

Trends of minority rights' protection in the countries of the Adriatic area and the Republic of Macedonia¹: comparative analysis and perspectives

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Abstract

In European Union territorial perspective ethnic minorities pass state borders. In the Adriatic and the Balkan area the key to development towards an integrated, harmonious and sustainable socio-economic area is to be found in minorities' bridging role. Often such role can be a cause for political confrontation, marginalization or, at worse, radicalization processes. The colourful ethnic landscapes of the Adriatic and the Balkan Peninsula embrace different minority groups (historical, national and/or new minorities). The Adriatic Area includes various but quite homogeneous ethnic groups, for historical, geographic and cultural reasons. Then again, the Republic of Macedonia as an example from the Balkan Region, shares the same characteristics. The paper focuses on the main common issues, encountered in some Adriatic countries and in Republic of Macedonia, such as language and self-representation rights. The complexity of the minorities' situation in the selected areas requires a the use of the comparative methods, considering different perspectives in order to produce a joint approach, suitable for elaborating and presenting some main perspectives and lessons to be learned; This study uses a secondary data analysis on legislative provisions in some countries of the Adriatic area (Italy, Slovenia, Croatia and Montenegro) and in the Republic of Macedonia as an advanced model of minority rights protecting in the Balkan Peninsula.



INTRODUCTION

The protection of minorities in an academic assessment often comprises an analysis of the existing legal framework and it tends to deal with the respective implementation. As an issue of a forefront in the political agenda of many countries, the protection of minorities has become an important element for consideration in the countries' monitoring and evaluation reports undertaken by the international governmental organisations. The European Union (EU) is undoubtedly a mechanism in terms of actual legislative change in the countries aspiring its membership, however EU is based on a consensus politics; minority issues, within the EU, have had to be tackled in a fractionated way, almost by 'stealth' [2]. Issues relevant to minorities have been addressed by the EU (discrimination and social inclusion, cultural diversity etc.) nevertheless the commitment to initiatives on minorities as such is unsuccessful. The fractionated way of addressing minority protection is seen through the different legal frameworks existing in the EU member states (EU MSs) and those of the pre-accession and candidate countries, mostly developed following the Council of Europe (CoE) Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional or Minority Languages (ECRML).

This paper attempt to examine in brief the legal solutions for minority protection both in EU and non-EU MSs, by selecting the following countries as case studies: Italy, Slovenia, Croatia, Montenegro and the Republic of Macedonia. These countries represent an interesting combination: some have quite sizeable minorities; others have only recently started to adopt protective legislation; they also differ in terms of membership in the EU and other regional organisations. The study is mainly interested in the minority legislation in the countries under consideration and not on the implementation processes, focusing on the recognized numerically largest minority groups settled in the countries' regions belonging to the Adriatic basin area and the numerically largest minority group in the Republic of Macedonia. Through the analysis two key areas emerge: language rights and representation of minority groups. Furthermore, it should be noted that this study represent an overview of the minority rights' protection in the selected countries, with an ambition to illustrate in brief the encountered trends.

ON MINORITIES AND THEIR PROTECTION

Before examining the legislative measures addressing minorities' issues it is crucial to highlight some basic concepts and definitions. The most recent minorities' distinction is the one distinguishing national from ethnic minorities. It is believed (in general) that national minorities are those having a state (nation) of reference (a 'motherland' or 'kin-state'), while ethnic minorities doesn't. However, the concept of 'nation' can be diversely interpreted. The CoE Parliamentary Assembly, in its Recommendation in 2006 [3] has considered whether, and how, this concept can help to address the question of national minorities and their rights in 21st century Europe. The term 'nation' in some CoE Member States is used to indicate citizenship (a legal link between a state and an individual, irrespective of the individual's ethno-cultural origin) while in other states is used to indicate an organic community speaking a certain language and characterized by a set of similar cultural and historic traditions. The term 'nation' is often used in double meaning as well. In this respect, it is easier to identifying the different types of minorities on the basis of objective criteria as the identification distinguished by language, religion and culture, therefore there are linguistic, religious and cultural minorities. [4] These minorities can be as well national or ethnic minorities following the definition mentioned above. As the term 'nation', the term 'culture', as well, faces different and complex interpretations. Kymlicka in his theory of minority rights uses the term 'culture' as synonymous with 'nation' or 'people', therefore for him a state is multicultural if its members are either belonging to different nations (multination state) or have emigrated from different nations (polyethnic state) [5]. It seems that cultural minorities can be defined as well as ethnic or national minorities, and even further, they can be as well linguistic and religious. Another distinctions is made in terms of 'autochthonous' or 'old' and 'new' minorities. The definition of autochthonous minorities is strictly connected with the 'old' or traditional criteria of defining minority groups - the criteria that was seen above, distinguishing among national or ethnic minorities, linguistic, religious and cultural minorities - emerging from an historical context. Autochthonous minorities were settled on a certain territory but because of the migration phenomenon became minorities (national, linguistic etc.) in a certain state. Under the term 'new minorities' are distinguished the immigrant groups - representing one of the most complex and exciting challenges for the diversity rights - the immigration law often uses different instruments than that provided for the treatment of the differences.



Rights of minorities have dual nature – they are at the same time both collective and individual rights. If we analyse the minority rights and their complexity, we can discover that as collective rights they belong to minorities as distinct communities, and as individual rights they belong to every member of a certain minority [6]. The concept of collective rights is becoming more acceptable, but most official legal documents perceive minority rights as individual rights of members of certain distinct ethnic communities [7]. There are state constitutions that explicitly define rights of minorities also as collective rights of these distinct ethnic communities (the Slovenian Constitution in Art. 65 defines the rights of traditional ethnic minorities as collective and individual rights of autochthonous ethnic communities and their members) [8]. Minority rights have their hierarchical order which begins with the principle of non-discrimination and of equal rights. Climbing up on the scale we find the special rights (which may or may not be accompanied by affirmative action); and these special rights, which take into account the differences of the minority members, can be granted as individual or collective rights. On the top we encounter collective rights which reach a certain level of self-determination becoming the right of autonomy as the maximum legal status a minority may achieve within a state [9].

There are at least four fundamental ideological (abstract) models that determine the overall attitude towards arrangements of differences [10]: 1) nationalistic repressive model; 2) "agnostic" liberal model; 3) 'promotional' model; and 4) multinational model. Clearly legislative and administrative practice and case law show how the reality and the historical experience tend to combine elements of different models, because of different circumstances and different parameters of the adopted decisions. In the *nationalistic repressive model*, the state emphasizes the repressive ideology of national identity and unity of the population homogeneity, exalting with exclusivity and superiority. The differences in the society are not ignored, on the contrary, they are considered from the perspective of their repression and their annihilation [11]. *Liberal models* are characterized by exclusive attention to individual rights and a consequent indifference to the collective demands of diversity. In these systems is assumed by law the coincidence between nationality and citizenship, diverse groups of citizens cannot exist. There is no denial of individual fundamental rights and the liberal designs are based on the general recognition of the principle of equality in the formal sense (non-discrimination) of all citizens, however, disregarding the instruments designed to guarantee equality in a substan-

tive way [12]. '*Promotional' models* are characterized by the presence of a dominant national group (the majority) alongside with one or more minority groups. The recognition, protection and promotion of minorities are essential for the constitutional order and take part of its core values. Thus, while the classical liberal model guarantees the right to be equal, the promotion recognizes the right to be different. The entire constitutional order in the case of a *multinational model* is designed to complement and reflect the diversity of institutional constituent groups in the organizational structure of the state, either through the appearance of the territorial division of power, or through specific rules concerning the form of government. Legally there are no majorities and minorities: each national community is a constitutive element of the state. What is going to be seen in the analysis are the different countries' models and arrangements in terms of specific minority rights protection.

TRENDS OF MINORITY RIGHTS' PROTECTION

With the rise of nationalism in Southern, Eastern and Central Europe (during the 19th century), national minorities became a political issue. In order to protect minorities certain states were bound to introduce laws in their domestic legal system [13]. By the end of the 20th century, solutions to ethnic conflicts scenarios were sought through various bi-lateral and multilateral treaties and declarations. Minority rights had been frequently on the agenda of bilateral treaties between the Allied nations and the Eastern and Central European states; the treaties were not of a universal application, applying only between the Allied nations and the particular signatory state. In this regards, in the case of Italy, Slovenia and Croatia the following historical documents are of a great importance: The London Memorandum of Understanding of 1954 [14]; and the Treaty of Osimo from 1975 which confirmed the agreed situation of the London Memorandum [15]. With the dissolution of Yugoslavia and the newly formed independent states in the Balkan Peninsula the previously settled ethnic communities (nationalities) rise up not as 'new' minority groups but as autochthonous minority groups distinct from each other by language, religion and culture. The obligations to respect the signed declarations, conventions and treaties as a consequence of their membership in international governmental organizations (IGOs) such as the UN and CoE, forced these countries to introduce legal measures for human rights protection and in specific to form corpus of minority rights' protection. Their aspirations to become part of



the EU family put them even more in a position to reform their legal frameworks and adjust them in accordance with the Copenhagen criteria. The constant monitoring and evaluation has created a 'peer pressure' for these countries, and in order to be treated equally they are encouraged to change their norms in order to conform to the norms of the IGOs.

Minorities' protection in Italy

Italy, as a founding EU member and the largest state (in terms of territorial dimensions) in the Adriatic area, represents a particular model for minority rights' protection. The Italian model of arrangements of differences can be categorized as 'promotional' model. Through the years, the Italian legal order has been developed in a rich and complex instrument in regards to the juridical treatment of differences. In Italy, there are many minority groups living together, rather different from each other in the number and level of protection granted to them by the legal system. There are about 2.5 million (around 4.5% of the population), divided into at least 12 different language groups. Despite the significant presence of non-native groups from the unification, the question of minority was raised only after World War II, following the annexation of South Tyrol by Italy. Only after the fall of the Fascist regime, however, the protection of minorities became one of the main objectives of the new democratic state born of the ashes of World War II.

The Italian Constitution uses exclusively the *linguistic* criteria as a distinctive feature when defining the term 'minority', ideological choice for the original base membership to the Italian State (and then to the Italian nation, since the state is characterized typically as by the French model) on the objective criterion of citizenship and thus a conception of civic and not ethnic belonging. Despite the adjective "ethnic" appearing in some regional statutes (Trentino-Alto Adige, Friuli Venezia Giulia), the intention is in eliminating references to political-national and ethnic-racial issues and placing the minorities' protection by a linguistic and cultural factor. This does not imply a uniform protection of all linguistic minorities in Italy, or protection of all linguistic minorities. The promotional instrument for their protection is extremely differentiated. To understand the recognition and protection of minorities there must first be kept in mind the fundamental distinction between linguistic minorities and other minorities. To the former, the constitution devotes a special provision (Art. 6), while for the later, the term "minorities" is not specifically mentioned, thus the protection can be found in other fundamental rights and standards (e.g., religious minorities are protected according to articles 8,

19 and 20, the minorities' policies are generally protected through various freedoms, such as that of expression, association, formation of political parties), in addition to the general prohibition of discrimination based on gender, race, language, religion, political opinions, personal and social conditions (Art. 3 para. 1) [16]. The Art. 6 of the Italian Constitution does not specify whether the protection should be implemented through a minority law (applied for all minority groups) or through different measures for each of the minorities to be protected. A particular interest was focused on the key constitutional question of the immediate applicability of this article, given the continued absence (for half a century) of a general standard for implementation of the constitutional principles concerning the protection of minorities. For a long time, the special provisions laid down by Art. 6 came to fruition only in the statutes of certain special regions - in particular, Trentino-Alto Adige/South Tyrol, Valle d'Aosta and Friuli Venezia Giulia (FVG), and their respective implementing rules - and in the few regional laws approved since the seventies of last century [17]. To be able to understand the regional structure of the Italian state it should be noted that there are two types of regions: those of special statute (five - governed by constitutional law and represent those for which - due to economic, cultural, linguistic, geographical reasons or international obligations - the notion of autonomy had taken form prior to the approval of the Italian Constitution on 22nd of December 1947) and the remaining (fifteen) of ordinary statute [18].

Until the approbation of the Law on the protection of linguistic historical minorities of 1999 [19], the distinction was made between recognized and not-recognized linguistic minorities; after the approval the differentiation, in doctrine, is made according to the level of protection since it recognizes all the historic linguistic minorities in the territory: 1) *Extra-protected (superprotette) minorities* - the most protected minority groups in the special autonomous regions in the Alpine and north-Adriatic area (Trentino-South Tyrol, Friuli Venezia Giulia, Val d'Aosta) and within those they are diverse in the intensity and modality of protection; 2) *Minorities eventually protected* - those listed in the law of 1999, whose different level of protection depends on whether the various instruments provided by law are activated or not; 3) *Not recognized minorities (and unprotected)*, or groups which, while in possession of the subjective requirement of the request for recognition as a distinct group, do not fulfil the objective requirement of recognition, and, therefore, are legally irrelevant to the differential treatment (Sinti and



Roma people, but the same goes for immigrant minorities).

The Law of 1999 (Art. 2) provides protection of the following languages and cultures living in Italy: "...Albanian, Catalan, Germanic Greek, Slovenian and Croatian peoples and those speaking French, Franco-Provençal, Friulian, Ladin, Occitan and Sardinian". This law does not apply directly to special regions; the rights contained therein may be extended (if more extensive than that already in place) by the implementing rules of the respective statutes (Art. 18) [20]. The law provides a series of linguistic and cultural rights activities in favour of minority groups subject to protection. It reaffirms the three fundamental pillars on which the protection of minorities is laid on: 1) the language criterion; 2) the need for recognition and; 3) the anchoring of territorial rights recognized.

The Slovenian linguistic minority in Friuli Venezia Giulia

As mentioned, extra-protected minorities are those language groups enjoying a particular strong protection on an extended (in material terms) level, settled in the special regions of the Alps and the north Adriatic. These groups for a long time, represented the only protected linguistic minority groups.

In the Autonomous Region FVG the multilingualism is considered to be the main reason for the 'speciality' of the region [21]. This Region has officially recognised three regional languages – and therefore three linguistic minorities – on its territory: the Friulian, Slovenian and German language. The Slovenian minority and language is protected in the municipalities of the Province of Trieste, in some municipalities of the Province of Gorizia and the Province of Udine (in the so called "Slavia friuliana" area and "Val Canale" area). The exact number of Slovenian speaking persons is quite disputed; while Slovenia estimates around 100,000, Italy estimates about 61,000 [22]. Although the Slovenian minority has enjoyed a status of recognised minority since after the WW II, for a long time, their protection was marked by the absence of legal instruments and was based more on administrative practice than on legal provisions [23]. Apart from the London Memorandum of Understanding of 1954 and the Treaty of Osimo from 1975, the Law of 1999 was considered as the first important step helping in the development of the legal instruments for the protection of the Slovene minority in Italy and specifically in the FVG region. This law provided the legal ground for the Law on the Protection of the Slovene Linguistic Minority (n.

38/2001) [24]. Prior to the enactment of these laws, some language rights of the population living in the FVG region such as the use of the mother language in the education system were regulated by the by Law n. 1012 from 19 July 1961 [25]. The regional legal framework covers the following main legal texts crucial for the protection of the Slovenian minority: the Regional Law n. 26 from 16 November 2007 concerning the regional standards for the protection of the Slovenian linguistic minority; and the two Decrees of the President of the Region (no. 0253/Pres. from 05.08.2005 regarding the regulations for recognition of organizations and institutions and n. 0340/Pres. from 03.10.2005 on granting funds in favour of the minority).

The Law n.38/2001 recognizes and protects the rights of Italian citizens belonging to the Slovenian linguistic minority in the provinces of Trieste, Gorizia and Udine [26]. The application of this law is based on the traditional presence of the Slovenian minority in the territory of the region (municipalities or fractions listed and established by law), at the request of at least 15% of citizens registered to vote or one third of the municipal councillors of the municipalities concerned [27]. By law, members of the Slovenian minority have the right to give their children Slovenian names. They also have the right to have their name written or printed in proper form according to the Slovenian spelling in all public acts. The right to the names, emblems and insignia in Slovenian language is also applied to the Slovenian companies, and other legal entities, as well as to institutions, organizations, associations and foundations. Citizens belonging to the Slovenian minority may obtain a change of their names written in Italian and imposed on them prior to the corresponding name in the Slovenian language or in the language usually used in their social relations. The Slovenian minority is entitled to use the Slovenian language in relations with the public authorities and local courts, with the dealers of services of public interest established in the territory. The right to receive a response in Slovenian language is also recognized: a) in verbal communication, usually directly or through an interpreter; b) in correspondence, with at least a translation attached to the text written in Italian; c) in the municipal acts and measures of any kind for public use. Competent public administration offices provide contextual translation in Italian of speeches and writings. The communication in the offices of the Regional Council, Regional Administration and dependent entities is also allowed in the Slovenian language; the law ensures that the information direct to the public, as well as those of specific interest to the minority and institutional and promotional information spread



throughout the region are also published in Slovenian in the magazines. Personal documents such as identity cards (IDs) and personal certificates are issued at the request of concerned citizens, both in Italian and Slovenian or in Italian only. The use of the Slovenian language is also provided with reference to notices and official publications. The official forms for access to benefits are provided by law in Italian and Slovenian language. The collegial bodies and elected assemblies located in the territories are entitled to use the Slovenian language in speeches and writings, and in the presentation of proposals, motions, questions and interpellations. The Slovenian language can be used for place names and road signs in parts of municipalities and localities identified by law. In the area of settlement of the Slovenian minority language on signs on public display and in all indications for the public, including the labels on agricultural products, handicrafts and industrial products, are available in Italian and Slovenian language.

Apart from the linguistic rights, the members of the Slovenian minority have the right to form organizations and associations (trade unions and professional organizations), the right to elect their political representatives, and right to economic activities and a right to be protected against discrimination (on ethnic basis). Regional Consultative Commission for the Slovenian minority is formed as an organ of general advice on all matters and issues related to Slovenian minority and language in the region (Art. 8 of the Regional Law n. 26/2007).

Minorities' protection in Slovenia

As an EU Member State (MS) from 2004, the Republic of Slovenia officially recognizes two autochthonous (historic and national) minorities on its territory: the Italian and the Hungarian minority group [28]. According to the last census 2,258 (0.11%) declared themselves as Italians and 6,243 (0.32%) as Hungarians [29]. Besides their small consistency in numbers, these minority groups enjoy guaranteed rights irrespectively of the number of members belonging to these minority groups [30]. The most numerically consisted community living in Slovenia is the Serbian with 1,98 % of the total population (1,964,036) according to the 2002 census, however this community has not be recognized as (national) minority group. In this regards, it should be immediately underlined the fact the Slovenia accepts the definition of 'minority' in terms of 'old' and 'new' minority, giving special safeguards for the rights of the 'old' autochthonous (linguistic and national) minorities. By taking the subjective approach in defining 'minorities', Slovenia bases minority affiliation on the individual's identity, acknowledging two

minorities whose language and cultural particularities are to be protected [31].

As the Italian, the Slovenian model is also seen as 'promotional' [32]. The model of minorities' protection in Slovenia can be distinguished by the following three dimensions: 1) legal protection (relatively complete) of autochthonous national minorities; 2) provisions for protection of the Roma community and specific policies; and 3) preservation of ethnic and cultural identity on an individual basis (not as a collective right) deriving from the universal cultural rights of the individuals established by the Slovenian Constitution (Art. 61: *Everyone has the right to freely express affiliation with his nation or national community, to foster and give expression to his culture, and to use his language and script*) and referring to the 'new' minorities (migrants). The focus of this chapter is put on the first dimension.

Already in the Constitution of the Socialist Republic (SR) of Slovenia of 1963 (Art. 77) [33] as well as that of 1974 (articles 250, 251) [34] Slovenia granted to the Italian and Slovenian minorities (at that time defined as 'nationalities') several special rights (language rights, education, media and cultural education). The Slovenian Constitution from 1991 (in art. 64) affirms special rights for the autochthonous national communities living in Slovenia. It specifically asserts the following rights: use of national symbols; establishment of organisations and development of economic, cultural, scientific and research activities as well as activities in the field of public media and publishing; education and schooling in their mother language and right to establish and develop such education and schooling; representation in local self-government and National Assembly (Art. 80); fostering relations with their nations of origin and their respective countries. In reference to the territorial application of these rights, it is stated that the exercise of these rights outside the areas where these minorities reside is to be regulated by a specific law. It is also established that laws, regulations and other acts regarding the rights and position of these minorities exclusively "*may not be adopted without the consent of representatives of these national communities*"; a type of 'absolute' veto in the hands of representatives of the national minorities (both deputies in the Slovene parliament and municipal council members) [35].

In the areas where these minority groups reside, self-governing communities are established to facilitate the use of the guaranteed rights. The main institutions of the self-governing communities (public legal bodies) are the Councils. These communities are established by the Law



on Self-governing Ethnic Communities [36]. The activities of these self-governing ethnic communities are funded by the municipal budgets (for the communities acting on municipal level) and from the state budget (for the Hungarian and Italian national communities) (Art. 18). They can perform the following tasks (Art. 3): 1) give consent to matters concerning the protection of special rights of ethnic communities; 2) discuss and study matters concerning the status of ethnic communities (by adopting standpoints and submitting proposals and initiatives to competent bodies); 3) stimulate and organize activities, contributing to the preservation of ethnic identity of members of Italian and Hungarian ethnic community. In regards to their language rights, the Constitution protects them by recognising them together with the Slovenian as official languages with an equal status (Art. 11), however the application of this right is limited on territorial basis as asserted in the Slovenian Public Administration Act for the use of languages in administration where the Italian and Hungarian language are second official languages only in the areas where the Italians and Hungarians are traditionally settled [37].

The Italian national minority in Slovenia

Historically speaking, for the protection of the Italian minority in Slovenia, the two previously mentioned historical documents are of a great importance. The London Memorandum of Understanding of 1954, for example, provided protection in an extensive and reciprocal way: *"The members of the Yugoslav ethnic group in the area administered by Italy and the members of the Italian ethnic group in the area administered by Yugoslavia shall enjoy equality of rights and treatment with the other inhabitants of the two areas."* The equality of rights and treatment refers to: political and civil rights; acquisition or performing public services, functions, professions and honours; access to public and administrative office; use of language (education in mother language, free use of mother language in personal and official relations with administrative and juridical authorities); social assistance and pensions (Annex II 'Special Statute'). The provisions of the London Memorandum were confirmed in the Treaty of Osimo (1975) (where the Yugoslav translation of the terms 'minority' and ethnic group' is made by the term meaning 'minority' and the Italian translation by the term meaning 'ethnic group').

As emphasised before, the members of the Italian minority in the territory of their settlement enjoy linguistic rights (use of Italian language in the municipal administration, in education, place and street names, road indications, etc.). The Italian language is an official language

in the areas inhabited by this minority, the so-called ethnically mixed areas determined by municipalities' statutes according to the Law on the Formation of Municipalities and on the Determination of Their Territories [38]. What is interesting to mention is that it is provided an increase of the basic salary by 6% for those persons who have active knowledge of the language of the national community and an increase by 3% for those persons who have passive knowledge of the language of the national community ('economic bilingualism') [39].

In regards to the representation in the Parliament the Italian minority has one reserved seat (from 90 seats), *"the deputies, except for the deputies of the national communities, are elected according to the principle of proportional representation with a four-percent threshold required for election to the National Assembly, with due consideration that voters have a decisive influence on the allocation of seats to the candidates"* (Art.80 of the Constitution). The Italian minority have a double voting right in the sense that the members of the minority are entitled to vote on the basis of the general constituency of residence as well as on the basis of the minority constituency (on in other terms one vote according to political affiliation and another to elect special minority representatives [40]. The most important political organization of the Italian minority in Slovenia is the Italian Federation (Unione Italiana) taking coordination actions of members of the Italian minority in Slovenia and Croatia. This organization was registered in 1998 as a federation of association [41].

Members of the Italian minority are very much distinguished from the ethnic Slovenians in the area inhabited by the Italian minority - Slovene Istria - mostly by their everyday use of Italian. Consequently members of the Italian minority continually define themselves as such merely on the basis of language; however at the same time they feel Slovene Istria as their home [42]. In Slovene Istria there is bilingualism in public inscriptions, bilingual identity cards and passports, a high number of mixed marriages etc. According to some due to the absence of interethnic conflict, the case of Slovene Istria can be referred to as a working example of multi/interculturalism [43].

Minorities' protection in Croatia

The Republic of Croatia is an EU Acceding country; in June 2011 closed the last of the 35 negotiating chapters; in December signed the Accession Treaty and in January this year held a positive referendum on EU accession. As in most of the countries' legal frameworks on protection



of minority groups, in Croatia the minorities' protection is guaranteed through a supra-national protection directly applicable in the national legislation following a ratification of international conventions and charters; bilateral agreements, such as the one between Italy and Croatia from 1996 [44]; the Constitution and the Constitutional law on the rights of national minorities in Croatia and other relevant laws concerning the rights of the minority groups living in the country. It is possible to distinguish two main 'normative seasons' in Croatia in terms of minorities' rights [45]. The first one is from the beginning of 1991, following the dissolution of Yugoslavia and the independence of Croatia. In this period, the prediction of legal measures for minorities 'protection, both in the Constitution and in constitutional law, has represented an aspect of the broader objective of ensuring full protection of human rights. On the sidelines of this regulatory process stands the agreement between Italy and Croatia, for the protection of minorities, which was the result of a long historical development. The second 'season' has started in 2000, when, on the basis of the CoE recommendations [46], the Constitutional law has been amended. This reform took place also in the context of the negotiation process for adhesion with the EU which started the same year when the law has been amended. As in the previous two countries, Croatia has a 'promotional' model of arrangements of differences.

The Croatian legal framework on minorities' protection consists of: FCNM, ECRML, European Charter of Local Self-Government, The Constitution of the Republic of Croatia (Const.), Constitutional Law on the Protection of National Minorities (Const.Law), (adopted in 2002), The Law on Use of Language and Script of National Minorities, The Law on Education in Languages and Scripts of National Minorities, The Act on Election of Representatives to the Croatian Parliament, The Law on the Election of Members of Representative Bodies of Local and Regional Self-Government and other relevant laws. Additional mechanisms for the protection of national minorities are bilateral agreements signed between the Croatia and Italy, Hungary, Montenegro, Serbia and Macedonia [47].

The Constitution does not contain a list of minority rights; it establishes some fundamental principles allowing for a development of protective provisions for minority groups. The Constitutional Preamble [48] affirms that the Republic of Croatia is established as the nation state of the Croatian nation and the state of the members of its national minorities: Serbs (4.54%), Czechs (0.24%), Slovaks (0.11%), Italians (0.44%), Hungarians (0.37%), Jews (0.01%), Germans (0.07%), Austrians (0.01%),

Ukrainians (0.04%), Rusyns (0.05%), Bosniaks (0.47%), Slovenians (0.30%), Montenegrins (0.11%), Macedonians (0.10%), Russians (0.02%), Bulgarians (0.01%), Poles (0.01%), Roma (0.21%), Romanians (0.01%), Turks (0.01%), Vlachs (0.00%/12 citizens), Albanians (0.34%) [49] and others (citizens of Croatia).

Under the Const. Art. 15(1), equal rights are guaranteed for the members of all national minorities living in Croatia. Furthermore the constitution establishes a two-thirds majority vote in the Croatia Parliament for adopting laws regulating the rights of national minorities (Art.83). In 1999 Croatia adopted a Constitutional Law on Human Rights and Liberties and the Rights of Ethnic or National Communities or Minorities in the Republic of Croatia which was amended in 2002 [50]. On the principle of non-discrimination, this law recognises the rights of all citizens to express their national (ethnic) belonging. In Art. 5 it defines the term 'national minority' as a group of Croatian citizens traditionally settled on the territory of Croatia having ethnic, linguistic, cultural and/or religious characteristic different from the rest of the citizens in Croatia and have a wish to maintain those characteristics. The special rights guaranteed to the minority groups in Croatia (enjoyable on individual or a collective basis) are established by Art. 7, in particular in terms of: 1) linguistic rights; 2) education; 3) use of symbols and insignia; 4) culture; 5) practise of religion; 6) media; 7) self-organisation and association; 8) representation; 9) participation in public life and local self-government; 10) protection of their existence and exercise of their rights and freedoms.

In regards to linguistic rights, minorities in Croatia have the following specific rights: 1) to use their family and first names in the language they use; 2) to have the forms for their ID cards printed and completed in their language; 3) to use freely their language and script privately and in public; 4) to be educated in their mother language. In Croatia the official state language is the Croatian, however in individual local units, another language and Cyrillic or some other script may be introduced in official use together with the Croatian language and Latin script under conditions specified by law (Const. Art12(2)). A threshold of one third of the population in the territory of a local self-government unit is established (under Art. 12(1) of the Const. Law) for an official use of a minority language. Language rights are regulated also with the Law on Use of Language and Script of National Minorities [51].



Representation rights are assured under Art. 19 of the Const. Law guaranteeing three seats in the Croatian Parliament for the minorities accounting for more than 1.5% of the total population, while those minorities accounting less than 1.5% have the right to vote for five deputies within their own special constituencies. Members of national minorities have also the right to representation in the representative bodies of local and regional self-government units. In the self-government units an election of a minimum of one member of minority is guaranteed if the minority accounts for more than 5% and less than 15% of the population (in that unit). The number of members of a representative body is achieved following the proportional representation principle. For protection, advancement and preservation of minority rights, the Const. Law (Art.23) establishes National Minority Councils (non-profit legal persons) in those self-government units in which minorities account for a minimum of 1.5% of the total population, in local self-government units in which over 200 members of a given national minority live, and in regional self-government units in which over 500 members of a national minority live. The Const. Law establishes also a National Minorities Advisory Board in the interest of national minority participation in public life, and in particular for protection of minority rights and freedoms (Art.35).

The Italian national minority in the Region of Istria

Following the Adriatic context of this paper, the protection of minorities in the Region of Istria has been selected; in terms of numerically largest minority in this region, the focus will be on the protection of the Italian minority. According to the data retrieved from the Region of Istria (from the 2001 Census), in the territory of this region there are 14.284 Italians or 6.9% of the total population in the region [52].

For the special protection of this minority group Italy and Croatia have signed the bilateral agreement "Treaty between the Republic of Croatia and the Italian Republic concerning minority rights" on 5 of November 1996 in Zagreb (in English). On the basis of this treaty the Italian minority enjoys special protection. Recognizing autochthony, uniqueness and specificity of the Italian minority, the treaty imposes the respect of minority rights enshrined both internationally and nationally (Art.1). Before the dissolution of Socialist Federal Republic of Yugoslavia (SFRY), the Italian minority was settled in the territory of Istria; after the independence of Slovenia and Croatia, the minority was divided by a border when the minority was settled in two different states. To be able to over-

come the negative consequences Italy signed a Memorandum of Understanding (15 January 1992 in Rome) with the two states setting the main provisions for protection of the Italian minority. The above mentioned treaty includes provisions from this Memorandum; and furthermore endorses the rights established by the London Memorandum and the Osimo Treaty (previously mentioned). With this treaty "Unione Italiana" is established as recognized organization with legal personality representing the Italian Minority in Istria (Art.4) [53].

The Italian minority in Istria enjoys linguistic rights. According to the Statute of the Region, the Croatian and the Italian language are equally recognized as official languages in the regional public administration and the local self-government units (Art.6) [54], accordingly the use of the Italian language in legal documents is recognized. In order to perform the principle of equality, the Region employs personnel with the proficiency of both languages (Art.28). In regards to the use of languages in the Regional Assembly, by this Statute it is established that the Assembly's work is carried out in both languages, Croatian and Italian. Furthermore the Region provides bilingualism for texts and stamps, signboards of representative, executive and administrative bodies and authorized legal persons, titles of acts, whereas bilingualism is also guaranteed in submitting materials for the sessions of the Regional Assembly and Parliament, in writing minutes and conclusions, publishing official documents (in the Official Bulletin of the Region) and notifications, as well as for public documents and forms used for the official purpose etc. (see Art. 25 Art. 28). The Statute (in Art. 27), guarantees the following rights to the members of the Italian minority: 1) the right of public use of their language and their alphabet; 2) the right of preserving their national and cultural identity; 3) establishment of cultural and other associations that are autonomous; 4) the right of free organization of informative and publishing activity; 5) the right of pre-school and elementary, high school and college education in their own language according to special programmes which appropriately contain their history, culture, and science; 6) the right of giving prominence to their national features; 7) the rights to representatives in the Regional Assembly (at least 4 members of 41 whereas the President or one of the Vice Presidents are members of the Italian minority). The Statute also prescribes the use of the flag of the Italian minority on special occasions and during sessions of the representative body. Furthermore in the Statute a Committee for Issues on Protection of Rights of the Autochthonous Italian National Community is formed as a permanent working body of the Regional Assembly, with ma-



majority of members from the Italian minority. To the Italian Union (mentioned above), the Statute recognizes the status of a representative of the members of the Italian minority. In terms of voting procedures for amendments to the Statute, it is established that whereas amendments concern "articles regulating the rights of the Italian national community and other autochthonous, ethnic, or cultural characteristics of the Istrian Region", those amendments are passed by a two-thirds majority (Art.82). As a conclusive remark, it should be noted that by the Decision of the Constitutional Court of Croatia (U-II-425/2002 of 16 January 2008), the proposal to institute the proceedings for the review of constitutionality and legality of some of the articles of the Amendments to the Statute was dismissed. Those articles among others refer to the linguistic rights of the Italian minority in the region [55].

Minorities' protection in Montenegro

On May 21, 2006, the Republic of Montenegro held a successful referendum on independence and formally declared independence on June 3, 2006. As an independent state it is founded following the basic values of freedom, peace, tolerance, respect for human rights and liberties, multiculturalism, democracy and rule of law [56]. In terms of respect and protection of human rights and minority rights in specific, Montenegro has taken in short period of time important steps by adopting a Constitution which includes a minority rights chapter (5. Special – minority rights) reflecting the principles of the FCNM [57]. Moreover, this country has been confirmed a candidate status by the European Council in December 2010; accession process was launched in December 2011 and the accession negotiations are to be opened in June this year.

In the census of 2011, in accordance with the census methodology, the persons were not required to declare a national or ethnic origin, nor in terms of religion or mother tongue. The data on national, i.e. ethnical affiliation are a result of free declaration of population. When asked about national or ethnic origin 4.87% of citizens (30,170) did not want to declare according to ethnic affiliation. According to the Census data of the Statistical Office of Montenegro (MONSTAT) Montenegro has a population of 620,029 from which: Montenegrins (44.98%), Serbs (28.73%), Bosniaks (8.65%), Albanians (4.91%), Muslims (3.31%), Roma (1.01%), Croats (0.97%), Bosnians (0.07%), Bosniaks-Muslims (0.03%), Montenegrins-Muslims (0.03%), Montenegrins-Serbs (0.30%), Egyptians (0.33%), Gorani (0.03%), Italians (0.19%), Yugoslavs (0.19%), Hungarians (0.05%), Macedonians (0.15%), Muslims-Bosniaks (0.03%), Mus-

lim-Montenegrins (0.04%), Germans (0.02%), Slovenians (0.15%), Serbs-Montenegrins (0.34%), Turks (0.02%), Other (0.19%). The census data also give percentage on regional affiliation (0.19%) [58].

In the Constitution of Montenegro (Art. 79) are guaranteed the following 'special minority rights': 1) the right to exercise, protect, develop and publicly express national, ethnic, cultural and religious particularities; 2) the right to choose, use and publicly post national symbols and to celebrate national holidays; 3) the right to use their own language and alphabet in private, public and official use; 4) the right to education in their own language and alphabet in public institutions and the right to have included in the curricula the history and culture of the persons belonging to minority nations and other minority national communities; 5) the right, in the areas with significant share in the total population, to have the local self-government authorities, state and court authorities carry out the proceedings also in the language of minority nations and other minority national communities; 6) the right to establish educational, cultural and religious associations, with the state financial support; 7) the right to write and use their own name and surname in their own language and alphabet in the official documents; 8) the right, in the areas with significant share in total population, to have traditional local terms, names of streets and settlements, as well as topographic signs written also in the language of minority nations and other minority national communities; 9) the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action; 10) the right to proportional representation in public services, state authorities and local self-government bodies; 11) the right to information in their own language; 12) the right to establish and maintain contacts with the citizens and associations outside of Montenegro, with whom they have common national and ethnic background, cultural and historic heritage, as well as religious beliefs; 13) the right to establish councils for the protection and improvement of special rights. Laws regulating "...the manner of exercising obtained minority rights..." are voted in the Parliament by a two-third majority in the first round and by a simple majority in the second round (Art. 91, para.4). The exercise of the special minority rights is regulated by the Law on minority rights and freedoms [59]. In this legal document Montenegro gives a definition on what constitutes a minority (Art. 2): "any group of citizens of Montenegro, numerically smaller than the rest of the predominant population, having common eth-



nic, religious or linguistic characteristics, different from those of the rest of the population, being historically tied to Montenegro and motivated by the wish to express themselves and maintain their national, ethnic, cultural, linguistic and religious identity". The definition follows completely the most commonly cited definition of minority developed by Francesco Capotorti, Special Rapporteur for the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in a special study on minorities in 1977 [60]. None of the definitions formulated in international law is binding upon any state; a given state should find a definition that serves the needs of the specific minority situation in this state. It could be also said that it is not necessary to use the term 'minority' in the definition, if a given group feels unhappy with this expression, as is often the case when a part of the former majority population becomes minority due to border changes (the case of Serbians, Croatians, Slovenians, Bosniaks, Bosnians and Macedonians in Montenegro); another term could be more acceptable, such as 'language group', 'cultural group' or 'community', 'nationality', 'nation', etc. However this certainly does not facilitate the long lasting process of finding and concretising a definition on minorities. In the case of Montenegro this is exactly the problem. Considering the last census data mentioned above (and those according to mother language and religion) Montenegro has around 23 ethnic minority groups (according to ethnic affiliation) and around 19 linguistic minority groups. Gilbert points out that *"while a minority must be numerically smaller than the majority population, it must also constitute a sufficient number for the State to recognise it as a distinct part of the society and to justify the State making an effort to protect and promote it. There must be a group, not simply a few individuals"* [61]. In the Law on minority rights and freedoms there is no legal provision on explicit recognition of some ethnic, religious, or linguistic communities as an official minority group or a numerical threshold in this regards. In the Constitution of Montenegro the preamble establish clearly that *"...as free and equal citizens, members of peoples and national minorities who live in Montenegro: Montenegrins, Serbs, Bosniacs, Albanians, Muslims, Croats and the others, are committed to democratic and civic Montenegro"*.

The Albanian minority in Montenegro

It is selected by the author, following the criteria of language and numerical consistency that in this part the protection of the Albanian community in Montenegro will be shortly presented. The Albanian minority in Montenegro is considered to be a national minority (ethnic group

within a host-state, but simultaneously ethnic kin of another, often neighbouring kin-state).

As guaranteed right, the Albanian community in Montenegro has established a National Council in 2008 with the main aim to preserve the identity and culture of the community. The actions and activities undertaken by the National Councils of minorities and other national communities in Montenegro are financed by the state budget. The Albanian minority in Montenegro enjoys linguistic rights; the Albanian language is one of the languages having an official use in Montenegro (Art. 13, para.1 of the Constitution). Should be noted that the Albanian and Romani minority languages are languages for which Montenegro take on the obligations of ECMRL[62]. In the local self-government units where the minority members make the majority or significant part of the population, according to the last Census results, the language of that minority is in official use (Art. 11 of the Law on minority rights and freedoms). This stipulates that the language of that minority is used in administrative and court proceedings and in conducting administrative and court proceedings, use of such language at issuing public documents and keeping official records, on the ballot and other election material and in the work of representative bodies. The official use in the territories of local self-government is guaranteed through the naming of bodies in charge of public authorizations, local self-administration unit, settlements, squares and streets, institutions, commercial and other companies and toponyms.

In specific the Albanian language is in official use in Podgorica, in the Municipalities of Plav and Ulcinj, as well as in the City Municipality of Tuzi, Rozaje and Bar . In these municipalities the members of the Albanian minority are allowed to use their language and follow the proceedings in the administrative bodies though an interpreter and have copies of the decisions in their language. Documents in these specific municipalities can be issued in Albanian language. In the Assemblies of the local self-government units, the use of the Albanian language is allowed, while discussing acts and other relevant documents (and later published in Albanian). According to the Second Report of Montenegro on implementation of ECMRL, *"in the electoral legislation procedure - in the electoral places specified by the special decision of the Parliament of Montenegro, in electoral material for the election of Councillors, Members of the Parliament, Municipality Presidents and President of Montenegro, in use is the Albanian language and script"*. In regards to the language of instruction the General law on Education stipulates that the official language of instruction in Mon-



tenegrin, however in line with the respect of the rights of minorities in teaching institutions, the Bosnian, Albanian and Croatian languages are language in official use (Art. 11) [63].

Some claim that the Albanian minority suffers from under-representation, discrimination, un-equal treatment, not 'rightly' used mother language where guaranteed by law and other similar issues pointing the fact that the Albanian minority in Montenegro finds itself in a still 'unhappy' position. According to the same scholars in the education system Montenegro is denying basic minority rights "where everything that is Montenegrin is disproportionately glorified and almost everything Albanian is omitted, downplayed, or actively demonized" [64].

Minorities' protection in the Republic of Macedonia

The Republic of Macedonia is a case of a multicultural society with a history of minorities' accommodation followed by inter-ethnic tensions. As a multicultural state the Republic of Macedonia is characterized by the following elements: 1) a unitary state where the relationships with the ethnic communities (nationalities) is direct (interaction between communities with communities); 2) a non territorial principle of accommodating minorities; 3) and a country (as one of many in the Balkans) that passed through a transition period [65]. In terms of a model determining the attitude towards arrangements of differences this country created a 'promotional' model. The Republic of Macedonia has developed mechanisms and instruments for inclusion and co-habitation with different ethnic groups until recently (however the basis was established long ago). The system of minority rights protection is still fragile and subject to further modifications; nevertheless the political and legal system in the country are seen as a unique and unquestionably successful model of protection of minority rights in the Balkan Region. The Republic of Macedonia has been granted an EU candidate status in December 2005; while high level accession dialogue with Macedonia has been opened at the beginning of 2012.

In Republic of Macedonia, there is an interethnic structure composed of one dominant group and that is the Macedonian ethnic community (the Macedonian people or the Macedonian ethnic nation) and one large minority group and that is the Albanian national minority. According to the census of 20 June 1994, alongside 1,295,964 Macedonians (66.6% of a total of 1,945,932 inhabitants) in the Republic of Macedonia also lived 441,104 Albanians (22.7%), 78,019 Turks (4%), 43,707 Roma (2.2%),

40,228 Serbs (2.1%), 15,418 Muslims (0.8%), 8,601 Vlachs (0.4%), and 22,891 members of other nationalities (1.2%). The number in the next census in 2002, did not change much for the smaller communities, and the Albanian community as the biggest minority community showed a growth, having a participation in the total population of the Republic of Macedonia with 25.17 % while Macedonians 64.18%. The Turkish community in this census showed 3.85 %, the Roma 2.66%, Vlachs 0.48%, Serbs 1.78%, Bosniaks 0.84% and Others 1.04% [66].

In September, 1991, after a referendum, a new independent Republic of Macedonia was formed. The 1991 Constitutional Preamble asserted "...the historical fact that Macedonia is established as a national state of the Macedonian people, in which full equality as citizens and permanent co-existence with the Macedonian people is provided for Albanians, Turks, Vlachs, Romas and other nationalities living in the Republic of Macedonia." Not only was there a 'titular nation' emphasis in this civic constitution's preamble, but more significantly, group rights were shifted to an individual basis. The Macedonian language and its Cyrillic alphabet were declared the Republic's official language. The 1991 Constitution, as a first pillar, established Macedonia as a unitary and civil state. The provision that at that time provided protection for the minority groups are Art. 7 (use of language), 8 (fundamental values: free expression of national identity) and Art. 48 (protection of the ethnic, cultural, linguistic and religious identity of the nationalities; instruction in Macedonian and the language of the nationalities) [67]. With the Ohrid Framework Agreement (OFA) as 'the internationally recognized conflict-resolution agreement' of 2001, the Constitution has been amended. It was amended pursuant to the stipulations of the agreement in an attempt to reflect better the multiethnic character of the country.

The Macedonian Constitution includes an explicit acknowledgement of the country's Albanian, Turkish, Vlach, Serbian, Roma, and Bosnian minorities in the Preamble. It provides for minority language rights, and provisions for the use of minority languages at the local level: "*The Macedonian language, written using its Cyrillic alphabet, is the official language throughout the Republic of Macedonia. Any other language spoken by at least 20 percent of the population is also an official language, written using its alphabet...*" (Amendment to the Art.7). It also establishes "*equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life*" and "*the free expression of national identity*" as fundamental values of the state. Non-



discrimination and equality of religious communities are also guaranteed in the Constitution. It specifies as well, the rights of members of ethnic minorities ("communities"): "a right freely to express, foster and develop their identity and community attributes, and to use their community symbols", a right "to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity", and "a right to instruction in their language in primary and secondary education". The freedom of religion, the historical and artistic heritage promotion and protection of the Macedonian citizens are guaranteed by the Constitution. As a significant element of the Macedonian model for minority rights protection is considered to be the double majority voting (Art. 69, the Badinter principle - a right for a double voting on laws that concerns minorities' interests). Moreover, it should be highlighted as a comparison with the other countries in consideration in this study, the fact that with the Constitution from 1991, a special Council was introduced composed by the President of the Republic, two Macedonians, two Albanians, two Turks, two Vlach, two Roma and two members of other ethnic groups in Macedonia. This Council was called the "Council for inter-ethnic relations" as part of the Parliament. With the amendments brought by the OFA the Council is renamed into a Committee comprised from 19 members of whom 7 Macedonians and 7 Albanians, and one each from the communities of Turks, Vlach, Roma, Serbs and Bosniaks" elected by the Parliament.

As an important legal instrument protecting minority rights in general, should be mentioned the Law on prevention of protection against discrimination from 2010 [68]. This law guarantees prohibition of and protection from discrimination in the exercise of the rights guaranteed by the Constitution, laws and ratified international agreements (Art.1(1)). It prohibits any direct or indirect discrimination, reference and incitement to discrimination and assisting discriminatory treatment on the ground of gender, race, colour of skin, belonging to a marginalized group, ethnic affiliation, language, citizenship, social background, religion or religious belief, other beliefs, education, political affiliation, personal or society status, mental or physical disability, age, family or marital status, property status, medical condition or any other basis which is provided by law or a ratified international agreement (referred to as discriminatory basis). Other laws that include provisions guaranteeing certain minority rights (and amended by the OFA) are the Law on Local Self-Government; Law on territorial organization of local self-government in the Republic of Macedonia; Law on

the organization and work of the Public Administration; Law for civil servants; the Electoral Code; Law on Members of the Parliament; Law on Identity Card; Law on Personal Registry Files; Law for the promotion and protection of the rights of members of the community that is less than 20% of population in the Republic of Macedonia; Law on the use of a language spoken by at least 20% of the population and in the units of local-self government and other laws.

The Albanian minority in Macedonia

The Albanians, as the most numerous nationality, live in compact settlements in the western part of Macedonia (near the border with Albania) and in the north-western part (towards the border with Kosovo), as well as in Skopje and Kumanovo. They comprise the majority of the population in Tetovo, Gostivar, Debar, and other towns. The Albanian minority in Macedonia enjoys special minority rights (pursuant to the OFA and the amendments briefly underlined above) in particularly in terms of language use. For enjoying language rights at state and local level, the size of the community has become an important mark. The OFA established a percentage in this regards. For the collective rights to be exercised by an ethnic community, a percentage of at least 20% of the population is established. According to existing legislation, the languages of ethnic minorities must be recognized as additional official languages in areas where those minorities comprise at least 20% of the population.

As a minority group comprising 25.17 % of the total population, the Albanian minority enjoys highly protected linguistic rights, guaranteed by the Macedonian Constitution and regulated by special laws, in first place, by the Law on the use of a language spoken by at least 20% of the population and in the units of local-self government. This law ascertains the use of the language (spoken by at least 20% of the citizens in the country) in the Parliament, in the communication with ministries, judicial and administrative proceedings, enforcement of sanctions, communication with the ombudsman, in electoral processes, issuance of personal documents, in keeping personal files records, police force, infrastructure facilities, local self-government, finances, economy, education and science, culture and other areas according to this law (Art.2,para.2). A MP who speaks Albanian language, can use that language during a parliamentary session and in the meeting of the parliamentary working groups. The materials from the parliamentary sessions and other materials issued by the Parliament may be available in that language and its alphabet as well. The members of the Albanian minority have a right to communicate and to



receive a response in their own language with the units of local self-government and state administration offices if in that unit at least 20% of the citizens speak Albanian language. Linguistic rights for the Albanian minority are also guaranteed in education. In this regards Republic of Macedonia received a positive assessment by the CoE Advisory Committee on the FCNM in its third opinion on Republic of Macedonia stating that "a well-developed system of minority language education exists" in the country [69]. Primary education and education activities are in Macedonian language and Cyrillic alphabet. For the students, members of an ethnic community, who follow the teaching language different from the Macedonian, the educational activities are conducted in the language and script of the relevant community; however those students are obliged to learn the Macedonian language. The Law for primary education in Art. 2 prohibit "*discrimination based on sex, race, colour, national, social, political, religious, financial and social background in exercising the rights of primary education...*" [70].

The OFA introduced the proportional representation of the ethnic communities in Macedonia. In this regards, statistical data shows an increase in the participation of the members of the Albanian minority in the public administration, something that cannot be said for the other minorities in the country [71]. As for the inclusion of the Albanian minority in the government in the Republic of Macedonia all governments elected by the Macedonian Parliament since independence have been coalition governments, in which one of the parties of the Albanian community acted as a coalition partner.

COMPARATIVE OBSERVATIONS AND CONCLUDING REMARKS

In the two EU Member States (MS) (Italy and Slovenia) in this study there are significant differences and similarities. As a starting distinctive mark can be mentioned the criteria for recognizing minorities on their territories. Both countries have accepted the distinction in terms of autochthonous and new minorities, giving special rights and protection for the former. Historical minorities in the territories of these countries played a crucial role in the past. At the same time, both countries' models are according to the theory (explained at the beginning of this study) 'promotional'. Whereas Italy, as a significantly larger state has a differentiated treatment of minorities mainly because of its quasi-federal system, Slovenia as a smaller EU MS, creates another type of differentiated

treatment mainly because of the historical developments in its territory. These two countries share a common history; this was clearly seen and noted by the analysis of the protection of the Slovenian minority in FVG Region and of the Italian minority in Slovenia. Italy kept accusing Slovenia for not respecting the rights of the Italian minority and tried to block Slovenia's accession to the CoE. Furthermore, many experts on minorities consider Slovenia somewhat of a model for an adequate protection of minorities, while in Slovenia there is a general awareness of the poor protection enjoyed by the Slovenian minority in Italy. Since both minorities (Slovenian minority in Italy and Italian minority in Slovenia) do not present a considerable part of the respective nations on both sides of the border, the minority issue was often considered as an instrument of national policy. Minorities are often (mis)used by states to achieve quite other national interests [72]. Going further to Croatia, it can be said that it shares as well a common history with both Slovenia and Italy in regards to the legal instruments for minority rights' protection. It also shares the same minority group with Slovenia – the Italian minority in the Region Istria. Historical agreement, as Kymlicka points out, and the value of cultural diversity can contribute greatly to justification of minority rights [73].

An EU founding member state can be considered an example for the others when it comes to the respect of human rights and freedoms and protection of minority rights. With the EU conditionality in this regards, it is not a bad assumption to follow an example from such an EU member. In this study Italy is the example, or maybe not quite at all. Despite its complex legal framework (with a lot of regulatory changes), the protection of minorities in Italy has always maintained and continues to maintain the characteristics of a highly asymmetric arrangement, in terms of legal sources and in the intensity of protection. Even in the context of an overall sorting of promotional tools for the differential juridical treatment different groups differ greatly by the recognized rights, their effectiveness and level of assurance. A different treatment of groups must be constitutionally justified, based on the same principle of equality, which requires, of course, treating different situations differently.

It was observed that in both EU and non-EU countries the minorities the right to form national communities with important tasks established by law is guaranteed; in some countries they are called national communities in other national minority councils. The case of Macedonia it seems to be different, where on the state level as part of the Parliament an important body has been formed com-



prising representatives from each of the minority groups. What Croatia and Macedonia have in common is the proportional representation. Whereas Macedonia has a double majority voting for laws regulating the rights of the minorities, the Croatian and the Montenegrin Constitution establish a two-third majority voting.

Each country in this study recognizes certain minority groups in the Preambles of their Constitution. In regards to the defining 'minority' in legal framework of the countries taken as case studies, Croatia and Montenegro distinguish themselves by giving an explicit definition. Minority protection *sensu strictu* requires a well defined and accepted definition and identification of the minority groups in one country. Years back Max van der Stoep dared to say that he knows a minority when he sees one [74], however, this postulation must not be the case when it comes to the recognition of minority groups in the legal constitutional orders. Republic of Macedonia seems to be an exception in this sense; it does not explicitly give a definition in the Constitution nor it uses the term 'minorities' and despite this fact it is considered to be a very well developed model for minorities' protection especially in regards to the protection of the Albanian minority. The reasons could be many; in spite of everything, the country has been significantly challenged with the ethnic-conflict in 2001 and in terms of legal frameworking it can be said that it faced successfully the minority's demands. It should not be forgotten that the relationship between the state, the majority and the minority groups is very complex. In a state, the demands of the minority are conflicting almost always with the interest of the majority and the state. Forming legal frameworks with improved protection mechanism followed by successful implementation process is not an easy task to accomplish. In this respect, the distinction between developing, developed country, EU MS or not, is irrelevant. Every country faces challenges conditioned by the respective situation in its territory and formed by its historical developments. And as Kymlicka points out, the demands for minority rights must be seen in the context of, and as a response to, state nation-building.

In regards to the linguistic rights of minority groups it has been observed that these rights are fully guaranteed in all countries through different legal instruments and mechanisms of protection. It is clear that the countries have diverse arrangements of minority rights however in theory their systems offer protection to the minority groups analysed. In all five countries, the use of minority languages is allowed in relation to the public administra-

tion offices. The comparison or the relevant legislation gives some conclusions in terms of the territorial scope of application. Each country mentions explicitly a certain territorial application of the linguistic rights. Their enjoyment is limited to the areas where the specific minority is settled, for example the use of the mother language when addressing public authorities is limited in the territorial administrative units where the minority group is settled. In Slovenia those areas are called "ethnically mixed territories", in Italy in the case of the FVG region those areas are the areas where the minority is traditionally settled and are strictly specified by law, in Croatia the situation is similar, in Montenegro as well. In the case of the Republic of Macedonia it can be observed that it is at the same time similar but rather different; some linguistic rights of the Albanian minority enjoy different treatment of application. The difference of minority group's treatment by the state is also a consequence of the significant numeric consistency of the specific minority group. In the other countries there are low percentages reflecting the numerical positions of minority groups. Numbers play crucial role in respect of the total population whether on state or local level. Another interesting point is linked to the recognition of a minority language as official language. It can have important symbolic repercussions for the integration of the minority concerned and the larger project of nation-building. Scholars emphasize that the status of an official language is neither the only possible way of granting minority languages some kind of official recognition, nor a panacea for all the demands of linguistic minorities [75].

At the end, it is necessary to be reminiscent, when it comes to states' special measures for members of minority groups it is certain that they have as their goal and limitation substantive or real equality with the rest of the population (the majority group), it is essentially however that they should not reform to privileges, going beyond the requirements of substantive equality.



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- [10] Palermo, F., & Woelk, J. (2011). *Diritto Costituzionale comparato dei gruppi e delle minoranze [Comparative Constitutional Law of groups and minorities]* (2nd edition). Milano: CEDAM.
- [11] "The situations and problems of minorities cannot be solved, but only be reversed" – Benito Mussolini (original: *Le situazioni e i problemi delle minoranze non si possono risolvere, ma solo capovolgere*). In 1939, German speaking citizens of the Province of Bolzano (Italy) were offered a 'choice', to stay in their own land and give up their language and culture by Italianization of their names, or to obtain the German *Reich* citizenship and abandon their homes; See note 9.
- [12] Examples for liberal designs - 1. USA approach based on the following characteristics: a) all citizens are included in the concept of 'nation'; b) there cannot be created new nations within the American nation; c) exists the right to maintain liberally the characteristics of one own identity. 2. Citizenship has always been seen as the only key factor in France: the citizens had all rights, non-citizens had none. Until recently, France has an open policy for the acquisi-



tion of citizenship by foreigners. Now things are changing fast and the French law opens doors to diversity, for example, introducing the principle of decentralization, the affirmative action policy for women's representation and the affirmation of the regional languages in the French heritage. See [12] at 56.

- [13] Bagley, T. H. (1950). *General Principles and Problems in the Protection of Minorities*. Geneva: Imprimeries Populaires, at 68.
- [14] United Nations Treaty Series (n. 3297) United States of America, United Kingdom of Great Britain and Northern Ireland, Italy and Yugoslavia, Memorandum of Understanding (with annexes and exchange of notes) regarding the Free Territory of Trieste. Signed at London, on 5 October 1954, at <http://www.triestfreeport.org/wp-content/uploads/2010/09/Memorandum-of-Understandig-05.10.1954.pdf>.
- [15] United Nations Treaty Series (n. 24848), Italy and Yugoslavia, Treaty on the delimitation of the frontier for the part not indicated as such in the Peace Treaty of 10 February 1947 (with annexes, exchanges of letter and final act). Signed at Osimo, Ancona, on 10 November 1975 at <http://www.triestfreeport.org/wp-content/uploads/2010/09/orig.-Treaty-OSIMO-1975.pdf>
- [16] Article 6 - "*The Republic safeguards linguistic minorities by means of appropriate measures.*" Article 8 - "*All religious denominations are equally free before the law. Denominations other than Catholicism have the right to self-organisation according to their own statutes, provided these do not conflict with Italian law. Their relations with the State are regulated by law, based on agreements with their respective representatives.*" Article 19 - "*Anyone is entitled to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality.*" Article 20 - "*No special limitation or tax burden may be imposed on the establishment, legal capacity or activities of any organisation on the ground of its religious nature or its religious or confessional aims.*" Article 3 para. 1 - "*All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.*" See "La Costituzione della Repubblica Italiana" [The Constitution of the Italian Republic], retrieved from Governo italiano. Presidenza del Consiglio dei Ministri at <http://www.governo.it/governo/costituzione/principi.html>.
- [17] The Statutes of these regions were drawn up in early 1948, with the exception of Friuli Venezia Giulia (Statute was not approved until 1963). The statutes of the remaining fifteen regions were not drawn up until 1970. In accordance with the Italian Constitution, the ordinary regions are granted legislative and administrative powers in specific matters, as well as financial autonomy within limits established by law.
- [18] The development of Italian regionalism can be roughly divided into three stages: 1) The early period (1948–1972); 2) The implementation of regional autonomy (1972–1999); and 3) The new constitutional framework (1999 onwards), which is still in the process of implementation. Italian regionalism defined by the distinguished Italian scholar Francesco Palermo is as "devolutionary asymmetric federalism in the making". See Woelk, J., Palermo, F., & Marko, J. (Eds.). (2008). *Tolerance through Law: Self-Governance and Group Rights in South Tyrol*. Leiden and Boston: Martinus Nijhoff Publishers.
- [19] See Law 15/12/1999, n. 482 - Norme in materia di tutela delle minoranze linguistiche storiche [Norms for historical linguistic minorities' protection] at <http://www.parlamento.it/parlam/leggi/99482l.htm>.
- [20] Art. 18 para 1 and 2 - "In regions with special status, the application of the most favorable provisions under this law is to be made by norms of the respective statutes. The already existing norms in the regions with special status and the autonomous provinces of Trento and Bolzano remain applicable." "Until the entry into force of the implementing rules referred to in paragraph 1, in the special regions whose law does not provide legal protection, the provision of this law will be applied."
- [21] Statement of the Regional Minister Elio De Anna in "Il multilinguismo è la ragione principale della specialità regionale", A.B. (Novi Matajur, 18.4.2012), *SLOVIT* n. 4-5 of 31/5/12 at 3.
- [22] See Hilpold, P. (2008). Minderheitenschutz in Italien: völkerrechtliche und verfassungsrechtliche Grundlagen, 65 (1-2) *Europa Ethnica*, 3-18, at 4.
- [23] See Lantschner, E., Constantin, S., and Marko, J. (eds.) (2011). *Practice of Minority Protection in Central Europe*. Baden-Baden: Nomos.
- [24] See "Legge 23 febbraio 2001, n. 38 Norme a tutela della minoranza linguistica slovena della regione Friuli - Venezia Giulia" [Law n. 38 from 23 February 2001], (Official Gazette n. 56, 08.03.2001) at http://www.regione.fvg.it/rafvq/export/sites/default/RAVVG/AT5/ARG3/FOGLIA2/allegati/ITA_testo_38.pdf.
- [25] See "Legge 19 luglio 1961, n. 1012 Disciplina delle istituzioni scolastiche nella provincia di Gorizia e nel Territorio di Trieste" (Official Gazette n.252 from 9-10-1961) (Italian version) at <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1961-07-19:1012>.



- [26]A list of municipalities where the Slovenian language is spoken can be found at http://www.regione.fvg.it/rafv/export/sites/default/RAFGV/AT12/ARG2/Allegati/COMUNI_LINGUA_SLOVENA.pdf
- [27]See "Legge regionale 16 novembre 2007, n. 26 Norme regionali per la tutela della minoranza linguistica slovena" at <http://lexview-int.regione.fvg.it/fontinormative/xml/scarico.aspx?ANN=2007&LEX=0026&tip=0&id=>; "Decreto del Presidente della Regione 5 agosto 2005, n. 0253/Pres." at http://www.regione.fvg.it/rafv/export/sites/default/RAFGV/AT5/ARG3/FOGLIA4/allegati/d_p_reg_253-2005.pdf; and "Decreto del Presidente della Regione 3 ottobre 2005, n. 0340/Pres." at http://www.regione.fvg.it/rafv/export/sites/default/RAFGV/AT5/ARG3/FOGLIA4/allegati/d_p_reg_340-2005.pdf.
- [28]Art. 4(1) of the Constitution of the Republic of Slovenia: "...the state...shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities...". See the Constitution of the Republic of Slovenia retrieved from the Official web site of the President of the Republic of Slovenia at <http://www.up-rs.si/up-rs/uprs-eng.nsf/dokumentiweb/063E5907BE5B679CC1256FB20037658C?OpenDocument>.
- [29]See "Population by ethnic affiliation, 1961–2002 censuses", retrieved from the Statistical Office of the Republic of Slovenia, at http://www.stat.si/letopis/2011/04_11/04-03-11.htm.
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- [32]Palermo, F., & Woelk, J. (2011). *Diritto Costituzionale comparato dei gruppi e delle minoranze [Comparative Constitutional Law of groups and minorities]* (2nd edition). Milano: CEDAM. at 65.
- [33]The Constitution of the Socialist Republic of Slovenia, Ljubljana 1963. [Ustava Socialistične republike Slovenije. Ljubljana, Uradni list SRS, 1963]
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- [35]See Klemenčič, M.(2006). "The Effects of the Dissolution of Yugoslavia on Minority Rights: the Italian Minority in Post-Yugoslav Slovenia and Croatia", in Steven G. Ellis, Gudmundur Hálfanarson and Ann Katherine Isaacs (eds.), *Citizenship in historical perspective*. Pisa: Edizioni Plus - Pisa University Press.
- [36] Art. 4 (2) of Law on Self-Governing Ethnic Communities [Zakon o samoupravnih narodnih skupnostih] (Official Gazette of the Republic of Slovenia, no. 65/94)
- [37]The Public Administration Act of the Republic of Slovenia, at <http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan015728.pdf>.
- [38]*Zakon o ustanovitvi občin ter o določitvi njihovih odmočij*, Official Gazette of the Republic of Slovenia, n. 60/94 and 56/98.
- [39]Ordinance on quotients for the basic remuneration of officials appointed by the Government of the Republic of Slovenia, and other employees in Slovene government services, administrative bodies and administrative units, 1994, at http://www.cilevics.eu/minelres/NationalLegislation/Slovenia/Slovenia_OfficRenum_excerpts_English.htm.
- [40]See Klemenčič, M.(2006). "The Effects of the Dissolution of Yugoslavia on Minority Rights: the Italian Minority in Post-Yugoslav Slovenia and Croatia"...
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- [46] See *Resolution 1185 (1999)* (Extract from the Official Gazette of the Council of Europe-April 1999) retrieved from Parliamentary Assembly Council of Europe at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta99/ERES1185.htm>.
- [47] See Tatalovič, S.(2008). *The policies of protection of national minorities in the Republic of Croatia*. Split: Stina.
- [48] See *The Constitution of the Republic of Croatia* (consolidated text) downloadable from the web site of the Croatian Parliament at <http://www.sabor.hr/Default.aspx?art=2405>.
- [49] The percentage in brackets for each national minority is according to the 2001 Census on population by ethnicity, retrieved from the Croatian Bureau of Statistics at http://www.dzs.hr/Hrv/censuses/Census2001/Popis/H01_02_02/H01_02_02.html. The data of the 2011 Census of population by ethnicity are not available yet.
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- [52] See *Istarska Županija, Opći podaci, Stanovništvo* [Region of Istria, Basic data, Population], at <http://www.istra-istria.hr/index.php?id=14>.
- [53] Conforti, B., Ferrari Bravo, L., Sacerdoti, G., Francioni, F., & Ronzitti, N. (2000). *The Italian Yearbook of International Law Volume IX, 1999*. The Hague: Martinus Nijhoff Publishers, at 260.
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- [56] See The Constitution of Montenegro adopted on 19 October 2007, retrieved from http://www.skupstina.me/cms/site_data/ustav/Ustav%20Crne%20Gore.pdf (Montenegrin version).
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