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Review Article

LEGAL RULES OF EUROPEAN COUNTRIES IN MINORITY PROTECTION – TRACING THE DOUBLE STANDARD

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Abstract: The article explores the contentional notion of 'double standard' in minority protection in the original European Union (EU) member states and those that have joined it later, or are still wishing to join it. It starts by citing the authors that speak about the double standard, and it shows that no matter what the ideological position of the author is (whether he defends it or attacks) they all agree that the double standard exists. Then, the article concentrates on some exemplary practices of states towards their minorities and asymmetric reactions of the main actors such as the EU and the Organization for Security and Cooperation in Europe (OSCE) towards those practices. It is shown that the reactions tended to be criticism for ones, and indulgence for the others. The article goes on showing that with some notable exceptions, which in the opinion of the authors just enforce the argument that there exist no unified criteria for minorities protection across Europe, minorities legislation in the countries that acceded later in time, or are still awaiting the accession, are much more in-depth and extensive in view of the types of rights they include in their provisions than the original members. In addition to it, they tend to cover those communities that do not enjoy the status of national minorities in original member states. This state of affairs puts minorities across what should be a common standard European legal system in a rather fragmented and disbalanced situation. This situation can, however, lead to very similar social problems, such as the social discontent of the unprotected minorities in original members and disintegration of unstable and young societies in newer members or candidates for membership.

Key words: minorities, international law protection, minority rights, human rights, double standard, EU, national legal systems.

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1. DEFINING THE DOUBLE STANDARD

1.1 Legal Theorists on the Existence of the Double Standard

The question of double standards in minority protection resounds with some clamour when it relates to the European Union. It is really difficult to accept that an organization with such undisputed legitimacy in the field of human rights protection can show itself behaving in a twofold manner towards the national legislation of countries on which it exerts influence when it comes to the regulation of the status of national minorities.[2] Consequentially, it is even more dubious that the ambidextrous behaviour can be traced most obviously when the differences in treatment of original members on the one side, and more newly accepted and those still in the process of accession on the other, are analysed.

However, the differences are often indicated in legal theory. As Bruno de Witte puts it, for the EU the concept of minority protection appears to be 'primarily an export article and not one for domestic consumption' (De Witte, 2002, p. 467). Moravcsik and Vachudova go even further, stating that they believe that many of the changes the East (meaning the new members) has been forced to make do not reflect the laws of the West. They believe that the accession process 'imposes something of a double standard in a handful of areas, chiefly the protection of ethnic minority rights, where candidates are asked to meet standards that the EU-15 have never set for themselves'(Moravscik & Vachudova, 2003, p.684). One can also hear authors commenting that 'there exists a contextual discrepancy between the internal non-discrimination approach and the external promotion of special minority rights beyond and in addition to this standard' (Schwellnus, 2006, p. 187).

Such allegations are sometimes received by the EU with arguments of necessity and exceptionality of cases. For example, the EU has indicated that the reason it has emphasized rights of minority groups is to prevent the type of violence seen in the former Yugoslavia. There was always the constant fear for endangered democracy, as it can be perceived in some of the writings from that era (e.g. Mullerson in his article, 1993).This attitude has, in turn, prompted some authors to come forward with some provocative conclusions based on theories not far from pure racism. In the words of Matti Jutila, policymakers and analysts used an old theory of nationalism to explain the complex situation in Europe during the post-Cold War years of rapid and radical changes. This theory, known as the Kohn dichotomy, claims that nationalisms in the East are essentially different from those in the West. According to this dichotomy, Western forms of nationalism are based on the concept of a civic nation that is constituted by a

[2] This especially bearing in mind, such practices are unidentifiable when it comes to other important international organizations, such as the UN, (see more in Kymlicka, 2008, p. 4).

rational association of people, whereas Eastern variants are based on ethnicity and culture, and therefore tend to be more xenophobic, illiberal and aggressive. Minority situations in the West are considered unthreatening because Western nationalisms are colour-blind, benign and civic in nature. Although this theory has created criticism for a number of reasons, it was used in the construction of a minority protection system that suspects some countries of minority rights violations and considers others not guilty, based on their position in the dichotomy (Jutila, 2009, p. 627). But, as one author notes, what is of importance is that the rules designed to prevent an ethnic conflict within the potential members are not being enforced in the West, and therefore there is still the potential for continuing ethnic unrest within EU countries such as Spain and Northern Ireland and future unrest in other EU countries that contain unhappy ethnic groups (Johns, 2003, p. 687). Obviously, the EU has decided how the states of Eastern Europe should deal with their minority issues and how their laws and constitutions should be structured. The failure to comply has serious repercussions. As Adam Burgess states in regard to the Slovak government's willingness to change its laws concerning the Hungarian minority, 'until they are judged to have shown enough willingness in this regard they are likely to remain marginalized. Perceived attentiveness to the wishes of minorities is deciding the fate of states and not simply that of non-titular national minorities' (Burgess, 1994, p. 54). The question must be asked: are the fates of Western states affected the same way?

1.2 Double Standard in Factual Examples

It appears that the Western states have chosen to ignore the regulations as opposed to adapting to them. Due to a technical loophole, Germany does not include the Turkish minority as a national minority in the country. They claim that they are a new minority and should not count (Chandler, 1994, p.68). Other countries, such as Sweden and Denmark, have also specified what minority groups they would provide cultural rights for. Austria has limited protection to citizens, and Luxembourg, France and Greece claim to have no minorities. Even those minorities that are so widespread that they represent some kind of European common concern, namely the Roma population, fail to be protected under some uniform standard. It is a well-known fact that the EU was concerned with the treatment of the Roma population in Slovakia and it made an end to the discrimination by the Slovaks as a key element of accession. Although it did at some point praise the efforts of the Slovakian government on the Roma issue, in 2000 it stated in the Progress Report that 'tangible improvement of the situation of the Roma minority in particular by implementing specific measures, a short term priority of the 1999 Accession Partnership, has…not been achieved to a large extent' (EU, 2000, p.65). Similar were the cases of other candidates (Rechel, 2009, p. 171, Heintze, 2008).

Regarding 'respect for and protection of minorities', in its 1997 Opinions, the Commission pointed out that the integration of minorities in Bulgaria was in general satisfactory 'except for the situation of the Roma minority in a number of applicants, which gives cause for concern' (EU Commission, 1999, p. 3). The Opinion on Bulgaria noted that the Roma minority suffered from discrimination and social hardship, as did the Opinions on the Czech Republic, Hungary, Poland, Romania, and Slovakia (EU Commission, 1999, pp. 8–18). On the other side of medal, the Roma in Italy, for example, faced severe discrimination at the very same time. The ERRC has documented cases of abuse by the police, including torture and sexual assaults on women by police during searches. The Italian Roma have faced restrictions on education, employment both in and out of the public sector, and mobility, with many Roma confined to 'camps'. The Roma also faced the threats of violence by non-state actors (ERRC, 2000).

The paradox of the EU attempting to enforce minority rights protection on states outside the EU, while foregoing it for its member states raises commitment and compliance dilemmas of three main types.

Firstly, of all the 'Copenhagen criteria', minority rights protection was the most weakly defined by the EU, as it lacked a clear foundation in law. With the ratification of the Lisbon Agreement in 2009, the term minority has been introduced for the first time in the EU primary legislation (TEU, 2007, article 2). However, this is the only thing that changed, since this article was constructed as the basis upon which the further legal structure would be built by the European Court of Justice jurisprudence and the future EU legislation. This absence of content is the essence of the EU's policy commitment problem. The enlargement of 2004 incorporated into the EU's territory many countries with a multitude of minorities. Consequentially, for the rest of candidates such as Turkey, Macedonia or Croatia, the accession conditions for minorities gained in rigour (Hillion, 2008).

Secondly, the EU's priorities are evident from the fact that its own mechanisms for enforcing and monitoring compliance on minority protection in the candidate countries are very weakly developed compared with other areas of the *acquis*. Consequently, the EU tends to rely on proxies (primarily external bodies such as the Council of Europe, the OSCE, and NGOs) to perform the monitoring functions. Candidates according to the Copenhagen criteria were a grand EU double standard (Hughes & Sasse, 2003, pp. 11–12). The OSCE is especially important because of the mechanism impersonated in the office of the High Commissioner. His primary role is to solve the disputes on minorities before they escalate into critical conflicts (CSCE, 1992). The activities of the High Commissioner is some kind of a legitimized intervention in the internal affairs of the OSCE member states, which aroused some resistance in the past (for example in the case of Russia and the Chechnya crisis) (Bloed & Rianne, 2009, p. 98). When the influence of the High Commissioner is examined, an interesting pattern

emerges. While the entire OSCE region is open for analysis, the Western countries have historically not been examined equally with the East. While some reports are made for the entire region, on general issues such as linguistic rights of national minorities when specific countries are targeted for analysis, all 14 of the recommendations have been countries in Eastern Europe (OSCE 2013).[3] There are 55 participating states in the OSCE (all of Europe and the United States and Canada), and yet all of the country recommendations are from one area of Europe, the East. How can this be? Is it possible that only in Eastern Europe there are national minorities that are potentially ready for militant activity and as a result need OSCE recommendations to avoid such conflict? This seems unlikely. Another possibility is to make recommendations on the relationship between the state and the minority group, particularly as an insider third party, the OSCE needs to have permanent missions on the ground for long periods of time to collect information and survey the situation. These are large operations that are funded mainly by the richer countries of the OSCE (the West); therefore, the Commission has avoided criticizing the 'hand that feeds it'. As a result, according to David Chandler, there has been a 'qualitatively different level of intrusiveness into the affairs of the states of Eastern Europe' (Chandler, 1994, p. 68). At the end, the most likely of all would be as one author crisply states, that the High Commissioner knows that 'any recommendation given to Western countries would be summarily ignored, and therefore it is more productive (both in appearance and in reality) to concentrate on the newly democratic countries of Eastern Europe. It is more productive because the OSCE has influence on these groups compared to the West' (Johns, 2003, p. 682).

Thirdly, the commitment to minority rights is weakened by the fact that it is a concept that is deeply disputed in international politics, with few generally accepted standards, and even, as will be noted later in the text, confusion over the very definition of the term 'minority'. Within the EU itself, the practices of member states vary widely ranging from elaborate constitutional and legal means for minority protection and political participation, such as language rights, autonomy or consociational quota arrangements, to constitutional unitarism and denial that national minorities exist. The combined effects of the vague and contested international standards, the diverse approaches of member states, and the weak influence of the Commission and the Court in this policy area, strengthen the perception on the part of the candidates that the Copenhagen criteria were a grand EU double standard.

[3] It contains all of the recommendations produced by the High Commission on National Minorities. The country reports are available for Albania, Croatia, Estonia, the Former Yugoslav Republic of Macedonia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Romania, the Russian Federation, the Slovak Republic, and the Ukraine.

All these arguments can, of course, be seen in a more agreeable light, if it is imagined that the established democracies of Western Europe are providing helpful advice to the newly democratic states of Eastern Europe as they prepare to join the European community. However, this would be the case if the laws that are found to be unacceptable in Eastern European countries were also found to be the same in Western Europe. However, exactly at this point, as this article will show, the defensive arguments ultimately crumble upon the weight of pure fact-finding. This article shows exactly the failure of defensive arguments. Its research was conducted with the idea of showing these differences' reflection on the national constitutional and legislative provisions of the EU member states and those wishing to become the same. But before we pass on the overview of the overview of numerous and various examples of differences in minority protection across European states in support of this thesis, it is necessary to define the terms national minorities and national minority rights respectively, as key terms for the purpose of the debate.

2. DEFINING THE NATIONAL MINORITY

The protection of the rights of national, religious, language and similar minorities is one of the contemporary questions which has its history (see Krivokapić, 2006, pp. 13–30) and which represents a part of a wider batch of various legal, historical, political and philosophic questions.

One of the specific questions, which has its (not only) methodological aspects, is the question of problem which stems from the need to define precisely the meaning of the term 'national minorities' and other similar terms. There were several attempts to define this term.[4] Even the only legally obliging international instrument in this field, the Council of Europe's Framework Convention for the Protection of National Minorities (Council of Europe 1995), fails to define the term of national minority. Recently, in legal literature it is often cited the definition suggested on one of the UN conferences which under the term national minority supposes 'Group numerically inferior to the rest of the population of the 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' (Ahmed, 2010, p. 268, see also Craig, 2010, p. 342).

[4] For the suggestion of the International Court of Justice, see, for example, Devetak, 1989, p. 201. For the suggestion of the Subcomission on the Prevention of Discrimination and the Protection of Minorities (1985) see Obradović, 2003, p. 166. See also Paunović et al, 2010, p. 314.

Besides the term minority, for the purpose of researching the state of protection of their rights in a more detailed analysis, it is necessary to delineate the terms of personal and collective rights. This is especially being the case, since the focus of the care for the rights of minorities in the international community is on categories of people (Smith, 2007, p. 317).[5] In the words of John Rolls, it is justifiable to alleviate life conditions for those social groups, which have found themselves in difficult situation against their own will, (Pavlović, 2004, p. 139). The collective rights cannot be looked upon as simple collection of the personal rights of individual group members. These rights are spread to the individual on the basis of his allegiance to the identified group.

As for some commonly accepted standards as to what minority legislation must require, most states usually adopt models that address and incorporate, at least, the following areas: (1) identity; (2) language; (3) employment; (4) education; (5) media; and (6) participation in public life (IILHR, 2008, p.12).

3. COMPARATIVE VIEW OF THE MINORITIES LEGISLATION

3.1 Original Members

Out of the original 12 members, France, Belgium, Luxembourg and Greece do not acknowledge the existence of minorities in their territories. UK, Ireland and Portugal do not have any provisions which deal explicitly with national minorities, but follow some other concepts. The three countries that joined EU in 1995 (Austria, Finland and Sweden) have somewhat specific situation but will be included in the analysis with the original members.

In Austria, the legal system acknowledges the Croatian minority in Burgenland, but also the Slovenian, Hungarian, Czech, Slovak and Roma minority. The Federal Constitutional Law, the highest legal act of the Republic, guarantees in Article 1 equality to all citizens under the law with no privileges upon birth (Austria (a)). In Article 8, German language is proclaimed as state language but with no prejudice to rights of linguistic minorities envisaged by federal laws. The Federal Law on the Legal Status of People Groups of 1976 (Austria (b)), uses the term people groups (volksgruppen) for Austrian citizens whose mother tongue is not German, and who have their own national characteristics (Article 1(1)). It is not intended to cover immigrants. In view of electoral rights, the Law envisages the establishment of people groups councils with advisory function on the federal and local level (Articles 3(1) and 3(2)). This law also regulates activities of the federal government towards the protection of the current composition of people groups, through plans and

[5] The good example is language. The use of language is dependent upon the institutional framework which is based on the collectivity, since the language cannot be reduced to a personal right.

measures which do not prejudice general development (Article 8). It sets the one-quarter condition on the composition of the local populace for the bilingual toponyms in the area (Article 12) and obligates all public services and institutions to ensure the possibility of communication in people groups languages. The newer legislation has included the anti-discrimination clause on the basis of ethnic origin (Austria (c) Article 8) and obligatory proportional emission time for programmes in languages of minorities (FCPNM Reports Austria, 4th).

The Italian Constitution ensures rights of local autonomy and in Article 6, it expressly states that linguistic minorities are protected by special provisions. Article 116 envisages special forms of autonomy for certain Italian regions. The Act on the Protection of Linguistic Minorities of 1999 (Italy (b)) states that the official language of the Republic is Italian, but the Republic supports also other cultures and languages and encourage their usage. (Article 1). These are languages of the Albanian, Catalan, German, Greek, Slovenian and Croatian population as well as some regional Francophone languages (Article 2). This Act and articles set therein are applied to districts and territories where it has been approved by the District Council based on a request of minimum 15 per cent of citizens enlisted in the electoral roll for these regions, or of one third of the Council members. (Article 3 (1)). The Law regulates in detail the use of these languages in education and official communication in municipalities (Articles 4-8), public administration except army and police (Article 9), toponyms and personal names, radio and TV programme, publishing and printing houses. In Article 15, maximum annual limit is set in the state budget for the execution of this Act. On their own expense, regions and provinces may establish additional institutions, or departments of the existing institutions, focusing on the protection of minority languages and cultural heritage. In regions with a special status, if they have adopted conditions that are more advantageous as set forth in this Act, these may abide in effectivity. (Articles 16 and 18). As for the regional autonomies, a special system is created which envisages that legal regulations are created mutually between the State and the linguistic minority. These regulations are autonomous and have stronger legal power than ordinary laws. The Constitutional Court of Italy regards them as 'separate and special in their field of application' (FCPNM Reports Italy, 1st, p. 9).

In Germany, especially protected as national minorities are those ethnic communities which traditionally inhabit the German state territory. Only the Danish population, therefore, has the status of national minority with its own sovereign state abroad. These minorities live in various German federal units, and their status is regulated mostly by the legislation of these lands, but there exist some provisions on federal level which benefit them. The basic law guarantees non-discrimination in Article 3(3) (Germany (a)). Even the Protocol Note on the Unification Treaty between East and West Germany of 1990 states the importance of the traditional minority protection (FMI, 2010, p. 40). The German

Federal Electoral Law (Germany (b)), removes the 5% threshold for entrance into the Parliament for national minorities parties. It also offers state financing to these parties even though they have not received the required percentage of votes under the Act on Political Parties (Section 18(3)). These parties also enjoy privileges in their financing arrangements coming from abroad (FMI, 2010, p. 47).

The Constitution of the Netherlands (Netherlands) guarantees general equality to all citizens under all conditions (Article 1), but it does not mention national minorities as particular object of protection. The only national minority acknowledged by the law is the Frisian population (FCPNM Reports Netherlands, 1st, p.3). It lives almost entirely in the province of Fryslân and their status is regulated by the Law on the Usage of Frisian Language which regulates usage of Frisian in legal proceedings in the province, but also by some general laws, as is the Law on General Administrative Procedure, which guarantees adequate linguistic rights in communications with local and provincial authorities in the province (FCPNM Reports Netherlands, pp. 20–21). Only with some institutions of general importance for the protection of rights of citizens, as the ombudsman, is it allowed to use the Frisian language at the state level (FCPNM Reports Netherlands,p. 28).

The Spanish legislation on national minorities is concerned with the Roma population. They were accepted as full citizens as late as in 1978 by the new Constitution (Spain). However, the Constitution does not protect national minorities, but acknowledges various Spanish peoples and their institutions.

The Constitutional Act of Denmark of 1953 (Denmark) acknowledges and protects in Article 70 only the German national minority. It is through laws on general and local elections to the German minority that equality is guaranteed for the majority of people in relation to electoral rights (FCPNM Denmark, 1st, p. 15). A party of the German national minority can enjoy the right of parliamentary representation, although it has not scored the required result in the elections (Justesen & Rowlett, 2009). Furthermore, this party can compete at the elections through informing the Minister of Interior, while other parties have to collect minimum 20,000 voter signatures to candidate. The German National Minority Party has the exclusive right to use its separate list of candidates (FCPNM Denmark, 1st, p. 40–41).

Finland is one of the ethnically most homogenous European countries. It has the special situation with the Swedish population. The Swedish language is national, besides Finnish under Article 14(1) of the Constitutional Act (Krivokapić, 2004, p. 92). Therefore, in Finland, in formal legal terms the Swedes are designated not as minority but as the populace which speaks Swedish' (Ibid, p. 94). As for other ethnic groups, the Constitutional Act enumerates the Sami and the Roma people, and other minorities are defined as 'other groups' (Krivokapić, 2004, p. 104). The Sami people are protected under Article 14(3) of the Constitutional Act and the special Law on the Sami Language. They enjoy advisory rights in matters that influence them under Article 52/a of the Law on

Parliament. They enjoy cultural autonomy under Article 51/a of the Constitutional Act in territories where they live. Under the law, they are enabled to attend schools in their language in their territories during primary and secondary education. There also exist quotas for Sami students in faculties which condition existence of subject-lecturers in the Sami language (Krivokapić, 2004, p. 105).

As it is shown, in all countries analysed, with a slight exception of Austria, only minorities which enjoy special protection under the legislation on national minorities are traditional ones, and even to them it is not afforded the same measure of protection which exists in Eastern bloc countries that joined the EU after the end of the Cold War.

3.2 Countries that Joined the EU in 2004

Of these countries, Malta and Cyprus do not have specific provisions on minorities. Other eight legal systems are all part of former communist block (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia, respectively).

The Constitution of the Slovak Republic has a separate section on the rights of minorities under the title 'Rights of national minorities and ethnic groups' (Articles 33 and 34, Slovakia, (a)). However, in other Articles there exist provisions of importance for national minorities as well. Article 12(1) guarantees liberty and equality for everyone, and paragraph 2 of the same Article provides the anti-discrimination clause. In the next sentence it is stated that everyone has the right to freely decide on his nationality, and that any influence on this decision and any form of pressure aimed at assimilation are forbidden. Article 33 continues in the same manner when it claims that membership of any national minority or ethnic group must not be to anyone's detriment. Article 34 guarantees the comprehensive development of citizens representing national minorities or ethnic groups, particularly the right to develop their own culture, together with other members of the minority or ethnic group, the right to disseminate and receive information in their mother tongue, the right to associate in national minority associations, and the right to set up and maintain educational and cultural institutions. In the second paragraph of this article, minorities are guaranteed the right to education in their own language, the right to use their language in dealings with the authorities, and the right to participate in the regulation of affairs concerning national minorities and ethnic groups. The Law on the State Language of the Slovak Republic (Slovakia (b)), provides for the official usage of languages of national minorities if members of the given minority compose minimum of 20% of the population of a city or a local community. The Slovak Republic has adopted specific provisions on the usage of national minority languages in its judiciary laws, the Law on Name and Family name, and the Law on Registers. The same situation is in the laws on

political parties and movements, TV and Radio, special education for minorities. The only field of minority rights not regulated by the Slovak legal system is the electoral rights field, but as we shall see further in the analysis this is an occurrence known to other legal systems of this group of countries as well.

The Czech Republic acknowledges the existence of several larger (Slovakian, Polish, German and Roma) and smaller national minorities (Bulgarian, Russian, Ruthenian, Ukrainian, Greek, Romanian, Serb, Croatian and Jewish) (Minority Rights Group International, 2013). The basic acts which protect national minorities are the Constitution and the Charter on Basic Rights and Liberties (Czech Republic (a)), both dating from 1992. In June 2001, the Act on Rights of Members of National Minorities was adopted (Minority Act, Czech Republic (b)). It is based on the Framework Convention of the Council of Europe, but it differs in essence from it. Although being detailed, this Act was criticized by minorities themselves, especially by the Roma because they think it is hardly applicable to them, but also by numerous NGOs and the UN Commission on the Elimination of All Forms of Racial Discrimination (Zwilling, 2013, p. 3). These deficiencies were amended with the adoption of the Law on the Equal Treatment and the Protection from Discrimination (FCPNM Reports Czech Republic, 3rd). Officially acknowledged minority languages are German, Polish Ukrainian and Hungarian. The right of minorities to use their native languages in communications with public authorities is guaranteed by Article 25 (2b) of the Constitution. Article 7 of the Minority Act provides that members of minorities can use their native language when they write their name and family name. Bilingual toponyms can be used on the basis of Article 29(2) if in the given local community 10% of the population register themselves as members of the given minority, and 40% of those petition for this option. Article 25 of the Charter on Basic Rights and Liberties regulates education on minority languages. Special laws exist on the TV, radio and press programmes and publications for minorities. As for voting rights, in Article 15 of the Minority Act the Czech Republic provides the institution of minority councils in local communities where they constitute minimum of 10% of the population.

The Republic of Poland has 13 officially acknowledged national and ethnic minorities which represent around 3% of the population. The Belarus are the largest with around 200-300 thousand members (FCPNM Reports, Poland, 1st). In Poland, equality before law of national minorities is the constitutional principle (Article 6, Poland (a)). Ban on discrimination is also the subject of Article 113 of the Labour Law (FCPNM Reports, Poland, 1st). Article 35 of the Constitution is of key importance for the interests of minorities. It ensures to Polish citizens belonging to national or ethnic minorities the freedom to maintain and develop their own language, to maintain customs and traditions, and to develop their own culture. In the same Article, national and ethnic minorities are provided with the

right to establish educational and cultural institutions, institutions designed to protect religious identity, as well as to participate in the resolution of matters connected with their cultural identity. The Act on National and Ethnic Minorities and Regional Languages (Poland (b)) provides the right of every citizen to freely decide on his nationality and that membership of any national minority or ethnic group must not be to anyone's detriment (Article 4(1)). This act defines national and ethnic minority, it differentiates between them but provides identical legal protection (FCPNM Reports, Poland, 2nd, p. 40). Article 27 of the Constitution states that the state language is Polish. However, by Article 35 mentioned above, and through provisions of the Polish Language Act of 1999, minority languages are protected. Also, in Article 18 of the Minorities Act an obligation on the part of Polish public authorities is created to support by suitable measures activities which are directed to the protection, preservation and development of the cultural identity of minorities (FCPNM Reports, Poland, p. 47). Under Article 9, languages of minorities can be used in relations with public authorities if in the given local community the number of their members is minimum of 20% of the population. As for voting rights, in accordance with the Law on the Elections for the Parliament and the Senate, electoral lists are freed from the 5% minimum of gained votes (FCPNM Reports Poland 1st, p. 5).

In Article 49, the Constitution of Estonia (Estonia (a)) protects everyone's right to preserve his or her ethnic identity. Article 50 says that national minorities have the right, in the interests of their culture, to establish self-governing agencies under such conditions and pursuant to such procedure as are provided in the National Minorities Cultural Autonomy Act (Estonia (b)). This law was adopted in 1993. It is based on the ideas of the acknowledgment of rights of national minorities to preserve their ethnic identity, culture and language. It defines the national minority in accordance with the general definition mentioned earlier. Under the section 2 of the same law, the right of establishing institutions of cultural autonomy is granted to all those national minority groups that enjoyed the same right under the Law of 1925 (German, Russian, Swedish, Jewish) and other ethnic groups that number more than 3,000 citizens. In article 12, the Constitution bans the discrimination on any ground. The same ban is provided in judiciary laws and Act on Equal Treatment (FCPNM Reports, Estonia, 3rd). In its section 3 the Law on Education of 1992 (Estonia (c)) and other specific laws in the field protect the right to education of the members of national minorities in their native languages, and the already mentioned Cultural Autonomy Act regulates minorities rights in relation to TV, radio and press (FCPNM Reports, Estonia, 3rd). As for language, in their relations with public authorities all minorities can use their native languages, if according to Article 51(2) of the Constitution in local communities at least one half of the permanent residents belong to a national minority. Article 52 says that in localities where the language of the majority of residents is not

Estonian, local authorities may, to the extent and pursuant to a procedure provided by the law, use the language of the majority of permanent residents of the locality as their internal working language. The use of foreign languages, including the languages of national minorities, in government agencies, in courts and in pre-trial procedure is provided by the law. The Act on Languages of 1995 regulates these questions, providing broad rights of the native language usage in relations with public authorities in local communities with the one-half condition mentioned above, and the exclusive right of usage in the organs of cultural autonomies (Ibid, page 43). The Law on Cultural Autonomies provides the right to minorities to establish institutions of cultural self-government and to decide on questions connected to their cultural needs and to enjoy their cultural rights according to the Constitution. So far, the Swedish and Finnish minorities have exerted this right (Ibid, page 58). Estonia does not have a specific legislation on voting rights.

There is no definition of national minority in the Lithuanian legal system. The largest minorities are Russian and Polish, but there are also the German, Belarus, Ukrainian, Jewish, Roma and Tatar minorities (Kallonen, 2004, p.2). In Article 37, the Constitution of Lithuania guarantees that citizens belonging to ethnic communities shall have the right to foster their language, culture, and customs. Lithuania adopted the Law on National Minorities even before gaining independence in 1989 (Lithuania (a)). It forbids discrimination on ethnic or racial grounds. The Law regulates the right to equal treatment, the right to acquire support from the state for the development of culture and education, establishment of media, freedom of religion, establishment of cultural institutions and contact with persons of the same ethnic origin abroad, equality in political representation (Article 3). The status of members of national minorities that have not acquired Lithuanian citizenship is somewhat unclear, especially in relation to the Roma (For more information see Hollstein, 1999, pp. 377–388). As for language, the Law on Minorities states that in densely populated areas with members of the given minority, other languages, except Lithuanian will be in usage in various administrative institutions. However, the Law does not define the term 'densely populated' (Kallonen, 2004, p. 5). Article 45 of the Constitution guarantees to national minorities the right to education in their mother tongue. State finances preliminary and basic education under the Law on Education (Kallonen, 2004, p. 7). Political parties of minorities in Lithuania do not enjoy special privileges in the elections for parliament and local councils. All minorities are represented in the Council of National Minorities. Its most important function is to 'analyse legal acts that regulate the condition of national communities and minorities, suggests the regulation of questions that are connected with minorities and to strengthen relations of Lithuanian communities with foreign countries' (Kallonen, 2004, p. 8).

Latvia is the independent democratic republic in which sovereignty is vested in the people (Latvia (a), Chapter 1, Articles 1 and 2). Article 114 of the

Constitution guarantees linguistic, ethnical and cultural identity. In 1991, the Law on the Unrestricted Development and Cultural Autonomy Rights for Cultural Autonomy of Ethnic and National Groups was adopted (Latvia (b)). In this law, all human rights are guaranteed equally to all citizens of Latvia without discrimination and in accordance with international standards. The Law has provisions on some specific nationalities (Article 4) and general provisions on the right of establishment of national organizations and societies (Article 5). It envisages budget finances for its purposes (Article 10) and contains a non-discrimination clause (Article 16). In 1995, The Law on Religious Organizations was adopted, which guarantees equal treatment for all citizens of Latvia regardless of their religious convictions (Latvia (c)). Latvia has recently adopted laws in the field of labour (2005), consumer protection (2008) and social security (2008) which envisage non-discrimination clause on the basis of ethnicity of the person (FCPNM Reports Latvia 2nd, p. 16-17). The Law on Education (2009) guarantees the right to education on the languages of seven national minorities (Latvia (d)). Under the Law on Mass Electronic Media (2010) minimum of 35% of the national and regional TV broadcast time is accorded to programmes on the languages of minorities (FCPNM Reports Latvia 2nd, p. 38).

The basic law of Hungary, which came into power on 1 January 2012, does not provide specific provisions on national minorities. Indeed, it does not mention the term national minorities (Hungary (a)). The status of minorities is regulated by the special Law dating from 1993, which was amended and supplemented in 2005 (Hungary (b)). It recognizes 13 national minorities (Armenian, Bulgarian, Croat, German, Greek, Polish, Roma, Romanian, Serbian, Slovakian, Slovenian and Ukrainian). It specifically regulates individual rights of minorities (Articles 7-14) and minority communities (15-20), the right to establish minority authorities (21-39), the status of the local representative of minorities (40-41), cultural and educational autonomy (42-50), the use of language (51-54). Article 5 of the Law states that minorities have the right to establish local, regional and national self-governments which are included in the national minority election register (Article 22).

The Constitution of the Republic of Slovenia (Slovenia (a)) defines Slovenia as the country of all its citizens (Article 3). In Article 5, it guarantees the protection for the autochthonous Italian and Hungarian minorities. Every citizen is guaranteed the right to freely pronounce his/her nationality and culture and use his/her mother tongue and scripture (Articles 61-62). Any discrimination on the basis of race, religion or nationality is prohibited (Article 63). National minorities have the right of self-government in the territories where they live. They freely elect members of the Parliament and local councils which will represent them. State or local organs cannot decide on matters of importance to life and status of autochthonous minorities if the opinion of representatives of these minorities has not been previously acquired. The Law on Self-Government of Ethnic

Communities (Slovenia (b)) defines more closely the modality of the activities of ethnic communities on the territories where the Italian and Hungarian national minorities are autochthonous. Electoral rights are universal and equal (Article 43 of the Constitution), but Article 80 envisages special treatment of the Italian and Hungarian national minorities by guaranteeing them double representation in the National Parliament, actually the right of 'double vote'.[6]

It can be seen that all the above analysed countries have detailed and extensive legislations concerning national minorities. They acknowledge as national minorities all the ethnic communities that inhabit their territories which fulfil very low-set numerical threshold. They all have separate laws on minorities which specify constitutional provisions and they look upon minorities as communities, which have all kinds of identity, not only linguistic, but also ethnic, religious and racial. Except electoral rights in some cases, all other fundamental rights of minorities are envisaged by their legal systems.

3.3 The Newest Wave-Members and Candidates After 2004

Among these countries, the analysis will first start with Romania and Bulgaria which joined the EU in 2007, and then it will cover Croatia, Macedonia and Montenegro, which are still in the process of accession.

In Article 6, the Constitution of Romania (1991) explicitly guarantees the right to preservation, development and expression of identity (Romania). Section 32 of the Constitution guarantees the right of persons belonging to national minorities to learn their mother tongue and to be educated in their language (paragraph 3). The right of national minorities' freedom of thought, conscience and religion and the right to manifest one's religion or belief are protected by the Constitution of Romania in Article 29. The right to establish religious institutions, organizations and associations is regulated by Article 40. Speaking of specific rights for minorities in connection with their participation in public life, the Constitution of Romania has defined in Article 59 that 'In case that in elections they do not reach a sufficient number of votes for representation in the Parliament organizations of citizens belonging to national minorities shall be entitled to one representative under rules of the election law. Citizens of a national minority can be represented by only one organization'. According to the Law on Elections, 20 groups are officially recognized as national minorities, and the definition of this term is linked to the groups that are represented in the Council for National Minorities, a governmental advisory body. The largest groups are the Hungarians and the Roma. Organizations of citizens which belong to national minorities, except those

[6] This rule was criticised in OSCR report on elections in Slovenia, (OSCE/ODIHR, 2012, p. 7).

which are already represented in the Parliament, must collect signatures of 15% of this group (according to the last census) in order to have the opportunity to submit their nomination for their candidates (For more information on this topic see OSCE /ODIHR, 2013a p. 18-20).

Article 2 of the Constitution of the Republic of Bulgaria (1991), which was amended in 2003, 2005 and 2006, states that Bulgaria is a unitary state with local self-governance (Bulgaria). However, none of the territorial autonomy units are permitted (paragraph 1). The use of the Bulgarian language is the right and duty of all Bulgarian citizens and citizens whose mother tongue is not Bulgarian shall have the right to use their own language in addition to the Bulgarian language, which is regulated by a special law (Article 36 of the Constitution). Expression and practice of any religion is free (Article 13). Everyone has the right to develop his own culture in harmony with his 'ethnic self-identification' in accordance with the law (Article 54). The Bulgarian Constitution prohibits the formation of political parties on ethnic, racial or religious grounds (Article 11(4)), but in practice they do exist (Petrusevska, 2009, p. 45)[9] The Anti-Discrimination Law (2003) prohibits discrimination based on sex, race, ethnic origin, nationality, ethnic origin, religion or belief, or on any other basis (Article 4) (see more at Human Rights Council, 2012).

The Constitution of the Republic of Croatia of 1990 (Croatia (a)), establishes Croatia as '(...) the national state of the Croatian people and the state of indigenous national minorities: Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians and Ruthenians, which are its nationals, and are guaranteed equality with citizens of Croatian nationality and the realization of national rights in accordance with the democratic norms of the UN and the countries of the free world (...)'. The 2002 Constitutional Law on National Minorities gives a definition of minority (Croatia (b), Article 5). Some of the guaranteed rights include: use and official use of minority languages and alphabets; education in the language and script used; use of signs and symbols; cultural autonomy and preservation and protection of cultural heritage and traditions; practice of religion and establishment of religious communities, access to media and means of dealing with the media in minority languages and scripts; self-organization and conspiracy to achieve common interests; representation in elected bodies at the state and local level, and in administrative and judicial bodies; participation of national minorities in public life and local affairs through councils and representatives of national minorities, and protection from any activity which endangers or may endanger their existence, rights and freedoms. According to the Law on Election of Representatives of the

[9] In the opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities of which Bulgaria is a member, this provision of the Constitution may unduly restrict the right to peaceful assembly and association under Article 7 of the Convention. See: OSCE / ODIHR, 2013b, p. 5.

Croatian Parliament, national minorities are granted the opportunity to be represented in the Parliament by a precisely determined key. Members of national minorities in the Republic of Croatia have the right to choose eight Members of Parliament who are elected in a special election constituency that includes the whole territory of the Republic of Croatia.

The Constitution of The Former Yugoslav Republic of Macedonia defines the position of national minorities in Article 48, using the specific term 'nationality' as neutral and equal for all ethnic communities, given the commitment to the concept of a civil state. They are guaranteed the right of linguistic, ethnic, religious and cultural identities, as well as expression of their identity and mother tongue education (Macedonia (a), Article 48). However, in Macedonia, in addition to the Constitution, the Ohrid Peace Agreement, adopted as a solution of the conflict with the ethnic Albanians in 2001, also has the highest legal force and modifies the position of minorities, putting the principles of civil government ineffective in real life. This agreement favours the Albanian minority by providing a high level of collective rights to the communities that exceed 20% of the population, which is only the case with Albanians. In Article 19, the Constitution prescribes that the church is separated from the state, but at the same time, a special status is given to the Macedonian Orthodox Church (MOC). The law for the election of representatives for the Macedonian Parliament does not mention the issue of election of national minority representatives.

According to Article 1 the Constitution of the Republic of Montenegro (Montenegro (a)), the Republic of Montenegro is a 'civic, democratic, ecological state of social justice based on the rule of law'. The provisions of 'special – minority rights' are in the second part of the Constitution devoted to 'human rights and freedoms'. Article 79 of the Constitution guarantees the rights and freedoms of minority nations and other minority ethnic groups that can be used 'individually or in community with others', and Article 80 of the Constitution 'prohibits ... forced assimilation of minorities and other minority communities'. The principal legislation related to minorities includes the Law on Minority Rights and Freedoms (Montenegro (b)) and the use of national symbols (Montenegro (c)). The Law on Minority Rights and Freedoms has a definition of minority (Article 2). The law guarantees a number of rights of minorities (Art. 8-36). Article 23 of the Law stipulates that 'the electoral legislation, applying the principles of affirmative action serves to ensure ... an additional number of mandates for minorities. Minorities, which in the total population consist of 1% to 5% according to the latest census, will be represented in the Parliament with an MP's mandate, through representatives chosen from the list of minority candidates. Minorities in the total population that consist of more than 5% according to the latest census, will have three guaranteed seats in the Parliament of Montenegro, through representatives elected from the minority electoral list, again taking into

account the linguistic and ethnic characteristics, and on completion of the electoral law of the Albanians in the Republic. The assembly of local self-governance representatives elected by a minority representative in the local population participate from 1% to 5%, 5% and above in accordance with the electoral law (Article 24). Montenegro also adopted a Strategy of Minority Policy (Montenegro (d)), which defines measures for the law enforcement and improvement of the living conditions of minority communities.

This group of countries, with the exception of Bulgaria, sets even higher standards in the protection of minorities than the previous two groups. In comparison with the group of countries that joined in 2004, these countries have adopted extensive legislation on electoral rights of minorities which is generally favourable. As for the other types of rights, they are all in accordance with the accepted international standards.

4. CONCLUSION

The double standard in national minority protection across Europe is a well-known, although controversial notion in legal circles, as it has been shown in the first part of this article. Most critics attack it and cite evidence of different factual treatment of minorities in every European country (the best example is the status of the Roma population, but there are others as well, and no single country is immune from them). On the other hand, there are still the authors who justify it on various bases, which can be reduced to the explanations of the necessary historical prejudice towards the countries in whose political instability this caused danger for democracy and human rights. With ideological explanations put aside, this article was written with the intention of finding the expressions of the double standard where it should be objectively easy to ascertain it, in the form of legislation related to minority protection. Through comparative analysis of these legislative discrepancies, the authors have shown that what should be a common standard European legal system, there is a rather fragmented and disbalanced picture. The lack of unified approach of the EU towards the states that fall under its legal influence is one of the main factors behind it. Of course, minority protection varies across the European continent for reasons of more specific nature, such as the historical and social conditions of a particular country, but notwithstanding these notable exceptions, one line of difference can be clearly traced. Minority legislation in countries that have acceded later in time, or are still awaiting the accession to the EU are much more in-depth and extensive in view of the types of rights they include in their provisions than the original members. In addition to it, they tend to cover those communities that do not enjoy the status of national minorities in original member states, since the practice in original members is to treat these communities as immigrants who fall under the

integrationist legislation, while autochthonous communities which enjoy special minorities protection do not stand in numbers as a significant percentage of the real minorities population. Even when there exists the extensive legislation which covers the most important minorities in a particular country, it is based on the notions of language (linguistic minorities and not national such as in Italy), therefore stripping the minorities in question of any other rights than those related to the language. In the article, it is also shown that the standards for protection are becoming even higher in the legislation of the current candidates for accession then they were in the legislation of the last wave of members (2004). Thus, it can be said that the more one moves from the EU core, the stricter legislation one finds concerning minority rights and their protection. Two consequences arise from this state of affairs. The first is that in the original member states, which are the most economically developed and thus attract a large influx of immigrants, those masses stay unprotected by the advanced legislation on national minorities, although they have very strong numbers and a sense of national identity, a fact which can create (and indeed it creates already) friction and discontent in these societies, whenever economic welfare on which they found all their rights as separate social groups, becomes endangered. Secondly, stricter conditions, which are imposed upon new members and candidates relating to minority legislation, can lead to failure of the successful integration of these relatively young and unstable societies, which, in the effort to keep on the accession track, create legislation, which is not in accord with real social conditions. It seems that the double standard leads to a double flaw in both groups of societies, in each for its own particular reasons. The solution to such a situation might be to finally create minority legislation on the level of the EU as a whole, which will provide for a unified approach and eliminate these negative discrepancies. Otherwise, if minority protection continues to be a part of the field of external policy instrument and not a general and *erga omnes* legal requirement, social turmoil can be expected on both ends of the spectre.

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PRAVNA PRAVILA EVROPSKIH ZEMALJA O ZAŠTITI MANJINA – NA TRAGU DVOSTRUKOG STANDARDA

Apstrakt: Članak se bavi spornim pitanjem 'dvostrukog standarda' u zaštiti manjina u originalnim članicama Evropske Unije (EU) kao i onim koje su se pridružile kasnije ili su žele da se pridruže. U članku se najpre govori o dvostrukom standardu i ukazuje se da se nezavisno od ideološkog stanovišta autora (bilo da se napada ili brani), svi slažu oko njegovog postojanja. Zatim članak pokazuje da je uz izvesne izuzetke, koji po mišljenju autora samo osnažuju argument da ne postoje jedinstveni kriterijumi u zaštiti manjina na evropskom području, zakonodavstvo o manjinama u zemljama koje su se pridružile u kasnijem vremenskom periodu, ili tek očekuju pridruživanje,

daleko obuhvatnije i detaljnije u pogledu vrsta prava koje predviđa svojim odredbama nego što je to slučaj u 'starim' zemljama članicama. Ovakva situacija stvara jedan fragmentisan i neuravnotežen sistem zaštite manjina, naspram onog poželjnog koji bi se zasnivao na zajedničkim standardima. Isto tako, iz ove situacije mogu nastati društveni problemi, kao što je socijalno nezadovoljstvo nezaštićenih manjina u originalnim zemljama članicama i dezintegracija nestabilnih društava u povoju koja postoje u novim članicama ili kandidatima za članstvo.

Ključne reči: manjine, međunarodno-pravna zaštita, manjinska prava, ljudska prava, dvostruki standard, EU, nacionalni pravni poreci.