state and kin minorities might be seen not just as an alliance, but as a threatening complicity, which would provoke states wherein these minorities live, that they would consider these groups as a fifth column serving to outside powers. Thirdly, minorities can be identified as traitors by their kin states if they are loyal to or might also have firm relations and solid identity elements, particularly in terms of patriotism, with their home-states. Finally, minority groups could no longer be seen as an independent entity if kin states use them as a pretext of their broad intervention.

All these consequences could provoke and have actually provoked a permanent mistrust and suspicion towards minority groups and their kin states by their home-states or even by the international community. Accordingly, even in cases when third actors have allegedly participated in obtaining beneficial outcomes for minorities, the tension have grown as well as detrimental consequences for the minority groups increased, particularly if an intervention has been carried out illegitimately or without observing the international law or the recommendations made by specialised bodies and institutions.³⁶

The minority problem also increased because in contemporary local and global societies it is not easy to recognise the identity of minorities, since sometimes they are not strong or clear enough to establish an unmistakable relation with kin states. And finally, owing to the fact

³⁵ Ruiz Vieyetz, Eduardo J., *Las Recomendaciones de Bolzano/Bozen sobre las Minorías Nacionales en Relaciones Internacionales*, pp. 1-19, Madrid, 2009

³⁶ For further information about some criteria regarding the attitude of kin states towards its kin minorities, see OSCE, High Commissioner on National Minorities, *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations*, The Hague, June 2008

that historic and geographic distances have increased and that many kin minorities groups have decided to separate from their kin states.³⁷

It is evident that the so-called minority problems are in fact majority problems.³⁸ Their occurrence has domestic and international implications, especially in the existing situation characterised by the dynamics and diversity of actors, groups, societies, policies, legislations, international relations, communications, identities, cultures and so on, in the states and in the international community. The world knows many groups varieties, including minorities within traditional, relatively well-defined areas, groups disseminated throughout the world or most of state across state limits, nomadic groups and so on.³⁹

How to face the world in such circumstances of diversity and dynamism? How to find an adequate balance between the interest of majority and minority groups? How to allow and support minorities so that they may preserve their identities and avoid being deemed as a threat by states? What should be done that minorities would no longer be considered a possible risk for the state sovereignty? How to integrate minorities in societies without jeopardizing their identities as well as the integrity and stability of states? How can we progressively eradicate the perception of minorities as a destabilizing factor? In the next chapter these questions will be addressed in detail.

³⁷ Ruiz Vieytez, 2009, pp. 1-19

³⁸ Lewin Kurt, *Action Research and Minority Problems*, Journal of Social Issues, Vol. 2, Issue 4, pp. 34-46, November 1946

³⁹ Thornberry, Patrick and Martín Estébanez, María Amor, *Minority rights in Europe*, pp. 137-168, Belgium, 2004

CHAPTER II MECHANISMS TO DEMYSTIFY THE SO-CALLED MINORITY PROBLEM: DIVERSITY MANAGEMENT AND THE LEGAL-POLITICAL FRAMEWORK ON MINORITIES PROTECTION

2.1 Diversity Management purposes and proposals

It is undeniable that contemporary societies are comprised by diverse, varied and heterogeneous entities at local, subnational, regional, national and international level. Minorities are part of that diversity, and nowadays these groups are incrementing as a result of the increased mobility and migrations throughout the world.⁴⁰

New minorities are emerging and it seems that this phenomenon, far from being reduced or stopped, is widespread. Migratory movements continue to shape contemporary societies⁴¹ because people and communities migrate to different places not only for reasons of survival or security, or as result of conflicts and forced migrations, but also for environmental, political, humanitarian and economic causes.⁴² The opening of borders, for example within the European Union member States, has also contributed to the increased movement of people.⁴³

New groups with specific characteristics are settling down in countries, often demanding the recognition of their identity and rights. Unfortunately, these groups are not immune to the inappropriate perception and attitudes towards the so-called minority problem.

Nevertheless, such a myth of homogeneity and the conceptualization of minority groups as “national minorities” is increasingly being questioned. Pluralism, variety and diversity within and among societies is an irrefutable reality that must be included in a new perception about minorities because minorities and minority-majority relations are continuously developing

⁴⁰ Finney, Nissa and Catney, Gemma (eds.), *Minority Internal Migration in Europe*, United Kingdom, 2012

⁴¹ Rudiger, Anja and Spencer, Sarah, *Social integration of Migrants and Ethnic Minorities. Policies to Combat Discrimination*, Conference organised by the European Commission and the OECD, Brussels, 2013

⁴² Medda-Windischer, Roberta, *Comment on the Green Paper on an EU Approach to Managing Economic Migration*, European Academy of Bolzano/Bozen, Italy, 2005

⁴³ UN, General Assembly, *Report of the Independent Expert on Minority Issues*, December 2012

and evolving due to the permanent change in the external context and the internal dynamics of these groups.⁴⁴

The international community, global institutions, states, local organizations and individuals are increasingly aware of the cultural and identity differences, as well as of the fact that population mobility is widening.⁴⁵ Consequently, they have been seeking new theories, strategies and mechanisms to face this situation.

Diversity Management arose as a response for addressing and managing such asymmetries and differences within and between nation-states. The term was originally devised in the United States in the 1980s to deal with economic differences, to eliminate discrimination and to challenge economic organisation.⁴⁶ This initial notion was taken beyond economics and translated into multiculturalism and pluralistic societies, especially after the nation-building and state-formation processes.

For the purpose of this thesis, an in-depth analysis of the motive for Diversity Management will be prioritised over a dissection of its definition.⁴⁷ Its proposals will also be given significant space, but firstly a few words about what Diversity Management is.

Firstly, Diversity Management can be deemed as a new approach for detecting diversities and for encouraging favourable conditions allowing diverse groups to maintain, preserve and express their own identity, tradition, culture, language, religion or any particular trait provided that it is not contrary to international standards or national law.⁴⁸

⁴⁴ Palermo Francesco and Woelk, Jens, *From Minority Protection to a Law of Diversity? Reflections on the Evolution of Minority Rights*, in *European Yearbook of Minority Issues*, Vol. 3, 2003/4, pp. 5-13, The Netherlands, 2005

⁴⁵ Ruiz Vieytez, Eduardo J. (dir.), *Diversidad, inmigración y minorías en un marco de diversidad*, in *Derechos Humanos y Diversidad. Nuevos desafíos para las sociedades plurales*, pp. 23-42, Alberdania, 2008

⁴⁶ Plummer L., Deborah, *Diversity Management: Beyond Awareness to Competency Based Learning*, in *Handbook of Diversity Management*, University Press of America, pp. 51-93, Maryland 2003

⁴⁷ For further description about Diversity Management, see Žagar, Mitja, *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations, Minority Rights and Trends in Minority Protection*, in *National Minorities in Inter-State Relations*, pp. 129-143, Leiden-Boston, 2011

⁴⁸ For further information, see Economic and Social Council. Commission on Human Rights, *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, E/CN.4/Sub.2/AC.5/2005/2, n. 57, April 2005

Diversity Management fosters an effective integration of minority groups in societies and their official recognition by states and the international community. Achieving mutual recognition of differences amongst society members as well as the integration, cohesion and strength in pluralistic societies are also elements of Diversity Management.⁴⁹

Secondly, Diversity Management is a multidisciplinary approach that proposes and encourages strategies, policies, concepts, programs, measures and actions that would not otherwise meet. A narrow or mono-focal outlook might not favour the managing and resolution of complex situations in which diverse interests and concerns are involved. Just an interdisciplinary approach can contribute to finding particular solutions for specific problems as well as to achieving social cohesion and the integration of diverse societies.⁵⁰

Thirdly, as an all-encompassing approach, Diversity Management demands the participation and convergence of many disciplines working independently and interdependently. Economics, anthropology, politics, history, culture, literature, linguistics, ethnography, human rights, law and other fields of study from the private and public area are called to be part of Diversity Management. Its theoretical frameworks and research results must to be taken into account⁵¹ in order to get a better knowledge about the specificity, complexity, multidimensionality and interdependence of all actors and factors interacting in the diversified contemporary societies.

Moving to the purposes of Diversity Management, one of the first and most important is the identification of the origin of the distorted views about minorities. Just by acknowledging these perceptions it is possible to unbend the so-called minority problem and restrain, revert or eliminate the historical misunderstandings regarding these groups.

⁴⁹ Jackson-Preece, Jennifer, *Diversity and Co-existence in International Society: The Bolzano/Bozen Recommendations in historical Perspective*, in *National Minorities in Inter-State Relations*, pp. 30-43, Leiden-Boston, 2011

⁵⁰ Marko, Joseph, *Five Years after: Continuing reflections on the Thematic Commentary on effective participation. The interplay between Equality and participation*, in *Minorities, their rights and the monitoring of the European Framework Convention for the Protection of National Minorities*, Malloy H. Tove H. and Caruso, Ugo (eds.), European Centre for Minority Issues, pp. 97-120, Leiden and Boston, 2013

⁵¹ Promitzer, Christian, Hermanik Klaus-Jügen, Staudinger Eduard, *(Hidden) Minorities, language and ethnic identity between Central Europe and the Balkans*, pp. 9-31, Wien-Berlin, 2009

As it was said in the first chapter, the traditional idea of homogeneous nation-states has had an important role in the construction of the "minority problem." Throughout history, diversity has been perceived as a hazardous threat for state sovereignty, unity and stability. Over many decades, nationalist politicians, parties and movements - not interested in the existence, official recognition or protection of minorities - have promoted an intolerant discourse about these issues.⁵²

Nevertheless, pluralistic societies have always existed. Diversity has existed between and within states because the traditions, culture, language and other specific elements that make up identities are not of a monolithic character.⁵³

Yet, diversity and the existence of different identities, requirements or interests does not mean an impossible coexistence and interaction among heterogeneous groups. Differences do not irremediably lead to permanent quarrels. And not even the occurrence of social conflicts inevitably triggers fatal or destructive consequences.⁵⁴ Frictions and conflict of interests can be managed in a peaceful way. Conflicts have emerged and will continue emerging if someone's interests are imposed over others and differences are not accepted or reconciled.

It is necessary to keep in mind that sometimes the "minority problem" as well as minority related conflicts have been the result of historical processes that have delimited new borders, created nation-states⁵⁵ and prompted high flows of migrations. In such cases where the creation of new states has unavoidably resulted in new minorities, these groups did not desire becoming a minority, nor did they aim to be a potential problem or the origin of controversies and rivalries.⁵⁶

On the other hand, there are other elements that have fed the "minority problem" myth, *inter alia*, the lack of information, knowledge and understanding about minorities; the stereotypes

⁵² Žagar, Mitja, *Diversity Management and Integration: From Ideas to Concept*, in European Yearbook of Minority Issues, Vol. 6, 2006/7, pp. 307-327, The Netherlands, 2008

⁵³ Kugelmann, 2007, p. 233-263

⁵⁴ Roter, 2011, pp. 45-62

⁵⁵ Roter, Petra, *Ethnic Diversity Management in Central Europe*, in Regional and International Relations in Central Europe, Šabič, Zlatko and Dulák, Petr (eds.), pp. 181-200, London 2012

⁵⁶ Jackson-Preece, 2011, pp. 30-43

and cataloguing of non-citizens or non-majority population members as “the others” or as a collective whose components are not identified; political policies and propaganda encouraging racist, xenophobic or discriminatory opinions; and the simplifications spread by the media.⁵⁷

By identifying causes, the next task of Diversity Management is to clarify concepts and ideas concerning minorities’ issues. One of the most important ideas to be elucidated is that minorities are not a formless subject but entities comprised by human beings with name and face, capable to be individualised and express themselves and to manifest both their collective and personal identity without necessarily endangering the sovereignty of the state.

As other inhabitants of a state, their identity should be recognised and the states shall take measures to ensure they can exercise fully and effectively their human rights and fundamental freedoms, as is set forth in the international instruments that guarantee a specific protection for persons belonging to minorities.

States play a fundamental role so that minorities can be deemed as inhabitants of their territory, having particular characteristics that can coexist with those of the majority populations and encourage the knowledge of the history, traditions, language and culture of the minorities existing within their territory.⁵⁸

It is vital that adequate information about minorities reaches everybody because there still are no clear ideas about their role(s) and importance in the societies. In this regard, is important to be aware that biased information could have a huge impact and lead to discrimination, exclusions, hostilities, conflicts or violence. History witnessed how a lack of

⁵⁷ Žagar, 2011, pp. 129-143

⁵⁸ UN, *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, art. 4.4, December 1992; Council of Europe, *Framework Convention for the Protection of National Minorities*, art. 12, Strasbourg, February 1995; OSCE, High Commissioner on National Minorities, *The Hague Recommendations regarding the Education Rights of National Minorities*, n. 19, The Hague, October 1996; OSCE, High Commissioner on National Minorities, *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 45, Ljubljana, 2012

the right information has sometimes resulted in violent extremisms and crimes against humanity like ethnic cleansing, and genocide.⁵⁹

Information, policies and any measure regarding minority groups should be developed and implemented in a way that reaches both majorities and minorities, given that the integration of societies and the correct understanding of minorities is a process of mutual and active engagement involving all members of society as individuals or organised groups.⁶⁰

Experience has shown that in societies where different groups coexist, minorities' identity elements have often been neglected and the majorities are frequently ignorant of such elements. Many times the culture, history and traditions of minority groups have been subject to distorted representations, resulting in low self-esteem within the groups and negative stereotypes towards members of minorities from the wider community.⁶¹

There are situations in which majority populations have long trusted the diffused ideas or have been captivated by media and political speeches.⁶² Indeed, not just the majority population, also minorities have to some extent the same perception about themselves, as complete strangers constantly battling against the majority population.⁶³ Thus, states should encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory, addressed not just to minority groups, but also and specifically to majorities. It is also beneficial that majority populations have the same opportunity to access this information as minorities,⁶⁴ in order to promote mutual understanding and confidence,⁶⁵ tolerance and inclusion, multicultural and intercultural education that shall foster interactions with each other.⁶⁶

⁵⁹ The atrocities perpetrated in Armenia, the Soviet Union, Rwanda and the Balkans, among others, are examples of the extent of violence that misunderstanding and impositions of power have caused

⁶⁰ *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 12

⁶¹ *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, n. 65

⁶² Žagar, Mitja, 2008, pp. 307-327

⁶³ Promitzer, 2009, pp. 9-31

⁶⁴ UN, Human Rights Council, Special Rapporteur on minority issues, *Draft of the Handbook Language Rights of Linguistic Minorities*

⁶⁵ UNDM, art. 6

⁶⁶ *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, n. 66

Minorities have to acknowledge their position and situation considering that diversity and plurality also mean being a part of a society, where a numerical majority exist. Minorities can be cooperate and be part of pluralistic societies comprised by majorities and minorities, without perpetually being in conflict. They have also a fundamental an irreplaceable role in diversity management because it is mainly a two-way communication process.⁶⁷ Both states and minorities should pursue an inclusive, transparent and active participation in order to maintain a climate of peace and confidence.⁶⁸

The will of minorities for real inclusion, participation and cooperation is a fundamental element to achieve stability and cohesion in plural contemporary societies. Without that, any kind of reported integration would be just assimilation or forced integration and whatever strategies would be condemned as short-term, while effective minority protection promotes their integration in pluralistic societies without undermining their identity.⁶⁹

Therefore, besides protecting the existence of minorities and encouraging conditions for the promotion of their identities, states should adopt appropriate measures so that persons belonging to minorities enjoy their own culture, profess and practice their own religion and use their own language, in private and in public, freely and without interference or any form of discrimination.⁷⁰ Minority groups must be provided with favourable conditions to feel secure and protected. Furthermore, they should have the opportunity to express themselves, preserve their identity, have their rights properly protected and be effectively integrated in the society they live with and in.⁷¹

Therefore, presenting minorities and persons belonging to them as entities whose identity, interests and rights can concur with those of the majorities and displaying the reality about the imperative need of loyal cooperation between minorities and majorities, might prevent

⁶⁷ Žagar, Mitja, 2011, pp. 129-143

⁶⁸ OSCE, High Commissioner on National Minorities, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life and Explanatory Note*, n. 5, Lund, September 1999

⁶⁹ *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, n. 21

⁷⁰ UNDM, art. 2.1

⁷¹ UNDM, arts. 1 to 4

unilateral or imposed ideas⁷² and spur to develop strategies for the preservation, coexistence and harmonious interaction within and between diverse groups.

To realise this task, Diversity Management has proposed the creation of spaces of dialogue and cooperation, concretised in meetings whereby international actors, local authorities, minorities and civil society can talk about the concerns, needs and challenges of minorities.⁷³ Gathering places wherein majority and minority populations relate to each other without formalities, prejudices and rivalries, just sharing - in the everyday life environment - their history, interest and aspirations have also been encouraged. According to the aspirations of Diversity Management, as a result of these encounters it is possible that states achieve formal agreements - bilateral or multilateral treaties - relating to minorities and their protection, which undoubtedly would reduce tensions and defuse the volatility of minority issues⁷⁴ and would contribute to unblocking political relations between states, regions and minority groups.⁷⁵

Another strategy that also contributes to this aim is to plan campaigns promoting the advantages of diversity, tolerance, solidarity, inclusion, cooperation and integration of minorities. The Public and private sectors from both majority and minority populations may design these campaigns, in order to involve a greater number of actors. The media, educational systems, governmental and NGOs, authorities and individuals have to get implicated in loud and silent crusades for diversity. Especially the media, which have a primordial role in building the imaginary collective as well as an important social repercussion in breaking stereotypes. But also the other actors given that they have important roles to play in the formation of an understanding for minorities and support for their integration.⁷⁶

⁷² Palermo, 2005, pp. 5-13

⁷³ Korkeakivi, Antti, *The role of Dialogue in the Monitoring Process of the Framework Convention*, in *Minorities, their rights and the monitoring of the European Framework Convention for the Protection of National Minorities*, Malloy H. Tove H. and Caruso, Ugo (eds.), European Centre for Minority Issues, pp. 81-96, Leiden and Boston, 2013

⁷⁴ Žagar, 2011, pp. 129-143

⁷⁵ Roter, 2012, pp. 181-200

⁷⁶ *The Ljubljana Guidelines on Integration of Diverse Societies*, n. 26

The establishment of specialised organizations and institutions which can contribute to a better understanding about minorities, their history, needs, rights, and so on, as well as to foster dialogue and cooperation within the state regarding minorities' issues is another element recommended by Diversity Management. Advisory and consultative bodies may serve as channels for dialogue between governmental authorities and national minorities, and contribute to more effective communication and advancement of the interests of minorities.⁷⁷

Notwithstanding the foregoing, probably the most compelling measure to be taken in order to acknowledge the importance of an effective inclusion of minorities and to promote diversity is to design and implement effective conditions, standards, laws and policies guaranteeing the effective participation of minorities in religious, cultural, social life and in public affairs.

As an effective participation of minorities in public life is an essential component of a peaceful and democratic society,⁷⁸ its role in all aspects of the life is essential both for promoting minorities' interests and values and for creating and integrating a pluralistic society based on tolerance and dialogue.⁷⁹ To this extent, states should consider appropriate measures so that persons belonging to minorities may participate effectively in all aspects of the political, economic, social, religious and cultural life of a society and in the economic progress and development in their country,⁸⁰ especially in those spheres wherein they still have not been considerably involved.

Pursued in Diversity Management is the participation of minorities in the decision-making processes; since they are inhabitants of the territory where the decisions adopted by governments apply, they are also affected by them. An adequate representation of minorities in all relevant structures of public administration and decision-making bodies provides an important opportunity for the voices of minorities to be heard.⁸¹ However, most of them have

⁷⁷ *The Lund Recommendations on the Effective Participation of National Minorities in Public Life*, n. 12

⁷⁸ *Ibidem*, n. 1

⁷⁹ *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, n. 35

⁸⁰ UN, General Assembly, *Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, Resolution A/RES/49/192, New York, December 1994

⁸¹ *The Ljubljana Guidelines on Integration of Diverse Societies*, n. 39

not had opportunities to achieve equality or participate adequately in the decision-making processes at any level of governance.⁸²

The voices of minorities have to be taken into account at the international, regional and local levels in the formulation, adoption, implementation, and monitoring of decisions, standards and policies affecting them.⁸³ Granting them some sites and say in governmental branches (Parliament, Courts, Ministries, advisory bodies as well as civil and public services), allowing them to have their own institutions, authorities, parties and associations who represent their interest, as well as implementing policies favouring their access to educational and public services in their mother tongue, are among the strategies proposed to ensure minorities take part in governance and public affairs.

Full participation in economic activities and the development of their country⁸⁴ is still to a large extent denied to minorities. For many years, persons belonging to minorities have been subjected to exclusions or marginalization.⁸⁵ Even though they are a part of and contribute to the national economy, often minorities are still excluded from the labour market and several times have not had access to quality housing; besides, their lands and habitat have not been effectively protected.⁸⁶

One way to involve minorities in the economic life of the society is by promoting their inclusion in the labour-market and by favouring their traditional occupations, technologies as well as the functioning of their private enterprises. This, in addition to reducing unemployment rates among minorities, promotes the minorities' sense of inclusion and participation in society. Although effective integration doesn't mean exclusively access to

⁸² Roter, 2011, pp. 45-62

⁸³ UNDM, art. 2.3; FCPNM, art. 15

⁸⁴ UNDM, art. 4.5

⁸⁵ *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, n. 71

⁸⁶ Eide Asbjørn, *Ensuring Social and Economic Rights of National Minorities through the Work of the Advisory Committee on the Framework Convention*, in *Minorities, their rights and the monitoring of the European Framework Convention for the Protection of National Minorities*, Malloy H. Tove H. and Caruso, Ugo (eds.), European Centre for Minority Issues, pp. 43-62, Leiden and Boston, 2013

the job market or economic benefits of the state,⁸⁷ including minorities in these areas contributes to their incorporation and integration in the society.

Accordingly, it is necessary for states and the international community, together with minority groups' representatives, to draw, adopt and implement effective strategies for including minorities in a comprehensive manner, protecting their economic rights⁸⁸.

Last but not least, due to the fact that the promotion of cultural diversity implies legal and political consequences, Diversity Management has also pointed out the necessity to design effective and inclusive international, constitutional, legal and political frameworks on the protection of minorities. Strategies, mechanisms, campaigns and whichever action have no meaning until societies ascribes minority issues certain significance.⁸⁹ One way of doing so is by creating a framework that establishes general principles, rules and guidelines, based on the rule of law and high human rights standards.⁹⁰

Furthermore, a legal and effective protection of persons belonging to minorities is a fundamental premise of a true democracy in diverse societies.⁹¹ Minorities' protection is a (pre) requirement for democracy,⁹² thus, states shall adopt appropriate legislative and other measures to protect minorities and should encourage favourable conditions and opportunities so that minorities may exercise their rights individually as well as in community, without any discrimination or disadvantage.⁹³

As stated above, a multidisciplinary approach is necessary so that each strategy or mechanism involves a greater number of actors and provides an effective promotion of diversity. Hence, to create an international, regional or local legal framework on minority issues rather than

⁸⁷ Ruiz Vieytez, 2008, pp. 23-42

⁸⁸ Phillips, Alan, *The Framework Convention for the Protection of National Minorities and the Protection of the Economic Rights of Minorities*, in *European Yearbook of Minority Issues*, Vol. 3, 2003/4, pp. 287-306, The Netherlands, 2005

⁸⁹ Roter, 2011, pp. 45-62

⁹⁰ *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 40; Conference on Security and Co-operation in Europe, *Document of the Copenhagen Meeting of the conference on the human dimension of the CSCE*, p. 30, Copenhagen, 1990

⁹¹ Žagar, 2011, pp. 129-143

⁹² Kymlicka, Will, *Categorizing Groups, Categorizing States: Theorizing Minority Rights in a World of Deep Diversity*, in *Ethics and International Affairs*, Vol. 23/4, pp. 371-388, 2010

⁹³ UNDM, arts. 1 and 3

involve only politicians, lawyers or judges, there is the need to implicate the largest number of disciplines and actors from the local and international community, which can play important proactive roles. Anthropological, philosophical, sociological, cultural studies, linguistics, ethnology, historiography and other areas of analysis are a part and foundation of the legal reasoning in cases of minority protection;⁹⁴ therefore, scholars and specialists must be involved and over all, minorities themselves because they have the right to convey and express their concerns, requirements and demands.⁹⁵

So far, some proposals to manage diversity have been explained. Before continuing to the next section, it must be said that all strategies, mechanisms or any factor related with managing diversity by no means should be taken as static concept. They are dynamic elements exposed to rapid changes.⁹⁶

States and minorities, as well as their relationships, are constantly changing and developing, and with them, the context, rules, negotiations and processes managing diversity. Thus, strategies and actions to deal with varieties and differences must be very precise, concrete and diligent. Especially concerning the minority problem and minority-majority relations, which due to the permanent changes in the external context and the internal dynamics of groups, are always dynamic processes.⁹⁷

It is indispensable to be aware that Diversity Management is dealing with dynamic issues and think about decoding the so-called minority problem and minority-majority relations, as well as addressing asymmetries and diversities in dynamic terms. There are no unmistakable or immutable formulas.⁹⁸ What might be good for ones, maybe is not for others and even for themselves in other time or circumstances. Taking into account and analysing the history, stakeholders, context and especially the dynamism of each element is an essential task.

⁹⁴ Kugelmann, 2007, p. 233-263

⁹⁵ Palermo, Francesco, *Soluciones jurídicas a sociedades complejas: El Derecho a la Diversidad*, in *Derechos Humanos y Diversidad. Nuevos desafíos para las sociedades plurales*, pp. 77-97, Alberdania, 2008

⁹⁶ Roter, 2001, pp. 221-249

⁹⁷ Palermo, 2005, pp. 5-13

⁹⁸ Palermo, 2008, pp. 77-97

The law-making process and the contents thereof, are not exempted; conversely, dynamic laws, capable to adapt to multiculturalism and complex societies are the best legal solutions. Static formulas and rigid processes would only be detrimental to minorities themselves.⁹⁹

2.2 The Legal and Political Framework on Minorities Protection¹⁰⁰

Before describing the most significant documents on the protection of minority groups, it is necessary to mention that there is a debate on the nature and implications of the legal and political international framework, since most of the instruments and resolutions of specialised bodies and institutions are not legally binding.

For some, the legal and political frameworks as well as the resolutions have not granted effective protection to minorities because they are not coercive instruments obliging states to observe and implement the rules and guidelines outlined. It is said that their non-legally binding nature reveals itself as a weakness due to the fact that their effectiveness rests with the willingness of the states and parties to cooperate.¹⁰¹ Therefore, legally binding instruments are preferred to purely political declarations, especially in the pluralistic and heterogeneous contemporary societies where any kind of conflict regarding diversities aims to be avoided.¹⁰²

On the other hand, others have argued that it is precisely in the lack of enforceability where the strength of these documents and recommendations lies. According to this conception, being soft-law is a strength rather than a weakness, especially in modern complex societies where soft-law or mild-law instruments as well as and non-binding recommendations can be more efficient, compelling and long lasting by means of persuasion than prescriptive norms

⁹⁹ Palermo, Francesco, *Legal Solutions to Complex Societies: The Law of Diversity*, in Human Rights and Diversity: New Challenges for Plural Societies, Ruiz Vieytes, Eduardo J. and Dunbar, Robert (eds.), pp. 63-82, Bilbao, 2007

¹⁰⁰ In this section there will be presented the international and regional framework on Minorities Protection just inasmuch as it has contributed to demystify the minority problem, since the analysis of the evolution, improvements, shortcomings and criticism to these documents and resolutions, as well as discussions concerning if minorities entitled just individual or also collective rights go beyond the scope of this work

¹⁰¹ Pentassuglia, Gaetano, *On the Model of Minority Rights Supervision in Europe and how they affect a changing concept of Sovereignty*, in European Yearbook of Minority Issues, Vol. 1, 2001/2, pp. 30-64, The Hague, 2003

¹⁰² Uddin Khan, Borhan, *Protection of Minorities: a South Asian Discourse*, Dhaka, July 2009

because, the more pluralistic society is, the higher is the need for tolerance and persuasion instead of imposed uniformed standards and sanctions.¹⁰³

Furthermore, it must be said that sometimes political, non-binding instruments have a superior level of confidentiality and are more able to establish more favourable conditions for the resolution of minorities' issues than judicial or legal interventions.¹⁰⁴ In addition, there are also opinions arguing that even if some instruments and bodies' resolutions are not binding, there are some legal and political strategies leading states to adopt and implement them.¹⁰⁵

For the purpose of this research, it must be said that despite being not binding, international and regional instruments have helped to manage diversities, reduce tensions and improve relations between states, regions and minority groups. Consequently, the following framework will be presented insofar it has contributed to demystify the minority problem and to understand minorities as entities who can contribute to the political and social stability of states in which they live.

In modern international law, the protection of minorities is part of the protection of human rights. Persons belonging to minorities have the right to enjoy all the rights set out in all human rights instruments adopted at the universal or regional level. Starting from the most basic one at the global level, the Universal Declaration of Human Rights (UDHR) to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESC), the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) and the International Convention on the Rights of the Child (CRC), wherein the principle of non-discrimination is clearly laid down, which is somehow the core of the human rights of minorities.¹⁰⁶

¹⁰³ Palermo, 2007, pp. 63-82

¹⁰⁴ Giorgi, Jacopo, *Minorities Protection: Between Legal Framework and Political Mechanisms*, Centro Studi per la Pace, 2004

¹⁰⁵ For instance, the accession to the European Union is conditioned to the respect and protection of minorities. Copenhagen European Council, *Presidency Conclusions*, Copenhagen, 1993

¹⁰⁶ Kugelmann, 2007, p. 233-263

In the last years of 80's, after the fall of the Berlin Wall, new multilayered international regime for the protection of national minorities was formed.¹⁰⁷ There was the increasing number of conflicts between minorities - fighting for an effective protection of their rights - and the states – reluctant to recognise even the very existence of minorities - as well as the lack of effective protection of minorities that made minority protection the subject of worldwide political discussions and concern, elevating this topic in the international arena.¹⁰⁸

Therefore, documents on minority protection have arisen from particular ideological and political contexts marked by clashes and contentions, whose historical and sociological background is intertwined with their content. Hence, it may be validly said that there have been the social and political events, rather than protective criteria, which have led to the emergence of the legal protection of minorities.¹⁰⁹

Nonetheless, the politicised issue of minorities' protection¹¹⁰ as well as the political deliberations, negotiations and agreements it has brought about, have contributed to the construction of a legal framework wherein minorities are no longer considered as an unbearable problem to deal with. It is undeniable that there are still several issues and stigmatizations placed on minority groups that must be eliminated or at least reduced, however, the international, regional and some local instruments have provided principles, standards and ideas that may help to decode the so-called minority problem, as summarised in the following sections.

2.2.1 International Instruments and Mechanisms

In the International arena, the first attempt to affirm the rights – and consequently the existence - of minorities to exist was the Convention on the Prevention and Punishment of the Crime of Genocide, approved in 1948.¹¹¹ This instrument, by prohibiting the destruction

¹⁰⁷ Roter, 2011, pp. 45-62

¹⁰⁸ Kugelmann, 2007, p. 233-263

¹⁰⁹ Ruiz Vieitez, Eduardo J., *La Protección Jurídica de las Minorías en la Historia Europea (Siglos XVI-XX)* in Cuadernos Deusto de Derechos Humanos, No. 3, Bilbao, 1998

¹¹⁰ Roter, Petra, *Minority rights Protection in the Western Balkans*, Contribution in the 15th anniversary of the Framework Convention for the Protection of National Minorities, Strasbourg, November, 2013

¹¹¹ UN, *Convention on the Prevention and Punishment of the Crime of Genocide*, December 1948

of specific groups, formally recognised the right of minorities to exist as groups, which may be considered a noteworthy step in the identification of minorities as subjects of rights.

Another instrument in the same direction and the first one granting specific provisions for minority groups was the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), adopted in 1965.¹¹² Its Article 5 sets the principle of non-discrimination and encourages states to guarantee to everyone the enjoyment of the most fundamental human rights, without any distinction. This provision supplies special measures for the advancement of racial and ethnic groups and constitutes an implicit acknowledgment of minorities.

Being a binding document, the states parties have to respect the CERD's content and in case there is any grievance about their non-compliance, the Committee on the Elimination of Racial Discrimination - a body comprised by experts tasked with monitoring the implementation of the Convention - has faculties to make recommendations, examine inter-state or individual complains as well as to start early-warning procedures.

For the purposes of this work, it's enough to say that this Committee has been acting as an efficient mechanism to safeguard the rights of minorities going far beyond protection against discrimination, which certainly constitute another step forward in the recognition of minorities as entities entitled to rights.

Probably the most prominent universal instrument providing protection to minorities is the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966.¹¹³ It was the first universal instrument to internationalise the concept of minority rights.¹¹⁴ Its Article 27 prescribes that persons belonging to minorities shall not be denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language, in community with the other members of their group.¹¹⁵

¹¹² UN, *International Convention on the Elimination of all Forms of Racial Discrimination*, January 1969

¹¹³ UN, *International Covenant on Civil and Political Rights*, March 1973

¹¹⁴ Uddin Khan, 2009, p. 26

¹¹⁵ ICCPR, art. 27

Even though this provision was framed negatively and doesn't place upon the state a positive obligation with respect to its content,¹¹⁶ it was also an important starting point concerning the identification of minorities as subjects of rights and consequently, entities capable to be individualised and identified.

The ICCP is also a binding instrument and the Human Rights Committee monitors its implementation. This body has competence to consider individual and inter-state complaints and to produce recommendations.

Regarding minority issues, this committee elaborated a General Comment interpreting Article 27 of the ICCP wherein it stated that minorities' identity and rights do not prejudice the sovereignty and territorial integrity of a State but enrich the fabric of society as a whole.¹¹⁷

The statements made by the Human Rights Committee have also recognised that the existence of minority groups in a state rather than representing a threat itself constitutes an element for its enrichment. Thus, they represent a contribution for the deconstruction of the so-called minority problem, since such criteria may be used in the elaboration of recommendations regarding minority groups.

There is also another international binding document that contains provisions specifically addressing the rights of minorities, the Convention on the Rights of the Child, adopted in 1989.¹¹⁸ For the purposes of this work, it suffices to say that by establishing rulings protecting expressly minority groups, the CRC also contributes to acknowledge that persons belonging to minorities are also entitled to rights. The body responsible to examine and monitor the progress made by states in achieving the realization of the obligations undertaken in the CRC is the Committee on the Rights of the Child.

The last international document to be mentioned is the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in 1992. This

¹¹⁶ Dunbar, Robert, *European Traditional Linguistic Diversity and Human Rights: A Critical Assessment of International Instruments*, in Human Rights and Diversity: New Challenges for Plural Societies, Ruiz Vieyetz, Eduardo J. and Dunbar, Robert (eds.), pp. 85-110, Bilbao, 2007

¹¹⁷ *General Comment 23, Article 27*, n. 9

¹¹⁸ UN, *Convention on the Rights of the Child*, September 1990

instrument is one of the most relevant because is the first one devoted exclusively to minority concerns.¹¹⁹ Furthermore, it is one of the most comprehensive universal documents, setting out both the rights of minorities and the duties of states.

The UNDM emphasises that the promotion of minorities' rights is an integral part of the development of society as a whole and within a democratic framework based on the rule of law as well as the protection of minorities. Moreover, by extending the protection of minorities from non-discrimination provisions to more encompassing ones that encourage a wider engagement of the state in facilitating the development of minority identities and promoting a political role for minorities, the UNDM holds that minorities' protection may contribute to the strengthening of friendship and cooperation among peoples and states.

Even though the UNDM is not a binding instrument, the fact that it was adopted unanimously by the United Nations member states shows that there is at least a slight willingness of states to recognise and protect minorities and by doing so, to revert the constructed minority problem.

It is also worth mentioning that in 2005, the former Working Group on Minorities (since 2007, Forum on Minority Issues) elaborated a Commentary to the UNDM, considering suggestions and comments made by governments, governmental and non-governmental organizations and individual experts. This document reflects concerns and challenges on the protection of minorities¹²⁰ and spurs to promote and protect cultural diversity because, as the document remarks, distinctive characteristics of minorities can contribute to the life of the society as a whole.

In addition to the instruments and mechanisms aforementioned, there are also other international bodies and procedures with the mandate - not exclusively - of promoting and protecting minorities.

¹¹⁹ Jackson-Preece, Jennifer, *National Minority Rights vs. State Sovereignty in Europe: Changing Norms in International Relations?*, in *Nations and Nationalism*, Vol. 3, Issue 3, pp. 345-364, 2004

¹²⁰ Kugelmann, 2007, p. 233-263

The Human Rights Council (the former Commission on Human Rights) is an inter-governmental body within the United Nations system, responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations, including minorities' issues. It makes proposals, reports and recommendations on them.

In 2005, this body established the mandate of the Special Rapporteur in minority issues (formerly, the Independent Expert on minority issues), whose faculties complement and enhance the work of other bodies addressing minority rights and minority issues. By receiving communications, submitting annual reports and realizing country visits, the Special Rapporteur has fostered that states, expert bodies, United Nations agencies, regional and other inter-governmental organizations, NGOs and other civil society organizations cooperate closely on matters of minorities.

The Human Rights Council has also an instrument which functions as its think tank, the Human Rights Council Advisory Committee (previously, the former Sub-Commission on the Promotion and Protection of Human Rights). It is composed of independent experts whose mandate is focused on studies and research-based advice.

This Advisory Committee has undertaken many studies on minority rights, among which stand out the definition and classification of minorities, the problem of the juridical treatment of these groups and ways for managing conflicts and situations involving minorities.

These studies, as well as the work of the Special Rapporteur and the recommendations issued by the Human Rights Council, have contributed to disseminate information about minorities and to make the international community and populations aware of their current situation.

Finally, the Forum on Minority Issues (Formerly, the Working Group on Minorities - a subsidiary organ of the Sub-Commission on the Promotion and Protection of Human Rights and by that time the only minority specific United Nation organ) is a specialised body established by the former Commission on Human Rights, which provides a platform for promoting dialogue and cooperation on issues pertaining to minorities.

Besides by identifying and analysing practices, challenges, opportunities and initiatives for the further implementation of the UNDM, this body has contributed to decoding the minority problem by being a forum of dialogue, by facilitating greater understanding of the distinct perspectives on minority issues and by encouraging mutual respect and consideration among these groups as well as between minorities and governments. Moreover, it has carried out important studies about the recognition of the existence of minority groups, their participation in public life, as well as integrative measures and inclusive development.

2.2.2 European Instruments and Mechanisms

The European framework on minorities is composed of different instruments and mechanisms, which are mainly addressing national minorities. Since the fall of Communism and the disintegration of the Union of the Soviet Socialist Republics, a new geopolitical order has been created in Central Europe and an increasing number of minority groups has emerged.¹²¹

Like in the universal system, the protection of minorities in Europe is part of the protection of human rights. Thus, persons belonging to minorities are holders of the rights settled in the most prominent document protecting human rights in that continent, the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, the European Convention on Human Rights – ECHR).¹²² This instrument doesn't include any specific provision on minorities. In spite of this considerable gap, some minority concerns have been addressed by the European Court of Human Rights through the non-discrimination clause and some rights as freedom of expression, right to private and family life, education of children, freedom of religion, linguistic rights, right to peaceful assembly and association and the effective participation of minorities in public life.¹²³

¹²¹ Ananicz, Szymon and Sadowski, Rafal, *Central Europe facing 'Eastern Europe': symphony or cacophony?*, in *Regional and International Relations in Central Europe*, Šabič, Zlatko and Dulák, Petr (eds.), pp. 286-309, London, 2012

¹²² Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 1953

¹²³ UN, Office of the High Commissioner for Human Rights, *United Nations Guide for Minorities, Pamphlet No. 7, Minority Rights under the European Convention on Human Rights*, 2001

It is undeniable that the lack of specific provisions on minorities, as well as the possibility to make reservations and derogations to the European Convention on Human Rights and the reluctance to initiate inter-state complaints before the Court, can weaken and affect the overall legal provisions of these mechanisms.¹²⁴ Nevertheless, it must be said that the legally binding character of this mechanism make it significant, due to the fact that states are obliged to be more concerned and to implement effective measures to protect the rights of all persons, including those who belong to minorities.

In the European system there is a document which covers a specific topic concerning minorities, namely their languages, the European Charter for Regional or Minority Languages (ECRML),¹²⁵ adopted by the Council of Europe in 1992, which is the only legally binding instrument in the world for the protection and promotion of traditional regional and national minority languages.¹²⁶

This instrument is intended to protect and promote regional or minority languages as an endangered component of the European cultural heritage. It attempts to safeguard the value of interculturalism and multilingualism as an important contribution to the building of a Europe based on the principles of democracy and cultural diversity.¹²⁷

Aimed at protecting the regional and minority languages spoken in the different countries of Europe, the ECRML includes provisions fostering the use of minority languages. It also stresses that the promotion and protection of the historical regional or minority languages is an essential requirement to protect their identity. Moreover, it is a significant contribution to guarantee cultural diversity as well as to maintain and develop Europe's cultural wealth and traditions.¹²⁸

¹²⁴ Giorgi, 2004

¹²⁵ Council of Europe, *European Charter for Regional or Minority Languages*, Strasbourg, November 1992

¹²⁶ Council of Europe, OSCE Human Dimension Implementation Conference, *Council of Europe Activities in the Field of Protection of National Minorities*, Warsaw, 2013

¹²⁷ European Commission for Democracy through Law (Venice Commission), *Opinion on the Provisions of the European Charter For Regional or Minority Languages which should be accepted by all the contracting States*, Strasbourg, March 1996

¹²⁸ ECRML, Preamble

In addition, by recognizing that all languages are an expression of identity, this document has echoed the idea of the tie between the protection of minorities' languages and the nourishment of linguistic and cultural diversity at large. This relationship is "so close" that the protection of linguistic diversity has become an essential part of the agenda of the protection of fundamental rights in Europe.¹²⁹

The implementation of the ECRML in each State is monitored by a committee of experts, which examines how the state is complying with its obligations selected under this instrument and makes recommendations for improvements in legislation, policy and practice.

Other instrument at the regional level developed and adopted within the Council of Europe is the European Framework Convention for the Protection of National Minorities (FCPNM),¹³⁰ which is considered the most comprehensive treaty designed to protect the rights of persons belonging to national minorities.¹³¹

In its Preamble, the FCPNM highlights the commitment to protect the existence of national minorities and encourages states to be a pluralist and genuinely democratic society wherein the identity of each person belonging to a national minority is effectively respected. Besides, it recognises that a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society.¹³²

Attempting to provide a specific legal protection of minorities as well as to promote an intercultural dialogue, the FCPNM contains a set of rules on state action regarding these groups, emphasizing that the specific conditions of the persons belonging to national minorities has to be taken into account.¹³³

¹²⁹ De Witte, Bruno, *Common Market Freedoms versus Linguistic Requirements in the EU States*, in *Mundialització, lliure circulació i immigració, i l'exigència d'una llengua com a requisite*, pp. 109-131, Barcelona, 2008

¹³⁰ *Framework Convention for the Protection of National Minorities*, Strasbourg, February 1995

¹³¹ Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, *Eighth Activity Report*, Strasbourg, May 2012

¹³² *Framework Convention for the Protection of National Minorities*

¹³³ FCPNM, art. 4.2

Additionally, the FCPNM encourages states to take measures to foster knowledge of the culture, history, language and religion of their national minorities and of the majority, as well as to create favourable conditions for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.¹³⁴

The Committee of Ministers, assisted by an Advisory Committee, exercises the monitoring of the compliance with the FCPNM. This body is composed of independent experts, whose main task is to revise state reports and make opinions and recommendation regarding minorities' issue.

Although the FCPNM is a legally binding international document, its monitoring mechanism to a large extent is confined in the domain of soft-law. Nevertheless, many commitments have been adopted by states under it, which is an important step to dismantle the so-called minority problem.

Within the Council of Europe, there is another European instrument that has devoted particular attention to this topic, even though it is not specifically aimed to minority issues, the European Commission for Democracy through Law (Venice Commission). Its role is to provide legal advice to the member states of the Council of Europe, and help them to bring their legal and institutional structures in line with European standards.

Regarding minorities, the Venice Commission - through its Sub-Commission on the Protection of Minorities - has provided expertise on draft legislation on national minorities and prepared several opinions, thematic studies and scientific events with the view of shedding light on the evolving international practice in this field.¹³⁵ One of the most relevant is the Report on Non-Citizens and Minority Rights, wherein the Venice Commission stated that there are alternative criteria to citizenship for identifying or defining a minority.¹³⁶

¹³⁴ FCPNM, arts. 12.1 and 15

¹³⁵ *Council of Europe Activities in the Field of Protection of National Minorities*, Warsaw, 2013

¹³⁶ *Report on Non-Citizens and Minority Rights*, 2006, pp. 26-28

In addition, some recent recommendations and resolutions of the Council of Europe's Parliamentary Assembly have called for the promotion of unity through diversity within and between countries and asserted that minorities' protection brings stability, economic development and prosperity not just to those groups but to all.¹³⁷

Within the context of this regional scope, the Organisation for Security and Cooperation in Europe (OSCE) is the one that has had a good approach on minority issues, by identifying and seeking resolutions to ethnic tensions. In 1992, the OSCE mandated the creation of the High Commissioner on National Minorities (HCNM),¹³⁸ an institution to provide early warnings and implement early actions in regard to tensions involving national minority issues.

Even being a non-binding mechanism, the HCNM has a significant role in the dismantling of the minority problem, since its faculties to visit countries and to communicate with any actor who can provide information about national minorities' situation allows it to have a wide range of opportunities to know the real situation of minorities.¹³⁹

The HCNM has concentrated its work on different issues relevant for minorities as well as on the prevention and resolution of conflicts involving minorities, particularly in the OSCE peripheral countries, while in the context of developing minority protection standards, particularly its recommendations and guidelines should be mentioned.

Although they are non-binding but soft-law built on the moral commitment of states to protect minorities, the recommendations and guidelines could be considered important for the development of the international protection of minorities and its standards.

¹³⁷ Council of Europe, Parliamentary Assembly, *The situation and rights of national minorities in Europe*, Resolution 1985, Strasbourg, 2014; *The situation and rights of national minorities in Europe*, Recommendation 2040, Strasbourg, 2014; *An additional protocol to the European Convention on Human Rights on national minorities*, Resolution 1866, Strasbourg, 2012; and *An additional protocol to the European Convention on Human Rights on national minorities*, Recommendation 1994, Strasbourg, 2012

¹³⁸ Conference for Security and Co-operation in Europe, *Helsinki Document, The Challenges of Change*, Helsinki, 1992

¹³⁹ Altenhønen, Charlotte and Palermo, Francesco, *Civil Society Contributions to the Work of the OSCE High Commissioner on National Minorities*, in *International Journal on Minority and Group Rights*, Vol.18, pp. 201–218, The Hague, 2011

The HCMN recommendations and guidelines are: The Hague Recommendations regarding the Education Rights of National Minorities (hereinafter, The Hague Recommendations)¹⁴⁰, The Oslo Recommendations regarding the Linguistic Rights of National Minorities (hereinafter, The Oslo Recommendations)¹⁴¹, The Lund Recommendations on the Effective Participation of National Minorities in Public Life (hereinafter, The Lund Recommendations)¹⁴² adopted in 1996, 1998 and 1999 respectively; the Guidelines on the use of Minority Languages in the Broadcast Media (2003),¹⁴³ the Recommendations on Policing in Multi-Ethnic Societies (2006),¹⁴⁴ the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (hereinafter, the Bolzano/Bozen Recommendations)¹⁴⁵ and the Ljubljana Guidelines on Integration of Diversity Societies (hereinafter, The Ljubljana Guidelines)¹⁴⁶, adopted in 2008 and 2012, respectively.

Last but not least, it must be said that many different local, national and regional regimes adopted also play a crucial role in managing diversity and are inherent to minority protection.¹⁴⁷ Although subnational and national regimes are not formally part of and thus cannot be considered part of the regional system, they are as essential in the European context. National and local frameworks and actors can contribute to accommodating diversity claims, given that for achieving an all-embracing comprehension of minorities, it is necessary to reach all the social and ethnic strata.

There are also a number of bilateral instruments (e.g. treaties and agreements on good neighbourliness and friendly cooperation between neighbouring countries in Central and

¹⁴⁰ OSCE, High Commissioner on National Minorities, *The Hague Recommendations regarding the Education Rights of National Minorities*, The Hague, October 1996

¹⁴¹ OSCE, High Commissioner on National Minorities, *The Oslo Recommendations regarding the Linguistic Rights of National Minorities and Explanatory Note*, Oslo, February 1998

¹⁴² OSCE, High Commissioner on National Minorities, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life and Explanatory Note*, Lund, September 1999

¹⁴³ OSCE, High Commissioner on National Minorities, *Guidelines on the use of Minority Languages in the Broadcast Media*, The Hague, October 2003

¹⁴⁴ OSCE, High Commissioner on National Minorities, *Recommendations on Policing in Multi-Ethnic Societies*, The Hague, February 2006

¹⁴⁵ OSCE, High Commissioner on National Minorities, *The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations*, The Hague, June 2008

¹⁴⁶ OSCE, High Commissioner on National Minorities, *The Ljubljana Guidelines on Integration of Diversity Societies*, Ljubljana, 2012

¹⁴⁷ Palermo, 2011, pp. 35-44, Strasbourg, 2011

Eastern Europe)¹⁴⁸ and a few (sub)regional instruments, such as the Central European Initiative Instrument for the Protection of Minority Rights¹⁴⁹ that can be considered relevant for the protection of minorities in Europe.

Notwithstanding the foregoing regarding the legal and political framework on minorities, the most important and crucial matter is the effective implementation and operationalization of the standards they contain. Provisions, commitments and good intentions can be tremendously promising. However, a decisive and conclusive application and implementation of these standards and regimes in the universal, regional and local arena will grant them the power and efficiency they aspire to. Moreover, as was noted in the section on Diversity Management, any measure implemented must adapt to the dynamism of circumstances, actors and other factors, in order to be able to meet the demands of each moment, state and persons belonging to any minority group.

The concretization in rules, policies and procedural frameworks,¹⁵⁰ leading to a better understanding of minorities seems to be the most auspicious measure to decode the so-called minority problem at the universal level.

¹⁴⁸ E.g. Germany has signed treaties on friendly co-operation and partnership with Bulgaria (1991), Hungary (1992) and Romania (1992); Hungary with Slovenia (1992), Slovakia (1995) and Romania (1996)

¹⁴⁹ The Central European Initiative (CEI) Instrument for the Protection of Minority Rights is a document signed in 1994 by the Member States of the Central European Initiative, that contains provisions for the protection of persons belonging to national minorities

¹⁵⁰ Palermo, 2011, pp. 35-44

CHAPTER III LINGUISTIC MINORITIES: THE INTRINSIC VALUE OF THE LANGUAGE AND ITS PROTECTION IN SOME AREAS OF SPECIAL CONCERN

3.1 The importance of language for linguistic minorities

The ability to communicate is a key function for all people, and language is the privileged medium to do it. Language is one of the crucial skills of each individual,¹⁵¹ through it, human beings communicate, share meaning and experience their sense of individual and community/collective identity.¹⁵²

Language is one of the most fundamental components of the human identity¹⁵³ and is vitally important for people; it is at the centre of human activity and self-expression.¹⁵⁴ It is their ownership, what we see in and hear from people, and what we know of them. It guarantees that each individual expresses, diffuses and transmits his or her culture,¹⁵⁵ all his or her thoughts, including most intimate and finest ideas. It further allows, particularly when it is also written, persons to record experiences,¹⁵⁶ and to manifest how they identify themselves.

Language has not been an infrequent maker of identity in the past and neither now. It is integral in affirming and maintaining wellbeing, self-esteem and a strong sense of identity.¹⁵⁷ It is also the basis for learning about one's environment and for creating perceptions of the world. It allows human beings to determine their relationships to other people and their position in the society, as well as to transmit ideas, which is necessary for the structuring of society.¹⁵⁸

¹⁵¹ Novak-Lukanovič, Sonja, *Position of language: Case of the Slovene language*, in *Treatises and Documents*, No. 52, Institute for Ethnic Studies, pp. 186-197, Ljubljana, 2007

¹⁵² UNESCO, *Why language matters for the Millennium Development Goals?*, Bangkok, 2012

¹⁵³ *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, Introduction

¹⁵⁴ *Why language matters for the Millennium Development Goals?*, 2012

¹⁵⁵ Inter-American Court of Human Rights, *Case of López Álvarez v. Honduras, Merits, Reparations and Costs*, n. 171, San José, Costa Rica, February 2006

¹⁵⁶ Riagáin, Dónall, *Linguistic rights for Speakers of Lesser Used Languages*, in *International Journal on Minority and Group Rights*, Vol. 6, No. 3, pp. 289-298, The Hague, 1999

¹⁵⁷ Parliament of the Commonwealth of Australia, Committee on Aboriginal and Torres Strait Islander Affairs, *Our Land, Our Languages*, Canberra, September 2012

¹⁵⁸ Kontra, Miklós, *Some reflections on the Nature of Language and its Regulation*, in *International Journal on Minority and Group Rights*, Vol. 6, No. 3, pp. 281-288, The Hague, 1999

The respect for the person's language and consequently for the person's identity, is intimately connected with the respect for the person's dignity.¹⁵⁹ Suppressing or restricting the use of a people's language attacks their dignity and infringes upon their human rights.¹⁶⁰

On the other hand, language has often been intrinsic or at least closely related to each culture. It shows who and what a person is, how the person behaves, what knowledge the person has learnt, how the person perceives and communicates with the surrounding world. This explains why the use of a particular language not only serves as a means of functional communication, but also expresses a person's cultural identity as well as the cultural heritage developed by all previous speakers of the language.¹⁶¹

It is a matter of fact that generally there is a link between language and culture, which shapes a sense of identity. It is the basic feature for identification, integration, differentiation and distinction between individuals and groups, and because of that is not only part of an individual's identity but also of a community's.

Besides helping to shape a persons' identity, the ability to communicate effectively in an individual's mother tongue also connects a person to his or her group. Individuals do speak a specific language because historically their families have also spoken it. Cultural knowledge, kinship and stories are reliant on language in order for these important cultural elements to be passed on from generation to generation. The cultural heritage and knowledge have been passed on throughout each generation by language, the element that has kept them connected to their culture and strengthened their feelings of pride and self-worth.¹⁶²

The foregoing illustrates that language is a personal matter closely connected with identity but at the same time it is also an essential tool of social organisation, which in many situations becomes a matter of public interest.¹⁶³ Thus, rather than being important just for individuals,

¹⁵⁹ *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, Introduction

¹⁶⁰ Riagáin, 1999, pp. 289-298

¹⁶¹ Mancini Susana and De Witte, Bruno, *Language rights and Cultural Rights: A European Perspective*, in Cultural Human Rights, Francioni, Francesco and Scheinin, Martin (eds.), pp. 247-284, The Netherlands, 2008

¹⁶² *Our Land, Our Languages*, 2012

¹⁶³ *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, Introduction

language is fundamental for the community as a whole¹⁶⁴ since it informs an individual of the collective values of a group, orients his or her vital trajectory, her or his personal and social options.¹⁶⁵

Language is thus not just important culturally or symbolically, language is also power¹⁶⁶ and a key to inclusion or, conversely, a reason for exclusion. Linguistic communication has a very influential role in fostering the process of inclusion and an informed dialogue between communities. Providing essential information in languages familiar to all and in ways that engage with their cultural context is a clear signal of true inclusion.¹⁶⁷ The opposite, the dissemination of information in a language that is not known by everyone, gives rise to marginalisation, frustration, anger, exclusion, and discrimination towards the ones who do not understand it.¹⁶⁸ Consequently, the denial of language rights, including the use of the mother tongue, has been deemed as a repudiation of personal dignity.¹⁶⁹

The aforementioned is more evident in the case of persons belonging to a minority because language forms one of the essential elements of their identity.¹⁷⁰ Language permeates many aspects of the minority identity, given that it is the most visible element that corresponds to the group people belong to, with its own presence in the national society.

For linguistic minorities, language means a lot owing to having a crucial role for their collective self-understanding.¹⁷¹ The knowledge and the possibility of employing the mother tongue constitutes the essence of its identity. With its loss, these minorities may lose their identity and eventually disappear. Accordingly, the use of any minority language in all

¹⁶⁴ Coupland N., Giles H., *Language: Context and Consequences*, Bristol, 1991

¹⁶⁵ Inter-American Court of Human Rights, *Case of López Álvarez v. Honduras, Merits, Reparations and Costs, Concurring Opinion of Judge Sergio García Ramírez*, n. 48, San José, Costa Rica, February 2006

¹⁶⁶ De Varennes, Fernand, *Language, Ethnic Conflicts and International Law*, in *Journal of Ethnic Studies*, No. 65, Institute for Ethnic Studies, pp. 8-35, Ljubljana, 2011

¹⁶⁷ *Why language matters for the Millennium Development Goals?*, 2012

¹⁶⁸ De Varennes, 2011, pp. 8-35

¹⁶⁹ *Case of López Álvarez v. Honduras, Merits, Reparations and Costs*, 2006, n. 169

¹⁷⁰ FCPNM, art. 5.1

¹⁷¹ Moria, Paz, *The Failed Promise of Language Rights: A Critique of the International Language Rights Regime*, *Harvard International Law Journal*, Vol. 54, No. 1, pp. 157-215, 2013

private activities must be guaranteed, as well as its transmission and acquisition both at home and in schools.¹⁷²

Before going to the specific rights linguistic minorities have, it must be said that regarding language and what has been stated so far, dynamisms is also an element to be taken into account. Languages are not frozen, especially in contemporary societies, characterised by large scale movements of people, volume of communication and increasingly fast communication(s). They are exposed to several influences, to permeate and be permeated.¹⁷³ Therefore, rather than encouraging laws and policies recognizing just pluri-linguistic societies or promoting the maintenance and use of minorities' mother tongue, it seems more convenient to implement more progressive measures recognising and legislating in favour of multilingualism and diversity.¹⁷⁴

The protection of linguistic rights, which stands in close relationship to the protection of diversity,¹⁷⁵ shows that an effective support for multilingualism will stimulate both the preservation of minorities' mother tongue and the promotion of cultural diversity. And this reveals how language also has power to contribute to the dismantling of the minority problem by encouraging diversity.

3.2 Rights of Linguistic Minorities and their implementation

In the global contemporary society, the central significance and role of language is probably even stronger than in the past, as the knowledge of a language can benefit some and disadvantage or exclude others to a greater extent. The reason is not that some languages are naturally superior to others, but the fact that authorities and societies have a great influence through their language policies and attitudes that may condition the treatment of individuals or groups.¹⁷⁶

¹⁷² De Bot, Kee, and Gorter, Durk, *A European Perspective on Heritage Languages*, *The Modern Language Journal*, Vol. 89, Issue 4, pp. 612-616, 2005

¹⁷³ Kontra, 1999, pp. 281-288

¹⁷⁴ Palermo, 2007, pp. 63-82

¹⁷⁵ Mancini, 2008, pp. 247-284

¹⁷⁶ De Varennes, 2011, pp. 8-35

To avoid such discriminations, new generations are offered linguistic tools enabling them to move from one world to another, thus developing critical and reflexive competences.¹⁷⁷ However, it seems that this is not enough for achieving a truly diversity-oriented approach to linguistic pluralism and diversity. There are still the challenges that confront both linguistic minorities and states seeking to manage linguistically diverse societies. And these pending tasks are even more important currently, precisely because globalization is having a direct and detrimental impact on minority languages and linguistic diversity, as global communications and marketplaces require global understanding.¹⁷⁸

Linguistic minorities, by virtue of being minorities, aspire for equal treatment with the majority in general, but at the same time, strive for measures of differential treatment in order to preserve and develop the language that distinguishes them from the majority population and configures their own identity.

The previous chapter enlisted the documents that grant protection to minorities in general, this section is intended to briefly refer to the international and regional instruments, mechanisms and policies particularly addressed to protection of minority languages, linguistic minorities and their specific rights.

Article 27 of the ICCPR is a key provision which has direct bearing on the linguistic rights by providing applicants a direct right to the use of minorities' languages.¹⁷⁹ It affirms that persons belonging to minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Similarly, Article 30 of the CRC proclaims that children belonging to minorities have the right to use their own language. It sets forth that a child belonging to a minority shall not be

¹⁷⁷ UNESCO, *Universal Declaration on Cultural Diversity, A vision, a conceptual platform, a pool of ideas for implementation, a new paradigm*, Johannesburg, 2002

¹⁷⁸ *Report of the Independent Expert on Minority Issues*, n. 19

¹⁷⁹ ICCPR, art. 27

denied the right, in community with other members of his or her group, to enjoy to use his or her own language.¹⁸⁰

Both the Human Rights Committee and the Committee on the Rights of the Child have received and analysed complains under Article 27 of the ICCPR and Article 30 of the CRC, respectively, and set some criteria regarding linguistic rights. These bodies have also been creative in their usage of certain other articles wherever the foregoing provisions have not been enough to guarantee an effective protection to minority groups, for example, those relating to non-discrimination, freedom of expressions and association, equality and education.

The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities further elaborates the rights of minorities, including in relation to the language, which is specifically contained in Article 2.1, which affirms that persons belonging to national minorities have the right to use their own language, in private and in public, freely and without interference or any form of discrimination.¹⁸¹

Moreover, although legally not directly binding, the UNDM is the only universal document going beyond standards of non-discrimination, equality and participation contained in other international instruments. Its provisions give a better and proactive approach than the ICCPR and CRC as demonstrated by its strongly positive formulation and imposition of specific duties upon states.

Linguistic rights are also given special consideration in the Commentary elaborated by the Working Group interpreting the content of the UNDM, which asserts that denying minorities the possibility of learning their own language and of receiving instruction in their own language, or excluding from their education the transmission of knowledge about their own culture, history, tradition and language, would transgress the obligation to protect their identity.¹⁸²

¹⁸⁰ CRC, art. 30

¹⁸¹ UNDM, art. 2.1

¹⁸² *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, n. 28

Within the European scope, linguistic diversity has been broadly recognised in many instruments. However, despite strong regional standards, implementation continues to be poor in many countries and large-scale improvements in specific areas of linguistic minority concerns are still missing.¹⁸³

The European Convention on Human Rights does not encompass any particular provision concerning linguistic minorities rights, thus the European Court of Human Rights cannot raise direct language rights claims. Like other international bodies, this Court has had an approach in relation to these cases under the auspices of other rights as was stated in the last chapter.

The protection of the rights of linguistic minorities is better developed in the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities.

The ECRML, the only legally binding document concerning minority languages, contains the aims and principles for all minority languages spoken in a given territory, to wit, the recognition of the language as an expression of cultural wealth, the respect for the geographical area in which each language is spoken, the facilitation and/or encouragement of the use of such languages, in speech and writing, in public and private life, and the teaching and study of these languages at all the appropriate stages.¹⁸⁴

The FCPNM also contains extensive provisions for the protection of the rights of linguistic minorities and minority languages. This instrument address the responsibilities of the state in, inter alia, the fields of minority language use in public and private spheres, provision of information and engagement with administrative authorities in minority languages, the media, minority languages in education and the right of minorities to establish private educational institutions, the use of names, signs and public information in minority languages, and the use of minority languages in the legal and judicial realm.

¹⁸³ *Report of the Independent Expert on Minority Issues*, n. 33

¹⁸⁴ *Council of Europe Activities in the Field of Protection of National Minorities*, Warsaw, 2013

Despite these legal provisions requiring states to concrete positive measures for the protection and promotion of regional or minority languages, it does not necessarily result in implementation of rights in practice.¹⁸⁵ The extent of the protection varies according to the situation of each state since linguistic rights have to be balanced with other rights and needs.

Sometimes states have to deal with the lack of resources and other factors; but considering that many times the real obstacle has been their lack of willingness, the aforementioned provisions as well as other bodies' recommendations have stated that linguistic minority rights must be protected with the maximum of the state available resources, by themselves or through international assistance and cooperation.¹⁸⁶

It is a matter of fact that steps depend on several variable circumstances which must be taken into account, including, for instance, the number of language users and their distribution within the country, if linguistic minorities settled are located together in the same or in some regions or dispersed throughout the country, as well as the period they have been established in a region. Greater attention and resources have to be dedicated to commonly spoken, traditionally present or geographically concentrated minority languages¹⁸⁷ in order to achieve that these groups enjoy the conditions required for their development.

In any case, for attaining an effective promotion of the protection of linguistic minorities, the participation and cooperation of many international and local actors is crucial, not just when states resources are scarce but primarily when there is no interest in this fundamental concern, since the rights of persons belonging to minorities to use their language must be balanced in a context of full participation in the wider national and international society. Economic and financial support among states, including trade and investment agreements may help to ensure that these minorities can benefit as much as members of majorities from international cooperation provided by development agencies, and financial institutions.¹⁸⁸

¹⁸⁵ *Report of the Independent Expert on Minority Issues*, n. 41

¹⁸⁶ *The Hague Recommendations regarding the Education Rights of National Minorities*, n. 3

¹⁸⁷ *Report of the Independent Expert on Minority Issues*, n. 74

¹⁸⁸ *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, n. 74

On the other hand, inter-states and inter-community exchange of information and experiences may also help to find constructive solutions to situations involving linguistic minorities and to provide better opportunities, examples of good practices and practical assistance to implementing their rights.¹⁸⁹

In regard to this liability of states, the foregoing provisions have also stipulated that the protection and encouragement of regional or minority languages should not be to the detriment of official languages and the obligation to learn them.¹⁹⁰ As both minorities and majorities have the right and responsibility to participate in the public life and affairs of wider society, it is convenient that persons belonging to minorities acquire adequate knowledge of the State or official language,¹⁹¹ given that it constitutes a common basis for the communication and functioning of a society.¹⁹² Moreover, it may be also beneficial that majorities have the same opportunity to learn minority languages, in order to promote tolerance and inclusion.

The use of one common language should not be aimed at privileging one idiom over others or to the detriment of minority languages, but to provide a medium of communication and exchange¹⁹³ that enables linguistic minorities to integrate fully in and contribute to all aspects of society.¹⁹⁴

As mentioned above, these aspects range from education, media and justice to economic and social life. As an effective inclusion, cooperation and participation in all these aspects of public and private life has a special dimension in the context of linguistic minorities, what has been stated by specialised bodies and the instruments for some key issues concerning linguistic minorities will be succinctly described.

¹⁸⁹ *Report of the Independent Expert on Minority Issues*, n. 28

¹⁹⁰ ECRML, Preamble; FCPNM, art. 14.3; *The Hague Recommendations regarding the Education Rights of National Minorities*, n.1

¹⁹¹ *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, n. 61; *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 42

¹⁹² *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 42

¹⁹³ De Varennes, 2011, pp. 8-35

¹⁹⁴ *Report of the Independent Expert on Minority Issues*, n. 23

3.2.1 Public and Private Education

The educational rights of minorities are one of the most recurrent subjects that have been analysed, since minority education - particularly minority language education - is an extremely important element for the preservation, development and the deepening of the identity of persons belonging to minorities.¹⁹⁵

Education is fundamental in equipping all members of a society with the necessary skills to enable their full and effective participation in all spheres of life and, because of that, an important tool for furthering integration and social cohesion.¹⁹⁶ Accordingly, despite being a very sensitive issue, the protection of the right to education has the potential to effectively facilitate and strengthen mutual respect and understanding of minorities as well as among the various communities within states.¹⁹⁷

The right to learn in one's mother tongue is the minimum standard that has been established, followed by the further right to receive instruction in one's mother tongue,¹⁹⁸ ideally at all levels, but especially at pre-school and kindergarten level and primary and secondary level,¹⁹⁹ which includes the access to appropriate curricula and teaching materials in minority languages.

At the same time, the necessity to provide bilingual education by teaching the official State language at primary and secondary levels, in order to achieve that persons belonging to linguistic minorities become proficient in their mother tongue and the dominant language from an early age has been recognised.²⁰⁰ It will improve standards of communication,

¹⁹⁵ *The Hague Recommendations regarding the Education Rights of National Minorities*, Introduction

¹⁹⁶ *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 44

¹⁹⁷ *The Hague Recommendations regarding the Education Rights of National Minorities*, Final Remarks

¹⁹⁸ ICCPR, art. 27; CRC, art. 30; ECRML, art. 8; UNESCO Convention against Discrimination in Education, art. 5; UNDM, art. 4; FCPNM, art. 14.3; *The Ljubljana Guidelines on Integration of Diversity Societies* n. 45; *Report of the Independent Expert on Minority Issues*, n. 48-53; *Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, n. 59; *Draft of the Handbook Language Rights of Linguistic Minorities*, n. 2.1

¹⁹⁹ *The Hague Recommendations regarding the Education Rights of National Minorities*, n. 11-14

²⁰⁰ *Report of the Independent Expert on Minority Issues*, n. 51

capitalise capacity for language learning and reconcile the need to preserve and complement cultural identities with those of communication and participation.²⁰¹

The participation at regional and local level(s) of minority groups' representatives in the formulation, development and implementation of policies, curricula and programmes related to minorities has also been considered a minimal standard that must be adopted.²⁰² The same applies to the right to establish and manage their own private educational institutions²⁰³ and the requirement to provide adequate facilities and access to the appropriate training of teachers.²⁰⁴

3.2.2 The Media

The effective protection of the access to media provides an opportunity to ensure the inclusion of minority groups while encouraging pluralism, acceptance, tolerance, intercultural dialogue, cultural diversity, and mutual respect, understanding and co-operation.²⁰⁵ Moreover, it is essential so that minorities can preserve and transmit their culture and identity²⁰⁶ as well as counter negative stereotypes and prejudices.²⁰⁷

This right to media, more specifically to media in the languages of minorities consist fundamentally in the possibility for minorities to receive and impart information and ideas in their own languages, as well as in the official language of the State, both in public and private broadcast, printed and electronic media.²⁰⁸

Minorities should have the opportunity to be provided with sufficient and proportionate space in the media as well as with the access to broadcast time in their own language on publicly

²⁰¹ UNESCO, *Universal Declaration on Cultural Diversity, A vision, a conceptual platform, a pool of ideas for implementation, a new paradigm*, Johannesburg, 2002

²⁰² UNDM, art. 3; FCPNM, art. 15; *The Hague Recommendations regarding the Education Rights of National Minorities*, n. 5-7, 20

²⁰³ FCPNM, art. 13

²⁰⁴ *The Hague Recommendations regarding the Education Rights of National Minorities*, n. 14

²⁰⁵ *Draft of the Handbook Language Rights of Linguistic Minorities*, n. 2.5

²⁰⁶ *Report of the Independent Expert on Minority Issues*, n. 54; *Draft of the Handbook Language Rights of Linguistic Minorities*, n. 2.6

²⁰⁷ *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 48

²⁰⁸ ECRML art. 11, FCPNM, art. 9

funded media.²⁰⁹ Moreover, to the extent that public service broadcasting play an important role, they must encourage a visible and auditable presence of minorities,²¹⁰ addressed to members of their community as well as those of the majority,²¹¹ by facilitating the creation and broadcasting of media in the minority languages²¹² as well as the spreading of relevant information on minorities in the official language so that it is accessible to the majority population. The access and use of their language in broadcast also includes the private media, therefore, minorities must also be allowed to establish, use and maintain their own minority language media,²¹³ without being bounded by discriminatory licensing regimes or disproportionate requirements for translation, dubbing, post-synchronisation or subtitling.²¹⁴ Limitations are allowed just when minority linguistic expression contravene local or international legal grounds.

The lack of resources should not be insuperable limitation given that wherever the law provides for financial assistance in general for the media²¹⁵ minority language media also have to benefit from economic incentives, including the distribution of State grants and support for content production,²¹⁶ which must be devoted to cover some costs of those minority language media.²¹⁷ The same applies to technical assistance²¹⁸ and the training of journalists and other staff using regional or minority languages.²¹⁹

The right to media also includes the guarantee for minorities to receive media, programming and web-based information originating from abroad in the minority language, particularly

²⁰⁹ *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n. 9

²¹⁰ *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 48

²¹¹ *Draft of the Handbook Language Rights of Linguistic Minorities*, n. 2.6

²¹² ECRML art. 11.1; *Guidelines on the use of Minority Languages in the Broadcast Media*, n. 15

²¹³ *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n. 8; *Guidelines on the use of Minority Languages in the Broadcast Media*, n. 8

²¹⁴ *Guidelines on the use of Minority Languages in the Broadcast Media*, n. 9

²¹⁵ ECRML, art. 11.1, *Guidelines on the use of Minority Languages in the Broadcast Media*, n. 16

²¹⁶ *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 49

²¹⁷ *Report of the Independent Expert on Minority Issues*, n. 56

²¹⁸ *Guidelines on the use of Minority Languages in the Broadcast Media*, n. 7

²¹⁹ ECRML, art 11.1, *Guidelines on the use of Minority Languages in the Broadcast Media*, n. 17

from their kin states²²⁰ or neighbouring countries where the language is the same,²²¹ without this constituting a substitution of locally produced programmes in minority languages.²²²

Multilingual and subtitled programmes in both majority and minority languages are also another inclusive policy toward minorities that foster linguistic diversity and improve cross-community communication and outreach.²²³

Lastly, it is necessary to say that the lack of observance of one of these measures, besides constituting a breach of this right, may also result in the violation of the rights of freedom of expression, equality and non-discrimination. Thus, the broader meaningful presence of pluralistic media reflects the needs of different communities. The greatest the fulfilment of international standards in using minority languages in locally produced media, the largest will be the impact in the promotion of cultural diversity and in the clarification and surpassing of biased perceptions concerning minorities.

3.2.3 Names, place and geographic names (toponyms) and public symbols in the public domain

Compared to other provisions in relation to linguistic minorities, the ones related with the names are among the least controversial.²²⁴ For a person, being called by the own name in the own language is one of the most important makers of identity because the name is intimately connected to dignity as well as to traditions, culture, history and belonging.²²⁵

Minorities have the right to have and use their own names, first names and family names in the minority language according to their correct forms and transcription of place-names (toponyms) as well as to their own traditions and linguistic systems.²²⁶ The return to their

²²⁰ *Report of the Independent Expert on Minority Issues*, n. 56

²²¹ ECRML, art. 11.2

²²² *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 49; *Guidelines on the use of Minority Languages in the Broadcast Media*, n. 13

²²³ *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 48

²²⁴ Thornberry, 2004, pp. 137-168

²²⁵ *Draft of the Handbook Language Rights of Linguistic Minorities*, n.2.4

²²⁶ ECRML, 10.2 and 10.5; FCPNM, art. 11.1; *The Oslo Recommendations regarding the Linguistic Rights of National Minorities and Explanatory Note*, n.1

original names and surnames, when they were forced to give them up, is also included into this right.²²⁷

Official recognition of minority personal names in birth registration or other official documents²²⁸ and their utilization in public documents and activities is also required to guarantee this right.²²⁹ Wherever possible, it is also convenient and recommended that these documents are available in the languages spoken and written by minority populations.²³⁰ In cases where names and surnames are written in a language which uses a different script from the official language, they must be transliterated, meaning approximating the corresponding sounds of the characters of one script to the other used by authorities; and where they are written in a distinct language but with the same script of the official language, they must be reproduced literally without any modification or translation.²³¹

As names used by minority communities have also a deep significance for the relation with minorities' identity, the aforementioned is applicable also to private entities such as cultural associations and business enterprises established by them.²³²

Similarly, it has been stated that in areas where minorities have historical significance or are inhabited by significant numbers of persons belonging to a minority and when there is sufficient demand, the displaying in minority language of local names, buildings, street and place names, inscriptions and other topographical indications or information must be secured given that they are important markers of social identity, culture and history.²³³ As this doesn't exclude the use of the official language, in such situations the most recommendable is the utilization of bilingual signs as it ensures also the rights of other members of the community

²²⁷ Council of Europe, *Explanatory Report to the Framework Convention for the Protection of National Minorities*, Strasbourg, February 1995, n. 68

²²⁸FCPNM, art. 11.1, *Draft of the Handbook Language Rights of Linguistic Minorities*, n. 2.4; *Report of the Independent Expert on Minority Issues*, n. 61

²²⁹ *Draft of the Handbook Language Rights of Linguistic Minorities*, n. 2.4

²³⁰ *Report of the Independent Expert on Minority Issues*, n. 61

²³¹ *Draft of the Handbook Language Rights of Linguistic Minorities*, 2.4

²³² *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n. 2

²³³ FCPNM, art. 11.2 and 11.2, *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n.3; *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 50; *Report of the Independent Expert on Minority Issues*, n. 59; *Draft of the Handbook Language Rights of Linguistic Minorities*, n. 2.4

who do not belong to the linguistic minority²³⁴ and conveys the message that a given territory is shared in harmony by various population groups.²³⁵

Respecting the use of symbols, recent studies have recognised the importance of the linguistic landscape, which refers to the oral, visual and symbolic modes of communication in the public domain: the languages visible in road signs, advertising billboards, street names, place names, commercial shop signs, flags, statues, monuments and public signs, among others. While encouraging the understanding and acquisition of an unknown language,²³⁶ it also impacts social relations and over all, it has the power to promote diversity, inclusion and cohesion in the contemporary diverse societies.²³⁷

3.2.4 Access to justice

International standards stipulate that all persons arrested or charged with a criminal offense have the right to be informed promptly of the nature and cause of the charges and of all other proceedings in a language they understand. The right to be assisted, free of charge, by a translator or interpreter, during trial and on appeal before tribunals, legal authorities and courts has been also broadly recognised.²³⁸

Persons belonging to linguistic minorities are holders of the foregoing rights, which render access to justice more direct and easy for them. In spite of the fact that they are able to speak the official language, it is preferable when they can express in the language which is emotionally closest to them or in which they have greater fluency.²³⁹

Therefore, it has been provided that expressing themselves in their language in all stages of judicial proceedings (whether criminal, civil or administrative), as well as the availability of

²³⁴ *Report of the Independent Expert on Minority Issues*, n. 59

²³⁵ *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 50

²³⁶ Cenoz, Jasone and Gorter, Durk, *The linguistic landscape as an additional source of input in second language acquisition*, *International Review of Applied Linguistics in Language Teaching*, Vol. 46, Issue 3, January 2008

²³⁷ *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 50

²³⁸ ICCPR, art. 14.3; ECHR, arts. 6.2 and 6.3; ECRML, art. 9.1; FCPNM, n. 10.3; *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n. 17; *Report of the Independent Expert on Minority Issues*, n. 58; *Draft of the Handbook Language Rights of Linguistic Minorities*, n. 2.5

²³⁹ *Explanatory Report to the European Charter for Regional or Minority Languages*, n. 95

judicial proceedings functioning and conducted in this language, is fundamental for the enjoyment of this right.²⁴⁰

To effectively protect minorities and persons belonging to them in the access to justice, the convenience of employing personnel proficient minority languages in judicial and penal institutions, including officers, judges, prosecutors, police and other staff members, has also been recognised, in order to guarantee an effective communication between authorities and persons belonging to linguistic minorities.²⁴¹

Another established measure is the need to allow, receive and take into account, in any proceeding, the documents and evidence drafted in a minority language.²⁴² However, this provision has not been thoroughly developed, since it has to be balanced with other formalities in the proceedings, like the requirement of particular formula or certifications in the official language.²⁴³

The last standard guaranteeing that linguistic minorities have access to justice is the necessity of making available, in the minority language(s), the most important national statutory texts and those relating particularly to users of these languages, so that they can reach such important legal information.²⁴⁴

3.2.5 Administration and Public Services

Persons belonging to minorities have the right to use their language in oral and written communications with administrative bodies and authorities to an appropriate and

²⁴⁰ ECRML, art. 9.1; *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n. 18 and 19, 21; *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 47; *Draft of the Handbook Language Rights of Linguistic Minorities*, n.2.5

²⁴¹ *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n.20; *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 26; *Report of the Independent Expert on Minority Issues*, n. 58

²⁴² ECRML, art. 9.1 and 9.2

²⁴³ *Explanatory Report to the European Charter for Regional or Minority Languages*, n. 97

²⁴⁴ ECRML, art. 9.3

proportionate degree,²⁴⁵ particularly in cases of social welfare, health institutions and social services due to their fundamental effect on the quality of minorities' life.

In localities where persons belonging to minorities are present in significant number, the provision of public services should be also in minority languages. This provision implies that public institutions are equipped to handle interactions in minority languages.²⁴⁶

To ensure that minorities can benefit from administrative and social assistance and comply with the administrative requirements, it is necessary that the authorities have the ability to transmit, receive and deliver information in minority languages.²⁴⁷ Moreover, it is convenient that persons belonging to minorities are employed in administrative offices and those where public services are provided since they can offer them to the persons belonging to minorities in their own language.²⁴⁸ This facilitates the communication between services providers and users, and improves the quality of service delivery.²⁴⁹

Training and monitoring of members of governmental bodies to consider and respect the rights, needs and interests of persons belonging to minorities is a similar measure that has been suggested to provide adequate responses to the needs of minority groups and prevent discrimination or exclusion against them at all levels.²⁵⁰

The ability of minorities to engage institutions and administrative bodies in minority languages, while avoiding that persons belonging to these groups are placed at a disadvantage conditions, also ensures they are able to express their views, participate in consultative processes and influence every national policy that affects them and the regions where they

²⁴⁵ ECRML, art. 10; FCPNM art 10.2; *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n. 14; *Report of the Independent Expert on Minority Issues*, n. 57; *Draft of the Handbook Language Rights of Linguistic Minorities*, n.2.3

²⁴⁶ *Report of the Independent Expert on Minority Issues*, n. 71

²⁴⁷ ECRML, art. 10; *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n. 13; *Report of the Independent Expert on Minority Issues*, n. 70 and 71

²⁴⁸ ECRML, art. 10.4; *Report of the Independent Expert on Minority Issues*, n. 58 and 70

²⁴⁹ *Draft of the Handbook Language Rights of Linguistic Minorities*, n. 2.3

²⁵⁰ ECRML 10.4; *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n. 15; *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 26; *Draft of the Handbook Language Rights of Linguistic Minorities*, n. 23

live.²⁵¹ Besides, it favours their inclusion in public affairs and encourages the promotion and development of diversity.

3.2.6 Participation in economic life

Persons belonging to minorities have the right to participate fully in the economic life of the state and to benefit from all opportunities in equality with all other members of the society.²⁵²

To guarantee the participation of linguistic minorities in economic life it is necessary to involve them in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly.²⁵³

Furthermore, it is necessary to promote their access to labour market, including public service jobs, and avoid undue regulations which restrict their access to certain jobs or localities due to being non-native speakers.²⁵⁴

Finally, their right to operate private enterprises and other self-employment opportunities must be protected.²⁵⁵ It comprises the freedom to run their business in the language of their choice, including in communication with their clients and in the managing of internal documents.²⁵⁶ This does not go in detriment of the possibility to request to use the official language in cases where there is a legitimate public interest, such as when enterprises deal with public bodies or in cases where the rights of others can be affected.²⁵⁷

²⁵¹ *Report of the Independent Expert on Minority Issues*, n. 57

²⁵² FCPNM, art. 15; ECRML art. 13

²⁵³ *Explanatory Report to the Framework Convention for the Protection of National Minorities*, n. 80

²⁵⁴ *Report of the Independent Expert on Minority Issues*, n. 62 and 63

²⁵⁵ *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n. 13; *The Ljubljana Guidelines on Integration of Diversity Societies*, n. 40

²⁵⁶ ECRML, art. 13; *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n.12

²⁵⁷ *The Oslo Recommendations regarding the Linguistic Rights of National Minorities*, n.12

CHAPTER IV DO MINORITIES PLAY A POSSITIVE ROLE? THE EXPERIENCE OF THE GERMAN-SPEAKING MINORITY IN ITALY

4.1 Historical background

The German-speaking population is located in the autonomous province of South Tyrol in the Northern Italy. Although it is a linguistic minority within the Italian territory (less than 1% of Italy's total population and less than 1.5% of the national land), this group constitutes a majority in South Tyrol, where about two-thirds of the population speak German.

South Tyrol, together with the Province of Trentino, compose the autonomous Region of Trentino-Alto Adige/Südtirol. The South Tyrolean population is around half a million and of which 70% speak German, 25% Italian and 5% Ladin.²⁵⁸ The capital of South Tyrol is Bolzano/Bozen.

South Tyrol has always been a territory of transit and the intersection of many different cultures and languages. Up until the early middle Ages, Germanic and Roman communities populated the current land of South Tyrol.²⁵⁹ During the course of the 13th century The Counts of Tyrol unified many valleys creating the area of Tyrol (North and East Tyrol that belong to Austria and South Tyrol and Trentino that are Italian territories). From that century until the end of the First World War, this territory was part of the Austrian Empire (excluding the years in the early nineteenth century when it was under Napoleonic occupation) and the population was almost exclusively German-speaking. At the turn of the 19th century, around 3% of the inhabitants of the current region of South Tyrol were Italian speakers, 4% Ladin and the majority, approximately 89% German speakers, whereas in the modern Trentino area the predominant language was Italian.²⁶⁰

²⁵⁸ Provincial Statistics Institute, *South Tyrol in figures 2012*, Autonomous Province of South Tyrol, Bozen/Bolzano, 2012

²⁵⁹ Lantschner, Emma, *History of the South Tyrol Conflict and Its Settlement*, in *Tolerance through law: self-governance and group rights in South Tyrol*, Woelk Jens, Palermo Francisco & Joseph Marko (eds.), pp. 3-15, Boston, 2008

²⁶⁰ Ruiz Vieyetz, Eduardo J. and Kallonen, Markko, *Territorial Autonomy and European National Minorities: South Tyrol, the Basque Country and the Åland Islands*, in *European Yearbook of Minority Issues Vol. 2, 2002/3*, pp. 247-281, The Netherlands, 2004

In 1915, when the First World War broke out, Italy signed secretly the Treaty of London with the Allied Powers, wherein Italy was promised the area of Trentino and South Tyrol in return for entering the war on the Triple Entente side.²⁶¹ When the War finished and the Austro-Hungarian Empire was dismantled, these territories were annexed to the Italian Kingdom without any plebiscite, under the terms of the Peace Treaty of St. Germain-en-laye.²⁶²

Even though the Italian Government as well as the Allied and Associated Powers asseverated that they would safeguard the identity of the linguistic minority after the annexation, it was the starting point of a repression period wherein Italian authorities tried to forcefully assimilate both German and Ladin-speaking populations, especially when the fascist regime came to power in 1922.²⁶³

What followed were many measures to Italianize the whole territory by means of repression of the German and Ladin language and culture and through mass immigration of the Italians from other regions of Italy. German-language press was eliminated and the German political parties and unions were liquidated.²⁶⁴ German-speaking churches and schools were closed and laws prohibiting the use of the language or any outward expression of the German culture were passed.²⁶⁵

Names, family names, natural and geographical features, public inscriptions, signs, official documents, time-tables, maps, general descriptions destined for the public, even when referring to private matters, were replaced by their Italian equivalent or a translation. Italian was the only official language in all public services including schools, health establishments, chambers of commerce, saving banks, organisations for the promotion of foreign trade, courts

²⁶¹ Rossini, Daniela, *Woodrow Wilson and the American Myth in Italy: culture, diplomacy and war propaganda*, pp. 38-56, Harvard, 2008

²⁶² Fingeller, Hans, *Don't forget South Tyrol, The lost home*, 1938

²⁶³ Rautz, Günter, *A Minority within a Minority: The Special status of the Ladins Valleys in Tolerance through law: self-governance and group rights in South Tyrol*, Woelk Jens, Palermo Francisco & Joseph Marko (eds.), pp. 279-290, Boston, 2008

²⁶⁴ World Directory of Minorities and Indigenous People, South Tyrolean German-speakers, available at <http://www.minorityrights.org/1525/italy/south-tyrolean-germanspeakers.html>

²⁶⁵ Steinbrech, Sonja, *South Tyrol Conflicting Ethnicity*, in the ICE Cases, Washington D.C., May 2004

and other state bodies. Even the name Südtirol or any references which included the word Tyrol in them were suppressed.²⁶⁶

Those who did not speak Italian to the required standard were dismissed and substituted by Italian native speakers. Immigrations of Italians into the area, with different mentality and idiosyncrasy, increased considerably in order to get an Italian majority. By that time, the government fostered job opportunities for Italians in the public administration and industrial enterprises, by creating an industrial zone in the southern part of Bozen/Bolzano.²⁶⁷

In the meantime, the only way the South Tyrolese German speakers had for preserving and transmitting their idiom was by teaching their children in secret catacomb schools, the unique places where it was possible to speak German.²⁶⁸

In 1939 there was an Agreement between the German and Italian governments, giving two options to the German-speaking inhabitants of South Tyrol:²⁶⁹ leave their land and move to the German Third Reich, giving up their homeland and becoming citizens of Germany, or stay in South Tyrol, facing forced and complete assimilation and giving up their identity. Under pressure from both Fascist and Nazi authorities about 75,000 voted to leave, but many returned after the war.²⁷⁰

When the Second World War ended, the South Tyrolese German-speaking people were at a cultural, economic and social disadvantage. Even though fascist regime had not managed to assimilate and homogenise them completely, for German speakers the period under the Fascism has been a long time without the access to their idiom, oral or written. So, it was predictable that they wanted for South Tyrol to be returned to Austria. Together with the provisional government of Austria, South Tyrolese demanded that the Allies return their territory to a restored Austria, but their request was rejected for strategic, political and

²⁶⁶ Kunz, Josef L., *Italian Rule in German South-Tyrol*, pp. 500-505 in *Foreign Affairs*, 1927

²⁶⁷ Alcock, Antony, *The South Tyrol Autonomy*, pp. 1-3, Bolzano, May 2001

²⁶⁸ Lapidoth, Ruth, *Autonomy: Flexible Solutions to Ethnic Conflicts*, pp. 99- 109, Washington D. C., 1996

²⁶⁹Steininger, Rolf, *South Tyrol: A Minority Conflict of the Twentieth Century*, New Jersey, 2003

²⁷⁰ Lantschner, 2008, pp. 3-15

economic reasons and the Italian borders were officially reconfirmed in 1947 in the Peace Treaty of Paris.²⁷¹

Nevertheless, an Agreement on the self-government of South Tyrol was reached in 1946 by the Italian Prime Minister De Gasperi and Austrian Foreign Minister Gruber, both natives of the area. The agreement contained special measures to guarantee German-speaking inhabitants of the Bolzano and Trento provinces complete equality of rights with the Italian-speaking inhabitants and protection of their ethnic, cultural and economic development. German was allowed to be taught in schools, and German surnames were permitted again.²⁷² In addition, the populations of Bolzano and Trento would be granted the exercise of autonomous legislative and executive regional power.²⁷³

The Gruber-Degasperi Agreement, which constitutes the basis for the South Tyrolean autonomy, was formally signed in 1947 and annexed to the Peace Treaty of Paris so that the South Tyrol question was thereby given international standing.²⁷⁴ As Germany no longer played any role in this territory, it was Austria that assumed the role of kin state for this region. However, the clauses of the treaty implied that Austria gave up to any attempt to re-annexation of the province, while Italy renounced to a full sovereignty over a part of its territory, and the German-speaking population of the region waived their right to external self-determination.²⁷⁵

Intending to implement the Gruber-Degasperi Agreement, in 1948 the Italian Parliament adopted an autonomy statute. But some difficulties emerged given that it addressed the Region of Trentino-Alto Adige as a whole. It is composed of both the province of Bolzano - where the predominant language is German - and to the province of Trento - that is larger and whose population speaks Italian -.

²⁷¹ Peterlini, Oskar, *The Autonomy Statute of the Region Trentino-South Tyrol. A short overview of Historical, Political and Legal Aspects*, pp. 5-30, Bolzano, 1994

²⁷² World Directory of Minorities and Indigenous People, South Tyrolean German-speakers

²⁷³ Lapidoth, 1996, pp. 99- 109

²⁷⁴ Ruiz Vieyetz, 2004, pp. 247-281

²⁷⁵ Pallaver, Günther, *South Tyrol, The 'Package' and its Ratification in Politics and Society*, in Germany, Austria and Switzerland – Journal of the Association for the Study of German Politics and the Institute of German, Austrian and Swiss Affairs, Vol. 2, pp. 70-79, 1990

As a result, the First Autonomy Statute granted autonomous powers and competences to a region with a two-thirds Italian-speaking's majority. The German speakers were once more in a minority and they could hardly benefit from the autonomy. Bolzano received legislative competences just in the field of culture, gained its administrative autonomy and became a separate electoral district. Internal communication in public administration continued to be Italian.²⁷⁶ German was admissible but it was not an official language. There was no obligation to learn it whereas learning Italian, the official language, was mandatory.²⁷⁷

The emergence of unconformities, protests and violent acts was not surprising. In 1957 there was a massive demonstration claiming that as long as the autonomy was not granted to South Tyrol alone, the Gruber-Degasperi Agreement would not be fully implemented.²⁷⁸ In 1958, the main Party of South Tyrol, the SVP (Südtiroler Volkspartei, South Tyrolean People's Party) sent a draft autonomy statute for a Region South Tyrol to the national parliament in Rome, but it was rejected. The only way left was to bring the South Tyrolean Question before international fora. Austria as the kin and protector state that did the task by introducing it to the United Nations General Assembly, but in the meanwhile the violence continued.²⁷⁹

In two resolutions, the international body urged the two parties concerned to resume negotiations in order to find a solution for all differences relating to the implementation of the Gruber-Degasperi Agreement and to settle the conflict.²⁸⁰

In the eve of the 60's, The Commission of Nineteen, a new coalition comprised of twelve Italian, six German and one Ladin representatives, opened the way for more constructive discussions. After long and arduous negotiation, the Commission of Nineteen and the SVP produced a plan for a new autonomy in 1969. The "South Tyrol Package" is a catalogue of 137 concrete measures aimed to reform of the First Autonomy Statute and designed to

²⁷⁶ Lantschner, 2008, pp. 3-15

²⁷⁷ Alcock, 2001, pp. 4-9

²⁷⁸ Lantschner, 2008, pp. 3-15

²⁷⁹ Steininger, 2003

²⁸⁰ UN, General Assembly, *The Status of the German-Speaking Element in the Province of Bolzano, Implementation of the Paris Agreement of 5 September 1946*, Resolution 1497 (XV) December 1960, and UN, General Assembly, *The status of German-speaking element in the Province of Bolzano (Bozen)*, Resolution A/RES/1661(XVI), November 1961

substitute the autonomy of the Trentino-Alto Adige region by an extensive autonomy for the two provinces, Bolzano and Trento.²⁸¹

The “Package” set the basis for the Second Autonomy Statute, adopted in 1972, that granted a greatly increased and improved autonomy to South Tyrol.²⁸² The most important amendment consisted in the fact that the majority of competences were no longer given to the whole region, that still exists, but to the two provinces, which both received autonomous status separately. Even if the Region retained certain powers,²⁸³ the provinces received competences concerning almost all most important economic and social factors, including health and welfare, public works, employment exchanges, and vocational training, communications and transport of provincial interest, agriculture and forestry, mines, tourism and the hotel trade, protection of the countryside, school buildings and school welfare.²⁸⁴

The Second Autonomy Statute (hereinafter the Autonomy Statute) set the basis for a significantly improved territorial autonomy for South Tyrol.²⁸⁵ The province could officially be called South Tyrol again and protection of local linguistic minorities was deemed an issue of the national interest.²⁸⁶ The German- and Ladin-speaking populations living in the area were granted an advanced and generous protection system.²⁸⁷

²⁸¹ Peterlini, 1994, pp. 5-30

²⁸² Medda-Windischer, Roberta, *Protection of minorities under International Law and the Case of South Tyrol in Tolerance through law: self-governance and group rights*, in South Tyrol, Woelk Jens, Palermo Francisco & Joseph Marko (eds.), pp. 17-32, Boston, 2008

²⁸³ Nowadays the competences of the Region Trentino Alto Adige/Südtirol are very limited. It has just 3 of 58 subject areas (Regulation of regional offices and local authorities, expropriation for public use, except for works mainly and directly under the responsibility of the state and matters under provincial competences; and regulation of health bodies and hospitals), Medda-Windischer, Roberta, *Migration and Diversity Management in Traditionally Divided Society: The Case of the Autonomous Province of Bolzano/Bozen*, in Hagira - Israel Journal of Migration, pp. 112-129, 2015

²⁸⁴ Alcock, 2001, pp. 10-18

²⁸⁵ Decreto del Presidente della Repubblica Italiana No. 670, *Approvazione del testo unico delle leggi costituzionali concernenti lo statuto speciale per il Trentino-Alto Adige*, August 1972, published in the Official Gazette of the Republic No. 301, November 1972

²⁸⁶ Autonomy Statute, art. 2

²⁸⁷ Pallaver, Günther, *South Tyrol's changing political system: from dissociative on the road to associative conflict resolution*, in Nationalities Papers: The Journal of Nationalism and Ethnicity, pp. 376-398, Vol. 42, Issue 3, 2014

The German-speaking community obtained complete acknowledgement of its language rights and broad autonomy relating to language teaching.²⁸⁸ Education in their mother tongue was allowed once again. In addition, it was stated that all the regulations and official announcements, documents and signs of the region and provinces must be published in both German and Italian.²⁸⁹

The Ladin's right to use their mother tongue, both orally and in writing, in their relations with the public authorities in the Ladin municipalities of the province was also recognised. Regardless of their location, local and provincial authorities working in the interest of the Ladin minority have the obligation to include Ladin translations in their responses, when using German or Italian.²⁹⁰

Bolzano and Trento also were provided with secondary legislative faculties for teaching in primary and secondary schools, trade and commerce, promotion of industrial production, healthcare and sport.

The Second Autonomy Statute was amended in 2000 in order to grant even more legislative and administrative powers to the individual provinces individually while the powers of the Trentino-Alto Adige/Südtirol region further decreased.²⁹¹ The Autonomy Statute that is currently in force, has the status of a constitutional law.²⁹²

Due to the provisions it contains and the overall negotiations and compromises adopted during the implementation process, Bolzano and Trento are the only two provinces in the

²⁸⁸ Perta, Carmela and Ciccolone, Simone, *Minority Languages in Italy, Vitality, contact and planning*, pp. 63-84, Saarbrücken, 2012

²⁸⁹ World Directory of Minorities and Indigenous People, South Tyrolean German-speakers

²⁹⁰ Rautz, Günter, *A Minority within a Minority: The Special status of the Ladins Valleys*, in *Tolerance through law: self-governance and group rights in South Tyrol*, Woelk Jens, Palermo Francisco & Joseph Marko (eds.), pp. 279-290, Boston, 2008

²⁹¹ Wolff, Stefan, *Complex Power Sharing as Conflict Resolution: South Tyrol in Comparative Perspective*, in *Tolerance through law: self-governance and group rights in South Tyrol*, pp. 329-370, Leiden and Boston, 2008

²⁹² Decree of the President of the Italian Republic No. 670, *Approval of the unified text of the Constitutional Laws concerning the Special Statute for Trentino-Alto Adige/Trentino- Südtirol, (South Tyrol)*, August 1972, published in the Official Gazette of the Republic No. 301, November 1972

Italian Constitutional system with autonomous legislative and administrative competences, thus are internationally estimated as a model for solving a minority problem.²⁹³

In relation to the dispute before the United Nations, it only finished in 1992, when Austria recognised that Italy had fulfilled its international liabilities stated in the Gruber-Degasperi Agreement and an autonomy agreement for South Tyrol was reached by the Italian and Austrian governments.²⁹⁴

4.2 Legal and Political Framework protecting the linguistic rights of the German-speaking population in South Tyrol

Italy is one of the European countries where many traditional and new minorities live. Almost five percent of its population belong to at least twelve traditional minority groups. The Italian Constitution emphasises the importance of language to identify minorities.²⁹⁵ Special measures are mandated by the Constitution for linguistic groups.²⁹⁶

Since 1948, the Italian Constitution recognises the existence of five regions that enjoy a certain degree of autonomy.²⁹⁷ Trentino-Alto Adige/Südtirol is one of them²⁹⁸ and like any other region, it has its own statute that, in compliance with the Constitution, shall lay down the basic principles for the organisation of the Region.²⁹⁹ The Regional Autonomy Statute is the basic law of the territory and must be adopted by the national Parliament with a constitutional law.³⁰⁰

²⁹³ Pallaver, 2014, pp. 376-398

²⁹⁴ Peterlini, Oskar, *Autonomy and Protection of Ethnic Minorities in Trentino-South Tyrol. An overview of the history, law and politics*, pp. 205-212, Bolzano, 1997

²⁹⁵ The article 6 of the Italian Constitution reads: “The Republic safeguards linguistic minorities by means of appropriate measures”

²⁹⁶ Alber, Elisabeth and Palermo, Francesco, *Creating, studying and experimenting with Bilingual Law in South Tyrol: Lost in Interpretation?*, in *Bilingual Higher Education in the Legal Context*, Studies in International Minority and Group Rights, Arzoz Xabier (ed.), Vol. 2, pp. 287-309, Leiden and Boston, 2012

²⁹⁷ According to the article 116 of the Italian Constitution, the five autonomous regions are Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/Südtirol and Valle d’Aosta/Vallée d’Aoste, which have special forms and conditions of autonomy pursuant to the special statutes adopted by constitutional law.

²⁹⁸ Constitution of the Italian Republic, art. 116

²⁹⁹ Constitution of the Italian Republic, art. 123

³⁰⁰ Alber, 2012, pp. 287-309

South Tyrol has a bilateral relationship with the Italian State, which means that any modification to the Autonomy Statute as well as any development of its autonomy is negotiated by representatives of the State and region, particularly the German-speaking group on equal footing. Moreover, the enactment decrees for implementing the regional autonomous statute cannot be abrogated or modified by the laws of the national parliament. This confers a very special status to South Tyrol, grounded in the constitutional principle of speciality, by providing a parity treatment with the State rather than a relationship based on hierarchy.³⁰¹

Today South Tyrol enjoys by far the most extensive self-government as well as broad legislative and administrative autonomy of all Italian regions. It has eight different types of legislative powers: exclusive state powers, current legislative powers, exclusive regional legislation, exclusive provincial legislation, current regional legislation, current provincial legislation, provincial laws enacting national provisions and regional or provincial delegated legislation.³⁰² Most of them are listed in its Autonomy Statute, along with the main elements characterizing South Tyrol.³⁰³

According to the Autonomy Statute provisions, linguistic equality of Italian and German is widely recognised.³⁰⁴ This instrument, together with its bylaws, contains numerous and specific guarantees available to individuals and groups in order to consolidate their mutual confidence, particularly in case of an alleged breach of minority rights.³⁰⁵

Linguistic groups have legal subjectivity in regards to the composition of the executive bodies, as well as in the legislative process. Moreover, they have the possibility to veto draft

³⁰¹ Palermo, Francesco, *Implementation and Amendment of the Autonomy Statute*, in *Tolerance through law: self-governance and group rights in South Tyrol*, Woelk Jens, Palermo Francisco & Joseph Marko (eds.), pp. 143-159, Leiden and Boston, 2008

³⁰² Palermo, Francesco, *South Tyrol's Special Status within the Italian Constitution*, in *Tolerance through law: self-governance and group rights in South Tyrol*, Woelk Jens, Palermo Francisco & Joseph Marko (eds.), pp. 33-49, Leiden and Boston, 2008

³⁰³ Autonomy Statute, articles 4, 8 and 9

³⁰⁴ Autonomy Statute, articles 99 and 100

³⁰⁵ Alber, 2012, pp. 287-309

laws, and administrative acts they consider against the equality between the linguistic groups.³⁰⁶

In order to determine who counts as a part/member of the linguistic groups of South Tyrol, and, consequently, who is granted the specific protection for belonging to them, which is particularly important to enable to apply for public posts, offices, accommodations and many social contributions, each citizen over 14 years has to make a declaration as to which language group he or she belongs to or is affiliated with. Parents give the declaration on behalf of their children under that age. Even foreigners, when they become Italian citizens, are required to make such declaration. This enables them to apply for public posts, offices, accommodation and many social contributions.³⁰⁷

This Declaration has direct legal implications because, depending on the personal language declarations, individuals can claim the rights to which their respective linguistic groups are entitled in the public, social and cultural fields.³⁰⁸ Moreover, this declaration confirms membership or assignment of all legal effects and is fundamental for proportional representation. It is valid for 10 years until the next census is carried out.³⁰⁹

The Autonomy Statute has been progressively provided to the German speaking population with the highest degree of protection and broader range of rights in Italy.³¹⁰ Many Decrees and bylaws have been promulgated so that the provisions contained in the Autonomy Statute can effectively be applied to the current circumstances in South Tyrol.³¹¹

Consequently, the German-speaking group in South Tyrol enjoys the most comprehensive minority protection rights since there are extensive provisions for the use of its language. This is so because they are concentrated in a specific region where German is the language

³⁰⁶ Ibidem

³⁰⁷ Peterlini, 1997, pp. 159-230

³⁰⁸ Rautz, 2014, pp. 59-67

³⁰⁹ Peterlini, 1994, pp. 157-199

³¹⁰ Alber, 2012, pp. 287-309

³¹¹ For further information in relation to the South Tyrol's legislation, see <http://www.regione.taa.it/codice/default.aspx>

traditionally spoken and the Italian state has done much of its available resources to ensure that this linguistic identity can be preserved.

Based upon the constitutional, legal and statutory provisions for the protection of linguistic minorities, different measures and policies are implemented in South Tyrol to guarantee the rights of this linguistic minority in Italy, which will be presented below.

4.2.1 Public and Private Education

During the fascist regime, the educational system was severely affected when the use of German was categorically prohibited at schools. The German-speaking population managed to preserve their language by teaching it in secret catacombs schools.³¹² Despite the danger of being discovered and punished, pupils and teachers met in lofts, basements and stables. This system operated until 1940, when German was officially reintroduced into the educational system.³¹³

The Gruber-Degasperi Agreement established that the elementary and secondary school should be provided in the mother tongue of the child. Afterwards, during the negotiations to the First and Second Autonomy Statutes this principle was of great importance to achieve that instruction in South Tyrol was given in separate German and Italian schools.³¹⁴

The Autonomy Statute envisages that the instruction in kindergartens, elementary and secondary school is to be given in the Italian or German mother tongue of the pupils by instructors for whom that language is also their mother tongue. The teaching of the second official language is mandatory from the second or third class of elementary school, as well as in secondary schools and is given by instructors of the same mother tongue.³¹⁵

³¹² European Academy of Bozen/Bolzano (EURAC), *Legal Country Study: Italy* in Project: Practice of Minority Protection in Europe, pp. 1-38, Bolzano, 2009

³¹³ Lantschner, 2008, pp. 3-15

³¹⁴ Parolari, Sara and Voltmer, Leonhard, *Legislative and Administrative Autonomy*, in *Tolerance through law: self-governance and group rights in South Tyrol*, Woelk Jens, Palermo Francisco & Joseph Marko (eds.), pp. 77-103, Leiden and Boston, 2008

³¹⁵ Autonomy Statute, art. 19

Nowadays each linguistic group runs its own schools in its own language, from kindergarten to secondary schools. Each linguistic group has its administrative bodies that supervise the administration of the schools, the management of the educational programs and the legal treatment and salary of teachers.³¹⁶

The principle of the free choice of school applies as general rule. Parents may send their children to Italian or German schools. However, there are still cases in which pupils are denied the enrolment on ground of insufficient language skills. In such cases, persons belonging to linguistic groups have the right to challenge these decisions before the Administrative Courts.³¹⁷

4.2.2 The Media

Given that South Tyrol has the power to regulate media,³¹⁸ the German-speaking population has an excellent access to media in its respective language.³¹⁹

The right to access to media in the German language has been guaranteed in South Tyrol since 1975 when a provincial law regulated the free reception of media from Germany, Austria and Switzerland. There are also some agreements between South Tyrol and Italian broadcasting companies ensuring the transmission of programmes in German.³²⁰

There are also domestic media in German language, subsidised by the State. There are some public and private radio stations that broadcast their programmes in German or in both German and Italian. Several newspapers printed in neighbouring German-speaking countries are also available in South Tyrol, while there are also some local German newspapers funded by the State. The same applies regarding local broadcast channels, programmes, newspapers and magazines, which have broad coverage in South Tyrol.

³¹⁶ Baur Siegfried and Medda-Windischer, *The Educational System in South Tyrol*, in *Tolerance through law: self-governance and group rights in South Tyrol*, Woelk Jens, Palermo Francisco & Joseph Marko (eds.), pp. 235-258, Leiden and Boston, 2008

³¹⁷ Autonomy Statute, art. 19

³¹⁸ Autonomy Statute, art. 8

³¹⁹ Parolari, 2008, pp. 77-103

³²⁰ *Legal Country Study: Italy*, 2009, pp. 1-38

4.2.3 Names, place and geographic names (toponyms) and public symbols in the public domain

The Autonomy Statute sets out that the Province has exclusive competence to regulate place names, without prejudice to the requirement of bilingualism in the territory of the Province.³²¹

The toponymy is a very sensitive subject in South Tyrol. The damages caused by the fascist policies that completely prohibited the use of German and imposed Italian in public places and symbols has not been forgotten. Consequently, even if there have been some proposals in this regard, it has not been possible to grant a legal equality for the use of the Italian and German language because such provisions might be deemed as an admittance of the fascist impositions.³²²

Despite of that, nowadays most of the place names in South Tyrol are now bilingual or trilingual, regardless of the size of the linguistic populations.³²³ The addition of the German name Südtirol to the region's name Trentino-Alto Adige in the Italian Constitution³²⁴ as well as the use of the flags and seals of each Province - which can be used together with the Italian and European ones³²⁵ - means that Italian is not the unique idiom present in the names and symbols, at least to some extent.

Even though the use of German is somehow officially recognised given that the Autonomy Statute recognises the parity of Italian and German,³²⁶ it is undeniable that a compromise is necessary to effectively guarantee the linguistic groups in South Tyrol the possibility to use their own topographic names since there are still sensitive items in terms of identity.

³²¹ Autonomy Statute, art. 8

³²² Fraenkel-Haeberle, Cristina, *Linguistic Rights and the Use of Language*, in Tolerance through law: self-governance and group rights in South Tyrol, Woelk Jens, Palermo Francisco & Joseph Marko (eds.), pp. 259-278, Leiden and Boston, 2008

³²³ Rautz, Günter, 2014, pp. 59-67

³²⁴ Constitution of the Italian Republic, art. 116, as amended in 2001 by Constitutional Law No. 3

³²⁵ Parolari, 2008, pp. 77-103

³²⁶ Autonomy Statute, art. 99

4.2.4 Access to justice

The First Autonomy Statute laid out that the German speaking population could use its language before court, but the proceedings were basically in Italian, with interpreters present. The Second Autonomy Statute set that both Italian and German language can be used in the judiciary.³²⁷

However, fully bilingual judiciary and the real protection of this right have not been provided until 1998, when the Decree 574/1988,³²⁸ a bylaw on the use of languages, was adopted and recognised the parity of the German and Italian language in the public administration and the courts.³²⁹

This provision also established that judges, prosecutors, lawyers and other staff must be bilingual.³³⁰ However, it took time to set up a functional system comprised of personnel with adequate proficiency in both languages. Nowadays, professional and lay judges have to be bilingual and members of a jury must have a bilingual certificate.³³¹

Trials are conducted in one of the official languages, the one that is the mother-tongue of the accused.³³² The principle of the free choice of language prevails, especially in criminal proceeding to guarantee the rights of the accused.³³³

Trials may be bilingual in two cases, when the defending council decides to participate in a language different from that of the trial and when there is a change in the language at any stage of jurisdiction.³³⁴

³²⁷ Autonomy Statute, art. 100

³²⁸ Decreto del Presidente della Repubblica Italiana No. 574, *Norme di attuazione dello statuto speciale per la Regione Trentino-Alto Adige in materia di uso della lingua tedesca e della lingua ladina nei rapporti dei cittadini con la pubblica amministrazione e nei procedimenti giudiziari*, July 1988, published in the Official Gazette of the Republic No. 105, May 1989

³²⁹ Decree 574/1988, arts. 1 and 2

³³⁰ Decree 574/1988, art. 2

³³¹ Alcock, 2001, pp. 1-23

³³² Peterlini, 1997, pp. 159-230

³³³ Decree 574/1988, arts. 14 and 15

³³⁴ Fraenkel-Haerberle, 2008, pp. 259-278

In bilingual proceedings, the public prosecutor must give his opening address in German and Italian, and the judge renders his sentence in both languages.³³⁵ Testimonies may be taken in either German or Italian and should be translated in the language of the trial.³³⁶

In all cases involving the third level, when the proceedings go to the Council of State or to the Supreme Court - located in Rome and working just in Italian - this language may be used and all documents and acts of the proceeding must be translated into Italian.³³⁷

4.2.5 Administration and Public Services

According to the Autonomy Statute and the Decree 574/1988, Regional and provincial laws and regulations must be published both in German and Italian.³³⁸ Furthermore, public administration offices, services and documents addressed to the general public must be bilingual (trilingual in case of Ladin valleys).³³⁹ Also documents and decisions issued for individuals (i.e. identity cards, publications of bans of marriage), must be printed in Italian and German, both languages in the same size fonts. The same bilingualism requirement applies to some private affairs when they are of public interest (e.g. telephone book publishing).³⁴⁰

Applicants have the right to address the administration in one of the official languages they select.³⁴¹ If communications starts in one language, this is the one must be followed by the authorities.³⁴² When the public office begins the correspondence, it must be conducted in the language presumed to be the mother tongue of the person to whom it is directed. The recipient is entitled subsequently to rectify it.³⁴³

³³⁵ Alcock, 2001, pp. 1-23

³³⁶ Decree 574/1988, art. 16

³³⁷ Alber, 2012, pp. 287-309

³³⁸ Decree 574/1988, art. 57

³³⁹ Decree 574/1988, arts. 1 and 2

³⁴⁰ Decree 574/1988, art. 35

³⁴¹ Autonomy Statute, art. 100

³⁴² Decree 574/1988, art. 7

³⁴³ Decree 574/1988, art. 7

Every person employed in the public administration must be bilingual with language examinations leading to the award of a certificate required for recruitment, promotions or transfer into the service.³⁴⁴ Also notary publics are expected to know both languages.³⁴⁵

The Autonomy Statute reserves posts in the public administration for citizens belonging to each linguistic group in proportion to the numerical strength of those groups, in the proportions that appear in the declaration on the official census.³⁴⁶

Regarding health care, the Autonomy Statute provides the Province with full control. South Tyrol has faculties to enact legislation in respect of hygiene and public health, including health and hospital services.³⁴⁷ In 2006 a bylaw³⁴⁸ reorganised the provincial health service providing that the existing health insurance institutions in South Tyrol are now under a common administrative roof and into a network with a common goal.³⁴⁹

In relation to this area, there is a bylaw that envisages the obligation of bilingualism for pharmaceutical products. The labels and information must be written both in Italian and German.³⁵⁰

4.2.6 Participation in economic life

South Tyrol has a very specific framework that favoured the Region in comparison to other Regions in Italy. The Region receives three kinds of revenues. The first one comes from the State, that gives back to the Province almost all the taxes collected in its territory, just a small amount goes to the State and Region.³⁵¹ The second derives from direct transfers from the

³⁴⁴ Alcock, 2001, pp. 13-14

³⁴⁵ Decree 574/1988, art. 31

³⁴⁶ Autonomy Statute, art. 89

³⁴⁷ Autonomy Statute, arts. 4, 6, 8 and 9

³⁴⁸ Legge Provinciale No. 9 *Modifiche del riordinamento del servizio sanitario provinciale*, Regione Trentino Alto-Adige (Provincia di Bolzano), October 2006, published in the Bollettino Ufficiale della Regione Trentino-Alto Adige n. 41, October 2006

³⁴⁹ Parolari, 2008, pp. 77-103

³⁵⁰ Decreto Legislativo No. 283, *Norme di attuazione dello Statuto speciale della regione Trentino-Alto Adige concernenti modifiche e integrazioni al decreto del Presidente della Repubblica 15 luglio 1988, n. 574, in materia di processo penale e di processo civile, nonche' in materia di assegnazioni di sedi notarili, e in materia di redazione in doppia lingua delle etichette e degli stampati illustrativi dei farmaci*, in the Bollettino Ufficiale della Regione Autonoma Trentino-Alto Adige No. 162, July 2001

³⁵¹ Peterlini, Oskar, 1994, pp. 5-30

state's budget and the European Union to carry out specific programmes. And the last ones comes from the public property, assets and services.³⁵²

The Region's budget is fed almost entirely by revenue of taxes and tariffs collected in the province, while the state assumes several and important costly public services. Moreover, the Province enjoys complete budgetary freedom in the field of expenditure.³⁵³

The equal access to the labour market, including public service jobs, is guaranteed for the German-speaking population. The allocation of funds in key sectors as education, culture and social affairs, the access to labour market is based on the so-called "Proporz" system,³⁵⁴ according to which there is a proportional representation depending on the size of the three linguistic groups, German, Italian and Ladin, as they appear in the declaration of the official census.³⁵⁵

The possibility to operate private enterprises is also guaranteed in South Tyrol since German speakers set up and run their business in their own language.³⁵⁶

³⁵² Benedikter, Thomas, *The Financial System of the Autonomous Province of Bolzano/Bozen*, in *Tolerance through law: self-governance and group rights in South Tyrol*, Woelk Jens, Palermo Francisco & Joseph Marko (eds.), pp. 105-119, Leiden and Boston, 2008

³⁵³ Ibidem

³⁵⁴ Medda-Windischer, Roberta, *Migration and Old Minorities in South Tyrol: Beyond a 'Nimby' Approach?*, in *Migrations and Autonomous Territories: The Case of South Tyrol and Catalonia*, Medda-Windischer, Roberta and Carlà, Andrea (eds.), pp. 100-130, Leiden, 2015

³⁵⁵ Autonomy Statute, article 89

³⁵⁶ World Directory of Minorities and Indigenous People, South Tyrolean German-speakers

CONCLUSION

When I started this research I was – and I am still – very optimistic about the possibility to present a work that contributes to the promotion of knowledge about and rights and protection of minorities, as well as to release minorities from the negative connotations that in many places have loaded for many years.

I studied several theories and opinions about these groups. Some of them extolled the value of the differences and diversity and betted on the feasibility that these groups may be integrated in the majority societies wherein they live, without perturbing or affecting someone's interests. However, others etched more deeply the stigma with which they have been identified (the “minority problem”) by considering differences as irreconcilable elements, impossible to overcome.

I am aware that stories depend largely on who and how tells them as well as on the intention of the narrators and on the message and values they want to convey. Nevertheless, it is undisputable that history contains several episodes of indifference, disdain, intolerance, fear of the strangers, exclusion, assimilation and even attempts to cleanse one's territory of those who are different, minorities included.

This leads to the first conclusion: it seems that in many environments minorities will continue to be deemed as a tricky issue for some time to come. Prejudices are not easy to be eradicated. There are no simple solutions for complex situations. There are no formulas nor unequivocal resolutions for intricate realities.

Fortunately, during the research I also encountered some proposals and mechanisms that have contributed to some steps forward in the task of demystify minorities. They do not treat minorities as problems, but rather as added value, comparative advantage and factors that can contribute to peace, stability, cooperation and cohesion in plural societies and among them. Even if slowly, Diversity Management and the Legal and Political Framework on minorities' protection have offered solutions for dealing with the complex nature of diversities.

By struggling to guarantee equality rather than identity uniformity, these mechanisms seem to be effective at achieving peace and stability in pluralistic contemporary societies. Although there are still pending tasks - including the hard challenge of implementation of the provisions laid out by the foregoing international legal and political mechanisms as well as the matter of accountability - the management of diversity seems possible. It is not easy, but it is possible.

Also the second conclusion can be drawn: managing diversities is attainable and it is especially important that minority groups are promoted as entities that may enrich the cultural diversity and heritage of non-homogeneous societies.

Admittedly, the way and means to do it depend upon the situation of each minority. Their challenges are diverse and differ significantly according to their specific circumstances, experiences and the legal and policy standards and conditions of their countries of residence. Some minorities are well integrated, while others have not even obtained official recognition, and there is a number of situations in-between.

The participation of many actors, hopefully all relevant ones is fundamental to create the appropriate conditions for the promotion of social inclusion and cohesion between majority and minority groups. States play a principal role but they are not the only stakeholders. Minorities' issues are not exclusively the internal affairs of individual states. Issues relating to minorities and their rights are relevant for intra-state and international relations as well as all societies, each of them with their specifics as a whole. Civil society, media, NGO's, international organisations, majorities and minorities play a crucial role in the elaboration and development of an adequate environment that allows minority groups to maintain their identity and be included and integrated fully in the societies.

This leads to the third conclusion: creating unity in diversity is a joint action that requires dialogue and the participation of all stakeholders. Any development depends on the collaboration of all actors involved in the protection of minorities and the accommodation of their needs and rights in diverse societies.

Undoubtedly minority issues provide challenges for all the actors involved, because dealing with diversities implies to cope with dynamicity, among other reasons. Factors, circumstances, as well actors are always changing and evolving. However, while managing diversities and minorities entails challenges it also provides an opportunity to value the richness that a multicultural environment and diversity may offer. Minority issues can even be the catalyst for the improvement of inter-state relations and cooperation in which minorities can play an important and active role.

Nonetheless, the task is not completed yet. In spite of the existing framework and policies, the “minority problem” is not totally solved. Unfortunately, often the overemphasis of possible negative consequences of differences still prevails. It is urgent to avoid such simplifications and stereotypes if we want to grasp what diverse societies are, and what they could be and offer in all their richness.

Changes are still very much needed in legal, political, social, cultural and educational terms. Developments paving the way for a significant improvement in diversity management in general and minority protection in particular are still missing. So, the last conclusion is precisely this: there is probably a long way to go until the minority problem can be cleared up, but is urgent to continue making small and considerable steps.

This thesis concludes by calling for consistency in the interest in minority issues. The story told here was disclosed a problem and presented some possible solutions in order to decode the minority problem. But this can only be, firstly, if we all are conscious that the “minority problem” has not been resolved, that all socially relevant diversities and minorities need to be managed constantly, and that there is still a long way to go. Secondly, if we decide to get on the road and contribute, a peaceful and harmonious coexistence between majorities and minorities in contemporary societies becomes a possible and achievable goal.

Finally, with regard to the hypothesis presented in the introduction that an adequate model of the protection of minorities and its successful implementation through effective legislation, policies and measures can contribute to inclusion, integration and harmonious relations between minorities and majorities in plural societies, we believe that our study and research results can confirm it.

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