XXIV CICLO DEL

DOTTORATO DI RICERCA IN

POLITICHE TRANSFRONTALIERE PER LA VITA QUOTIDIANA
TRANSBORDER POLICIES FOR DAILY LIFE

MINORITY RIGHTS PROTECTION IN MULTIETHNIC
BORDER REGIONS
- CASE STUDY ANALYSIS -

(Settore scientifico-disciplinare: SPS/11)
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To my mother,

the woman who raised me, made me who I am; gave every single breath in her life for me; did everything in her power to enable me possibilities for exploring the world of knowledge, discovering many different experiences in life, and most of all, teaching me to be strong and believe in myself, believe in what I do, my work and the decisions I take. Mummy, I love you and I can’t thank you enough for everything you have done for me.
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Through the years, people find many persons to follow and role-models to admire. In my life, through the many adventures I experienced (work and private life), I met many people who I consider role-models, true examples of success and great personality; and because of those people, I have become what I am now, and I am sure, what I am going to be in the future. I am grateful, for knowing them, grateful for their advices and grateful for their time dedicated to me.

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At the end, I would like to thank my two dear friends and flat mates, Manuel and Cecilia, for their constant support and for making a perfect working environment at home.
ABSTRACT (RIASSUNTO) IN ITALIAN

Sin dagli inizi del liberalismo i gruppi hanno ricoperto un ruolo molto importante. (Eisenberg & Spinner-Hallev, 2005). I gruppi sono un elemento importante nel mantenimento della libertà democratica. L'esistenza di gruppi, insieme con la tutela della libertà di associazione, ha assicurato la tutela delle minoranze dalla supremazia di una maggioranza, al fine di promuovere i loro interessi. Come Robert Dahl (1956) dichiara, la governance democratica si sostanzia nel potere di governo effettivamente ripartito tra maggioranza e minoranze. I teorici politici si sono progressivamente sempre più interessati ai gruppi, alla loro natura e allo stato dei diritti loro concessi. Tema centrale di questa tesi sono proprio le questioni teoriche legate alla definizione di ‘gruppi di minoranza’ e dei loro diritti, le diverse soluzioni trovate per la loro tutela all’interno della società e la loro effettiva modalità di attuazione. La tesi considera due modelli di tutela dei gruppi di minoranza, come due realtà diverse caratterizzate in diversi contesti storici. Il primo modello considerato e riconosciuto a livello internazionale come un 'modello virtuoso' è la Regione Autonoma del Trentino-Alto Adige. Il secondo, visto come un modello di sviluppo’in divenire’, è il sistema di protezione dei gruppi di minoranza nella Repubblica di Macedonia. L'obiettivo finale non è quello di creare un modello standard e ‘ideale’ di protezione dei diritti delle minoranze, ma è piuttosto quello di effettuare un'analisi comparativa estrapolando i punti di collegamento tra i due sistemi/modelli. Per ciascun caso studio verranno analizzati a) il quadro normativo esistente; b) gli strumenti per la protezione dei diritti delle minoranze; c) il sistema politico, in pratica; d) la collocazione del gruppo di minoranza in esso; e) il tipo di tutela conferito ai diritti specifici del gruppo (group-differentiated rights), le loro particolarità e caratteristiche distintive. La tesi presenta uno studio multi-disciplinare, tenendo conto delle caratteristiche multinazionali, multietniche e multiculturali di uno Stato moderno, in cui il rapporto con le minoranze è
un argomento centrale. Analizzando le teorie giuridiche e politiche dei diritti umani con particolare attenzione ai diritti delle minoranze, la tesi cerca di individuare elementi caratterizzanti e definizioni dei diritti delle minoranze e non solo; cerca di produrre un’analisi comparativa per identificare le soluzioni ed i problemi presenti in una società multiculturale. In seguito analizza gli strumenti di protezione di tali diritti e la loro attuazione attraverso modelli di governance autonoma.

I diritti delle minoranze etniche hanno una certa complessità: ci sono diritti collettivi che appartengono a minoranze etniche come comunità distinte e diritti individuali che appartengono ad ogni membro di una certa minoranza etnica. Ci sono Costituzioni che definiscono esplicitamente i diritti delle minoranze anche come diritti collettivi di queste distinte comunità etniche. Nel presente lavoro la teoria della cittadinanza multiculturale è considerata come la teoria principale su cui è sviluppata l’argomentazione. Diritti specifici per le minoranze rispecchiano al meglio la natura della tutela dei gruppi minoritari. Una particolare attenzione è stata dedicata al diritto di auto-governo delle minoranze, ai diritti di rappresentanza delle minoranze e al concetto di autonomia. Dal concetto di democrazia consociativa si vede come la democrazia è legata ai diritti delle minoranze, e come i consociazioni regionali in alcuni casi sono considerati come uno strumento per la risoluzione di conflitti etnici all’interno di uno stato.

Richiamando i fondamenti teorici, nello studio comparativo l’attenzione si indirizza su alcune teorie e concetti chiave. Al primo posto è la questione della collocazione (accommodation) delle differenze culturali (linguistica, etnica, religiosa) in una società. Da una prospettiva individuale ad una comunitaria, il focus è stato portato verso una soluzione intermedia, cioè il concetto chiave che descrive sia il diritto individuale e il diritto collettivo come diritti differenziati (group-differentiated rights), costituzionalmente garantiti da leggi speciali (Kymlicka, Young, Levy). Questi diritti differenziati includono i diritti di autogoverno (attraverso diversi tipi di modelli che vanno dalla piena autonomia alla non-autonomia territoriale), i diritti polietnici (polyethnic rights) (cultura, lingua, educazione, religione, etc) e dei diritti speciali di rappresentanza (rappresentanza negli organi governativi). La questione della loro giustificazione porta alla luce l’esistenza di alcuni sviluppi storici e documenti, che
secondo Kymlicka (1995), possono giustificare pienamente le argomentazioni sull'esistenza dei diritti differenziati. Per implementare le misure che riguardano la protezione dei diritti delle minoranze in un ordinamento giuridico costituzionale ci sono diverse modalità di rendere effettivi i diritti. Le misure costituzionali e le politiche degli Stati offrono molte soluzioni, e ogni paese è diverso a questo proposito. Tuttavia in generale esiste una tendenza a seguire alcuni modelli specifici. Il concetto di ‘power-sharing’ e le varie modalità di collocazione dei suoi elementi principali può influenzare notevolmente la situazione delle minoranze in un paese; pertanto tali ordinamenti sono considerati importanti e necessari per l'analisi comparativa. La tesi conclude proprio con questa analisi, mettendo in evidenza le soluzioni offerte dai casi studio, le loro somiglianze e differenze, punti di forza e di debolezza, i problemi riscontrati, le soluzioni offerte per risolverli e le opportunità per lo sviluppo di tali modelli in futuro.
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>Ast</td>
<td>Autonomy Statute Region Trentino-Alto Adige (South Tyrol)</td>
</tr>
<tr>
<td>CFREU</td>
<td>The Charter of Fundamental Rights of the European Union</td>
</tr>
<tr>
<td>CoE</td>
<td>Council of Europe</td>
</tr>
<tr>
<td>CSCE</td>
<td>Conference for Security and Cooperation in Europe</td>
</tr>
<tr>
<td>ECRML</td>
<td>The European Charter for Regional and Minority Languages</td>
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<td>EU</td>
<td>European Union</td>
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<td>EurCrTHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>FCNM</td>
<td>Council of Europe Framework Convention for the Protection of National Minorities</td>
</tr>
<tr>
<td>FPRY</td>
<td>Federal People’s Republic of Yugoslavia</td>
</tr>
<tr>
<td>HCNM</td>
<td>OSCE High Commissioner on National Minorities</td>
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<tr>
<td>HRC</td>
<td>United Nations Human Rights Committee</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ICRC</td>
<td>International Convention on the Rights of the Child</td>
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<td>IHRL</td>
<td>International Human Rights Law</td>
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<td>OFA</td>
<td>Ohrid Framework Agreement</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
</tr>
<tr>
<td>PR</td>
<td>Proportional Representation</td>
</tr>
<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia</td>
</tr>
<tr>
<td>TEU</td>
<td>Treaty on the European Union</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNDM</td>
<td>United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities</td>
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<tr>
<td>UNFMI</td>
<td>United Nations Forum on Minority Issues</td>
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<tr>
<td>UNPFII</td>
<td>United Nations Declaration on the Rights of Indigenous People</td>
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<tr>
<td>UNWGM</td>
<td>United Nations Working Group on Minorities</td>
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INTRODUCTION
Groups have had a role in liberalism since its inception (Eisenberg & Spinner-Hallev, 2004). James Madison (1751-1836) argued that groups were an important element in maintaining democratic freedom. The existence of groups, along with the protection of freedom of association, certified that no enduring majority would dominate over any minority because, in order to advance their interests, groups continuously form and re-form alliances with other groups. As Robert Dahl puts it, democratic governance was not a matter of majority rule, but of “minorities rule” (Dahl, 1956). The groups celebrated by these classical liberals are open-ended: people presumably join or leave them as they please. Liberals have traditionally assumed that most groups are voluntary associations. Yet the nature and meaning of community began to emerge significantly in the 1980s, as some political theorists charged liberalism with being too individualistic. In contrast, inscriptive groups – groups whose membership is not open-ended, such as racial, ethnic, and sometimes national groups – were traditionally not a focal point of liberal thinking until the late 1980s. The rise of nationalism in Eastern Europe after the fall of the Berlin wall in 1989, all contributed to an increased interest in the role that inscriptive groups play in liberal theory and practice. Since then, political theorists have become increasingly interested in a whole range of groups, in the group-based nature of society, in the status of groups rights, and in what sorts of rights groups should be granted (Eisenberg, 2004).

Countries’ reasons to institutionalize minorities’ accommodation vary significantly. In some places, minority accommodation is based on historical arrangements, such as the accommodation of linguistic minorities in Belgium and Canada. Sometimes, group rights are acknowledged in order to correct past injustices, (as the arguments for the rights of indigenous peoples). Sometimes, identity claims can be present. Catalonia and Scotland have each made arguments for more autonomy in order to preserve their identity.
Colonialism has also an influence on the development of group rights and their protection. Occasionally accommodation of minorities is a result of extending rights to communities of new immigrants, or immigrants whose freedoms were previously restricted ('new minorities'), such as Sikhs or Muslims, the established values of tolerance and individual rights which have been enjoyed by the mainstream within the state. Extending rights to these new groups has given rise to new and unanticipated challenges to the traditional liberal concepts of freedom of association and freedom of religion.

Many minority groups have also become more insistent in asking for autonomy or state assistance to preserve their identity. Ignoring these demands all too easily leads to violence and instability. This ‘phenomenon’ is especially noticeable in the last thirty years, with the rise of ethno-national conflict, following the collapse of the Soviet Union, leading to concerted efforts, within and between nation states, to renew or reinvent legal and political arrangements for accommodating ethnic and national minorities. As is often the case, attempts to solve problems in one part of the world spark demands in other parts to revisit arrangements for the accommodation of minorities and to recognize new groups claiming minority rights. These demands have led to redrawing national boundaries, such as that between the Czech Republic and Slovakia, or, after considerable bloodshed, in the Balkans. It has led to rethinking and reframing the purposes of federalism in Canada, in Belgium and in Spain. It has required that numerous countries revisit the meaning of freedom of religion and, in this context, review the extent to which their public institutions can or ought to accommodate religious minorities. It has also required that numerous states rethink and revise their legal and political relations to indigenous peoples and develop a means of accommodating forms of internal self-determination. (Spinner-Halev, 2000)

As minority groups have become more vocal in demanding some form of accommodation, political theorists have increasingly taken an interest in issues raised by both voluntary and inscriptive minority groups. Perhaps nowhere is this made more evident than in the scholars viewing the problem in terms of ‘individual vs. collective rights’ and which focused, for the most part, on whether minorities were threatened by
the individualism of the liberal majority (Glazer, 1983) (Kymlicka, 1995). Multicultural theories of citizenship present another set of doctrines and possibilities to consider in relation to why and how minorities have to be accommodated, which are proven to be far more complex than the simple relationship of the individual vs. collective rights. Multiculturalists, as a centre of their attention take the questions on whether measures for group-based accommodation could justifiably violate individual rights. Will Kymlicka argues that strong group-based protections should not be secured at the price of violating rights fundamental to individual well-being. As a result, the aim of multicultural citizenship and minority rights is to provide groups with external protections and not to protect minorities in imposing internal restrictions on their members (Kymlicka, 1995).

When it comes to the discourse on multicultural society and the concept of cultural diversity, an important element for analysis is the equality. One way to interpret equality in relation to cultural diversity is to suggest that minority accommodation allows minority groups to receive the kind of cultural support that majority groups receive “free” (Parakh, 2000) (Kymlicka, 1995) (Young, 1990). Equality is also the central value involved when the discussion turns to language and cultural rights. Linguistic minorities enjoy linguistic protection in a variety of jurisdictions in the world and these protections usually mean that the minority’s language exists as the official language in a particular province or region of the country. The equality argument is a relatively recent addition to the arguments for toleration; it appears in the jurisprudence concerning religious freedom only in the twentieth century, and has been developed as a principle argument within political philosophy only in the last decade.

In terms of minority rights and their full enjoyment, another notion to consider it the right to self-determination, as an internal and sui generis form of self-determination, demands and supports the strongest type of minority claim against interference from the state. The principle of self-determination is unlike the commitment to cultural and religious accommodation precisely in that self-determining communities have jurisdiction to apply their own interpretation to how governance ought to work in their
territory and how conflicts which arise ought to be adjudicated (Eisenberg & Spinner-Hallev, 2004).

Another point for reflection and analysis is the democracy in societies where the cultural diversities are obvious and cannot be ignored. The resources of democratic theory are at least as broad as (and usually overlap) the resources of liberalism in addressing the contending claims of individuals and groups. Often, the powerful and the powerless do not understand each other, even when they use the same words to communicate (Levinson, 2003). Some contemporary democratic theorists argue that democracy can be quite helpful to minority groups. Scholars who advocate a form of “associative democracy,” like Veit Bader¹, argue that the resources of democracy are far richer than at first appears to be the case. Bader points out that most communities are interdependent and not insular; and, of those that are insular, their insularity is easily exaggerated. In most cases, minority communities are pluralistic both in the sense that their members have associative ties outside the community and in the sense that the minority itself is reliant on resources, such as public funding and tax concessions, from the broader public. Insofar as communities are interdependent, they can keep each other in check, much as pluralist theorists of democracy argued that they would. Pluralists argue that different aspects of the individual’s life and identity are fulfilled and developed within each of the different associations to which she belongs and in this sense individuals are deeply embedded in their associations and communities. But no association or community dominates the individual within a pluralist vision in the sense that none engages her entire identity. Bader explores the ways in which a democracy that is founded on the values of pluralist association establishes a flexible and fair system of governance. Moreover, it is a system that may provide the best protections for minorities and for minorities within minorities using the familiar mechanisms of democratic engagement combined with freedom of association to balance the power of groups and their individual members.

“No justice, no peace!” A social movement slogan that can be interpreted as a sociological prediction: where groups are chronically frustrated in their quest for fair treatment, they will turn to social disruption or even to violence in order to press their
claim. Doing justice is the best way to secure peace. From another angle it can be interpreted as well as a threat; if those in power ignore the group's claims there will be a price to pay. "No peace, no justice!" like the first version, can be read as both an empirical claim and a policy. In its guise as empirical claim it expresses the idea, traceable to Hobbes, that justice can be secure only where there is a stable political authority that has the power to secure it. First we secure the peace, and then we will work for justice. But this leaves open the question of what sacrifices of justice – what suspensions of rights, what delays of reform – may be made in the name of peace. The tensions between the claims of peace and the claims of justice run deep in liberalism.

Humans have devised a number of different political and institutional arrangements to sustain peaceful coexistence among diverse human beings. These arrangements range from the hands-off approach that neutralist liberal states prescribe to the millet system of the Ottoman Empire; from sovereignty as an instrument for peaceful international society to group-specific rights and consociational democracy (Lijphart, 1977). The form of toleration that emerges out of the religious wars of the sixteenth and seventeenth centuries "is simply a resigned acceptance of difference for the sake of peace". "People kill one another for years and years, and then, mercifully, exhaustion sets in, and we call this toleration". But other readings of the history of liberal toleration see this not as the substance but only as the beginning of toleration. For John Rawls, the toleration that begins as a peace treaty is soon reconceived as a remarkable discovery: that stability can actually be better served through tolerating than through suppressing one’s religious opponents. How does a concern for peace yield a practice of toleration? The psychological calculus of toleration owes a great deal to Hobbes, who used the same logic to justify the power of an absolute sovereign: when combatants can perceive that they lack the power to dominate others, or that their efforts to do so will lead them into an endless cycle of revenge, they may judge that they have more to gain from laying down their arms than from continuing the battle. Peace is not an end in itself, but is an instrumental good: we require a stable and peaceful order as a
Introduction

precondition of our freedom to pursue all of the other human goods we may seek (Spinner-Halev, 2000).

Autonomy is the most commonly expressed and is generally treated as the weightiest argument for toleration; many philosophical treatments of toleration neglect to discuss equality as an element of the justice of toleration, and those who do tend to treat it as subordinate to autonomy in the hierarchy of moral values. Autonomy tackles the sensitive question of sovereignty and borders’ stability and integrity. However, borders are not merely a territorial concept; borders tend to be nowadays a line which divides societies not solely on the basis of their geographical allocation. Besides the efforts to perceive a united society composed by diverse cultures, we all tend to have borders in our minds. Those same borders distinguish and divide religions, languages, cultures and ethnic background and nationalities. The present societies are not speared of these distinctions. The traditional conception of state is long gone, present only in history books; we now face ‘modern’ political systems with complex structure and governance; and the complexity is triggered by the appraisal of multiculturalism and pluralism.

As a result of these theoretical reflections, this research work challenges the multinational, multiethnic and multicultural features of a modern state with the minorities as a central argument. By analysing legal and political theories of human rights with specific focus on minority rights, the thesis tries to identify the main elements and definitions and further elaborate the minority rights instruments of protection and implementation through models of political systems and democracies. Minority rights are recognized as human rights, however the relationship between the individual member of the minority group, the collectively and the State, respectively, is often explored only in part. Arguments differ in regards to minority rights nature. Since human rights are attached to individuals, minority rights are perceived as specialized regime for persons belonging to minority groups. Human rights attach to individuals, whereas minority rights can be attached to the members of minority qua minority group. The rights of ethnic minorities have a certain complexity; there are collective rights that belong to ethnic minorities as distinct communities and individual rights that belong to every
member of a certain ethnic minority. International legal documents and protection instruments perceive minority rights as individual rights of members of a certain minority group, however the concept of collective rights is becoming more acceptable. There are state constitutions that explicitly define rights of minorities also as collective rights of these distinct ethnic communities. In the dissertation the theory of multicultural citizenship is conceived to be the leading one. Group-differentiated rights reflect better the nature of minority rights. The special attention has been given to the right of self-government in confrontation to the principle of self-determination, the language rights and the representation rights of minority groups and from this point the focus continues on the concept of autonomy and the different types it distinguishes. How democracy is linked to minority rights, is seen though the consociation democracy concept and the possibilities in some cases of a development of regional consociations as a resolution of ethnic conflicts within a state.

The dissertation considers two models of minority groups’ protection and their implementation as two different realities with different characteristics and historical backgrounds. The first one seen and recognized internationally as a ‘role model’ is the Autonomous Region of Trentino Alto Adige/South Tyrol and the second, which according is seen as a model in development, is the minority groups’ protection system in the Republic of Macedonia. The final aim is not to create a model solution of minority rights protection; it is rather to carry out a comparative analysis and extract the connection between the two systems/models. Each case study will be analysed in terms of the existing framework of instruments for minority rights protection; the political system in practice and the accommodation of minority group in it; and the way group-differentiated rights are protected and enhanced and their particularities and distinctive features are going to be extrapolated and confronted.
Introduction

Endnotes


2 "Where there is not common Power, there is no Law: where no Law, no Injustice . . . Justice, and Injustice . . . are Qualities, that relate to men in Society, not in Solitude. It is consequent also to the same condition, that there be no Propriety, no Dominion, no Mine and Thine distinct; but only that to be every mans, that he can get; and for so long as he can keep it“ (Tuck, et al., 1998)

3 Walzer delineates five conceptually distinct “regimes” of toleration: multinational empires, international society, consociations, nation-states and immigrant societies (Walzer, 1983)


5 “[T]he success of liberal constitutionalism came as a discovery of a new social possibility: the possibility of a reasonably harmonious and stable pluralist society. Before the successful and peaceful practice of toleration in societies with liberal institutions there was no way of knowing of that possibility. It is more natural to believe, as the centuries long practice of intolerance appeared to confirm, that social unity and concord requires agreement on a general and comprehensive religious, philosophical, or moral doctrine. Intolerance was accepted as a condition of social order and stability” (Rawls, 1999)


7 This is mostly implicit in Will Kymlicka’s work; it is explicit in Geoffrey Brahm Levey’s work.
RESEARCH METHODOLOGY
The methodology used in the research work is composed of a combination of sociological and normative methods combined in the comparative methodological approach. The research question in this work is to investigate the de jure and de facto protection of minority rights by taking two case studies as models. As a consequence the research hypothesis is: The presented political systems accommodating group-differentiated rights of minority groups as the best solution for guaranteeing protection of minority rights. This implies the use of qualitative research design with a main method of inquiry distinguished from the grounded theory approach consisted of inductive and deductive process of data analysis. In the work the deductive technique will be prevalent, since in this dissertation the main themes/theories are already set in advance (predetermined). This (top-down) approach does not test the hypothesis but rather attempts to find what theory accounts for the research question. In this work there is a minority rights theory narrowing us down into a specific hypothesis that will be tested (self-government rights as the best solution for minority rights' protection) accompanied by theories of political systems accommodating minority rights.

A reading and rereading of literature database is implied in this case. The observation phase consists the following steps: 1) identifying concepts and properties and labelling variables; 2) studying their interrelationships; and 3) comparative analysis. The comparative analysis includes the following activities: 1) scanning the literature for similar or different categories/themes; 2) isolating the similarities or differences; and 3) elaborating and analysing the isolated similarities or differences. The comparative analysis in this work evaluates the contrast between the two differing case studies. It includes comparison of two legal and political systems developed to assure guaranteed rights for minority groups and the social policies initiated for minority rights protection. The two cases analysis will seek to do the following:
- Be clear from the beginning what it is that is being compared and why. In this
regards it is clear from the beginning that the object of comparison are the solutions
offered in the legal instruments in regards to minority rights protection in the two
selected case studies.

- Establish one or more themes around which any comparison will revolve. It is
established that the main research problem are the minority rights protection models and
the theories of minority rights and governance.

- Develop a thesis that addresses the political systems accommodating group-
differentiated rights of minority groups as solutions for guaranteeing protection of
minority rights.

- Provide basic details relating to each case but avoid merely describing any cases
under investigation. This refers to the introductory part of each case study, as necessary
to be able to give background information so the consequent analysis is better understood.

- Seek to explore similarities and/or differences relating to each case. A
consideration of parallel attributes and disparities regarding each case study will be
performed.

- Aim to establish firm conclusions and recommendations grounded on the
findings from each case examined. Specifically the aim is to present what has been learnt
from the process of comparison and how might any findings assist any understanding of
each, and potentially other, related case.

The selected comparative method is regarded as a method of discovering empirical
relationships among the selected variables and not as a method of measurement. The
comparative analysis is made on the selected comparable case studies similar in a
number of important variables and at the same time dissimilar as far as those variables
are concerned in specific cases. The study is a cross-national comparison, however the
focus on inter-nation analysis is found only in few elements in the comparison process,
whereas the technique that prevails is the intra-nation comparison. The selection of
combined comparative study and a case study analysis is seen important for the
contribution in establishing general recommendations and theory-building. This research
generally is an interpretative case study research, by selecting a specific interest for analysis in the case studies rather than an interest in theories formulation. A generalization is applied (by presenting the theoretical foundations) to a specific case with the aim to focus on the cases and not improve the generalization. However the research has also elements of a hypothesis-generating case study with a general hypothesis formulation and testing.

The selected case studies in this research work could be considered unique, yet unquestionably diverse. They answer the basic question of how a governance model is created to avoid ethnic and identity conflicts, in an EU member state and in a country with aspirations to become one. The research question will be approached from two perspectives:

1. Social-scientific (sociological) - investigating the specific historical circumstances and conditions and the present situation of the minorities:

   The sociological research methods are needed to be able to link the legal contents with the dynamics of the social life. When the sociological methods are applied into the legal research we start with the maxim ‘ubi societas ibi ius’. The law is connected with the society; it is within the society and influences the society. At the same time, the social relations and customs develop the law and the legal order in one society. The sociological (or indicative) method eliminates some of the shortcomings of the dogma-normative methods in understanding the law, in specific, the statics and the limitations of these methods. The system of positive law cannot be constructed without the use of normative methods; however it remains only on the level of legal content of those norms. In this direction the sociological method is needed to connect the legal contents with the dynamics of social life. In this way the relation between the abstract legal norm and the concrete social conditions is built. The sociological method was developed in parallel with the social sciences and their meaning, born as criticism to the normative concept and its appropriate normative methods which didn’t give the expected results in explaining the legal phenomenon.
The contrast between the law and the society is represented by the fact that the law is abstract, hypothetic, simplified and static while the society is concrete, factorial, complex and dynamic. From this derives that the law is created in subjective and objective circumstances which seek for a review of how the law should be created and established. For this reason, the deontological/political method will be used. In one part, the legal-historical method will be also used for studying the series of phenomenon in the selected societies in a specific period of their development which had/have an influence on the character of the legal system. Historical legal documents will be analysed (constitutional acts, laws and other legal texts) to be able to understand and further explain specific event and social trends.

2. Legal-constitutional - investigating the types of constitutional/legal instruments for local political autonomy and self-governance:

A comparative analysis will be leading the study of the two selected countries. The use of the comparative method “compare and contrast” will assist in finding the factors influencing the similarities and dissimilarities in different systems. In the comparative research, the other circumstances which might influence the concrete political and legal system - such as: history, tradition and culture, moral, economy etc. - will be certainly taken into consideration. The rules of the comparison method, implying the use of logical instruments like classification, definitions and analogies, will be followed. To use this method, it is essential to stipulate the frame of reference or in other words the “tertium comparationis” as a common denominator and reference containing common characteristics to be found in both case studies. In this case it is determined that the frame of reference are the minority rights and their accommodation in a political system. The next important component to determine is the grounds of comparison.

At a macro level comparison, there are the two cases studies The Region Trentino-Alto Adige (South Tyrol) and the Republic of Macedonia as models to be compared. In this case the aim is to show how the two case studies actually relate to one another. The focus will be made on their different characteristics and yet indicating the precise relationship between them. Having this into consideration the organizational scheme in the
comparative analysis will be made with the use of the text-by-text method i.e. each case study is presented, first the model of Trentino-Alto Adige (South Tyrol) and after the model used in Republic of Macedonia. It should be highlighted here that on both models the focus will be made in one minority group only. In the first case study a detailed analysis is made on provincial level in regards to the accommodation of minority groups in the Autonomous Province of Bolzano-Alto Adige (South Tyrol), whereas the second case study is analysed on a state level.

At a micro level comparison, the basis will be the ‘functional equivalence’. Two distinct currents of functionalism are on offer: the ‘functionalist method’, one of the best-known working tools in comparative law, and ‘functionalism’ in the sense that law responds to human needs and therefore all rules and institutions have the purpose of answering these needs. The functional-institutional approach (method) will answer the question ‘Which institution in the second system performs an equivalent function to the one under survey in the first system?’. From the answer to this question the concept of ‘functional equivalence’ emerges. The problem-solving approach – the other side of the same coin – asks the questions: ‘How is a specific social or legal problem, encountered both in the first society and in the second society, resolved?’; ‘Which legal or other institutions cope with this problem?’. This approach springs from the belief that similar problems have similar solutions across legal/political systems, though reached by different routes. According to the functional-institutional approach the above questions, once answered, are translated immediately into functional questions (‘functionalism’). Functional inquiry also suits the utilitarian approach to comparative law whereas there are two options: 1) starting with a social problem or need in one society, discovering the institution that deals with it and then looking to other societies for institutions, legal or otherwise, which deal with the same problem or need (functional equivalents) or 2) starting with an institution in one society, asking ‘What is the purpose or function of this institution in this society?’ and, having ascertained it, looking for a functionally equivalent institution in the second society. In this dissertation the first option will be taken into account. Here, the similarity of factual needs met by the two (different) legal
systems makes those legal systems comparable. Institutions can only be meaningfully compared if they solve the same factual problem. This approach can also be called the universalistic approach to human needs which hails from the belief that social problems are universal, the laws respond to these needs in various ways, but that the end results are comparable. Hence, here, the starting point is a ‘concrete problem’.

The compared systems will be analyzed in their real connections, in the social, political and cultural context from which they resulted. It will be followed also the rule stipulating that at the base of all comparisons must be the discovery of a sufficient number of common coefficients, whose existence permits the discussion regarding an identity of phenomena. The comparison will facilitate the construction of juridical typologies and classifications; and the analysis of norms covered by other law systems or in international juridical documents.

The combination of comparative and case study method is complex and in this case involves multiple sources of data for analysis. This approach is considered to be a possibility for:

- Describing a selected phenomenon – the territorial and non – territorial autonomy for minority rights protection;
- Explaining a certain situation – Constitutional/Governance model in selected case studies (explaining the legal development in the particular systems);
- Finding common legal ideas and solution to initiate an international awareness and understanding of the research problem (minority rights protection);
- Contributing towards knowledge of the social problems in the selected case studies through the conducted study of their legal aspects.

The qualitative data presentation in this research work consists of a combination of a research based chronology - data are presented in a chronological order; and theory based approach - presentation of the findings based upon developed and/or in development theories about the phenomenon presented.

The comparison of legal and political systems is pursued (particularly in this research work):
i. to find ideas useful in improving or clarifying legal/political systems;
ii. to explain legal development in particular systems by tracing lines of legal borrowing and influence;
iii. to provide legal solutions to causes of intra-state and inter-state conflicts and so promote a broad understanding;
iv. to find common legal ideas and solutions to express the initiation of an international awareness;
v. to contribute toward knowledge of the social world through study of its legal aspects.
Even though I may not have a definition of what constitutes a minority, I would dare to say that I know a minority when I see one.

Max van der Stoel

Former High Commissioner on National Minorities

(Keynote address at the CSCE Human Dimension Seminar in Warsaw, 24 May 1993)
CHAPTER 1. MINORITY RIGHTS - INTERNATIONAL LEGAL INSTRUMENTS

1.1 INTERNATIONAL LAW AND HUMAN RIGHTS

From earliest times, communities interact with each other whether friendly, as in the case of trade; or hostile, as in the case of law. For such interactions, and for those between individuals, rules of conduct have evolved, passing through a process of development. Those rules varied from place to place and from time to time. Over centuries certain consistent traditions developed in the ways in which interactions between rulers, representing their nations of State, were conducted. Those traditions came to be collectively described as a set of law - the Law of Nations or, in more modern usage, international law (Sieghart, 1983).

Then again, the International Human Rights Law (IHRL) is the part of the public international law (the law of nations) which sets the international legal norms, rules, principles for the protection of the human rights and fundamental freedoms of every individual human being. It is simply “the law that deals with the protection of individuals and groups against violations of their internationally guaranteed rights, and with the promotion of these rights”¹. These norms, rules and principles establish the legally acceptable and, in theory, legally enforceable minimum standards of conduct of government to protect the inherent human dignity of human beings. By human rights law we mean something quite precise: a form of public international law creating rights for individuals and duties for states, as well as domestic and international remedies for violation of rights and failure of duties (Meckled-Garcia, et al., 2006 p. 13). IHRL is constituted by that set of international instruments and institutions which explicitly determine the human rights of persons.

The two major sources of IHRL are: 1) the international treaties, and 2) the customary international law, which is formed by the consistent practice of states over the course of time (usage), accompanied by the subjective element that it is
considered binding as a matter of law (opinio juris). Other sources are general principles of law, and the writings of experts and international case decisions. Some human rights norms are legally binding and are part of what is called hard law, while some norms contained in some resolutions, declarations, guidelines and sets of principles form what is known as soft law. Though not legally binding upon states this soft law serves as a more specific guide to states as to how they can comply with their hard law human rights obligations.\(^2\)

The modern international law-making process almost invariably begins with the adoption of a Declaration\(^3\) or Resolution\(^4\) by a major organ of an intergovernmental organization (such as the General Assembly of the United Nations). Such an instrument does not by itself create new international law, though over time it may come to be cited as evidence of the consistent practice of States, and so of the consent necessary for the development of a new rule of international law. Following such a declaration or resolution, attempt may be made to convert its principles into the form of a detailed and binding Treaty\(^5\), negotiate in the same (or sometimes different) inter-governmental forum. Once such a treaty enters into force, it will immediately create specific obligations in international law for those States which become parties to it. In the field of IHRL, resolutions and declarations fall into three broad categories: global, regional, and subsidiary\(^6\). In common, they: 1) specify the particular obligations of all their State Parties (SPs) in respect of certain human rights and fundamental freedoms; 2) contain general provisions applying to the protection or realization of all those rights; 3) define and circumscribe the rights and freedoms concerned; and 4) establish institutions and procedures for the international supervision, interpretation, and application of their substantive provisions.

The very first attempts to internationalise\(^7\) areas of human rights laws and to make them a matter of international concern were under the League of Nations system (to be analysed further). The atrocities committed by the Nazi regime in Germany marked a signal defeat for the notion of human rights, proving that the
human rights had still not reached the status of common values. The Four-Freedoms Doctrine, declaring the four freedoms: 1) of speech; 2) of religion; 3) from want and 4) from fear of physical aggression, established some essential social and political objectives, including the doctrine in the Atlantic Charter in 1941 (Volger, 2010 p. 256). After World War II, the victorious nations determined to introduce into international law new concepts designed to outlaw such events (of war and hostility) for the future, in order to make their recurrence at least less probable. The means were the adopted new intergovernmental organizations such as the United Nations, the Council of Europe and the Organisation of American States, and the development of a new branch of international law, specifically concerned with the relations between governments and their own subjects (Sieghart, 1983). Since then, several treaties have entered into force, which are considered in details later.

1.1.1 MAIN CHARACTERISTICS OF HUMAN RIGHTS

Human rights are becoming the language of the entire world in the realm of politics, international relations, and law. They have become very important in the eyes of the whole international community that the United Nations (UN) has declared the years 1995–2004 as the UN Decade of Human Rights Education. The study of human rights as an academic discipline exists not only in the legal studies but in other disciplines as well, such as political science, international relations, history, philosophy, social sciences, and even religion. We are all bearers or holders of internationally recognised human rights. The human rights are the birthright of humanity, and their protection is the first responsibility of all states (Conde, 2004). They derive not from the state but from the individual itself and as such they cannot be granted by the state and even so, the state is bound to guarantee them and pay them respect in the performance of its duties. The conventional liberal windstorm asserts that the state exists for the sake of man, not man for the sake of the state (Weston, et al., 1992).
The language of rights\textsuperscript{9} reached its first golden age in the great classical period of natural rights - the Enlightenment\textsuperscript{10}. At that time the rights have been preceded by the development of explicit conceptions of society, individuality, freedom, liberty, government, and religion. The conceptions laid the foundation for human rights - or called at the time-, the rights of man. The standard natural rights in this later period were still fairly limited in scope, namely, usually life, liberty, happiness, and often property. New theories were developed - by Hugo Grotius (1583 - 1645)\textsuperscript{11} and Thomas Hobbes (1588 - 1679)\textsuperscript{12}, for example - that sought to derive rights, not from the natural law (ordained by God), but from our basic humanity. John Locke (1632-1704) used Hobbes’s idea of a state of nature, and the idea of legitimating the state by explaining it as an improvement upon the state of nature\textsuperscript{13}. The natural rights idea became more and more politically effective; it also became more philosophically unsubstantiated. Their justification became questionable. Philosophers were attacking the idea of natural rights, from conservatives\textsuperscript{14}, liberals (particularly utilitarians)\textsuperscript{15}, radicals and socialists\textsuperscript{16}. As Edmundson points out, the term ‘natural’ rights opens the possibility of arguing that certain natural differences among human beings are good ground for distributing rights selectively, so the first expansionary period of rights discourse was one in which many thinkers assumed that such differences existed and were relevant to the distribution of rights (Edmundson, 2004 p. 187). He also argues that human rights are preeminently moral rights, whose existence and validity do not depend on their being recognized or instituted, and at the same time feels that it is tempting to say that human rights are simply what the eighteenth century called natural rights.

Although human rights have a long history in theory and even in spasmodic practice, it was the American and French revolutions of the eighteenth century that sought to create national politics based on broadly shared human rights.\textsuperscript{17} Human rights remained essentially a national matter until 1945 when they were recognized in global international law.
In the human rights discourse the subjects of the right are not members of this or that society but of the community of humankind. Human rights are universal, they are created on the basis of unique characteristics of the human nature, on the basis of its dignity and their primary aim is the applicability to all human beings no matter sex, race, ethnic and religious belongings, age and cultural differences and social development (Фрчкоскі, 2005). In this sense these rights cannot be taken away, they are inalienable (although limited in certain situations); the one possessing them cannot voluntarily give up on its rights, they are inherent, meaning that humans are born with them. In regards to the objects of human rights, they are absolute - prima facie rights. In reality the ‘absolute’ feature cannot be applied entirely. In general, they are considered to be of greatest importance. Their absolute meaning derives from the characteristics of their validity towards others and of the state institutions in whole. There are cases where they can be restricted but not abolished. Only the state can violate the rights of individuals, whether directly, or indirectly, and no individual as such can be held responsible for human rights violations (Meckled-Garcia, et al., 2006). In the case of exercise of human rights, human rights are appealed to when the claims they encompass are not locally acknowledged in positive law. The argument is, first, that they should be so acknowledged. Enforcement would then be the next step. The problem with enforcement is that its absence has led to the doubt of their existence since they take enforcement to be the mark of any rights in the spirit of 'covenants without the sword are but words'. But it is quite possible to have a right to something without the right being enforced (Vincent, 1986). There is the question of the location of the duties that correlate with human rights. The characteristics of correlativity with a duty provides the feature by which we may know that a right properly so-called exists. Thus it has been suggested that the attribution of a right is meaningless without the possibility of a correlative duty resting somewhere. The basic human rights fit the pattern of rights having correlative duties. It has been argued that there are universal human rights in a
PART I Theories and Concepts

strong and a weak sense. Rights in the strong sense are held against everybody else. Rights in the weak sense are held against a particular section of humanity. Everyone has a right to life against everyone else: there is a general duty to respect it. But if everyone holds, say, economic and social rights, it is against a particular government: duties are laid only on the responsible authorities. This formulation reveals a certain liberal habit of thought according to which 'negative rights', such as liberty; require only an undemanding non-interference, whereas 'positive rights', such as that to education, require substantial provision.

1.1.2 CLASSIFICATION OF HUMAN RIGHTS

The discussion continues to a short examination the classification of rights. Andrew Vincent distinguishes classifications by: 1) will or choice; 2) function in discourse; 3) what one has a right to do or expect from others; 4) correlatives; and 5) the substantive content (Vincent, 2010 p. 16). The classification of rights in terms of their substantive content according to Vincent can be structured as follows:

Table 1: Classification of rights in terms of their substantive content

<table>
<thead>
<tr>
<th>Moral rights</th>
<th>Legal rights</th>
<th>Political rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Natural rights</td>
<td>(a) Strict legal rights</td>
<td>(a) Realpolitik political right</td>
</tr>
<tr>
<td>(i) Human vis-à-vis creature of God</td>
<td>Humans as members of a legal association</td>
<td>Rights as premised on membership or citizenship of a political association</td>
</tr>
<tr>
<td>(ii) Human vis-à-vis creature of nature and reason</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(b) Human rights</td>
<td>(b) Human rights</td>
<td>(b) Human right</td>
</tr>
<tr>
<td><strong>Human</strong> vis-à-vis moral autonomous agency</td>
<td>Humans as universally possessing equal rights under international law</td>
<td>Humans as citizens of a civil state association</td>
</tr>
</tbody>
</table>

Source: (Vincent, 2010 p. 25)
Human rights are classified and organized in a number of different ways. They can be distinguished according to: 1) the area they cover; 2) the time of their creation and legal foundation and 3) their subject. In terms of the area they cover, they can be distinguished among civil and political rights, economic, social rights and cultural rights, and solidarity rights. The civil and political rights are enshrined in articles 3 to 21 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Civil and Political Rights (ICCPR). Economic, social and cultural rights are enshrined in articles 22 to 28 of the UDHR and in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Human rights can be also categorized according to the theory of three generations (this is according to the period of their formation) of human rights offered by Karel Vasak in 1979. This distinction comes from his inspiration by the three themes of the French Revolution. In the first generation rights are the civil and political rights (liberté), the second generation are the economic, social and cultural rights (égalité) and the third generation comprises the solidarity rights (fraternité).

Civil and political rights include the rights of life, liberty, security of the person, privacy and property; the right to marry and found a family; the right to a fair trial; freedom from slavery, torture and arbitrary arrest; freedom of movement and to seek asylum; the right to a nationality; freedom of thought, conscience and religion; freedom of opinion and expression; freedom of assembly and association; and the rights to free elections universal suffrage and participation in public affairs.

Economic, social and cultural rights include the right to work and for a just reward; the right to form and join trade unions; the right to rest and leisure, and to periodic holidays with pay; the right to a standard of living adequate to health and well-being; the right to social security; the right to education; and the right to participation in the cultural life of a community.

Third generation solidarity rights comprise both individual and group type rights: the right of economic and social development; right to self-determination;
rights to healthy environment; right to natural resources; right to communicate and communication rights; right to participation in cultural heritage; right to intergenerational equality and sustainability; right to humanitarian assistance. Appeared on the international scene in a popular format during the late 1980s and early 1990s, third generation rights are the most recently debated domain of human rights. They can be defined as claims, warrants, or entitlements which enable or allow for the protection or promotion of a group or minority interest (Vincent, 2010). These rights are plagued with terminological problems trying to identify what such rights actually apply to – race, language, religion, kinship, ethnicity, and culture, all projected as distinct group interests with attached right-based claims; categories covering two overlapping domains, focusing on both minorities and indigenous groups.

1.1.3 INDIVIDUAL AND COLLECTIVE/Group rights

Human rights classification according to the subject (holder) of the right distinguishes between individual and collective or group rights. The individual is a natural person, whereas a legal person is not necessarily a human being but may be a legally recognized entity (corporation or partnership), or simply a certain group of individuals. In order to act, legal persons depend on the existence of individuals, but a legal person may have interests adverse to those of the individuals who own it or act for it. According to the Interest Theory, rights exist to serve relevant interests of the right-holder; their function is to further protect the right-holder’s interests. This is opposite of the Will Theory, where the function of a right is to give its holder control over another’s duty; Will theorists believe that all rights confer control over others’ duties to act in particular ways. 31

The relationship between the individual and society is seen as one of the fundamental tensions in human experience (Cronin, 2004). Since the Enlightenment in particular, the dominant culture of the Western World has underlined the autonomy of the individual, demanding respect for human dignity on this basis, forming the foundations of the modern liberal political theory.
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However, the human beings have also a social nature. A number of problems are noticed considering the theoretical issues in regards. From the beginning the history of the rights movement has tended to focus on individual entitlements, why should there be any need for the concept of a group right? Since groups are made from individuals, so are the so-called group rights simply an amalgamation of individual rights? And, what rights can groups claim? There are scholars that see group especially to ethnic groups as a ‘bad idea’. Nickle’s ‘deficiency thesis’ states that many groups, and in particular ethnic groups, are deficient as right-holders, suggesting that assigning rights to groups is generally a bad idea because groups are often unable to play an active role in exercising, interpreting, and defending their rights – the inability source is the lack of effective agency and clear identity (Nickles, 1997). The discussion on group rights is a relatively modern phenomenon, traced back to the writings of the German legal theorist, Otto von Gierke (1841 – 1921) who challenged the Roman theory which defined group interests as the aggregate of individual constituent interests.32

There are two perspectives when it comes to individual vs. group rights discourse. The first one is the individualistic perspective. Liberalism is an individualist theory with a marked tendency to view politics as solely about the relationship between individuals and the state, with little or no room for groups in-between, other than as transient outgrowth of the combinations of individual interests (Shapiro, et al., 1997). Shapiro sees two aspects of liberalism - individualistic and the commitment to toleration; they do not come into conflict if the ethnocultural group is itself individualistic and shares the basic liberal-democratic principles of the larger society (Shapiro, et al., 1997). Many authors argued that liberalism emerged as a generalization of the principle of religious toleration.33 In this direction, it is important to highlight that there are clear distinctions between liberal nationalism34 and liberal multiculturalism35. The former provides set of guidelines for how liberal democracies should accommodate cultural groups which see themselves as ‘nations’ and seek rights of national
recognition and self-government. Liberal multiculturalism refers to non-national cultural groups seeking recognition and accommodation accepting their claim as valid not only to tolerance and non-discrimination, but also to explicit accommodation, recognition and representation within the institutions of the larger society. Kymlicka (2001) describes both liberal nationalism and liberal multiculturalism as forms of 'liberal culturalism', thus noting that it has become the dominant position in literature nowadays, concentrating on how to 'develop and refine the liberal culturalist position, rather than whether to accept it in the first place'.

A group rights construction of second generation rights has been supported from what has been called the communitarian perspective. Communitarians emphasize the importance of belonging to a distinctive community as an essential component of, as well as a means to, individual well-being. Rights are not purely individualistic constructs; they inherently portray critical and collective aspects (Mitnick, 2006 p. 26). As Mitnick points out, most rights critics, and post proponents of rights-based liberalism, what appear to have missed in their debates is that rights, under law, attach not because a subject is an individual separate and apart from all other, but specifically because the subject is an individual similar in some crucial respects to some number of others. Cronin, believes that there is a weak theory of group rights, reducing them essentialy to individual rights, regarding group rights as the rights of individuals to belong to groups that are significant for their identity (the right to freedom of association), and which provide certain important social needs (Cronin, 2004). But, as he points out, there is also a strong theory of group rights, which recognizes them as having a distinct existence from individual rights.

There is an uneasy dichotomy particularly with then terms 'group rights' and 'collective rights', often used interchangeably (O’Nions, 2007). As O’Nions points out ‘collective rights are derivative in that they vest in the individual members of groups, with group, or corporate rights, vesting in the group as a moral entity’. The common starting point with the collective and group rights schools is a belief in the
value of cultural membership to the individual. For Hohfeld, ‘group’ right-holders and ‘group’ rights were perfectly familiar. Some second generation rights can be taken as simply individual rights, other second generation rights - such as a right to cultural integrity, or to national self-determination - cannot. They can be construed as group rights – i.e., as rights held not by individuals singly but by groups collectively (Edmundson, 2004 p. 176).

The idea of group rights fronts a challenge to rights universalism, emerging out of the success of human rights (Kymlicka, 2007). Defenders of group rights argue that for certain groups of people it may be legitimate to invoke specific rights, or specific interpretations of rights, which do not apply universally, and accession to these rights depends on a membership of a group. Groups may be of a religious, social, cultural, indigenous, gender, sexual orientation, or other minority issue character (Langlois, 2009). A concern rests on whether such rights are understood as the rights of individuals - members of a group, or whether they are understood as rights that are accumulated to the group itself. In the second case, liberals have concerns about how individuals within such groups will be treated (will they have a right to speak, or crucially, to exit, if they disagree with the actions of the group). Langlois notes that group rights are useful when they ‘bolster those groups of individuals whose human rights are inadequately supported by universal regimes’; and this implies that the group rights should always be derivative from human rights—understood, as they are in the UDHR, as the rights of individuals. If a right is granted to a group or to its members on the basis of their belonging to this group, the group as well as the fact of belonging to it will have to be defined in legal terms in order to determine who is the bearer of the right conferred and who is not. Group rights are not supposed to be confused with rights that people possess in virtue of being members of groups.

Cultural differences and their forms can be accommodated through special legal or constitutional measures; some can be accommodated only if their members have certain ‘group-specific rights’. Iris Young calls this as ‘differentiated
citizenship’, since the used measures go beyond and above the common rights of citizenship. Jacob T. Levy developed a typology, identifying eight clusters of rights-claims of ethnocultural groups, which seem to have a similar normative structure and similar institutional implication (Levy, 1997). Will Kymlicka coined a term ‘group differentiated’ rights, developing special group-specific measures accommodating national and ethnic differences. In this direction, Pogge distinguishes three types of group rights: 1) Group rights proper or simply group rights (rights belonging to a group as a group); 2) group-specific rights (rights belonging to members of certain group rather than all groups); and 3) group-statistical rights (rights that protect or enhance the aggregate status of the members of a group (Pogge, 1997).

1.2 MINORITIES AND MINORITIES’ RIGHTS

1.2.1 IN SEARCH FOR A DEFINITION

It is considered essential to consider the distinction between the legal dimension and the pre-and the meta-juridical phenomenon, when dealing with the law of differences. A jurist who learns to wield the tools of the right of the differences must be aware of the different reasons that underlie the rules responsible for the identification of the groups - minority and differentiated - legally relevant. However, with this acquired knowledge, it would be a mistake to look for explanations of legally consistent criteria for identification of minorities, or, even more, believing that such rules are simply arbitrary (Palermo, et al., 2011).

The most commonly cited definition of minority was 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:

A group numerically inferior to the rest of the population of a State in a non-dominant position, whose members -being national of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only
implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language. (Capotorti, 1979)

The Capotorti definition was reformulated in 1985 by Judge Jules Descenes, although it remains substantially the same:

A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious, or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law. 42

Both definitions incorporated the same elements of objective and subjective classification. The first refers to 'nationals' of the state, the second to 'citizens' – illustrating a clear intent to exclude non-nationals from minority status. The Deschenes's definition has further been criticized for including a limitation to the aim of achieving equality in fact and law.43

In its 44th Session in 1993, the Parliamentary Assembly of the Council of Europe adopted the famous Recommendation 1201, which contains in Article 1 the definition of national minority:

A group of persons in a state who:

a) reside on the territory of that state and are citizens thereof; 
b) maintain long-standing, firm and lasting ties with that state;  
c) display distinctive ethnic, cultural, religious or linguistic characteristic; 
d) are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; 
e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.44
None of these definitions formulated in international law is binding upon any state; they serve as guidelines and are not compulsory. For these reasons, a given state should find a definition that serves the needs of the specific minority situation in this state. Some feel 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 Russians in the non-Russian successor state to the Soviet Union, the Serbs in Slovenia, Croatia and Macedonia); 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.

There are some common features in the minority definitions, such as:

- Non-dominant group
- Specific homeland
- Numerical inferiority
- Community unity
- Nationality
- Range of distinctive, constitutive characteristics
- Sense of solidarity
- Combination of objective and subjective criteria for recognition

In terms of the non-dominant group feature the Sub-Commission on the Prevention of Discrimination and Protection of Minorities suggested the following definition in 1954: ‘The term minority shall include “only those non-dominant groups in a population which possess and wish to preserve ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population”. Protection of minorities is the protection of non-dominant groups which, while wishing in general for equality of treatment with the majority wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population. Alcock notes that ‘almost all minorities have a homeland in which they are concentrated’ he then focuses exclusively on the ‘almost all’ without regard to non-territorial groups. Minorities are regarded as associated with a specific homeland. Territorial connection is not featured as an essential
component of a minority in these definitions and the issue of territory, although a relevant factor, should not act as a prerequisite for minority issues. (O’Nions, 2007 p. 182) Another term is the presence of a kin-state. In terms of numerical inferiority it appears to be uncontroversial when defining minorities. The maximum number that can constitute a minority is clearly established at less than 50 % of the total population of the state. The disagreements emerge when defining the minimum number of people who could constitute a minority group. Capotorti manages to evade this question by while 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.’ This view is an important reflection in respect of the State’s role in guarantying distributive justice throughout its jurisdiction. However it cannot be argued that with that some sort of proportionality in this regard generally tends towards the achievement of substantive social equality; the needs and desires of a group cannot be calculated merely in numerical or quantitative terms. The community unity is connected with the attachments to the culture and tradition of the specific group. The refusal to accept the assimilation in the mainstream society is an evidence of a desire to exist as a group. It shows the strong unity among the group members. In a memorandum on the definition of minorities, the UN Secretary-General noted: ‘Communities are based on unifying and spontaneous (as opposed to artificial or planned) factors essentially beyond the control of the members.’ Shaw comments that ‘it is also axiomatic that a group that has survived historically as a community with a distinct identity could hardly have done so unless it had positively so wished’. As regards to the nationality, it is debatable the requirement that members of a minority group should also be nationals of a State. The debate has often turned towards the appeal of the term ‘national minority’. There has been a general expectation among commentators and states that the rights conferred by Article 27 of the United
Nations International Covenant on Civil and Political Rights (to be analysed further) are only available to ‘citizens’ or ‘nationals’ of the particular state. The Central European Initiative’s Instrument for the Protection of Minority Rights adopted in 1996 this approach ‘reaffirming that the protection of national minorities concerns only citizens of the respective state’. As a result certain groups will be unable to claim protection. The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the definition advocated by Mr Chernichenko emphasised that minorities should include non-citizens who permanently resided in a given state. It should be noted here that, there are characteristic differentiates between persons belonging to ethnic minorities and (im)migrants. In order to assist in identifying minorities entitled to specific protection under international law, there is a tendency to adopt certain constitutive and distinctive characteristics forming a group identity. These characteristics make a distinction between the group members and the rest of the population. Such characteristics are deeply ingrained in minority identity, providing permanent indicators of the distinctiveness of the group. The sense of solidarity is related to the wish and will of the members of a minority group to conserve the group’s identity, culture, language and tradition. A question of loyalty of the minority group to the state has been raised by several commentators and can be seen in the UN Sub-commission’s fifth session definition. However, the criterion of loyalty can no longer be regarded as part of the definition of a minority. As Thornberry argues it would mean that there was no such thing as a disloyal minority and it would enable an intolerant state to argue that Article 27 does not apply as the particular group had not exhibited sufficient loyalty. Bruegel supports this argument by contending that such a clause would make the provision of minority rights into a charitable event.

A major difficulty with affording special rights for particular minority groups - the problem of defining a minority - has hounded international lawyers and academics since the League of Nations first became concerned with minority protection. Many years later there is still no accepted definition as to what
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constitutes a minority in international law. The Declaration on the Rights of Minorities in 1992 contains no definition. Furthermore, the international human rights documents use various terms, from ‘ethnic, linguistic and religious’ minorities (in the ICCPR to ‘national’ minorities (in the C/E Framework Convention and the OSCE documents). This lack of definition is generally blamed on the complexity of the subject. However, other commentators point to the traditional antipathy and ‘fear’ that talk of minority rights invokes in national governments (O’Nions, 2007).

1.2.2 Different minorities

The most recent minorities’ distinction is the one distinguishing national from ethnic minorities. In general, it is believed 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 Council of Europe Parliamentary Assembly, in its Recommendation in 2006, 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 within a state there are linguistic minorities, religious minorities and cultural minorities. These minorities can be as well national or ethnic minorities following the definition mentioned above. In regards to linguistic minorities, there are situation where, a certain regime of language rights permitting certain transitional accommodations for people with limited proficiency in the normal state or national language is allowed, however opposing
the rights of minority-language speakers to enjoy the use of their language in the public (public schools, public services). Patten calls this regime a 'norm-and-accommodation' regime enforced by 'nation-builders'. The language maintainers, on the other hand, value the importance of having an own language used in public settings. If the language as an important part of a person's culture and identity is not recognized by the state and public institutions by accommodating it, people can and are put in a disadvantaged position and by people we mean those people using a different language from the official state language (the language of the majority).

Little distinguishes two major types of religious minorities: belief groups and ethno-religious groups (Little, 2002). The former “give special priority to embracing and adhering to a set of basic beliefs about the nature of reality and human destiny, together with the behaviour patterns though to be consistent with those beliefs, which the group is established to nurture and propagate”. Latter consist of members bound together by loyalty to common ethnic origins, significantly including religious identity, but as well language and racial characteristics. The protection of religious minorities in the international human rights standards is seen though the overlapping guarantied rights: freedom of religion, freedom from discrimination (based on religion or belief), right of members of ethnic, religious or linguistic minorities to profess and practice their religion or belief and the rights of individuals to be free of becoming the target of “any advocacy of ... religious halted that constitutes incitement to discrimination, hostility, or violence”.

As the term ‘nation’, the term ‘culture’, as well, faces different and complex interpretations. In this sense under cultural minorities we find different sub-types. Cultural minority groups can have a distinct culture in one common sense of the word - that is ‘culture’ referring to the distinct customs, perspectives, life-styles or ethos of a group – and so there can be distinguished ‘gay culture’ or even a ‘bureaucratic culture’ (Kymlicka, 1995). Kymlicka in his theory of minority rights uses the term ‘culture’ as synonymous with ‘nation’ or ‘people’, therefore for him a state is multicultural it its members are either belonging to different nations...
(multination state) or have emigrated from different nations (polyethnic state). 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. From an anthropological perspective, the culture of a group consists of shared, socially learned knowledge and patterns of behaviour (Peoples, et al., 2009). The culture is shared, as it is a collective phenomenon. Within the group, the members share enough knowledge that they behave in ways that are meaningful and acceptable to others; cultural knowledge (norms, values, symbols, constructions of reality and worldviews) generally leads to behaviour that is meaningful to others and adaptive to the natural and social environment. In terms of the patterns of behaviour, it is known that even individuals brought up in the same culture differ in their behaviour; this varies for several reasons such as different social identities (males and females, old and young, rich and poor), context and situation and emotional responses, interpretations and reactions. Therefore a uniform behaviour does not exist even within the same culture; however within the same cultural group behavioural regularities or pattern emerge.

Another typology that emerges is the one distinguishing the minorities as ‘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. In this respect, the autochthonous minorities while defending and acquiring their rights seek to obtain autonomous management of their political, cultural and socio-economic affairs, representing
their particular demands and needs. The immigrant groups, as ‘new’ minorities, on the other hand, are concentrated on the economic and social integration process in the host-state without wishing to give up certain cultural characteristics. They seek for another type of guaranteed rights, that is, freedom from discrimination from one side, and rules to ensure the maintenance of cultural practices (recognition of religious holidays, female circumcision, polygamy, wearing a veil of Muslim girls in school). In other term, whereas the new minorities are requesting measures to facilitate their integration in the host society in order to be treated equally, the old minorities request to decide on their own for their future, independently and separately from the majority society claiming the rights and resources necessary for the realization of this request, in order to be and remain ‘different’.

It is worth mentioning here as well the characteristics of indigenous people, so to be distinguished from minorities. The rights of both, ‘minorities’ and ‘indigenous peoples’, are about protection within a State, without interruption of sovereignty and territorial integrity (Alfredsson, 2005). The differences are present, in terms of drafting and adoption of standards and the creation of separate forums and monitoring procedures. The identification of the indigenous peoples is relatively simple using the criteria seen before; they are people generally allocated from time immemorial in certain territories, placed under guardianship, although not necessarily numeric, and subject (if not exterminated) to the expansion of other peoples who have occupied their territories. The objective characteristics, the subjective elements and the numbers factor, clearly overlap when defining minorities and indigenous people. They have national, ethnic, linguistic and religious characteristics distinguishing them from the majority population, like the minorities. However, a crucial factor in their identification is their original inhabitation of the land on which, unlike minorities, they have lived before the arrival of later settlers. Also, one of their distinctive elements is their life style, different from the majority, which they tried and try to keep as original and unique no matter the many colonisations and foreign occupations. Another strong distinctive characteristic is the relationship they have...
with the land where they live (fishing, gathering, herding or hunting). In terms of their rights’ protection, indigenous rights involve not only equal rights and non-discrimination but as well special measures (possession of land and exploration of natural resources). United Nations General Assembly in 2007 adopted the Declaration on the Rights of Indigenous People (UNPFII), with 144 states in favour, 4 against and 11 abstentions, wherein indigenous peoples are entitled to have a wide spectrum of individual and collective rights, including the right of self-determination, right to autonomy or self-government.  

1.2.2  LEGAL INSTRUMENTS FOR MINORITY RIGHTS PROTECTION – HISTORY IN MOVEMENTS

The standard setting in the field of minority rights as part of the international protection of human rights is effected by various actors and by different means. At first, there are the states, as traditional subjects of international law, which create, by enacting domestic legislation, the legal basis for identifying international standards. States within their domestic legal framework and by ratifying bilateral and multilateral treaties, significantly contribute to the identification of international standards and instruments for minority rights protection. Secondly, there are the international organizations or international governmental organizations founded by states to pursue and implement international protection of human rights in general and minority rights in particular. By constituting a forum for drafting international legal documents aimed at international protection of human rights including rights of minorities, these international governmental organizations create the international legal framework and thus form international recognized standards. The identification of these international standards in the relevant treaties and their applicability is conditioned by the provided monitoring mechanisms for controlling and ensuring respect for the legal obligation incurred by state parties to implement and apply (within their domestic jurisdiction) the provisions of those treaties. There are three kinds of international supervision (from a legal point of view) (Hofmann, 2008). The first one - the strongest one - consist of juridical system, whereby a
court, acting upon individual complaints or applications by state parties, is entitled to hand down binding judgments based upon a binding interpretation of the applicable treaty provision. The second - intermediate – consists of quasi-juridical system, by which a body of experts authors legal non-binding opinions, based upon an examination and assessment of the legal and factual compliance of a state party with its obligations flowing from participation in an international treaty that then serves as the basis for a legally binding decision of the competent monitoring body. The third - the weakest one – consists of a non-juridical system. A body of exerts either produces (legally non-binding) guidelines on specific issues, or it authors country-specific reports (not based upon a legal document and have no legally binding force). If those guidelines or reports refer to binding legal instrument, they can contribute to identifying international standards. They have a potential influence on the domestic policies and legislation in their persuasive authority (Hofmann, 2008).

In this part the international development of the minority rights protection will be presented, through historical overview, following the legal standards and instruments developed and adopted by the United Nations (UN), the Organization for Security and Cooperation in Europe (OSCE) (with the weakest monitoring mechanism and international supervision), the Council of Europe (CoE) (with the strongest mechanism and supervision by the European Court of Human Rights) and the European Union (EU). At the end of this sub-section the minority rights protection through bilateral agreements will be explored in general as another system of ensuring and guaranteeing minority rights. Furthermore the last argument in this sub-section is the differentiation of the states’ policies used in the direction of minority groups within the states’ territories.

For centuries, predominantly in Europe and the Middle East, attempts have been made to find reasonable solutions to minority problems. It is supposed that the first initiative was the millet system, as "something akin to modern minority group rights" since it was based on the recognition of groups and their institutions (Sigler, 1983), introduced in the Ottoman Empire during the 15th century by Sultan
Mehmet II to guarantee certain rights for non-Muslim religious and ethnic minorities with the main objective to ensure protection for various ethnic and religious groups within the Empire. It was also international in character, because it was operated across national boundaries in large parts of Europe and Asia.

Consequently, the welfare of religious and national minority groups have become legitimate concern of the European powers. 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. As example, the Austrian Constitutional Law, 1967 as significant step in addressing legitimate concerns of minority groups recognized that all the national minorities of the States should enjoy the same rights and, in particular, have an absolute right to maintain and develop their nationality and their language. This act was considered as a significant step in minority protection (Capotorti, 1979). Similarly, the Polish Constitution 1815, Hungary’s Act XLIV, 1868, and the Constitution of the Swiss Confederation 1874 are other notable example where certain constitutional guarantees were introduced to protect minorities and to address their concerns. Minority perception in relation to the emergence of nationalism gradually laid the foundation for future ethnic conflicts which later spread to other parts of the globe; the nationalism as seedbed of modern minority rights and the minority discontent are seen as the most unsettling force in international relations (Sigler, 1983). Most early minority treaties were concerned with the treatment of religious minorities. However, Capotorti notes a change of attitude in the nineteenth century which saw an increased range of minority provisions contained in various multilateral instruments (Capotorti, 1979). It was noted a presence of a modest attention paid to the situation of ethnic and linguistic minority groups until the League of Nations was created following the First World War.

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 (Bagley, 1950 p. 68).

The protection of the rights of minorities and the importance of the international human rights law has not been universally accepted. The League of Nations introduced the first modern international ‘experiment’ in regards to the minority issue, which “constitutes an unsurpassed high point in a centuries old tradition” (Robinson, 1943). For examining minority rights protection from 20th century to present date, I will use the Pentassuglia’s structure of the international instruments protecting minority rights in a sequence of movements (trends) (Pentassuglia, 2009).

1.2.2.1 The First Movement

The first movement features minority instruments without an established international framework of human rights with the post-World War I League of Nations system. With the disintegration of the three multinational empires (Austria-Hungary, Prussia and the Ottoman Empire) a redrawing of the boundaries has been caused and with that a birth of new emerged or enlarged states. The League of Nations was a system consisted of special treaty and declaration based obligations, created to accommodate nationals who belonged to racial, religious or linguistic minorities existing in these new born states. Thornberry describes the League’s minority regime as “the most extensive developed by the international community” (Thornberry, 1991 p. 40).

The League minority provisions have been criticized for their cumbersome procedures and lack of real enforcement powers, the treaties were only concerned with the protection of certain minority groups. Moreover, policing of the treaty provisions created problems for some allied powers most of who were also involved with their own minority problems. Each particular state accepted that the treaty provisions are considered as fundamental laws, and that no law, regulation
or official action should conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them (O’Nions, 2007 p. 187). Minority issues left for States to deal with were popularly known as ‘minorities’ treaties’ and ‘declarations’ and some special measures were taken to address also individual cases. Nevertheless, these treaties did not constitute any ‘fresh departure’ in respect of minority protection (Robinson, 1943) as the guaranteed rights were limited. Baron Heyking points out that most minority treaties not even mention the right to private property of a minority although indirectly measures were taken to regulate property belonging to individuals of a minority population as the League of Nations was of the opinion that the right to property was not a legal right that can be claimed by minorities as such.

The Council of the League was made competent to address cases of actual or potential infractions of minority obligations brought to its attention by Council members, while the Permanent Court of International Justice (PCIJ) was empowered to deliver impartial decisions over differences of opinion on questions of law or fact arising out of the relevant regimes. Although they did produce a measure of protection, the League of Nations norms came under attack as they were not intended to be for general application nor did they entitle the groups concerned to initiate proceedings before the Council or to appear before it or other competent bodies for oral hearings (Pentassuglia, 2009 p. 2). However, the Minorities Section (branch formed under the Secretariat) operating under the League Council adopted procedures ensuring effective implementation of the guarantees in the minorities treaties (Welhengama, 2000). The minorities referred to in the treaties were not generally regarded as collective entities, however there was a clear understanding that a simple non-discrimination approach was insufficient and groups as well as individuals were given the right to petition the League (a right unfortunately absent in the United Nations Covenants that followed) (O’Nions, 2007 p. 186).
There is a symbolic significance in the recognition of the importance of minorities as a fundamental aspect of international law. The controversial application of special measures for minority members highlighted the importance of the distinction between equality in law and equality in fact: “Equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of differential treatment in order to obtain a result which establishes an equilibrium between different situations...”\(^8^1\) The fear of secessionist demands and irredentism based the post-war unwillingness to improve minority rights. Before the downfall of the League system these fears were not realised. Goronwy Jones argues that Hitler’s use of minority rights as a vehicle for the expression of Nazi ideology marked the nail in the coffin for the group rights vocabulary of pre-war Europe.\(^8^2\)

The Covenant of the League of Nations, as such, did not contain provisions for the protection of minority rights. The United States President Wilson made some attempts arguing that “The League of Nations shall require all new States to bind themselves as a condition precedent to their recognition as independent or autonomous States to accord to all racial or national minorities within their several jurisdictions exactly the same treatment and security, both in law and in fact, that is accorded to the racial or national majority of their people” \(^8^3\). The proposals were rejected and subsequently abandoned. Nevertheless, leading players of the League of Nations believed in the ultimate goal, that is international peace, achievable only though and effective mechanism capable of protecting minorities.

Averting inter-state wars arising out of ethnic conflicts, preventing national minorities from disturbing peaceful inter-state relations and preventing oppression and persecution of national minorities were the main political objectives of the League system. Still, some states questioned the consequences of establishing a strong international mechanism guaranteeing preferential treatment or special protective measures for a segment of a population of independent States (Welhengama, 2000). As the “Mello-Franco thesis”\(^8^4\) argued, some states wanted to see a gradual and painless minorities’ assimilation in the countries in which they
lived. To some states, the League system impeded the development of national unity and weakened the unity of the States by encouraging a segment of the population to look for a third party to protect them. It was also pointed out that “minorities were asking not for rights but for privileges, and they should be refused as being in contradiction with the equality principle”.85

The League system protected only certain minority groups in selected States in Eastern and Central Europe (Austria, Hungary, Bulgaria, Turkey, Poland, Greece, Czechoslovakia, Romania and Yugoslavia). Later, other states (Albania, Lithuania, Latvia, Estonia and Iraq) joined the system by making Declarations. Strong criticism was proven by the Congress of Minorities (which acted as a representative of minority groups in Europe) for lack of coherent and effective implementation procedures. The minorities were not parties to the minorities’ treaties nor were they given *locus standi* in any proceedings against State parties; therefore these treaties did not give the minority any legal foundation for establishing their claims before the League or the Permanent Court of International Justice (Welhengama, 2000).

After 20 years of ‘experiment’, minority regimes operating under the League system gradually collapsed (with the outbreak of World War II), the Minority Section was dissolved in 1939 and, consequently, minority treaties and regimes were considered non-operative due to desuetude or by operation of the *clausula rebus sic stantibus*.

1.2.2.2 The Second Movement

This period is characterized by the international human rights as a substitute for minority rights. If the first movement has exposed minority rights without international human rights, the second called for human rights without minority rights. The post-World War II period established a human rights framework, caught between universalistic ideals and the need to focus on group issues. The human rights approach was intended to remove ‘ethnic particularism’ from the code of rights available to everyone. At a time when the West objected to
recommending the legally binding regime on minorities of the
1920s, it was precisely the West that came to offer most of the ‘best practices’ on
how effectively to protect minorities domestically, in (at least implied) connection
with notions of democracy and human rights (Kymlicka, 2007).

It is considered that the second movement was never complete, caught as it
was between universalistic ideals and the pressing need to attend to group issues
on the ground (Pentassuglia, 2009). When the UN spoke out for an individualistic
approach for human rights and fundamental freedoms for all, states showed
determination to learn from the terrible collective experience of the Holocaust by
adopting the Genocide Convention in 1948. This action contributed for a much
wider discursive space about minority groups and rights in general.

The universal human rights that were affirmed in the United Nations
Charter, and confirmed in the Universal Declaration of Human Rights, as well as
main regional instruments in Europe and the Americas, were observed as
instrumental in, inter alia, disallowing minority identity claims and their
concomitant collective dimension (Pentassuglia, 2009). Since the very beginning,
on the UN agenda, the minority issue has been present, argued and very well
documented, despite the fact that neither the UN Charter nor the Universal
Declaration of Human Rights contains provisions on minority groups, both of them
do refer to the principle of non-discrimination. Minority rights and non-
discrimination can be viewed as two sides of the same coin (O’Nions, 2007). The
UN Sub-Commission did include ‘protection of minorities’ alongside ‘prevention
of discrimination’ in its title and furthermore a thorough study (to be produced by
the commission) of the problems of minority groups was referred to the Economic
and Social Council (ECOSOC) by the General Assembly resolution 217 A (III),
which was passed together with the resolution containing the Universal
Declaration. Subsequent activities were seen fundamental for the drafting of the
Article 27 of the International Covenant on Civil and Political Rights (ICCPR) in
1966. A minority rights provision finally made it into the most classical general
human rights treaty ever adopted, recognizing the right of persons belonging to
‘ethnic, religious or linguistic minorities’ to enjoy their own culture, to profess and practice their own religion, or to use their own language.

When the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) was adopted in 1992, a significant advancement was made (with the end of the Cold War and as a result of new minority related disputes emerged in Central and Eastern Europe) in 1992, further expanding the scope of the UN protection of minority rights. The UN standards were then reinforced by many instruments at the European level, including the 1995 Council of Europe’s Framework Convention for the Protection of National Minorities (FCPNM).

Minority rights cannot be ignored and rather than increasing irredentist tendencies, minority rights may be a prerequisite for the peaceful stable societies which benefit us all (O’Nions, 2007). In a detailed study on the rights of minorities, Special Rapporteur Eide identified three crucial components on the protection of minorities: 1) respect for the equality of all human beings; 2) group diversity when required to ensure the dignity and identity of all; 3) an approach which aimed to advance stability and peace, both domestically and internationally (Eide, 1993 p. 12).

1.2.2.3 The Third Movement

The third movement is defined as a minority related standard-setting, a way of integrating minority provisions into the international framework of human rights, beyond cases of gross abuse (Pentassuglia, 2009). The developments seen in the past decades have gone hand-in-hand with a sort of resistance from the international community sectors, to either robust minority rights regimes or the very notion of minority rights. Unwillingness by states to uphold standards meeting the core of minority demands and consequently provide advanced forms of protection under positive international law. Standards are focused on indigenous communities, and minority provisions founded by a strictly individualistic approach, with lack of direct entitlements to territorial or non-territorial
autonomy or solid language and educational rights. This raise questions in regards to the nature and efficiency between minority rights and international human rights regimes. This period highlights the scope of the supervisory procedures established under or associates with minority instruments. The minority rights instruments adopted as from the late 1980s do not make provisions for a juridical body to monitor its implementation. The UNDM minimum standards per se cannot give any legally binding obligations, proposals for building upon that text to draft the universal treaty on minority rights have not been followed though so far. Efforts to make minority rights under jurisprudential discussion and analysis with specialised instruments have been unsuccessful, especially in Europe. Pentassuglia points out the refusal to endorse a proposal from the Council of Europe’s Parliamentary Assembly in 1993 to adopt a protocol on minority rights to the European Court of Human Rights (EurCrtHR), or even to allow the EurCrHR to deliver advisory opinions on matters relating to the Framework Convention for the Protection of National Minorities, as a classical example (Pentassuglia, 2009). Most of the monitoring structures being set up (with a weak or vague mandate) formed a response to security and human rights concerns in the 1980s and 1990s. An opportunity has been provided for re-considering the minority questions (a long-standing issue) and the impacts of the security mandates after the collapse of the Soviet Union and Yugoslavia as well as during ethnic conflicts in other parts of the world.

1.2.2.4 The Fourth Movement

According to Pentassuglia, this movement can be called the ‘emerging fourth movement’. If the third movement marks the era of standard-setting and discursive practice associated with the gradual acknowledgement of minority rights within the post-1945 international human rights framework, a fourth movement seems to be emerging which is relatively insulated from whatever uncertainties or limitations may have been generated by earlier – and still ongoing – international efforts (Pentassuglia, 2009). This period is characterized by a rapidly expanded
body of international minority jurisprudence, particularly under general human rights treaties, and its direct or indirect relation to developing case law at the domestic level. The basic structural design of the third movement remains, whereas the fourth movement seeks for a capacity of jurisprudential assessments to address minority claims within the human rights canon. It, in some parts, goes beyond the *acquis* from the third movement, and deepens the understanding of international human rights law in relation to minority groups.

The framing of discussion regarding minority group rights continued, as the interest in the subject has been renewed. The international jurisprudence on minority issues shows, in different ways, within different settings, signs of unprecedented transformation. The minority issues, over the years, have come under intense study. Platform for discussion has been provided; researchers, civil society workers and academia show high interest, having discussions, writing and analysis on multiculturalism and multinationalism as significant subject matter to be brought in attention. And not only; political debates had raised issues on cultural identity, democratic participation and social cohesion.

International instruments on minority rights improved the minority communities’ and NGOs’ confidence in the capacity of judicial discourse to absorb and expound some of the elements underpinning them (Pentassuglia, 2009). There is a strong demand by experts, leading groups and NGOs, for re-considering minority question within the wider international human rights canon. It seems that the language of minority standards still needs to be explained, in particular the relationship between soft law and international human rights treaties. A distinctive form of judicial discourse is fast emerging that appears to be contributing to a relatively more solid ‘legalisation’ of minority issues, regardless of the treaty or regime in question.

Outside the ethno-cultural diversity discourse, there is an explicit connection between the emerging jurisprudence and the ongoing process of ‘globalisation of law’ motivated by a variety of international courts and court-like
bodies in fields as diverse as international trade, international law of the sea, international criminal justice, and of course international human rights. In a dramatic expansion of the judicial function at international level, the human rights stand at the forefront, which calls for an interaction between international and domestic judicial levels.

1.2.3 UN AND MINORITY RIGHTS PROTECTION

After the ‘minority treaties’ system of the League of Nations, the United Nations gradually developed a number of norms, procedures and mechanisms concerned with minorities. In this part are going to be discussed the main UN instruments for minority rights protection beginning with the International Covenant on Civil and Political Rights and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Before the short analysis of the protection offered in these two international legal instruments, it is worth mentioning the core of the UN protection of human rights, and that is the Universal Declaration of Human Rights (UDHR). The Declaration (adopted by the UN General Assembly on 10 December 1948 with 48 votes in favor, none against and 8 abstentions) underlines the universal character and validity of all human rights, considered one of the most important documents of the twentieth century enumerating all important human rights comprising the two major categories of human rights – the civil and political rights on the one hand and economic, social and cultural rights on the other – later split in the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. It has a decisive influence on the human rights debate in many states in the following decades.

1.2.3.1 The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN General Assembly on 16 December 1966, (considered part of the International Bill of Human Rights) and entered into force on 23 March 1976, three months after the 35th ratification was deposited, representing an effort by
governments to move beyond the hortatory character of the UDHR in order to give human rights binding legal character under international law. With the adoption of the UDHR in 1948, at a time where an agreement on a legally binding human rights instrument (an international treaty) could not be reached, a definition of the notion of human rights as contained in the Charter of the United Nations (Preamble, Articles 1, 13, 55, 62, 68 and 76) was achieved. The International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols, together with the International Covenant on Economic, Social and Cultural Rights (ICESCR) constitute the core of the legally binding human rights protection at the universal level (Volger, 2010). The rights and the terms are of international concern as between the parties, and states may take an interest in the compliance of other states to their human rights obligations.

The ICCPR starts with a preamble, expressly referring not only to the UN Charter and the UDHR, but also to economic, social and cultural rights as agreed upon in the parallel Covenant, the ICESCR. The subsequent text of the Covenant is subdivided into five parts: Part I is solely devoted to the right of self-determination of peoples (Art. 1). Part II contains provisions for the implementation of the Covenant by the states parties (Arts. 2-5). Part III comprises the substantive rights (Arts. 6-27), where the last article of this part protects the persons belonging to minorities, followed by Part IV regulating the establishment and the terms of reference of the Human Rights Committee (HRC) (Arts. 28-45). Part V clarifies – in the sense of an interpretative rule – the relationship between the Covenant and the UN Charter: the provisions of the Charter and the responsibilities of the organs of the UN and its specialized agencies shall not be impaired, in regard to the matters dealt with in the ICCPR (Art. 46), as well as the right of all peoples to enjoy and utilize their natural resources (Art. 47). Part VI contains final provisions. The ICCPR is the only human rights treaty that has universal coverage both geographically and in respect of its personal scope, and that includes a specific provision on the rights of minorities, or to be more exact, on the rights of members...
of minorities (Henrard, et al., 2008) stated in its Article 27. The negative experiences of minority protection under the League of Nations and the emphasis on the universality of human rights\(^{100}\) in this covenant, gives in general the reason why it differs from the Universal Declaration of Human Rights, which does not include a clause on minorities\(^{101}\). When assessing Article 27, the supervisory practice of the HRC and the interpretations and clarifications in relation to the article should be taken into account. The two main monitoring functions are a mandatory reporting procedure and an optional procedure for individual complaints. As of April 2006, 156 states are subject to the periodic reporting procedure and 105 states to the international right of individual complaint. Although there are no treaty provisions on the legal effect of findings by the HRC under the reporting procedure or in the consideration of individual complaints, such findings represent authoritative interpretations, as the HRC is the only international body established to monitor compliance with the ICCPR. The HRC may secure its lines of interpretation in respect of a specific provision or a cross-cutting issue by adopting a General Comment.

The ICCPR Article 27 is seen as a rather modest negative provision. It primarily addresses the negative obligation of states not to deny members of minorities the right to enjoy their culture, to profess and practice their religion or to use their own language:

*Article 27 - In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*

Expressed in negative terms, it is recognized the existence of a ‘right’ and it is required that it shall not be denied. Thus, a state is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are required not only against the acts of the state itself, whether through its legislative, judicial or administrative
authorities, but also against the acts of other persons within the state.\textsuperscript{102} It is conferred the right on persons belonging to minorities which ‘exist’ in a state, thus it is not relevant to determine the degree of permanence that the term ‘exist’ indicates, given the scope of the rights envisaged under this article; the minorities need not be nationals or citizens, or even permanent residents. Therefore, migrant workers or even visitors constituting such minorities are entitled not to be denied the exercise of the rights (to enjoy their own culture, practice their religion and speak their language in community with members of their group) proclaimed in the article. The existence of an ethnic, religious or linguistic minority in a state does not depend upon a decision by that state, but requires to be established by objective criteria.\textsuperscript{103}

The drafting process of symbolically the most important minority provision in international legal instruments reveals insights into the scope of the provision and expression of many of the fears in regards to the recognition of collective rights. Throughout the drafting debate in 1961, views were expressed by some members supporting assimilation policies.\textsuperscript{104} The first draft of Article 27 stated that:

\textit{Ethnic, religious and linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practice their own religion or use their own language.}

The Sub-Commission adopted a different construction, protecting the rights of ‘persons belonging to minorities’ after a series of debates questioning the juridical personality of minorities.\textsuperscript{105} The Covenant refers to ‘ethnic, religious or linguistic’ minorities rather than ‘national’ or ‘racial’ minorities. The terms ‘religious’ and ‘linguistic’ are self-explanatory; ‘ethnic’ is used instead of ‘racial’ to refer to all biological, cultural and historical characteristics, rather than inherited physical characteristics. Capotorti notes that the choice of wording reflects a desire to incorporate both national and racial groups within the obligation under Article 27 (Capotorti, 1979). The final version refers to ‘members of minorities’. According to Capotorti there are three reasons for this individual emphasis: 1) Historical
background of the WWII and the abuse of the pre-existing minorities regime; 2) The need for a coherent formulation which has been couched in terms of the individual as rights bearer against the state as rights upholder with no room for other collective entities; and 3) Political reasons to prevent friction between the minority and the state.

It seems that the formulation ‘persons belonging to such minorities’ gives clear message that the right protected under this article is an individual right. However, the practice of the right depends on the ability of the minority group to maintain its culture, religion or language. Positive measures (by a state) may be necessary to protect and assure the minorities’ identity and the rights (to enjoy their culture and language, and to practice their religion) in respect of the Article 2(1) and Article 26. The positive measure may constitute a legitimate differentiation under the covenant, as long as they are aimed at correcting conditions which prevent or harm the enjoyment of this right and provided that they are based on reasonable and objective criteria. With the wording ‘community with the other members of their group’ is added the collective dimension of this provision, probably with the intentions to avoid a concern that any individual could claim the benefit of the rights for minorities, as the effect is to recognise that the rights of members of minorities are not dependent and can only be fully realised within the security of the group. It seems that there is a ‘double effect’ approach, a rather limited one, since failed to be realised in practice.

What is the status of the obligation of the states to recognise minorities legally? Minorities’ recognition is fundamental to rights recognition. Giving states the right to determine whether minorities exist allowed them to redefine national minorities to avoid the international obligation. A proposal in the Human Rights Committee was rejected which alleged to ensure to national minorities the right to use their native language, to possess their own schools, libraries, museums and other cultural and educational institutions, as the Article 27 does not give a positive duty to states to ensure these rights that can be guaranteed only by an active involvement of governments in their implementation. The Committee on
Human Rights General Comment on Article 27 (mentioned above) required for positive measures of protection.\textsuperscript{112}

In regards to the universality of the minority rights (as human rights), the final version of Article 27 does not regard minority questions as a universal problem. The opening “\textit{In those state in which minorities exists...}” is not quite with the general purposes of the International Covenants aiming to secure universal respect of human rights, but rather an opportunity for any member state to refuse to acknowledge the existence of minority groups within the state. Note that the enjoyment of the right recognised by Article 27 does not prejudice the sovereignty and territorial integrity of a state.\textsuperscript{113}

The closest counterpart to the minority rights clause in Article 27 in other human rights treaties is Article 30 in the Convention on the Rights of the Child,\textsuperscript{114} following closely the wording of the provision but which focuses upon children\textsuperscript{115}. Article 27 has served as a source of inspiration for the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (Henrard, et al., 2008).

1.2.3.2 \textbf{The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities}

The UN General Assembly adopted a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) \textsuperscript{116} in 1992, expanding further the scope of the UN protection of minority rights. The Declaration is a reinforcement of the provisions in Article 27 ICCPR, on one hand not giving a definition of minorities, but on the other hand listing a number of basic principles. The preamble considers that:

\textit{The promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live.}

It is still dominant the individual emphasis, but it is required by states to protect the identity of minorities as well as their existence in Article 1.\textsuperscript{117} A vast
range of subjects are covered in the nine articles: 1) Education, which should promote awareness of the minorities traditions and culture; 2) Participation in cultural, religious, social, economic and public life as well as the right to participate in decisions concerning the minority at a national and, where appropriate, regional level; and 3) The right to associate and maintain contact with other members of the minority group.\textsuperscript{118}

In contrast to Article 27 of ICCPR, here there is a clear positive obligation on state to take:

\textit{...necessary measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.}\textsuperscript{119}

The Declaration is the main reference document for minority rights granting persons belonging to minorities:

- Protection, by States, of their existence and their national or ethnic, cultural, religious and linguistic identity;

- The right to enjoy their own culture, to profess and practise their own religion, and to use their own language in private and in public;

- The right to participate effectively in cultural, religious, social, economic and public life;

- The right to participate effectively in decisions which affect them on the national and regional levels;

- The right to establish and maintain their own associations;

- The right to establish and maintain peaceful contacts with other members of their group and with persons belonging to other minorities, both within their own country and across State borders; and

- The freedom to exercise their rights, individually as well as in community with other members of their group, without discrimination (art. 3).
According to the declaration states protect and promote the rights by taking measures to:

- Ensure that they may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law;

- Create favourable conditions to enable them to express their characteristics and to develop their culture, language, religion, traditions and customs;

- Allow them adequate opportunities to learn their mother tongue or to have instruction in their mother tongue;

- Encourage knowledge of the history, traditions, language and culture of minorities existing within their territory and ensure that members of such minorities have adequate opportunities to gain knowledge of the society as a whole;

- Allow their participation in economic progress and development;

- Consider the legitimate interests of minorities in developing and implementing national policies and programmes, and international programmes of cooperation and assistance;

- Cooperate with other States on questions relating to minorities, including exchanging information and experiences, to promote mutual understanding and confidence;

- Promote respect for the rights set forth in the Declaration;

- Fulfil the obligations and commitments States have assumed under international treaties and agreements to which they are parties.

The purposes of the Declaration is to promote more effective implementation of the human rights of persons belonging to minorities and more generally to contribute to the realization of the principles of the Charter of the United Nations and of the human rights instruments adopted at the universal or regional level (Eide, 2005). Inspired by Article 27, the Declaration builds on and adds to the rights contained in the International Bill of Human Rights and other human rights instruments by strengthening and clarifying those rights which make
it possible for persons belonging to minorities to preserve and develop their group identity.

The Declaration adds the term ‘national minorities’. Eide sees relevant, and with right, the question, on whether the title indicates that the Declaration covers four different categories of minorities, whose rights have somewhat different content and strength. Persons belonging to solely defined religious minorities might be held to have only those special minority rights (profession and practice of their religion). Persons belonging to a linguistic minority might similarly be held to have only rights related to education and use of their language. Persons who belong to groups defined as ethnic would have more extensive rights relating to the preservation and development of other aspects of their culture also, since ethnicity is generally defined by a broad conception of culture, including a way of life.

According to some the Declaration does contain a number of significant weaknesses; minorities were not consulted during the drafting process. There is still no precise definition of minorities, enabling again a subjective interpretation by states. The wording emphasis with ‘should’ rather than ‘shall’ or ‘will’ and the qualified provisions with the words ‘where possible’ enables a more gradual and possibly partial implementation of these essential measures. There is no right of minority autonomy, thus the protection of minority identity is at the hands of the state rather than an unchallengeable right of the group.

1.2.3.3 Other UN instruments concerned with minority rights

As UN legal documents concerned with minority rights are distinguished the following ones:

- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted as A/RES/2106A (XX) by the UN General Assembly on 21 December 1965 and entered into force three years later in January 1969. The Article 1 defines discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition,
enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

- International Covenant on Economic, Social and Cultural Rights (ICESCR) mentions explicitly in article 2 (2) that “the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

- Convention on the Prevention and Punishment of the Crime of Genocide (ICPRCG) was adopted by the United Nations General Assembly on 9 December 1948. After obtaining the requisite twenty ratifications required by article XIII, the Convention entered into force on 12 January 1951. The Convention is a legal source referred to in the United Nations Minorities Declaration for protecting the rights of minorities. It is one of the first conventions that the General Assembly adopted (resolution 260 A (III) of 9 December 1948) and relates to the protection of groups, including minorities, and their right to physical existence. No mechanism has been established to monitor its implementation. The ad hoc International Criminal Tribunals for the former Yugoslavia and for Rwanda were the first to apply this international Convention. Its article II defines genocide as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: 1) Killing members of the group; 2) Causing serious bodily or mental harm to members of the group; 3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; 4) Imposing measures intended to prevent births within the group; 5) Forcibly transferring children of the group to another group.”

- The Convention on the Rights of the Child (ICRC) Article 30 provides that “in those States in which ethnic, religious or linguistic minorities or persons of
indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language”. 124

- The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) requires States to adopt and implement national policies to promote and ensure equality of opportunity and treatment in employment and occupation, with a view to eliminating direct and indirect discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin (articles 1 and 2). These national policies must address discrimination and promote equality, in law and in practice, regarding access to education and training, employment services, recruitment, access to particular occupations, as well as terms and conditions of employment. 125

- The 1998 ILO Declaration on Fundamental Principles and Rights at Work provides that all members of the Organization have an obligation to respect, promote and realize the fundamental principles and rights at work (“core labour standards”). These include the principle of non-discrimination in employment and occupation, freedom of association and the right to collective bargaining, and the elimination of forced and compulsory labour, as well as child labour. The enjoyment of equality of opportunity and the treatment of minorities are monitored under this Declaration. 126

- The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage provides safeguards and promotes the practices, representations, expressions, knowledge, skills—as well as the associated instruments, objects, artefacts and cultural spaces—that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. For this purpose, the Convention establishes a fund and a listing system of representative and endangered heritage. 127

- The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions encourages States to incorporate culture as a
strategic element in national and international development policies and to adopt measures aimed at protecting and promoting the diversity of cultural expressions within their territory. It emphasizes the importance of the recognition of equal dignity and respect for all cultures, including that of persons belonging to minorities, and of the freedom to create, produce, disseminate, distribute and have access to traditional cultural expressions, and asks States to endeavour to create environments conducive thereto. In addition, several regional human rights treaties include provisions that can be invoked to advance minority rights. The Council of Europe’s Framework Convention for the Protection of National Minorities contains particularly detailed provisions on minority rights in various fields.\textsuperscript{128}

1.2.3.4 The UN Working Group on Minorities

The United Nations Working Group on Minorities (UNWGM) was established in 1994 as a subsidiary body of the UN Sub-Commission on the Promotion and Protection of Human Rights. In 1989 the Sub-Commission decided to request authorization to initiate a study on peaceful and constructive approaches to situations involving minorities. The study was carried out over a period of three years with a final report presented to the Sub-Commission in 1993. The thrust of the study was not solely to discuss minority rights, but to explore good guidelines for constructive relationships between the different groups in society (Eide, 2004), proposing, as one of its recommendations, the establishment of a working group within the United Nations to promote the implementation of the 1992 Declaration; later endorsed by the Sub-Commission and the Commission on Human Rights. Its mandate was: 1) to review the promotion and practical realization of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities; 2) to examine solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and governments; and 3) to recommend further measures as appropriate for the promotion and protection of the rights of persons belonging to national or ethnic,
religious and linguistic minorities. It provided a framework within which non-governmental organizations, members of minority groups or associations, academics, governments and international agencies may meet to discuss issues of concern and attempt to seek solutions to problems. The main achievements of the Working Group have been related to the elaboration of principles and guidelines for minority protection, based on the text of the Declaration. Nevertheless it had an important function in addressing the highly sensitive issues of peaceful and constructive group accommodation and pluralism inside states. Papers on topics such as multicultural and intercultural education; recognition of the existence of minorities; participation in public life, including through autonomy and integrative measures; inclusive development; and conflict prevention were prepared and submitted for consideration by the Working Group.\textsuperscript{129} However, the working group lacked the quasi-judicial functions invested in treaty-based supervisory organs; with no formal, systematic monitoring process and neither an adversarial complaints chamber empowered to receive and investigate complaints, nor an early-warning conflict prevention mechanism (Thio, 2008).

With the Human Rights Council Resolution 6/15, in 2007, the Working Group was replaced by the Forum on Minority Issues (UNFMI)\textsuperscript{130} as a platform for promoting dialogue and cooperation on issues pertaining to national or ethnic, religious and linguistic minorities, as well as thematic contributions and expertise to the work of the independent expert on minority issues.\textsuperscript{131}

\textbf{1.2.4 OSCE AND MINORITY RIGHTS PROTECTION}

The Organization for Security and Co-operation in Europe (OSCE) is primarily a security organization. It originates in the Conference on Security and Co-operation in Europe (CSCE), initiated as an intergovernmental diplomatic conference aiming to establish common ground between the opposed blocs of Eastern and Western Europe. The then (in the middle of the Cold War) 35 participating States reached agreement on the Final Act of Helsinki on 1 August 1975. With this, the Soviet bloc achieved some formal recognition of post-WWII
frontiers, while the West achieved some formal recognition that human rights and fundamental freedoms were a legitimate international interest and subject of East-West discourse (Packer, 2005). Broad areas of interest were divided into three ‘areas’ concerning: 1) security questions (military matters); 2) economic and environmental concerns; and 3) ‘human contacts, information and human rights’ (later to become as ‘the human dimension’, including humanitarian concerns). The participating States of the Final Act recognized “the close link between peace and security in Europe and in the world as a whole and...the need for each of them to make its contribution to the strengthening of world peace and security and to the promotion of fundamental rights, economic and social progress and well-being for all peoples”.132

The Final Act includes a ‘Declaration on Principles Guiding Relations between Participating States’ which, in reaffirming the commitment to develop friendly relations specifies ten principles ‘in conformity with the Charter of the United Nations’.133 The seventh principle concerning human rights refers to ‘the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development’. It requires all States to act in conformity with ‘the international declarations and agreements in this field’ and in addition, the principle states that:

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

The initial conference give way to an ongoing process which included subsequent conferences and meetings hosted by various participating States. Progress was achieved in the period 1989-1990 in the course of three meetings on the human dimension held successively in Paris (1989), Copenhagen (1990) and Moscow (1991). At Copenhagen, an agreement was reached on a much expanded
catalogue of human rights standards including a long list of standards concerning persons belonging to national minorities. In November 1990 the CSCE second summit of Heads of States and Government has been held when the ‘Charter of Paris for a New Europe’ was signed.\textsuperscript{134} States agreed to base their societies on the twin principle of: 1) democratic legitimacy of authority; and 2) market economy. Consequently, the authoritarian regimes of Eastern Europe collapsed and the Soviet Union itself dissolved. After the collapse of Socialist Federal Republic of Yugoslavia, in Europe it has been revealed the considerable prospect for problems involving national minorities, especially the countries of Central and Eastern Europe. This constituted a immediate threat to regional peace and security, when more and more State (re)acquired their independence and more and more minority situations were created in what are not 55 participating States of the OSCE.

1.2.4.1 OSCE High Commissioner on National Minorities and OSCE Recommendations

In 1992, OSCE (at that time CSCE) established the position of High Commissioner on National Minorities (HCNM) to be “an instrument of conflict prevention at the earliest possible stage”. With a view to achieving an appropriate and coherent application of relevant minority rights in the OSCE area, the HCNM requested the Foundation on Inter-Ethnic Relations – a nongovernmental organization established in 1993 to carry out specialized activities in support of the HCNM – to bring together two groups of internationally recognized independent experts to elaborate sets of recommendations. A more substantial influence on the elaboration of international standards on the protection of the rights of national minorities is seen in these sets of recommendations or guidelines which have been developed by the expert groups. The process of elaboration was aimed at bringing together outstanding experts on minority rights with the purpose of trying to further clarify or develop the often vaguely worded international norms on minority protection. In principle, such recommendations should be bold, but remain within realistic terms. The very first set of such
recommendations is known as the Hague Recommendations Regarding the Education Rights of National Minorities, which were officially approved in October 1996. Since then, four more sets of such recommendations have been developed: the Oslo Recommendations on Linguistic Rights (1998); the Lund Recommendations on Participation Rights (1999); the Guidelines on the Use of Minority Languages in the Broadcast Media (2003); and, in February 2006, Recommendations on Policing in Multi-Ethnic Societies (2006) and the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (2008).

As it was explained before, in international law, a distinction is often made between hard and soft law. Soft law consists of instruments that are non-binding in the legal sense, such as resolutions and recommendations, but which are generally considered as reflecting a more or less common opinion within the international community and which are drafted in a standard-setting way. Secondary soft law includes the recommendations and general comments of international human rights supervisory organs, the jurisprudence of courts and commissions, decisions of special rapporteurs and other ad hoc bodies, and the resolutions of political organs of international organisations applying primary norms. From the point of view of the normative development of international rules, the activities of international mechanisms in the field of standard setting and clarifying existing standards are therefore of utmost importance.

The purpose of the Lund Recommendations, like The Hague and Oslo Recommendations before them, is to encourage and facilitate the adoption by States of specific measures to alleviate tensions related to national minorities and thus to serve the ultimate conflict prevention goal of the HCNM. The Lund Recommendations on the Effective Participation of National Minorities in Public Life attempt to clarify in relatively straightforward language and build upon the content of minority rights and other standards generally applicable in the situations in which the HCNM is involved. The standards have been interpreted
specifically to ensure the coherence of their application in open and democratic States. The Recommendations are divided into four sub-headings which group the twenty-four recommendations into general principles, participation in decision-making, self-governance, and ways of guaranteeing such effective participation in public life. The basic conceptual division within the Lund Recommendations follows two prongs: participation in governance of the State as a whole, and self-governance over certain local or internal affairs. A wide variety of arrangements are possible and known. In several recommendations, alternatives are suggested. A more detailed explanation of each recommendation is provided in an accompanying Explanatory Note wherein express reference to the relevant international standards is found. (OSCE, 1999)

The central message of the Recommendations is that good policing in multi-ethnic societies is dependent on the establishment of a relationship of trust and confidence, built on regular communication and practical co-operation, between the police and the minorities (OSCE, 2006). For States seeking to integrate minorities, and at the same time develop professional service-oriented community policing, the Recommendations provide a practical way forward.

The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations repeat the previous recommendations and stipulate firstly, that under international law, the respect for and protection of minority rights is the responsibility of the State where the minority resides. States may have an interest in the well-being of minority groups abroad, however, does not entitle or imply a right under international law to exercise jurisdiction over people residing on the territory of another State. States, according to these recommendations, should ensure that their policies with respect to national minorities abroad do not undermine the integration of minorities in the States where they reside or fuel separatist tendencies (OSCE, 2008).
1.2.5 **COUNCIL OF EUROPE AND MINORITY RIGHTS PROTECTION**

The Council of Europe (CoE) instruments and mechanisms for identifying general standards for minority issues are to be seen through the European Convention on Human Rights (ECHR) and the Framework Convention for the Protection of National Minorities (FCNM).

The ECHR – as interpreted and applied by the European Court of Human Rights and the European Commission of Human Rights – had only very limited relevance for the protection of the rights of persons belonging to national minorities. This legal instrument was approved in 1950 and entered into force in 1953. Covering only fundamental civil and political rights, it remains the principal achievement of the CoE. It does not go too far to say that it comprises a quasi-constitutional regional bill of rights for Europe (Forsythe, 2006). Together with its protocols, covers a wide variety of primarily civil and political rights. The covered rights include the right to life (Art. 2), prohibition of torture and slavery (Articles 3 and 4), right to liberty and security of person (Art. 5), right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (Art. 6), prohibition of retroactive criminal legislation (Art. 7), right to respect for private and family life (Art. 8), freedom of thought, conscience and religion (Art. 9), freedom of expression (Art. 10), freedom of assembly and association (Art. 11), the right to marry and found a family (Art. 12), the right to an effective remedy before a national authority if one of the Convention rights or freedoms is violated (Art. 13) and a non-discrimination provision regarding the enjoyment of rights and freedoms under the Convention (Art. 14). In addition, several protocols have been added to the substantive rights protected under the Convention. The ECHR, like other international treaties, imposes obligations upon states parties to respect a variety of provisions. The convention has been incorporated into the domestic legislation of all current states parties although the Convention does not provide as to how exactly the states parties are to implement internally the relevant obligations.
The movement towards a specific minority rights convention in Europe began when the Committee of Ministers considered a draft protocol to the European Convention on ‘persons belonging to national minorities’. In 1993, the Parliamentary Assembly recommended an additional protocol on the rights of minorities to the European Convention. This document included a definition of the term ‘national minority’ and went as far as providing for local or autonomous authorities for national minorities.

The Vienna summit of October 1993 saw the Heads of State advocating legal commitments for minority protection, and a draft protocol to complement the ECHR in the cultural field was commenced by the ad hoc Committee for the Protection of National Minorities. In February 1995 the Framework Convention for the Protection of National Minorities was opened for signature requiring twelve ratifications to bring it into force. It entered into force on 1 February 1998 and has now been ratified by 35 states. The Convention situates minority rights protection squarely within the human rights paradigm. Marc Weller observes a fundamental shift from the security dimension of minority rights towards the promotion of a harmonious and inclusive society. The Convention, like the OSCE, prefers the term ‘national minority’ to the ICCPR formulation of ‘religious, linguistic and ethnic minority’. However, there is no definition of ‘national minority’ in the Framework Convention. The Explanatory Report notes that ‘it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member states’ and advocates a ‘pragmatic approach’ (O’Nions, 2007).

FCNM Article 1 clearly establishes that the protection of minorities and their members constitutes a fundamental element in international human rights law. It is apparent from the Explanatory Report that this does not constitute recognition of collective rights, with the general emphasis on ‘persons belonging to minorities’ as in the ICCPR. Any notion of minority rights is situated squarely within the human rights paradigm. Nevertheless, the Convention does contain rights which, although couched in individual terms, clearly apply to collectivities per se and could only be
enforced by such collectivities. The Convention expands some of the individual rights contained within the ECHR, such as freedom of expression and association. It also develops specific minority-centered rights such as rights to practice religion and language and advocates improvement in representation in a variety of contexts— including media, politics and education. Several of the articles include the clause ‘within the framework of their legal systems’ which undermines the importance of the right to which it is attached. Klebes notes that such a restriction implies, contrary to the European Convention on Human Rights, that national law prevails in cases of conflict and that there is no obligation on parties to adapt the national law to comply with the Convention rights.\textsuperscript{143}

Ever since the Recommendation 1201, the Parliamentary Assembly have maintained interest in cultural autonomy and recently adopted Recommendation 1609 advocating a convention on minority self-government which has received some, albeit limited, limited approval from the Committee of Ministers.\textsuperscript{144} Recommendation 43 on Territorial Autonomy and national Minorities relied on the principle of subsidiarity to recommend greater autonomy for territorially defined collectivities. The Committee of Ministers acknowledged the importance of subsidiarity for greater minority participation, but declined to accept the recommendation and any advancement of territorial autonomy.\textsuperscript{145}

Since 1992, Council of Europe’s Member States have been able to confirm their commitment to the protection of the Europe’s cultural heritage by ratifying the European Charter for Regional or Minority Languages (ECRML). The Charter, was adopted as a convention on 25 June 1992 by the Committee of Ministers of the Council of Europe, and was opened for signature in Strasbourg on 5 November 1992. It entered into force on 1 March 1998. It has been ratified by twenty-five states (Armenia, Austria, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxembourg, Montenegro, Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom). Another eight states have signed it,
some of which are expected to ratify soon.\textsuperscript{146} It aims to protect and promote the historical regional or minority languages of Europe, to maintain and to develop the Europe’s cultural traditions and heritage, and to respect an inalienable and commonly recognised right to use a regional or minority language in private and public life. The Charter sets out a number of specific measures to promote the use of regional or minority languages in public life: education, justice, administrative authorities and public services, media, cultural activities and facilities, economic and social activities and transfrontier exchanges.

1.2.6 **European Union and the Minority Rights Protection**

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and **respect for human rights, including the rights of persons belonging to minorities**. These values are common to the Member States in a society in which pluralism, **non-discrimination**, tolerance, justice, solidarity and equality between women and men prevail. \textit{(Art. 2 of the Treaty on European Union)}\textsuperscript{147}

The European Union is based on a consensus politics. Minority issues, within the EU, have had to be tackled in a fractionated way, almost by ‘stealth’ (Weller, et al., 2008). The EU addresses discrimination and social inclusion, cultural diversity, Roma issues, and other issues relevant to minorities; however the commitment to initiatives on minorities as such is unsuccessful. In the Charter of Fundamental Rights of the European Union (CFREU), membership to a national minority is mentioned only as a ground for prohibited discrimination:

\textit{Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a **national minority**, property, birth, disability, age or sexual orientation shall be prohibited. [Article 21(1)]}\textsuperscript{148}

The minority protection can be viewed as an outcome of anti-discrimination policies. In this regard, a legal frame of reference has been created also with the extension of the anti-discrimination provisions in the Treaty on the European Union (TEU) (see above) and the adoption of the Council Directive on
implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Race Directive) laying down ‘a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment’. The Directive provides a comprehensive legal base from which to address negative discrimination, and facilitates positive discrimination:

\[
\text{With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin. (Art. 6)}
\]

It does not, however, go into detail on the ways to adopt specific measures; “Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in the Directive”.

For the European Union, the protection of minorities is essentially a political criteria. The formulation dates back to the European Summit in Copenhagen in 1993 setting out the criteria to be met by the states of Central and Eastern Europe in order to be admitted to the EU. While other Copenhagen criteria (respect for human rights, democracy and rule of law) were quickly merged into the rules of the Treaties (the Treaty of Amsterdam, which encoded them in art. 6 of the TEU), the respect and the protection of minorities were not positivised until 2009. ‘Respect for and protection of minorities’ is outlined significantly in the Copenhagen political criteria, however in EU laws are not directly translatable into the \textit{acquis communautaire}. During the EU accession process, the progress of individual candidate States in respect of the criteria (including the protection of minorities) has been constantly monitored by the Commission. In the Commission’s regular reports in meeting the criteria of EU accession (Progress Reports), the progress on minority protection is examined under the section ‘Political criteria’, often referring to the ratification process of the FCNM (expecting from candidate to ratify it prior to EU accession). As it can be seen the EU have referred to legal
standards on minority protection established by the CoE (FCNM and ECRML)\(^{152}\), and it also referred to norms (recommendations) made by OSCE and HCNM\(^{153}\).

The European Union has never developed a ‘self-conscious minority protection policy’ or adopted a legal instrument expressly aimed at protecting minority rights. For an entity with policies on practically every political, economical and cultural aspect, the EU has been slow to develop one in relation to minorities, and the concept of ‘minority’ remains somewhat of an interloper in the EU law (De Witte, et al., 2008). The minority dimension is reflected though the policies directed to non-discrimination, cultural diversity, integration of migrants and social exclusion. For De Witte and Horváth the main elements of the EU’s minority policy are: 1) the rights of EU citizens and third-country nationals; 2) the policy on race and ethnic discrimination; 3) policies on education and culture; and 4) external relations (accession). EU minority policy is multi-faceted, scattered and indirect; protection comes in endless forms, from case law (free movement principles) to secondary legislation (Race Directive), funding policies (culture or education), policies based on principles established by international instruments (CoE).

Besides the fact that the EU does not contribute to the strict and implicit protection of minorities (mentioning them only via the principle of non-discrimination), within the EU, there is another phenomenon interesting for analysis. Although the normative aspect of the principle of subsidiarity was not immediately legitimimized and institutionalized, a system of vertical multi-level governance emerged, largely as a result of the adoption of the principle of subsidiarity. While some argue that the emergence of a so-called ‘new regionalism’ will result in a weakening of member state boundaries\(^{154}\) (and thus perhaps the elimination of the member state level), others argue that the new regionalism in fact means stronger and more politicized regions and thus a reinforcement of the three levels.\(^{155}\) Certainly, there is merit to the argument that, even though Europe is uniting and integrating each time it is enlarged, it is also becoming a larger mosaic of diverse nationalities adding more languages and more regions. In 78
addition, as more states join the EU, some smaller states become *de facto* minorities and thus Europe becomes a territory of minorities. This phenomenon in turn creates national minorities that are eyeing opportunities to manifest their identities more strongly, not only at the member state level, but also at the supra-state level. The questions on how national minority regions behave and how they mobilize in terms of structure and influence at the supra-state level will be further developed in the second chapter.
CHAPTER 2. MINORITY RIGHTS – STATE’S PROTECTION

While minority rights are acknowledged as human rights in many international instruments, the relationship between the individual member of the minority group, the collectively and the State, respectively, is often explored only in part. One could argue that minority rights cannot be human rights except to the extent that they are a specialised regime for persons belonging to minority groups. If it were truly a minority rights regime, then it is not, by definition, human rights: human rights attach to individuals, whereas minority rights ought to attach to the minority qua minority group.

In the Article 27 (ICCPR), that we mentioned previously, the protection is given to persons belonging to minority groups emphasising the individual rights of minority members not the right of the minority group as group right. Some rights that this article protects are also guaranteed to all individuals (not necessary members of a minority group) in other international legal instruments, for instance the freedom of religion, the freedom of expression, the rights to education and freedom of association. Parker sees minority rights as shorthand for human rights that are of particular relevance to persons belonging to minority groups who wish to preserve their own identity. It is true, what Geoff Gilbert points out, ‘the most complex issue is how the individual, the minority group and the State interact’. The interaction precedes analysis of the rights, duties and obligations of the State with respect to the individual and the minority group (Geoff, 2005).

It was mentioned that there are two perspectives when it comes to individual vs. group rights discourse. In the group (collective) rights discourse, the State has both duties towards the minority group and the individual. The persons belonging to the minority group have a relationship with the State and with the minority group. The minority group then again, can make demands of the individual in the cause of preserving the minority identity.
Under international instruments, the state owes duties to persons belonging to minority groups as individuals within the jurisdiction of the State and as members of the minority; and in addition having obligations to the minority group qua minority. And as Geoff points out, only the individual persons belonging to a minority group have rights. And since a belonging to a minority group is a matter of individual choice (freedom of association)\textsuperscript{159}, whenever there is a conflict of interest between the minority group and the individual the State should prefer the individual over the minority. Thornberry noted that this position is not necessarily that simple in practice; the protection of the group (through Article 27) can only ever be derivative of a benefit to persons belonging to the minority group\textsuperscript{160}.

The State, as we have seen, has a dual role: regulating the relationship between the individual persons belonging to the minority group and the group and of guaranteeing rights to the individual members of the group and to the group. The minimum of the latter case is to have a right to recognition and a right to no arbitrary removal of pre-existing rights. Finding the right balance in regulating the relationship is the most difficult task. We will see in this chapter special minority rights developed to assure equality of rights and opportunities. There rights should
enable individuals and groups to realise their guaranteed constitutional rights. Rights of minorities have dual nature – they are at the same time both collective and individual rights. If we analyse rights of ethnic minorities and their complexity, we can discover that as collective rights they belong to ethnic minorities as distinct communities, and as individual rights they belong to every member of a certain ethnic minority. 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. There are state constitutions that explicitly define rights of minorities also as collective rights of these distinct ethnic communities.

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). 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 (Brunner, Georg and Küpper, Herbert, 2002).

2.1 GROUP-DIFFERENTIATED RIGHTS

A group right should not be identified with a ‘group-differentiated’ right. This term describes a right that is accorded to a particular group but not to the larger society within which the group exists, as we saw earlier. For example, in one society there might be special territorial rights or rights of self-government, guaranteed to an indigenous minority as recognition of the special status that the minority should enjoy within the larger society. The term ‘group-differentiated rights’ is occasionally abbreviated to ‘group right’, however group-differentiated right may or may not be a group right in the ordinary sense (a right possessed by the group qua group rather than by its members separately). For example, if the group-differentiated right is the right of a group to be self governed, it will be a group right. But if it is, for example, a right unique to the members of an indigenous minority to fish in certain waters and if that right is vested in, and is
exercisable by, the several individuals who make up the minority, it will be a
group-differentiated individual right. (Kymlicka, 1995 pp. 45-48) The group-
differentiated rights proposed by Kymlicka are designed to protect cultural as well
as political interests and in order to determine which ethnocultural groups merit
which rights. To understand how these rights are justified by reference to the
varying circumstances of these groups it is helpful to attend to Kymlicka's
distinction between national minorities and ethnic groups (Valadez, 2001).
National minorities are formerly self-governing groups which were incorporated
by settler societies through conquest, annexation, or federation. Ethnic groups
consist of immigrant groups who left their countries of origin to integrate into a
new society. 165 Given the importance of retaining one's cultural tradition for
exercising freedom and supporting self-identity, the state should grant cultural
groups the necessary group-differentiated rights to enable them to maintain their
culture. Without such state support, minority groups will not have the same
opportunities as majority members to preserve their culture. Note an important
fact, stressed by (Nickles, 1997 p. 252) that if an ethnic minority lacks the effective
agency needed to exercise and tend its group rights, then it should be avoided the
granting and recognition of those rights, or, for non-territorial ethnic minorities to
try to create the clear identity, effective agency, and legitimate leaders needed for
the effective exercise and management of their rights.

There are at least three forms of group-specific/differentiated rights
according to Kymlicka166: 1) self-government rights; 2) polyethnic rights; and 3)
special representation rights. (Kymlicka, 1995 p. 27) Self-government rights refer
to the situation when there is a demand for some form of political autonomy or
territorial jurisdiction, ensuring development of the different cultures and
interests in a multinational state. Self-government rights may include regional
political autonomy, regulation of immigration policies in tribal homelands, control
of criminal justice institutions, and management of land and natural resources.
Rights to self-government typically involve a devolution of power to territorially
concentrated ethnocultural groups. These rights are seen as permanent rights that are an inherent corollary to self-determination, and not as temporary measures to eliminate inequitable representation or socioeconomic disadvantage. Federalism is one mechanism for recognizing claims to self-government, which divides powers between the central government and regional subunits (provinces/states/cantons). For example, federalism can provide extensive self-government for a national minority, guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society. Self-government claims for Levy, are the most visible of cultural rights-claims and among the most widespread. These claims (in form of political units with others in a confederation, or cantons, states, or provinces in a federal system or fully dependent) should not be ruled by aliens, they better have drawn borders and institutions well arranged to allow the group political freedom from domination by other groups (Levy, 1997). The claims for self-government, usually take the form of devolving political power to a political unit controlled by the members of the national minority, and significantly corresponding to their historical homeland or territory, not seen as temporary measures, there are often seen as ‘inherent’, and so permanent. (Kymlicka, 1995) Polyethnic rights involve formal protections that ensure that cultural groups can maintain their cultural practices and preserve their cultural norms and beliefs without limiting their successful functioning in the social and economic institutions of the majority society. Such rights may include language policies in the schools to help preserve minority cultural traditions, exemptions to school dress-codes to allow the wearing of religious attire, and state funding for minority arts and cultural events. These group-specific measures are intended to assist ethnic groups and religious minorities express their cultural particularity and pride without it obstructing their success in the economic and political institutions of the dominant society and they are usually intended to promote integration into the larger society, not self-government. Self-government rights are relevant for national minorities, while polyethnic rights generally apply to ethnic groups. Special representation rights are intended to rectify minority group political under-
representation in governing bodies. These rights may include guaranteed minority seats in legislatures, veto power on policies that directly affect ethnocultural minorities, and the formation of power-sharing arrangements in which ethnocultural minorities are provided equitable political partnership. Special representation rights can apply to either ethnic groups or national minorities. When applied to the latter, these rights are generally understood as a corollary to self-government rights. ‘Group representation rights are often defended as a response to some systematic disadvantages or barrier in the political process which makes it impossible for the group’s views and interests to be effectively represented’ (Kymlicka, 1995 p. 32).

Jacob T. Levy classifies cultural rights-claims and special policies for accommodating ethnic and linguistic pluralism in: 1) exemptions from laws which penalize or burden cultural practices; 2) assistance to do those things the majority can do unassisted; 3) self-government for ethnic, cultural, or “national” minorities; 4) external rules restricting non members’ liberty to protect members’ culture; 5) internal rules for members’ conduct enforced by ostracism, ex-communication; 6) recognition/enforcement of traditional legal code by the dominant legal system; 7) representation of minorities in government bodies, guaranteed or facilitated; and 8) symbolic claims to acknowledge the worth, status, or existence of various groups (Levy, 1997). Exemptions are defended in terms of liberty and only indirectly in terms of equality, however assistance rights are almost always arguments about equality; opposed on the grounds that they single out members of specific groups for receipt of unequal benefits; they are supported on the grounds that members of the minority culture face an unfair inequality in their chances to do or participate in something (Levy, 1997 p. 32).

*On some accounts it is thought easier to justify two separate states than it is to justify differentiated citizenship within one state. (Levy, 1997 p. 34)*

The focus will not be put on internal restrictions/rules, however the external ones are argued to be an extension of the right of self-government; the power to
limit outsiders is compared with the comparable power held by states (Levy, 1997). Recognition and enforcement claims, according to Levy, are occasionally closely linked with self-government, however recognition/enforcement rights do not claim territory neither request to govern non-members (Levy, 1997 p. 39). The representation claims of ethnic minorities are justified for securing protection of interests or rights, preventing discrimination or ensuing certain privileges. In assessing claims for group rights to electoral power, the primary concern is democracy\textsuperscript{170}. On these rights we will focus further. Symbolic claims refer to indirect affect on ability to enjoy or live according to its culture\textsuperscript{171} or the distribution of political power among groups (Levy, 1997 pp. 46-47).

At first, group-differentiated rights seem to violate principles of equal treatment because they grant special privileges to ethnocultural groups (sometimes at the expense of the majority society) (Kymlicka, 1995), (based on cultural membership) they violate the liberal principle of state neutrality regarding individual choice of cultural tradition. However, in liberal democracies, individuals can associate freely among themselves to support and practice any cultural tradition of their choosing, and it is not the business of the state to support any particular cultural tradition. The discourse on violation leads us to the justification of these rights. Kymlicka evaluates three types of argument that could be used to justify group differentiated rights—arguments based on equality, historical agreements, and the value of cultural diversity—and concludes that each of these arguments, particularly the equality argument, can contribute to the justification of group-differentiated rights (Kymlicka, 1995 pp. 107-130).

\textbf{2.1.1 \textit{NON-DISCRIMINATION, EQUALITY AND DIVERSITY}}

\textit{The foundations of inequality lie less in property than in human diversity, or in the human tendency to differentiate themselves from some while associating with others to form groups. (Kukathas, 2003)}

Kukathas suggest that we should “abandon equality as an aim because the suppression of diversity brings with it problems of its own, and, in the end, does
not bring about equality but simply creates different inequalities”. John Baker, defends principles of equality\textsuperscript{172} which include principles of satisfaction of basic needs, equal respect, economic equality, political equality, and sexual, racial, ethnic, and religious equality (Baker, et al., 2004).

The state should treat all of its citizens with equal respect and consideration. For national minorities, the conception of equality concern equal access to one’s societal culture. Without group-differentiated rights, the societal cultures of national minorities are vulnerable to economic and political decisions by the majority. Kymlicka indicates that the majority cannot justifiably demand that national minorities give up their culture and \textit{assimilate} into the majority society, not only because of the deep bonds they have to their own culture, but also because national minorities were not voluntarily incorporated into the state\textsuperscript{173}. A national minority, as much as the majority society, has a right to preserve the societal culture that it never relinquished and that is essential for its attainment of the good life.

For ethnic groups, group-differentiated rights equalize their opportunities to integrate into the mainstream society without discrimination or prejudice. Many of these groups want to become an integral part of the majority society while retaining a measure of their traditional cultures. This is why they seek polyethnic rights that would enable them to exercise their cultural practices and beliefs. As Kymlicka notes, these rights, rather than having a \textit{Balkanizing effect}\textsuperscript{174}, promote the social integration of ethnic groups by equalizing their capacity to function effectively within the institutions of the majority society. (Kymlicka, 1995 p. 150)

According to Taylor, when one country is found in a contact with other culture(s), it has to welcome the culture(s) as an equal; however the culture(s) coming into the country cannot claim equality (Taylor, et al., 1994). When minorities claim to be treated equal it is a form of disrespect. Living together with other cultures gives a grounded opinion about the other culture as it takes some time to understand and respect other cultures. Nevertheless, it is hardly possible
the case where different cultures will see each other as equal, and according to Barry they do not have to, as equality is not a necessary condition when treating citizens’ rights, since there is something like ‘tolerance’ that treats people equal but does not see all as equal. He agrees with Kukathas that ‘at the core of liberalism is the idea of toleration’\textsuperscript{175}, however he dissents Kukathas’s central idea of putting the right of association as fundamental giving considerable power to the group and denying others the right to intervene (Barry, 2001). Parekh perceives that sometimes we know that is relevant in a given context to treat people equally, but we find difficult to decide if two individuals are equal in relation to it. When applying the principle of equality in a multicultural society, equal treatments is likely to involve different or differential treatment, raising the question as to how we can ensure that the latter does not amount to discrimination or privilege; and there is no easy answer (Parakh, 2000).

While justifying group-differentiated rights, Kymlicka considers cultural diversity is important because it increases the cultural resources and ways of life available to the members of society. In his theory, the cultural diversity argument is questionable as a justification for group-differentiated rights for national minorities, because preserving the culture of these groups does not necessarily expand the range of cultural resources for majority group members. National minority cultures are less likely to enrich the lives of majority group members due to the distinct public spheres in which such cultures will be expressed. Thus, Kymlicka argues, the cultural diversity argument is ineffective as a general defense of group-differentiated rights because, while it may be plausible as a defense for polyethnic rights, it is not convincing as a justification for national minority rights.\textsuperscript{176}

2.1.2 DOES HISTORICAL AGREEMENTS JUSTIFY GROUP DIFFERENTIATED RIGHTS?

Kymlicka believes that arguments based on historical agreements and the value of cultural diversity can also be used, \textit{albeit} to a lesser extent than equality arguments, to justify group-differentiated rights. The terms under which national
minorities came under the legitimate authority of a given state can be found in the historical agreements. These agreements (in forms of treaties or confederation agreements), may specify the jurisdiction that the federal government and the states, provinces, cantons, or other subnational bodies have over a variety of areas, such as language, education, taxation, and criminal justice. Many treaties and historical agreements have a considerable legal force. Kymlicka referred to historical agreements such as treaty rights of indigenous people or the agreements which two or more peoples agreed to federate. However, we cannot limit the justification only to these ‘two types’ of agreements. Under historical agreement, we can distinguish as well political and bilateral agreements between two states. It was noted before the period of the League of Nation system where the minorities’ treaties were the main characteristic of that time, when a whole system of bilateral or multilateral treaties was implemented; most of them incorporated in different peace treaties. The bilateral treaties protection re-emerged after World War II with some successful peace treaties provisions and less successful ones. A trend of protection though bilateral agreements continued with the German agreements with the states from Central and Eastern Europe and a similar policy was taken by Hungary as well. The European Union has also encouraged bilateral agreements especially for guaranteeing stability in Central and Eastern Europe.

Kymlicka notes that, ‘where historical agreements are absent or disputed, groups are likely to appeal to the equality argument’. Since historical agreements tend and sometimes need to be revised, and according to Kymlicka, in that case their ground must be found in a deeper theory of justice. Therefore, ‘historical and equality arguments must work together’ (Kymlicka, 1995 p. 120)

2.2 SELF-GOVERNMENT AND AUTONOMY RIGHTS OF MINORITY GROUPS

It was said before that (according to Kymlicka) self-government rights refer to the situation of a demand for a political autonomy or territorial jurisdiction, guaranteeing development of the different cultures and interests in a multinational
state. The forms of political autonomy or territorial jurisdiction can be different; and their conceptions as well. Danspeckgruber thinks of five scenario or outcomes if a community seeks to obtain greater autonomy (Danspeckgruber, 2005): 1) Secession followed by independent statehood; 2) Secession followed by accession to another state; 3) Partition and partial secession followed by either independent statehood or accession to another state; 4) Continuation of the status quo; 5) Self-governance plus regional integration. The ‘self-governance plus regional integration’ offers ‘freedom’ and ‘autonomy’ (Danspeckgruber, 2005 p. 25), fostering stronger intra-regional interactions (economical and cultural) and assists with the provisions of the appropriate regional security arrangements. Key condition for Danspeckgruber is the acceptance of multiple identities and a flexible political culture, encouraging trans-border activities and thus regional integration, alleviating the external boundaries. This helps avoiding existing external boundaries to be redrawn and offers a high degree of socio-cultural development.

2.2.1 SELF-DETERMINATION VS. SELF-GOVERNMENT

It is important to distinguish the two concepts of self-governance and self-determination.

Classical self-determination, in the sense of Woodrow Wilson, comprises two dimensions: 1) searching full independence and sovereignty by a community in an existing state; and 2) a right to form a government and administration. It embraces redrawing of new international boundaries and international recognition. As primary a context of decolonization during the Cold War, after the 1980s and particularly the 1990s regionalization and trans-border contacts, self-determination became challenging. Being a treaty principle of universal scope, the self-determination has not been restricted to colonial peoples only and continues to be a source for the external and internal self-determination of any people, whether metropolitan or colonial. For Vincent the ‘self-determination and the nationalism are both unpredictable’, depicting them as ‘double-edged
swords’ in the human rights discourse, since according to him, the self-
determination as human right makes ‘problematic the understanding of what it is
to be human’ (Vincent, 2010 p. 95). The principle of self-determination in the
international law traces its origins to the concepts of nationality and democracy,
first appeared after the World War II. As a purely political concept and not a legal
rule in international law, was seen in the Aaland Islands case. The Self-
determination nowadays is being related to irregular or terrorist violence or more
regular internal armed conflicts with secessionist groups maintaining control over
significant parts of territory to the exclusion of the central government (Weller,
2008).

The concept has many meanings. In a legal sense (international law) self-
determination is: 1) an individual right (not only to peoples or groups also a right
of individuals to participate in the political, economic or cultural system in their
state); 2) a right invoked by members of certain groups (national, religious, ethnic
or linguistic minorities); 3) a right of indigenous peoples (enhancing not only
maintenance of cultural identity but also extended to land rights and to political or
territorial autonomy); 4) used in cases of limited territorial change; 5) used in the
sense of secession; At the end, as Weller points out, where opposed unilateral
secession is concerned, intensifies conflict rather than resolving it. Self-
determination in the sense of possible secession in the colonial context applies at
least in three sets of circumstances: 1) cases outside of the colonial context; 2)
challenges to the territorial definition of former colonial entities; and 3)
challenges to the implementation of colonial self-determination. Weller
distinguishes ‘colonial self-determination’ (based directly in international law),
‘constitutional self-determination’ (derives from a constitutional arrangement
establishing a separate legal personality for component parts of the overall state)
and ‘remedial self-determination’ (actions of the central government
persistently and systematically repressing a territorially organized segment of
population where a right of secession might be constituted).
The rights of persons belonging to minorities differ from the rights of peoples to self-determination. The rights of persons belonging to minorities are individual rights, even if they in most cases can only be enjoyed in community with others. The rights of peoples, on the other hand, are collective rights. While the right of peoples to self-determination is well established under international law, it does not apply to persons belonging to minorities. This does not exclude the possibility that persons belonging to an ethnic or national group may in some contexts legitimately make claims based on minority rights and, in another context, when acting as a group, can make claims based on the right of a people to self-determination (Eide, 2005). Tamir distinguishes between two interpretations of the right to self-determination. According to the political interpretation of this right, self-determination involves the right of individuals to participate in the democratic governing of their lives. The political rights that constitute this conception of political self-determination include the familiar democratic rights of political participation and civil liberties such as rights to freedom of speech and the press. The other interpretation is as a cultural right—a right of cultural groups to create institutions which reflect their distinctive cultural identity and common form of life. Tamir sustains that claims for national self-determination are demands for recognition of cultural distinctiveness and for the right to create and maintain a distinct public sphere in which a cultural group can give institutional expression to its traditions, language, norms of behaviour, and other forms of cultural identity. According to Tamir, political and cultural rights of self-determination are distinct rights that are not reducible to one another. The political right of self-determination is justified with the liberal democratic doctrine of human freedom and self-governance, while the cultural right to national self-determination is a result of the right to preservation of cultural tradition.

Repeatedly, minorities have demanded independence or political autonomy on the basis of their right to self-determination as nations. The terms of minorities and peoples overlap to a certain extent, and their definitions are, therefore,
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disputed. Within these limits, the right to self-determination has been recognized as a peremptory norm (ius cogens) of international law.

Therefore it is essential to distinguish two aspect of the concept of self-determination. External self-determination means a change in the legal status of a territory, and is therefore seen as the core aspect of the right to self-determination. The issue of internal self-determination deals with the relationship between peoples and their governments because it empowers peoples to determine the internal order of a state. The term internal self-determination was first used by Indonesia in 1949 when the UN demanded that the population of a territory be allowed to determine by a democratic procedure the status of their territory.

Self-governance is a concept more positive, extensive, humane, and forward looking than classical self-determination (Danspeckgruber, 2005). “It avoids the slippery slope to secession and independence, i.e. state shattering, and contains less emotionally loaded connotation of past ethnic historical experiences.” Danspeckgruber proposes self-governance plus regional integration for solving ethnic conflicts and enhancing cultural flexibility, equality and non-discriminatory politics. Defined as a combination of maximum autonomy i.e. ‘internal sovereignty’\(^{194}\), and wide-ranging ‘external competencies’\(^{195}\), self-governance and regional integration does not tackle state borders. “Effective self-governance and regional integration can only be achieved by introducing the readiness to identify with multiple identities—being a Catalan, a Spaniard, and a European; or being a Kashmiri as well as an Indian or Pakistani citizen.” The examples of the German State of Bavaria, the Austrian Bundesland Oberösterreich, the Spanish Region of Catalunya, and the Italian Region Trentino-Alto Adige Südtirol (South Tyrol) offer a significant level of internal sovereignty for the respective communities, and demonstrate also considerable external competencies and the ability to conduct ‘regional foreign policy’. Often federalism or confederalism are seen as a possible solution. Self-governance in its optimum form may however function more like the
confederal model. To Danspeckgruber, self-governance requires stability, predictability, transparency, and, most important, communal security.

2.2.2 **Self-determination for ethno-cultural groups**

The doctrine of self-determination defended by Danspeckgruber recognizes that for different ethno-cultural groups, self-determination can have different meanings and involve different institutional requirements. The doctrine has three parts: 1) the first relates to accommodationist cultural groups who seek self-determination within the institutional structures of the majority society; 2) the second concerns cultural groups who strive for self-determination through autonomous governance within the boundaries of the state; and 3) the third deals with cultural groups seeking secession and either independent statehood or irredentist integration (Danspeckgruber, 2005). The aim of democratic governments in culturally pluralistic societies with accommodationist groups should be to ensure that the members of all groups are included in the political process. In relation to the first part of the doctrine, the recommendations pointed out by Danspeckgruber go towards adaptation of ‘electoral systems such as proportional representation and cumulative voting that reflect more accurately the diversity of political perspectives of the citizenry’. The second part of the doctrine deals with cultural groups who seek various degrees of autonomous self-determination within the boundaries of the state. He classifies these groups as autonomist, to distinguish these groups from those in the other categories. The groups in this category are further divided into three subgroups: 1) indigenous peoples; 2) ethno nationalists; 3) communal contenders. The third part of the doctrine of self-determination concerns secessionist cultural groups, that is, those groups seeking secession and either independent statehood or irredentist integration.

Danspeckgruber holds to a distinct interpretation of the fundamental principle of self-determination. He maintains that “self-determination for ethnocultural groups should be understood as an integrated, overarching principle,
or cluster of rights and resources, which links a number of important human rights with certain social and political institutional patterns”. The different components of self-determination, argued, are mutually reinforcing and in order to understand self-determination in multicultural societies, the focus should be made on the complex dynamics between its components. Resisting reductionist tendencies which isolate one aspect of self-determination and identify it as the core concept needed for understanding this right.

Lijphart sees the very first point in favor of self-determination in the fact that it avoids the problem of invidious comparisons and discriminatory choices (Lijphart, 2008 p. 71), arguing however that self-determination “has no disadvantages compared with pre-determination in this respect”. His pre-determination concept entails potential discrimination as a rule and also the assignment of individuals to specific groups (registering individuals according to ethnic or other group membership may be offensive or completely unacceptable). Self-determination avoids this problem, giving equal changes not only to all ethnic or other segment, large or small, but also to groups and individual who explicitly reject the idea that the society should be organized on a segmental basis (Lijphart, 2008 p. 72). For Lijphart, the territorial federalism cannot be the perfect answer to the requirements of ethnic and cultural autonomy, even “when ethnic groups are geographically concentrated, the boundaries between different ethnic groups never perfectly divide these groups from each other”. The main disadvantage to self-determination, for Lijphart, is “that it precludes the application of the principle of minority overrepresentation” (Lijphart, 2008 p. 74). “The principle of proportionality is already favorable to minorities...but it may be extended even further by giving minorities more than proportional representation...The stronger protection for minorities in power sharing systems is provided by guaranteed representation, guaranteed autonomy, and, if necessary, the use of the minority veto. Compared with these strong weapons, overrepresentation is no more than a marginal benefit”.
2.2.3 Autonomy

The case of autonomy rests on three major principles: 1) minority rights; 2) indigenous rights; and 3) the right to self-determination (Ghai, 2000). Autonomy would be the collective right that could be held by a minority group qua group; other rights such as the right to recognition and the right to continuation of pre-existing rights, can be held by persons belonging to the minority group, but autonomy would have to be a right of the minority group itself (Geoff, 2005 p. 150). In the case of autonomy, the state has a duty to balance the rights of the individual and the group in the same way that it balances conflicting rights held by different individuals. In assuming autonomous control over internal affairs, the minority group must conform to international human rights law standards. From a traditional perspective, the balancing by the State is between the interests of some members of the minority group as against that of other members with respect to the preservation of group identity, while the new approach granting collective rights to the minority group only grants those rights so that the group can protect the interests of the members of the minority group. Autonomy is a collective right, but it generates an individual good - the preservation of the collectivity.

The use of autonomy as a species of group rights has changed the character of international law (Ghai, 2000). According to Potier international lawyers have failed to come to any agreement on a ‘stable’ workable definition for autonomy; it is a loose and disparate concept that contains many threads, but no single strand. He believes that autonomy ‘should be understood as the means whereby an authority, subject to another superior authority, has the opportunity to determine, separately from that authority, specific functions entrusted upon it, by that authority, for the general welfare of those to whom it is responsible’. Political scientists and international lawyers have not hesitated to offer a variety of definitions. Michael Hechter describes ‘political autonomy’ as ‘a state of affairs falling short of sovereignty’. For Kant, autonomy is not just a synonym for the capacity to choose, whether simple or deliberative; it is what the word literally implies: the imposition of a law on one’s own authority and out of one’s own
(rational) resources (Shell, 2009). Believing that the interpretation of Kant’s justice derives from his notion of autonomy (Rawls, 1999 p. 221), Rawls invokes ‘autonomy’ in at least three different senses: 1) ‘rational autonomy’ describes a ‘decision procedure’ designed to assure the emergence of basic social rules under conditions of ‘fairness’; 2) ‘full political autonomy’ is characterized by members of society who live by principles of justice that would be chosen by such parties; and 3) ‘moral autonomy’ (or ‘full autonomy’) is an ideal held within one or another comprehensive theory of the good. For others, autonomy means that a minority has a collective power base, usually a regional one, in a plural society. To Ghai, autonomy is an instrument allowing ethnic or other groups claiming a distinct identity to exercise direct control over affairs of special concern to them, while allowing the larger entity those powers which cover common interests, using ‘autonomy’ as a generic term (Ghai, 2000). Autonomy can be granted under different legal forms. Seen as well as a strategy of preventing and settling ethnic conflict, the autonomy while recognising group-specific and individual concerns, endows an ethnic group with legislative, executive, and judicial powers to address effectively these concerns - a state construction element addressing the needs of diverse communities (Wolff, et al., 2005). The concept and notion of autonomy as a means of giving a certain group within the human race the right to decide and administer certain affairs essential to their well-being is very old in European political and legal culture (Brunner and Küpper, 2002). After being revived (from an irredentist claim to a potential solution to self-determination claims) it was considered as a possible instrument for accommodating separatist movements without in any way violating states’ territorial integrity. The Conference on Security and Cooperation in Europe (CSCE) and the member states, in 1990, carefully celebrated

...the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial
In terms of territorial dimensions, autonomy can be non-territorial and territorial.

A non-territorial autonomy is distinguished by autonomy rights of a particular ethnic group no matter their territorial concentration area in the host state. For some, another term for this type of autonomy is personal autonomy, linked to the members of the minority group. Constitutional theorists such as Lijphart have perceived the non-territorial autonomy as instrument when dealing ethnic conflicts from a cultural dimension. Coakley believes that for a traditional state system to introduce ‘non-territorial ethnic autonomy’ two changes were required: 1) a state giving recognition to non-territorial groups definable in ethnic terms; and 2) a minimum degree of autonomy conceded to these groups.

A territorial autonomy can be distinguished by: 1) autonomous status of an ethnic group population living in a certain territory; 2) executive independence (administrative autonomy) within the central legal system; 3) executive and legislative independence (full self-government except in case of foreign and defence policy). A special territorial autonomy can be granted depending on the ethnic composition. ‘Autonomy is more likely to be negotiated and to succeed if there are several ethnic groups rather than two’ (Ghai, 2000) and this could mean a negotiated autonomy status in one or more geographic areas in a unitary state.

The recognition of territorial autonomy can contribute to preserving the unity of the state and at the same time increase the degree of involvement and participation of minorities by giving them a decisive role in the government of a territorial level in which they constitute the majority - or at least a numerically significant part - of the population. Legal systems are based on the territorial criterion - and this is held both by the representatives of the majority and minority
the granting of territorial forms of autonomy is the most widespread and conceptually more immediate self-government of minorities, especially those geographically compact. Despite some recent documents mentioning the autonomy as "one of the various possible means" for minorities’ protection, and despite the increasing popularity of territorial autonomy in the constitutional designs in Europe, international law does not recognize (yet) a real right of autonomy. Most of the states, (as main agent in the international law), fear autonomy as a first step on a slippery path that could lead to secession and then the changes of borders. Only in rare cases, the legal bases of territorial autonomy can be found in international law, in bilateral or multilateral treaties. These agreements are, however, framework agreements by their nature, they must be effectively implemented into the respective state. A problem is the next step, their internal implementation which is often long and difficult, and even failures are frequent. In the case of territorially compact groups, autonomy can be attributed to the territory of settlement of the minority, with the creation of autonomous territories: in these cases, self-government is achieved through a public sub-state status (one or more municipalities, a province or region, a Member State in a federal system), usually characterized by more competences than others. This special status constitutes a waiver of rights and values at a constitutionality rank and is therefore often constitutionalized, in a special statute or a fundamental law (reinforced or organic); the value of the constitutionality or otherwise superior to ordinary legislation also acts as a safeguard against changes that normally require compliance with specific and aggravated procedures.

The traditional definition of state can be also applied in the case of autonomy (Palermo, et al., 2011 p. 175) elaborated by the declaratory theory (expressed in the Montevideo Convention on Rights and Duties of States), defining a state as subject in international law if it meets the following criteria: 1) a defined territory; 2) a permanent population; 3) a government (controlling the well defined territory and population); and 4) a capacity to enter into relations with
other states.\textsuperscript{211} An autonomous territory has a well defined territory, where a permanent population resides and an autonomous government ruling over the territory and population. The last criteria, however could not be met in the case of autonomous territories, since it is reserved to the act (right and sometimes an obligation or duty) of a state to recognize another state (explicit in the constitutive theory of statehood).\textsuperscript{212} According to Palermo and Woelk, the deep significance of territorial autonomy as a means of protection of minorities is, in fact, the transformation of a national minority in a regional majority (or at least a substantial minority), giving self-government in its territory of the settlement and thus ensuring existence of the group as such, safeguarded against possible modification imposed from outside. The creation of a territorial autonomy through the establishment of a special legal system, asymmetric with respect to the rest of the state, therefore, serves to guarantee the existence of national minorities within the state, eliminating the structural disadvantages and possible discrimination for its components. Pluralism and the right to difference, however, cannot be valid only for the minority in relation to the state; it also must be applied in an autonomous entity. Just as the state is less characterized as mono-ethnic, also the ethnic autonomies are in fact more and more frequently confronted with the challenges of diversity within them.

The autonomy solutions need to be realised without touching upon the question of the integrity of the state, which needs to be unharmed and in political systems that recognize the diversity as such. A self-government model given to non-dominant groups should respect the diverse ethnic composition of the state and should pay attention and fully respect the territorial state boundaries. No territorial claim should be present. A compromise should be found where minorities could have a genuine self-governance and the state a framework which preserves its territorial integrity. The territorial autonomy model alone cannot give the solution; therefore a combination of territorial and non-territorial model of autonomy could be the key. Wolf and Weller propose three essential preconditions for a combination framework: 1) ethnic groups should be prepared to
grant the respective other(s) the same degree of non-territorial autonomy as they desire for themselves; 2) to accept the framework as a mutually beneficial and conflict-preventing set-up; 3) to have willingness to make compromise in the process of negotiating and administering the institutional arrangement of autonomy.

2.3 CONSTITUTIONAL DESIGNS FOR MINORITY RIGHTS’ PROTECTION

After presenting the international legal framework and the most important legal instrument on minority rights protection, this section is going to present the system of bilateral minority rights protection through political agreements between states and most of all, state’s policies and ‘frameworking’ models in regards to minorities and their rights’ arrangements within state. As already mentioned, international human rights law in legal terms present a soft law for human rights protection, it gives, recommendations, guidelines and political influences on states and their laws’ formulation and development of their legal system; the ‘real’ protection is to be found within the state, within the territory where minority groups reside.

2.3.1 MINORITY RIGHTS PROTECTION THROUGH BILATERAL AGREEMENTS

The standards set up by international organisations, such as UN, OSCE and Council of Europe, serve essentially as a basis for the drafting of provisions concerning minorities in bilateral agreements. The most often quoted documents are the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the relevant OSCE documents in general, and the Concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension (1990) in particular, Article 27 of the ICCPR (1966), and the Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights of the Parliamentary Assembly of the Council of Europe. In some of the more recent
agreements reference is also made to the Council of Europe Framework Convention for the Protection of National Minorities.

Bilateral agreements, as legal instrument for minority rights protection, have limits. One of the limits, inherent in their structure, is that certain minorities may benefit more than other groups from their provisions, because usually state parties are interested in protecting certain kin-groups and not others. Even if this attitude may not be unexpected or unreasonable, considering that the purpose of these agreements is to alleviate tensions among kin-and home-states, the situation of minority groups without kin-state, such as Roma/Gypsies, Gagauz, Tatar or Vlachs risks being ignored if too much emphasis is placed on the kin-state as the guarantor of minority rights. Minorities with a kin-state have the possibility of constantly improving their conditions through kin-state supports, however, from a human rights perspective, minority groups without kin-state and other groups in similar positions often need more protection than kin-groups.

Number of countries in South-eastern Europe and especially in the western Balkans started negotiations on bilateral agreements on mutual minorities. The trend is going in the direction whereby countries conclude agreements dealing with the issue of minority protection only, rather than bilateral treaties on good neighbourhood relations, which include some provisions on their mutual minorities. Like most of the bilateral agreements concluded in the field of minorities, the only beneficiaries are the members belonging to one of the mutual minorities (Lantschner, 2002/3). Members of other minority groups are therefore excluded from the scope of application of the agreements. According to Lantschner, this is quite a common shortcoming of bilateral agreements. Compared to more general regional or international instruments, bilateral agreements, have the advantage of having the possibility to adapt the general instruments to the needs of their minorities.
### 2.3.2 States’ Policies Towards Minorities

States have several possibilities when treating minorities within states’ territories. Possible policies towards minorities can be distinguished as follows: 1) Assimilation; 2) Pluralism; 3) Voluntary and forced exchange of population; and 4) Genocide (Фрчкоски, 2005). While assimilation, pluralism and genocide are still present, the exchange of population is a policy in extinction. Hadden depicts the assimilation policy together with integration and separation with the characteristics defined by the concepts of recognition, membership, political participation, religion, language, education, employment and development. In the table, the clear picture of the three policies is presented.

<table>
<thead>
<tr>
<th></th>
<th>Assimilation</th>
<th>Integration</th>
<th>Separation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recognition</strong></td>
<td>All citizens are equal; there are no minorities</td>
<td>Recognition of minorities with equal status</td>
<td>Recognition of minorities with separate status</td>
</tr>
<tr>
<td><strong>Membership</strong></td>
<td>Denied</td>
<td>Choice for each individual</td>
<td>Assigned by law</td>
</tr>
<tr>
<td><strong>Political Participation</strong></td>
<td>Simple majority rule</td>
<td>Special measures to ensure fair representation</td>
<td>Regional or functional autonomy</td>
</tr>
<tr>
<td><strong>Religion</strong></td>
<td>Secularism or state religion</td>
<td>Various religions formally recognized</td>
<td>Separate status, eg. Separate voting rolls</td>
</tr>
<tr>
<td><strong>Language</strong></td>
<td>Single national language for all official purposes</td>
<td>Several languages formally recognized for public purposes; support for bilingualism</td>
<td>Designed areas for exclusive use of each language</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td>Common schools; prescribed national curriculum</td>
<td>Integrated schools with multi-cultural curriculum</td>
<td>Separate schools for minorities</td>
</tr>
<tr>
<td><strong>Employment</strong></td>
<td>Recruitment on merit; prohibition of discrimination</td>
<td>Provision to ensure fair participation in public/private sectors</td>
<td>Separate employment structures</td>
</tr>
<tr>
<td><strong>Development</strong></td>
<td>National development plans</td>
<td>Participation of minorities in development plans</td>
<td>Separate development structures</td>
</tr>
</tbody>
</table>

*Source: (Hadden, 2005 p. 188)*
According to Danspeckhruber, the issue of a ‘minority’ has four major dimensions (Danspeckgruber, 2005): 1) The ‘we-they’-problem (with antagonism); 2) The other community—frequently the majority, but also ‘just’ another minority; 3) Boundary (inter-state or intra-state): potentially dividing an ethnic group into a majority on one side and a minority on the other, as an international issue—when it is a question of irredenta—or as a domestic issue, i.e., when the boundary is administrative, within a sovereign territory, where it becomes an issue of national governance; 4) International recognition: the ability to be recognized as a minority by the central authorities—and, if necessary, also by outside states and organizations—and the role of a minority in world policy as a function of increasing global interdependence and the resulting challenge to state and sovereignty. 213

In the graphic illustration below we see the ‘two-way relationship’ between the state and minorities. Kymlicka identifies seven tools of state nation-building: citizenship policy; language laws; education policy; public service employment; centralizing power; national media, symbols, holidays and military service.

Figure 2: Dialectic of State Nation-Building and Minority Rights

Source: (Kymlicka, 2002 p. 364)
On the other side of the relationship circle he distinguishes four types of minority rights claims: immigrant multiculturalism; multination federalism; metic inclusion and religious exemptions. In his view, both halves of the circle should be viewed together as ‘people simply look at the bottom half of the picture, and ask why pushy and aggressive minorities are asking for special status or privileges’. It becomes clear that demands for minority rights must be seen in the context of, and as a response to, state nation-building.

There are at least four fundamental ideological models that determine the overall attitude towards arrangements of differences (Palermo, et al., 2011). It is clear that these models are abstract and ideal, legislative and administrative practice and case law show quite clearly 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. Four fundamental classifications can be identified: 1) nationalistic repressive model; 2) “agnostic” liberal model; 3) ‘promotional’ model; and 4) multinational model. 214

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. The consequence in normative terms, is the official denial of minorities existence, along with functionally repressive policies as the prohibition of the use of minority languages in schools and public offices (also in private), with a forced translation of names, place and street names, with population relocation (minorities in areas inhabited by majority and vice versa) in order to dilute the balance between the groups. In extreme cases this model can lead to ‘ethnic cleansing’ and genocide of entire populations, making minorities subject to systematic campaigns of aggression. By way of repression can be done in different ways, not necessarily violent or prima facie discriminatory. It may also be that the rules, far from repressive nature, have a strong promotional content, and yet prove
in practice misapplied. 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. The liberal ideology that inspired this model makes a legal system very careful to ensure substantive and procedural legal instruments for the protection of fundamental freedoms of individuals, and include explicit prohibition of all forms of discrimination on the basis of the criteria for typically identifying minorities (language, religion, race, and ethnicity). 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 substantive way. One of the fundamental contradictions of the design of agnostic type is the legal treatment of minority positions and views. The problem arises when dealing with organizations who wish to become promoters of collective representation of their groups, in particular the political parties. Acceptance of ethnic parties contradicts the very foundation of the liberal state and could lead, in case of election statement, the subversion of the same principle of indifference (Palermo, et al., 2011). Some states, decide to introduce norms that prohibits the creations of such (ethnic/minority) parties. ‘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.
2.3.3 **Promoting special rights for minority groups**

As stated before, the ‘promotional’ model as constitutional design for minority rights’ protection is characterized by the recognition of the diversity as a primary feature. The right to be different is firmly recognised. The legal system under this model acknowledges, in favour of minority groups, a series of special rights, in order to ensure their effective enjoyment of the same rights as the majority of the population. It is a combination of special rights granted to collective exercise of minority groups’ rights and rights of self-government, which in some parts of the territory can also be similar to those characteristic to the multinational systems/designs (to be seen further). Minorities are recognised within the state, thus a form of state protection of minorities is secured. This can be seen as a first technique for minorities’ promotion (Palermo, et al., 2011). A second technique consists in forecasting few rules that on constitutional level, could be seen very similar or equal to the ‘multinational’ model, but in reality are limited because of specific factors or certain areas of the territory.\(^{218}\) Third important way of promoting minorities recognized in one nation state is the enforceability of rights in certain territorial areas, linked with the ‘numeric’ criteria. Here it is not a question of territorial autonomy, with the prior identification of areas that are granted self-government so that minorities can manage their own competences that most concern them, but of forms of cultural autonomy.\(^{219}\) Another instrument for promotion of minorities is seen through the recognition of the right to effective participation of minority group in the political life of the state. Apart from the rules on political representation and on representation in advisory bodies, it is in particular the presence of organs and processes of reconciliation between the minority and institutions.\(^{220}\)

2.3.3.1 **Special rights**

Faced with the risk of assimilation by the majority or permanent exclusion, minorities need special and stronger rights than those guaranteed to all in general. There are - and here lies the difference with respect to the prohibition of
discrimination - of few rules valid only for a specific group in order to ensure full enjoyment of rights by otherwise structurally discriminated groups. These ‘special’ rights (i.e. not general, but referred only to certain types of entities) are, on one hand, access rights, on equal terms, with certain services (education in the mother tongue, the right to use their own language in the administration, etc.). on other hand, rights "reserved", "preferential", needed to overcome obstacles in society (gender quotas in electoral lists). In this second case, when the recognition of special rights to the minority is in the acknowledgment of more rights than those held by the citizens of the majority population, it is called "affirmative action". It is evident that the balance between the principle of equal rights and special protection is never static but is constantly changing (Palermo, et al., 2011). The parameter for the realization of this balance is, like the case for fundamental rights, the principle of proportionality, i.e. the maintenance of a balanced relationship between the objective pursued and the means to achieve it, measured in terms of adequacy, the need and effectiveness. The remedial measures of historical injustices and discrimination are justified, therefore, tend to the end of a conflict in order to improve the position of the minority, while, once you reach a situation where there are no more dangers for the proper survival of the minority, the same measures may not be proportionate because they restrict the fundamental rights of others. Affirmative action is understood as comprise; positive steps to insure genuinely equal protection. The degree to which people in general are in favour of affirmative action depends in large measure on how that policy is described (Cohen, et al., 2003). It implies a variety of strategies designed to enhance employment, educational, or business opportunities, for groups, such as racial or ethnic minorities and women, however, the manner in which these efforts are implemented, the types of action they require, and the broader implications they carry for our society may vary from one specific program to another. Affirmative action, regardless of its specific form, is primarily a policy intended to promote the redistribution of opportunity (Kellough, 2006). Some people benefit directly, while others may not be as well off as they would have otherwise been.
Many arguments are offered on each side in the affirmative action debate. The struggle over affirmative action is a political contest consistent with Harold D. Lasswell’s classic definition of politics as “who gets what, when, and how.”

The ‘specialty’ of these rights, with respect to the formally equal treatment for all, potentially exposes the risk of creating further conflict. Therefore, the affirmative action in order to be legally eligible, it must be particularly justified and pass the test of reasonableness. In practice there, frequently, forms of affirmative action beyond the legal and institutional sphere can be found, for example in the distribution of public funds, or minorities’ commitment in public schools to teach tolerance and acceptance of others. This is due to a further element of distinction between the simple, non-discrimination and special rights: while the former generally does not involve costs, the latter, requiring active intervention by the authorities, of course, also they have an economic impact, which is often very considerable (the cost difference between a monolingual and a bilingual or multilingual administration).

2.3.3.2 Political participation

In addition to group-differentiated rights, discussed earlier, Kymlicka argues of a variety of electoral systems designed to provide group representation for cultural minorities. He notes that the institutional guarantees granted by formal democratic rights are not always sufficient to ensure that minority groups are represented fairly in the state’s governing bodies (Kymlicka, 1995). Kymlicka’s approach for cultural and political self-determination involves both group-differentiated rights and special electoral systems which allow for equitable minority political representation. Group-differentiated rights – such as territorial autonomy, veto powers, guaranteed representation in central institutions, land claims, and language rights – can help rectify present disadvantages of some minority groups, by alleviating the vulnerability of minority cultures to majority decisions. These are external protections that can guarantee members of minority groups to have same opportunity to live and work in their own culture as members
of the group. Young, in her works, argued for a principle of special representation for oppressed and disadvantage groups in processes of political decision making; special representation is necessary only for those groups, obviously, the dominant groups are already represented (Young, 1997). However, group representation faces paradoxes, in terms of the question on how one person (or few) can possibly claim to speak in place of all the people whom it represents, with their huge diversity of interests, experiences, and needs. Having certain group attributes that constituents can be said to share is not a ground for saying that the constituents are legitimately represented (Young, 1997). Representation can be impossible than yet necessary and desirable. What Young proposes is the understanding of representation in terms of ‘difference’ as a differentiated relationship, rather than identity, proposing a distinction of three representation modes: according to interest, opinion, and perspective. She agrees however with other scholars, that “different forms of promotional representation in voting schemes may be the best way to combine choice and fairness with a desire to maximize the representation of social perspective”.222

For members of minority groups, the guarantee of the right to representation and political participation have a significance that goes far beyond the simple desire to influence the outcome of a decision process that is the sum of individual wills, and that leads to a result acceptable to the majority of citizens.

“Effective participation of national minorities in public life is an essential component of a peaceful and democratic society” (OSCE, 1999). In order to promote such participation 223, specific governmental arrangements are often needed and necessary and when those arrangements are established with corresponding institutions and authorities ensuring the effectiveness, the human rights of all those affected should be respected. 224 There is a permanent tension between the minority political representation and political representation as such; an inevitable and structural contradiction between two poles: either we sacrifice the principle of equality (formal) representation, in order to promote certain groups (national minorities, gender, etc.), or compressing the expectation of the
same groups, thus making their positions permanent and structural, which have no chance to emerge because of their numerically or structurally minority status. It is, ultimately, to recognize the existence of an inherent conceptual contradiction between democracy and majority principle, on the one hand, and minority rights, on the other (Palermo, et al., 2011). The balance between these positions, even if it is achieved satisfactory to some extent, it is never definitively achieved, but it must be constantly reshaped in relation to the changing situations of specific societies and minority groups.

The recognition of special rights to minorities, such as the right of participation and political representation implies the recognition of a double meaning of the concept of nation (Palermo, et al., 2011). In order to make the political rights of minorities consistent with the constitutional order, the "nation" cannot be understood only in a democratic (civic connotation) but it must also contain a reading differential key. In other words, the identified factors ensuring political participation rights of minorities must be recognized as constituent elements of the nation, which is therefore (also) an expression of ethnic pluralism, cultural, linguistic or religious.

The idea of a right to effective participation is attractive, it sounds admirably democratic, is the tokenism of a right to ‘enjoy one’s culture’, recognizes that minorities want not only to speak their language or profess their religion in private life but also to participate as equals in public life (Kymlicka, 2008). The right to effective participation means simply that the members of national minorities should not face discrimination in the exercise of their standard political rights to vote, to engage in advocacy and to run for elections. Effective participation (in a more robust way) requires, not just those members can vote or run for elections, but that they actually achieve some degree of representation in the legislature. ‘Effective’ participation implies that participation should have an effect – participation changes the outcome. According to Kymlicka “the only way to ensure that participation by minorities is effective in this sense is to adopt counter-
majoritarian rules that require some form of power-sharing” (can take the form of internal autonomy or of consociational guarantees of a coalition government). The right to effective participation in cultural, economic and social life, and in public affairs is one of the principles essential for the proper functioning of any democratic society (Hofmann, 2008). The particular relevance results from the correct understanding that only members of those national minorities who feel that the state in which they reside is also ‘their’ state – that it ‘belongs to them’ – will be prepared to integrate themselves fully into that state and its structures; this, in turn, will contribute to stability and peaceful minority-majority relations. To achieve peaceful minority-majority relations, effective participation is another conditio sine qua non. Stability and peaceful relations can only be achieved if the members of (national) minority groups feel that the state in which they reside is also ‘their’ state, it ‘belongs to them’ too, thus prepared to integrate fully in the state (Hofmann, 2008).

2.3.4 Power-Sharing and Protection of Minority Groups’ Interests

It was noted earlier that the multinational model is designed to complement and reflect the diversity of institutional constituent groups in a state. Where the differentiation is the exception (the institutionalization of the groups), in the multinational model it is a rule. In some ways, it is similar to the criteria that inspired by the liberal model (outlined before) in relation to individuals: in fact the model is based on multi-formal equality between groups, defined as "institutional equality" as the entire institutional system is arranged in that way to represent all groups regardless of their power and consistency. Each group is essential for the existence of the legal order; without one group would not exist, at least not in this form. The governance structure of these systems is based on the necessary division and sharing of power between the groups. In the literature this model is called ‘consociational democracy’ (Lijphart, 1977) or ‘power-sharing’ (Weller, et al., 2005). When affronting the multinational constitutional model, Palermo distinguishes two fundamental conceptual distinctions: 1) territorial application of
power-sharing (total or partial); and 2) functionality of the system (equivalent or proportional) (Palermo, et al., 2011 p. 68). In the multinational equivalent models the composition of the organs and the decision-making process are developed around the necessity to treat equal all the constitutive groups, while in the proportional models the groups are represented on the basis of their numeric consistency.

The debate on power sharing – the various institutional forms it may take and its general suitability for the settlement of ethnic conflicts – has proceeded for many years. As a prescribed method for conflict resolution consociationalism in theory and practice has been often criticised. The consociational theory has become one of the most influential, appearing in a vast and broadly applied literature. Wolff distinguishes - at a basic level - two predominant types of power-sharing institutions: integrative and consociational (Wolff, 2005).

Consociational power-sharing is most closely associated with the work of Arend Lijphart. He examined consociations as a type of democratic system since the late 1960s. He identified four structural features in the consociational systems: 1) grand coalition government (between parties from different segments of society); 2) segmental autonomy (in the cultural sector); 3) proportionality (in the voting system and in public sector employment); and 4) minority veto. Finally, although both consociational and consensus democracy are highly suitable forms of democracy for divided societies, consociationalism is the stronger medicine. He often used power sharing as a rough synonym for the concept of “consensus democracy”. Whereas consensus democracy “provides many incentives for broad power sharing”, consociationalism “requires it and prescribes that all significant groups be included in it”. Lijphart sees consensus democracy as facilitator for group autonomy and consociational democracy requires group autonomy. Therefore “for the most deeply divided societies”, he recommends a consociational instead of a consensus system, as “the stronger medicine”. Consociational democracy includes all distinctive population groups rather than all
parties. In Lijphart’s terms, the most important aspect of the consociational principle of proportionality is proportional representation, also including proportionality in legislative representation that can occur without formal proportional representation (proportional appointment to the civil service, and proportional allocation of public funds).

Integrative power-sharing is most prominently associated with the work of Donald Horowitz\textsuperscript{230} and more lately with that of Timothy Sisk\textsuperscript{231} and Benjamin Reilly\textsuperscript{232}. Horowitz proposes a typology of five mechanisms aimed at reducing ethnic conflict: 1) dispersions of power, often territorial: 1) devolution of power and reservation of offices on an ethnic basis in an effort to foster interethnic competition at the local level; 3) inducement for interethnic cooperation, such as electoral laws that effectively promote pre-election electoral coalitions through vote pooling; 4) policies to encourage alternative social alignments, such as social class or territory, by placing political emphasis on crosscutting cleavages; and 5) reducing disparities between groups through managed distribution of resources. He argues that in order to safeguard minority interests, the system should make the votes of minority members count, they should have more than representation, and that is influence (this could be achieved through three practices: federalism, vote pooling and presidential system).\textsuperscript{233}

As the most popular instrument for the realization of the multinational constitutional model is noted in the first place the principle of territory, as an important legal principle that requires the coincidence \textit{ope legis} of a group with a territory crystallizing ethnic, linguistic and religious boundaries and imposing social and demographic developments so that they can alter the identity of culture in the territory (Palermo, et al., 2011). The main outcome is to ensure the most vulnerable groups are not mistreated by stronger ones. The principle of territory distinguishes itself from autonomy for the fact that it covers the entire territory of the State and to be a static concept, while the autonomy (producing similar effects in terms of self-government of one or more groups) is dynamic. There are no
entirely homogeneous territories, and because of this the territorial principle serves to combine effectively the multinational model with a multinational federal political system, which occurs very frequently in the multinational political systems. The territorial principle predicts representation forms and types of rights related to a territory rather than, prima facie, to a group. On this way the respect for the democratic principle is preserved, even if the territory is in fact only the "container" of a group: ethnic, linguistic, religious, etc. they coincide with the federal territory, and thus become political entities (Palermo, et al., 2011).

Another instrument is ensuring veto rights to groups. Veto "collective" rights are a clear sign of the institutionalization of the groups, being the groups themselves owners of their exercise. This is a very strong and "extreme" instrument, to be used depending on the political culture and the existing pacts between the groups, where those pacts function, veto rights are used very little and have a purely deterrent function, and if they don't work there is the tendency to misuse this instrument in order to paralyze the system. The veto can be of two types: 'suspensive' or 'absolute'. The 'suspensive' one has the effect of blocking the process of approval of a measure (in most cases, a law), transferring the final decision to a neutral body (usually equal). The 'absolute' veto is the direct attribution to the group's power to block the adoption of a final measure.

While "individualists" (liberals) models are likely to produce the tyranny of the majority because they do not consider the needs of groups in a minority position, the "collectivist" (multinational) models are in danger of degenerating into tyranny of the minority, compressing excessively at the expense of individual rights on behalf of collective ones derogating disproportionately democratic deliberative principles. The advantages of the multinational systems may also turn in their biggest flaw. The crystallization of the compromise between the original founding members of a multinational model also has the advantage to give more security to the weaker parties, but at the same risk of being unfit to accompany the
inevitable changes in society, fossilized historical situations that can be out-dated (Palermo, et al., 2011).

2.4 BETWEEN THE BORDERS OF DIVERSITY AND THE BORDERS OF THE LANDS

The first thought that comes on my mind when someone enunciates the word ‘border’ is the line between ‘us’ and ‘them’, however not in a material and territorial way, it is beyond that. It present how our minds can construct lines, how our minds create borders. The voyage while crossing those borders, can be slow and complex, because we carry a heavy identity baggage with insecurity of the intentions of ‘them’ and our neighbours of another nationality, culture and speaking ‘other’ languages. Is this the case because we fear of the differences or we are badly informed? Perhaps the first border with which mankind has had to face was that of knowledge. A territory not marked by boundaries can be marked by natural obstacles to overcome the knowledge taught. Probably the first born boundaries, not tracked on the ground, but given the idea of belonging to a group, by the fact that within that group is more or less equally divided the ‘prey’, excluding those who were not part of that group, and then trying to give homogeneity or at least minimize the differences within the group. In one tribe the boundary are seen as delimitation and separation mostly created with the idea of belonging. Common interests and collective needs have more value than one line on the ground. These are the first forms of state, born from the higher authority that distributing the work, supervise the food stocks, remitting disputes, maintained order and not from the distinction created by the existence of a geographical or political boundaries. With the birth of the modern state border gives way to the border, the flexibility and dynamism of the first replacing the static nature of the second, depending on the need to define an enclosed space that separates a given territory and population; the state system is to be distinctly separated from one another and therefore must establish precise lines and stable over time. The boundaries began to divide the states but not men: the passage from one side of the border was not related to passports or visas, and for this we must
wait until the twentieth century, when the border became a barrier easily surmountable.

If in the past the discourse was about race and racism, today the discourse is about ‘ethnicity’ and ‘national identity’. The created prejudices, as attitude, element of common sense, based on false generalizations of negatively valued properties attribute significantly on the perception of borders, those borders between ‘us’ and ‘them’. And here we have the phenomenon of indirect and direct discrimination, on much grounding and for many reasons. From equal treatment in equal circumstances to unequal social conditions (indirect) to unequal treatment in equal circumstances under racially unequal social conditions (Essed, 1996). And when we have cultural diversity, we have cultural pluralism, a system functioning most effectively and harmoniously by tolerating specific identities within a framework of mutually accepted norms, values, practices, and procedures (Brandt, 1986). And because we have borders within our knowledge (lack of information about the ‘other’) we tend to create prejudices, causing intolerance, leading to social conflict and avoiding mutual understanding of cultural backgrounds. And as Essed points out “tolerance of difference does not necessarily leads to mutual respect”, accepting the responsibility to accept ‘others’ rather than tolerating opens the possibility to discuss and negotiate, on equal terms, as a basic premise for a more just society.

2.4.1 CROSSING FRONTIERS, BOUNDARIES AND BORDERS

The terms frontier, boundary, and border are often used as synonyms. For scholars they are all specific terms that are not interchangeable, and there are other terms that have precise meanings (Prescott, et al., 2008). Political geographers use the term ‘frontier’ in two senses. It can either refer to the political division between two countries or the division between the settled and uninhabited parts of one country. Political frontiers once separated neighbouring countries and geographic interest in them is mainly concerned with their physical characteristics, their position, the attitudes and policies of flanking states, the
influence of the frontier on subsequent development of the cultural landscape and the way in which boundaries were drawn within the frontier. East distinguished between political frontiers of contact and political frontiers of separation and observed “...states have always sought frontiers which foster separation from, rather than assimilation with, their neighbours..." (East, 1962).

International boundaries have replaced international frontiers throughout the world (Prescott & Triggs, 2008). Deserts, mountain ranges, rivers, marshes and woodlands have all formed frontiers at some time. A **boundary** is a line while a **frontier** and a **border** are different kinds of areas. For Prescott and Triggs the term frontier has two meanings: 1) as long ago political frontiers separated tribes or kingdoms or principalities throughout the world; and 2) settlement frontier within a large country such as the United States of America or Australia (Prescott & Triggs, 2008). The concept took on the border, within the meaning of Turner, who started the study of the American experience of the meaning of the frontier (Strassoldo, 1979 p. 163). The border became the line of progressive advancement in areas depopulated or inhabited by populations living in the most primitive conditions. The American frontier is distinguished from the European frontier – a fortified boundary line running through dense population (Turner, 1977). Frontiers are **zones** of varying widths and they were common many centuries ago. Lord Curzon of Kedleston states that frontiers are indeed the razor’s edge on which hang suspended the modern issues of war and peace (Cox, 2008). Lastly Hartshorne (1936) proposed some useful terms that describe the relationship between the boundary and the landscape on which it is constructed. An **antecedent** boundary was drawn before most of the features of the cultural landscape existed. If a line was drawn through an uninhabited area the term **pioneer** boundary is appropriate. A **subsequent** boundary was constructed on an existing cultural landscape. Boundaries that are drawn to coincide with some physical or cultural features are called **consequent**. A boundary drawn on an existing cultural landscape, that appears to be unrelated to the cultural features, is called **superimposed** or **discordant**. Finally a **relict** boundary is one that has been...
abandoned but is still marked by differences in the landscape that developed during its lifetime. International lawyers have defined territorial boundaries variously, reflecting their approaches to international law. The editors of Oppenheim\textsuperscript{239} define a territorial boundary of a state as ‘the imaginary lines on the surface of the earth which separate the territory of one State from that of another, or from unappropriated territory, or from the Open Sea. McCorquodale and Pangalangan (2001)\textsuperscript{240} agree that territorial boundaries are ‘imaginary constructs’ and argue that they reflect nineteenth century concepts of International law that no longer respond to contemporary standards of human rights and self determination. Taking a functional approach, Brownlie (1979)\textsuperscript{241} focuses upon the ‘essential quality’ of a boundary that he defines as ‘an alignment, a line described in words in a treaty, and/or shown on a map or chart, and/or marked on the ground by physical indicators’. The boundary of a state thus defines the territorial framework within which its sovereignty may be exercised exclusively. The state with territorial jurisdiction has the power to legislate upon all aspects of the lives of its citizens and residents. While sovereignty may, and is increasingly, also exercised extraterritorially, the validity of any exercise of jurisdiction beyond the limits of the state will depend on what those limits are defined to be. Boundaries are the lines of physical contact between states and provide opportunities for cooperation and risks of discord (Prescott & Triggs, 2008).

The German geographer Ratzel made a determined effort to produce a set of laws that would enable the behaviour of states, in respect of International boundaries, to be predicted. Ratzel\textsuperscript{242} believed that each state had an idea of the possible limits of its territorial dominion and he called this idea ‘space conception’. This notion appears to be similar to the concept of \textit{les limites naturelles} (natural boundaries). Ratzel’s view on the space conception of states followed logically from his belief that the state was a living organism that grew and decayed. The boundary and the adjacent area, that is called the border, formed the epidermis of this organism that provided protection and allowed exchanges to occur. So for Ratzel
the border was a dynamic feature and when it was fixed in position we were witnessing a temporary halt in political expansion.243

The terms *border* and *borderland* are synonyms. They are both zones of indeterminate width that form the outermost parts of a country, that are bounded on one side by the national boundary. Lapradelle called such zones *le voisinage*, meaning neighbourhood, vicinity, nearness, neighbours244. He also uses the term *le territoire limitrophe* translated as the neighbouring or bordering area. The terms allocation, delimitation, demarcation and administration have the precise meanings that Lapradelle developed. Allocation means the initial political division between two states. Delimitation means the selection of a boundary site and its definition. Demarcation refers to the construction of boundary markers in the landscape. Finally administration is concerned with the maintenance of those boundary markers for as long as the boundary exists. The study of border(s) is not only a multidisciplinary field but also a melting pot of different theoretical and methodological points of departure. There are a variety of approaches, across disciplines, contributing to the multidisciplinary discourse on border and border regions (Schack, 2001). Owen Lattimore245 knowledge of the borders have often coincided with the construction of fortified lines, from the valleys to the Roman Wall of China, becoming a social phenomenon, military, political and economic. Often, the border became a place of contact and separation between the world largely agricultural, sedentary and nomadic, organized and an anarchist whose defensive needs led to a high level of autonomy.

Neither modern political theory nor international relations theory has an impressive record when it comes to theorizing the problems posed by borders, frontiers, and identity. Liberal approaches regard political life as regulated by some kind of contract, and the bounded nature of the society that contains the “contractors” is generally uninvestigated, nonliberal approaches focus more explicitly on the community, which involves a greater awareness of the importance of borders. Scholars of international relations have studied frontiers, but not in the context of borders and identity. Studying frontiers was the sort of thing that
international lawyers did, or global bureaucrats, not international relations theorists. This was because the relevant disciplines (international relations and international law) generally equated borders and frontiers; their practitioners believed they had a pretty good idea what a border/frontier was in general terms, a dividing line between two states, and disputes tended to be about where a specific border was, a subject that raised no important general issues (Brown, 2001).

In the late twentieth century, both culture and the state are perceived to be dispersed as well as consolidated or centralized and yet dispersed and the fragmented. Throughout the nineteenth century and the first half of the twentieth century, the nation, according to Benedict Anderson, came to be imagined in homogeneous time, and as an imagined community: "The nation is always conceived as a deep, horizontal comradeship. Ultimately it is this fraternity that makes it possible, over the past two centuries, for so many millions of people, not so much to kill, as willingly to die for such limited imaginings"(Anderson, 1991). The “imagined community” – the nation, the nation-state, nationalism – influence the notions of culture and society, and very much influence the perception of borders and border areas. Borders separate diversities; they perform the function of emphasising these diversities and therefore increase the substance of identities (Gasparini, 2000). in terms of dividing diversities, Gasparini points out that there are three types of consequences: 1) a block of intersystem relations; 2) open relations which do not undermine essential integrity; and 3) a kind of differentiated relational integration between two or more systems. Another perspective is that of borders with a functionality of a contact point. Their role lends substance to daily life in modern society; this is because the individual lives in a sequence of entries into and exits from organisations, institutions and communities which, since they are increasingly mono-functional, each have an overriding objective and borders indicating the inclusion or exclusion of the
individual in the pursuit of that objective. Borders were firstly linked with the territoriality, meaning a control involving the use of bounded geographical spaces, be they residential private property, the school playground, the workplace, the neighbourhood, the electoral district, the administrative region, or, pre-eminently, the state territory; the territory as such classifies, communicates and controls (Andreson et al, 2003). However, today, borders are seen beyond the territoriality, and on the question why study borders now, when the territoriality (at least in the European Union context) has a secondary significance, scholars point out that “it is basically because the contradictions of the system have become more pronounced with accelerating globalization that borders have become more central to people’s concerns, and more central to society than has generally been recognized heretofore in social science” (Anderson et al, 2003, p.8). Borders are not a new phenomenon, but they have become pressing and more prominent, and they highlight questions of cross-border democracy. And precisely that relationship between the diversity and the imagined community will be examined; the differentiated relationship between more systems and their characteristics will be seen further in this section, and as well in some points during the case studies analysis.

2.4.2 BORDER REGIONS, REGIONAL GOVERNANCE AND COOPERATION

One common assumption is that the border region is constituted by the presence of the state-border and that this presence has an influence on the people living there. State-borders seem to divide regional interaction into patterns belonging to different legal, political, economical and cultural frames of references. State-borders suffer substantial changes in their meaning, not simultaneously, but to a different extend and asynchronously. Good examples of borders where processes of integration and differentiation can be observed are the borders between the member states of the European Union. With the accelerating globalization borders have become more central to people’s concern, and more central to society than has generally been recognized in social science.
et al, 2003). The acceleration of the globalization trend, seen from economic and cultural perspective and the growing density of international and supranational institutions leads to a decrease of the significance of state borders. A trend has been noted, in terms of economic and cultural cooperation across borders and moreover across states’ regions. Regions as such, matter very much on political level as well. They present a meeting place and an arena for negotiation. What has been observed in Europe is the focus on regional governance and management of financial resources rather than on more general perspective on national/state level. This phenomenon has been encouraged by European Union Regional Policy, seeking to reduce structural disparities between EU regions and fostering balanced development. Consequently several of cooperation activities between the European regions have been established. Looking retrospectively, Europe has a long tradition of cross-border cooperation. Such cooperation, however, has only recently been intensified and institutionalized. Although border regions are currently referred to as contact zones rather than barriers, their location; varied economic, political, social and cultural policies between individual border regions; and diverse structures, competencies, and jurisdictions lead many border regions to still be characterized by poor development potential and low levels of cross-border interaction. Therefore, the basic goals of cross-border cooperative activities have been to overcome barriers and differences in these structures, to compensate for disadvantages pertaining to location and unequal development, and to design border regions that help the local population gain economic improvement as well as cultural and social interaction. In addition, the needs and interests of people living in border communities are increasingly taken into consideration.

Border regions have certain characteristics that make them fragile and subject to disputes and conflicts. The border regions of Europe are almost always ethnically confused zones. Since they are zones where the population has mixed nationalities, language and culture, they tend to have ethno-nationalism as a common phenomenon. Ethnonationalism is and is likely to remain a complicating
factor in the politics of border regions and in cross-border cooperation. The regionalization can be seen as a solution to conflicts in border regions. As Danspeckgruber points out, regionalization reflects the intention to preserve some degree of self-governance on the local or communal level that is independent of external national boundaries. If subsidiarity means ‘government by the lowest possible level’; ‘regionalization’ means the closest possible interaction between communities and peoples who like to cooperate, under circumstances favored by inter-communal relations, geography, and tradition. The underpinnings of regionalization may comprise geography, social and cultural affinities, traditional ethnic relations, trade and infrastructure, and even internal and external security (Danspeckgruber, 2005).

The Laeken Declaration adopted by the European Council in December 2001 recognized, for the first time in EU history, regions as potential co-architects of a new and more democratic EU; however it did not establish a definition of a ‘region’. Therefore, the definition of a region has been contested. It can be a social construction within states’ territorial boundaries, or it can be a region where national minorities are in the majority. According to Malloy, the process of national minorities’ regions and their mobilization in Europe has followed different paths in East and West Europe. In Western Europe, in Scotland, Wales, Catalonia, the Basque Country, Alto Adige (South Tyrol) and in Belgium, national minorities’ regions survived the decentralization process due to their strong sub-state identities and histories as semi-independent units. In this regards, academic studies focused mainly on the institutional, cultural and structural aspects of these regions, analyzing their political and administrative arrangements and organization.

One particular case has been the increased trend and development of the cross-border cooperation process followed by administrative regional structures called Euregions. The first Euregio between Germany and the Netherlands was established in 1958. The driving force behind its establishment was primarily the search for common solutions to technical problems. The Euregio supports cross-
border cooperation between communal and regional territorial authorities in the long run regarding social, cultural, economic, and infrastructural issues. Due to the different administrative structures of the individual EU member states and their neighboring states, there is no common organizational scheme. In most cases, border regional associations are founded on both sides of the border while members are local communes.\footnote{248} Representatives of these different associations are forming the Euregio-Rat (Council of the Euregio). The council’s purpose is to act as an advisory and coordinating body concerning basic questions of regional cross-border coordination. Ongoing business is dealt with by either one secretary who has been appointed by the parties on both sides of the border or by two managing directors, one from each side of the border. Teams of experts that are appointed by the Council of the Euregio are responsible for setting up priorities in terms of content.\footnote{249} Europe is marked by a patchwork of cross-border regions where projects are realized in the context of EU programs, instruments developed for fostering cross-border cooperation initiatives. However one instrument of a particular interest here and as seen in the first case study analysis is the European Grouping of Territorial Cooperation, fostered by the Council of Europe and established by the Madrid Outline Convention.\footnote{250} The aim of the Council of Europe is “to achieve greater unity between its members and to promote cooperation between them”\footnote{8}, the Madrid Outline Convention was adopted “to facilitate and foster transfrontier cooperation between territorial communities or authorities within its jurisdiction and territorial communities or authorities within the jurisdiction of other contracting parties”. The Outline Convention provides local, regional and national actors with a general legal framework for trans-frontier cooperation. The legal peculiarities of the Madrid Convention, as well as of all Council of Europe conventions, are however asking for the significant legal basis for territorial cooperation in the respective national constitutions complemented by bi- or multilateral agreements.\footnote{251} In 2006 the EU Council of Ministers and the European Parliament adopted a new regulation on a European Grouping of Territorial
Cooperation (EGTC), which became the first legal instrument granting substantial rights to local, regional and national authorities to set up specific joint structures for a more efficient collaboration.\textsuperscript{252} This instrument, as it will be seen further in the first case study of Trentino – Alto Adige (South Tyrol) has proofed to be an important additional toolkit for fostering not only good neighbourhood relations but as well an additional instrument for minority rights protection.
ENDNOTES


2 The theory of Legal Positivism says that law is only that which is actually issued from an authorized legislative source and promulgated by it. It denies the existence of any "higher law," such as natural law. In international law, it means that only the expressed will of states alone can constitute a valid source of international law.

3 Declaration (political and treaty instrument) is 1) a written instrument of expression of general principles by an intergovernmental organization, the principles of which are not meant to be legally binding but may have considerable moral and political authority and may constitute the terms of reference of an organ. These principles may, over the course of time, become binding as a matter of customary international law when there has been consistent state practice (usage) and evidence of the states' belief that it is acting as a matter of law (*opinio juris*) and not as a matter of comity or necessity. A declaration is not intended to be a legal instrument. It is drafted and adopted by the resolution of an international, intergovernmental organization, etc.; 2) an instrument submitted by a state at the time of its ratification of a treaty, wherein the state declares the extent to which it will be bound to apply a certain provision as to, e.g., geographical or temporal scope, or it may relate to acceptance of the competence of an implementation body to handle complaints against the state. This type of declaration is a legal instrument. It is often filed with 'Reservations' and 'Understandings,' which together are abbreviated RDU/RUD to a treaty. See Conde, V. (2004). *A handbook of international human rights terminology* (2nd ed.). Lincoln and London: University of Nebraska Press at 59.

4 UN General Assembly distinguishes between 'resolutions', 'declarations' and 'decisions' whereas a resolution is the most general form for making observations and recommendations (the terms comes from the constitutional law of the USA where it describes an official expression of opinion of a parliamentary assembly, in particular one of either house of the Congress, which does not, or does not yet, have a character of a statute). A typical resolution of the General Assembly begins with the words 'The General Assembly', followed by a preamble and an operative part consisting of the actual declaration or recommendation. The UN Charter refers to all resolutions of the Security Council as 'decisions' and according to Art. 25 (of the Charter), members of the UN are obliged 'to accept and carry out the decisions of the Security Council in accordance with the present Charter', however the Security Council distinguishes between 'resolutions' and 'decisions' whereas the latter term is generally used for determinations of procedural and organizational questions, all other statements (recommendations) are styled as 'resolutions'. See Volger, H. (Ed.). (2010). *A Concise Encyclopedia of the United Nations* (2nd ed.). Leiden; Boston: Martinus Nijhoff Publishers.

5 See the Vienna Convention on the Law of Treaties, 1969. Article 2(1)a defines a treaty for the purposes of the Convention as 'an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation'. The treaties have a variety of differing names, from 'Conventions', 'International Agreements', 'Pact's, 'General Acts', 'Charters', through 'Statutes', 'Declarations' and 'Covenants'. For definition of each see Shaw, M. N. (2008). *International Law*. New York: Cambridge University Press. All these terms refer to a similar matter, the creation of written agreements whereby the states participating bind themselves legally to act in a particular way or to set up particular relations between themselves. A series of conditions and arrangements are laid out which the parties oblige themselves to carry out. A treaty is intended to have a legally obligatory character and effect because it is deemed to be subject to the international law principle of *pacta sunt servanda*, meaning that 'agreements must be kept.'

6 The subsidiary treaties are distinguished from the global and regional ones principally by the fact that each of them deals only with one human right, or a small number of relates rights, at the same time. The obligations which they impose of their State Parties are usually much more specific and detailed, being designed to provide concrete means for the protection or realization of the rights or rights with which they deal.

7 The historical concept that human rights have evolved from an idea found in the domestic laws of countries, such as certain constitutional law protection of civil liberties, and have become accepted as international
norms generally applicable to all states. It also refers to the development of international human rights law and legal and political systems in international organizations for the promotion and protection of human rights in all countries. It grew out of an international idea that how human beings are treated anywhere is the concern of everyone everywhere, including internationally. See Conde, V. (2004). *A handbook of international human rights terminology* (2nd ed.). Lincoln and London: University of Nebraska Press.

The final declaration of the meeting between US President Roosevelt and UK President Churchill of 14 August 1941, as the first outline of the planned world organization (UN), mentioned only in one subordinate clause of the Charter. In order to create a safe foundation for the war against the Axis powers of the WWII, after a meeting of Roosevelt and Churchill on 22 December 1941 in Washington, where this issue was discussed, a political alliance was formed in the "Declaration By United Nations", in which the signatory states explicitly approved the Atlantic Charter, and declared that they intended to work together for the defense of freedom, independence and human rights in the fight against Germany, Japan, Italy and their allies. The 26 signatory states were the USA, the United Kingdom, the USSR, China, Australia, Belgium, Canada, Costa Rica, Czechoslovakia, Cuba, the Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxemburg, New Zealand, the Netherlands, Nicaragua, Norway, Panama, Poland, South Africa and Yugoslavia. In the course of the war a further 21 states entered the alliance. See more in Volger, H. (Ed.). (2010). *A Concise Encyclopedia of the United Nations* (2nd ed.). Leiden; Boston: Martinus Nijhoff Publishers.

All societies have revered some form of justice and civil order, which entails an implicit or explicit understanding of the concept of right. A significant distinction which has characterized a great deal of the literature on rights is the distinction is between 'objective' and 'subjective' right, made by the French writer Michel Villey, becoming a *locus classicus* one for many—although not all—scholars See Villey, M. (1962) *Leçons d'Histoire de la Philosophie du Droit*, Paris: Dalloz.

Francis Bacon marks the beginning and the two political revolutions – the American and the French one - defines the end. The beginning was characterized by the study of nature. The moral order was conceptualized as the natural law which became associated with the Church. The practice of claiming modern secular rights, rights that have as their focus the subjective freedoms and liberties of individuals rather than *objective right* (the divinely sanctioned moral order of the day), is associated with the long development of the idea of individual liberty, culminating in the Enlightenment. See Edmundson, W. A. (2004). *An Introduction to Rights*. Cambridge: Cambridge University Press.

Hugo Grotius’s three great innovations were: 1) to regard justice as a matter of respecting and exercising individual rights; 2) to separate the study of rights from theology; and 3) to turn political philosophy away from the quest for the ideal form of government by admitting the possibility of different, equally legitimate forms, derived from different peoples’ exercise of rights in differing circumstances. Grotius’ *De Jure Belli ac Pacis* (1625) argued, in effect, that instead of something being in accordance with law, *ius* (right) is seen as something that a person actually has or possesses. *Ius* was seen as both the ability of the person to have or do something justly, as well as what is just in itself. The concept becomes more closely linked to the claims of the individual human subject. See Edmundson, W. A. (2004). *An Introduction to Rights*. Cambridge: Cambridge University Press at 20.

To Hobbes, in a state of nature, everyone has a right to everything he judges to be necessary to his survival. Conflicts of rights are bound to happen in a world of limited abundance, unless people agree to give up their rights to a sovereign who is capable of settling conflicts. People in a state of nature have the power to give up on their rights and, seeing the necessity of doing so to secure themselves, they create the state, a sovereign "Leviathan," an "Artificial Man" possessing just those moral rights and powers that have been transferred to it. See Edmundson, W. A. (2004). *An Introduction to Rights*. Cambridge: Cambridge University Press at 23.

Like Hobbes, he defines the state of nature partly in terms of rights distributed equally to all humans. Locke’s state of nature is different. It is a state of ‘reciprocal’ liberty. The state of nature is not, for Locke, necessarily a state of war – but it is attended with inconveniences, chiefly the obscurity of natural law to those blinded by interest, and the absence of a settled ‘positive’ law and impartial judges to decide disputes and enforce decisions, leaving one only an ‘appeal to heaven.’ See Edmundson, W. A. (2004). *An Introduction to Rights*. Cambridge: Cambridge University Press at 28.

Conservatives are most famously represented by Edmund Burke (1729–1797). Burke’s criticism concerned the basis on which people were thought to have rights, not rejecting rights as such, but rejecting the idea that...
rights were natural, that they existed as an 'Archimedean point' beyond government by which government could be judged. Burke's purpose was to advance a negative argument: participation in the political life of a society is not a 'natural right'. Abstract formulations of right, Burke believed, were delusive guides to the 'real rights of men' as they existed in actual societies. The enumeration of the 'real rights' was only secondary. Nevertheless, as his fullest and most considered account of 'the real rights of men' as they are enjoyed and limited in actual societies, what are today called 'human rights'. The attempt to impose one list of abstract rights on all men would issue in the breakdown of social bonds, the eruption of chaos, and eventually tyranny—expectations that for Burke were vindicated by subsequent events in France. Locke, F. (2006). *Edmund Burke* (Vols. II, 1784-1797). Oxford: Oxford University Press, pp. 285-331.

15 Liberals (in the form of utilitarians) also attacked natural rights. For Jeremy Bentham (1748-1832) natural rights were 'unreal metaphysical phenomena'. The focus for Bentham's most sustained attack on the doctrine of natural rights was the French Declaration of the Rights of Man and the Citizen Schofield, P. (2006). *Utility and Democracy. The Political Thought of Jeremy Bentham*. Oxford: Oxford University Press at 59. Part of the initial philosophical ground for the legal positivist movement lies in the work of Bentham. The basic contention of legal positivism—which was founded as an oppositional movement to natural law and natural right theory—is that law is law regardless of its content. The strongest statement of this is that law arises from established legal associations with sovereign executives and legislatures. A right implies a command, this implies a duty to obey, and this in turn implies a sovereign who makes the command supported by the threat of coercive penalties. It therefore must involve a legal sovereign, and that is, the essential logical presupposition, as without this logic, a right is a meaningless clatter. In this context, Vincent affirms that the idea of natural right becomes futile. See Vincent, A. (2010). *The Politics of Human Rights*. New York: Oxford University Press at 76.

16 Radicals criticized the rights of man for being the rights of bourgeois man. The most well-known example of the historical argument, vis-à-vis natural rights, is Marx's historical materialism. It is neatly expressed in his early essay, 'On the Jewish Question', where he argues that the rights of man are nothing but the rights of a member of bourgeois civil society. Karl Marx's (1818-1883) passion was the emancipation of the proletariat or wage workers, to be achieved via revolution with the backing of rigorous science. In practice, rights were part of the general capitalist system of domination that stood in the way of the achievement of equality and well-being for all human persons. See Langlois, A. (2009). *Normative and Theoretical Foundations of Human Rights*. In M. Goodhart (Ed.), *Human Rights*. Oxford: Oxford University Press.


18 A right (as a moral possession or as 'normative property') can be thought of as consisting of five main elements: a right-holder (the subject of a right) has a claim to some substance (the object of a right), which he or she might assert, or demand, or enjoy, or enforce (exercising a right) against some individual or group (the bearer of the correlative duty), citing in support of his or her claim some particular ground (the justification of a right). See Vincent, R. (1986). *Human rights and international relations*. New York: Cambridge University Press.

19 Under classic International law only states were considered the 'subjects' of such law, and human beings were considered the 'objects' of such law. International law was, in its original theory, a set of rules governing the relation between and among states, not individuals, because only states could hold rights. Now, under the theory of international human rights law, human beings are considered the 'subjects' of such law as well. Andrew Vincent's argument is "that the subject of rights is the reflexive individual person, who requires social recognition from other persons in order to become the third-party institutional setting". See Vincent, A. (2010). *The Politics of Human Rights*. New York: Oxford University Press at 32.

20 Hegel distinguishes three ‘moments’: abstract universality, abstract particularity, and concrete universality. The first moment stands for 'undifferentiated identity'; the second for 'the differentiation of identity and

21 According to the object, the rights may be negative, 'a claim to a secured space in which subjects might pursue their own concerns without interference', or it may be positive, a claim that the space be filled with something.

22 *Prima facie* is a Latin phrase that conceptually means 'so far as can be judged from the first appearance/disclosure/reading,' 'presumably,' or 'a fact presumed to be true unless disproved by something'-something that at first sight appears to be evidence to the contrary. A *prima facie* human right is a substantive human rights norm that appears to be absolute in its first clause (at first appearance) but then is followed by a 'limitation clause' permitting limitation/restriction of the norm, such as to protect public health, safety, or welfare. It may also be a derogable right, meaning that it can be suspended in a time of public emergency that affects the life of the nation.

23 The exercise of a right takes several forms: 1) claiming that the right exists; 2) claiming a right confidently: asserting or demanding a right; 3) enjoying a right; and 4) enforcing a right: seeking protection against infractions and demanding compensation for the possible damage done. The rights are held against someone or something, distinguished as rights *in personam* (personal rights) and rights *in rem* (property rights).


27 The most common distinctions which occur here are between rights in an active and passive voice. Similar distinctions appear between positive and negative rights, or rights to act and rights of recipience. Another way of conceiving this distinction is between rights *in rem* and rights *in personam*. A right *in personam* is held against specific persons, whereas a right *in rem* is held against people in general.

28 Distinction between positive and negative rights in terms of negative and positive duties correlative to the rights.


30 Or as Edmundson states "Third-generation rights are not communitarian, but neither are they individual rights". (Edmundson, 2004)

31 Influential will theorists include Kant, Savigny, Hart, Kelsen, Wellman, and Steiner. Important interest theorists include Bentham, Ihering, Austin, Lyons, MacCormick, Raz, and Kramer. Each theory has stronger and weaker aspects as an account of what rights do for right-holders.


37 Wesley Newcomb Hohfeld (1879-1918) was an American jurist. He was the author of the seminal *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays* (1919). His work remains a powerful contribution to modern understanding of the nature of rights and the implications of liberty. Hohfeldian moral rights might be held by right-holders other than individual human beings, leaving open the possibility of asserting group rights held by nations, tribes, local communities, linguistic communities, cultural groups, and ‘affinity’ groups of all sorts, whether or not they are legally recognized or internally organized.

38 The right to at least a minimal subsistence, for example.

39 People possess rights as university members or members in a sports clubs, trade unions or churches or states but these are individual rights. The right of a member of a university to use its library, or the right of a citizen to vote in elections, is the right of an individual person. A breach of that right would break the right of the individual right-holder, rather than a group right of the relevant university or state. In fact, most rights held by individuals are associated with group identities or group memberships of some sort.


41 A very simple (from everyday life) example for distinguishing group proper rights and group –specific rights is in the institution marriage: both spouses have an active right to make various decisions together about their assets (group proper right) and each of the two spouses, but no one else, is entitled to spend from the family finances (group-specific right).


45 The Hungarian Minority Act gives a definition of minorities: *...all ethnic groups having lived on the territory of the Republic of Hungary for at least one century, that are in a numerical minority among the population of the State, whose members are Hungarian citizens and different from the rest of the population in terms of their own language, culture and traditions, and that give proof of such a conscience of belonging which is directed towards the preservation of all this, to the expression and the protection of the interests of their historically evolved communities*. See Act LXXVII of 1993 on the Rights of the Nationals and Ethnic Minorities (Minorities Act), Magyar Közlöny (1993), p. 2573 – cited in in (Brunner & Küpper, 2002).

46 The Sub-Commission on the Promotion and Protection of Human Right has ceased to exist as of 2006. As a new expert advisory mechanism is the Human Rights Council Advisory Committee. For more see at http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee.htm.


However, the main feature of the Roma people is the absence of a 'protector-state' to defend their interests.

The terms kin-state, mother-nation and 'nation-state of the mother-nation' refer to nations (ethnic communities) and states with which certain ethnic minorities share a common origin or heritage, language, culture, historic development and/or ethnic identity.

Louis B. Sohn, cited in (O’Nions, 2007)


Definition and Classification of Minorities (Memorandum) UN.Doc. E/CN.4/2/85 at para. 18.

Shaw, M 'The Definition of Minorities in International Law’ (1991) Israel YBHR Vol. 20 pp 13–42 at 37.


CEI Instrument for the Protection of Minority Rights (1996) at 4, Centre for Information and Documentation, Trieste, Italy. Though, ironically, Article 7 of the instrument recognises the specific problems faced by the Roma and emphasises a commitment to their rights.


Immigrants usually do not have citizenship of a country where they reside – usually with the legal status of resident aliens. See Žagar, Matja (1997) “Rights of Ethnic Minorities: Individual and/or Collective Rights?”. *Journal of International Relations* 4 (1-4), 29-48


Membership in such collectivities is voluntary and it is expected to assume a strong sense of personal responsibility for living up to the requirements of membership. Belief groups examples: Jehovah’s Witnesses, Mormons, Scientologists, Pentecostal Christians, and members of Hare Krishna and the Unification Church.


The ‘new’ minorities are not *per se* a homogenous group, and therefore it is difficult to identify unambiguously what are they requiring - assimilation, integration or special rights?


Such systems result in hard jurisprudence based upon hard law. Judgments, however, are concerned with individual cases and it is difficult to say that they can establish standards of general character.

The Treaty of Vienna, 1606 (between Hungary and Transylvania), the Treaty of Olivia, 1660 (between Sweden and Poland), the Treaty of Westphalia, 1648 (France and the Holy Roman Empire and their Allies), the Treaty of Nijmegen, 1678 (between France and Holland), the Treaty of Ryswick, 1697 (between France and Holland) the Treaty of Paris, 1763 (between France, Great Britain, Portugal, Prussia, Russia and Sweden),
the Treaty of Berlin, 1878 (between Germany, Austria, Hungary, France, Great Britain, Italy, Russia and Turkey), the International Convention of Constantinople, 1881 (between Germany, Austria, Hungary, France, Great Britain, Italy, Russia, and Turkey) are worth mentioning.  


75 Heinz, W. Indigenous Populations, Ethnic Minorities and Human Rights (1988) Quorum Verlag, Berlin at 1. This is also the main approach of the definition advocated by Fawcett in 1979. He defined a minority group as having ‘a common will – however conditioned-to preserve certain habits and patterns of life and behaviour which may be ethnic, cultural, linguistic or religious, or a combination of them, and which characterise it as a group. Further, such a minority may be politically dominant or non-dominant’ in Fawcett, J.E.S The International Protection of Minorities (1979) MRG, London at 4.  


77 During the first 10 years, 773 petitions were received of which 292 were found inadmissible, action was taken by the League in two cases. Three case decisions were given by the Permanent court of Justice and two further advisory opinions were issued. See also generally Claude, I National Minorities. An International Problem (1955) Harvard Univ. Press, Mass. at 33−6.  

78 Of these the Polish Treaty, 1919 (between Poland and Principle Powers and its Allies) became a standard formula for subsequent treaties, such as the Treaties of Saint-Germain-en-Laye, 1919, Neuilly-sur-Seine, 1919, Trianon, 1921 and Lausanne, 1920. Amongst declarations, the Declaration by Albania, October 2, 1921, the Declaration by Estonia, September 17, 1923, the Declaration by Finland, June 27, 1921, the Declaration by Latvia, July 7, 1923 and the Declaration by Lithuania, May 12, 1922.  

79 Such as the Jewish minorities in Greece, Poland, Romania, Lithuania; the Vlachs of Pindus in Greece, the Ruthanians in the Carpathian Mountains, the non-Greek monastic communities of Mount Athos in Greece; the Moslem minorities in Albania, Greece, and the Kingdom of the Serbs, Croats and Slovenians; the Czecklers and Saxons in Transylvania; the non-Moslems in Iraq; and the Kurds’ linguistic rights in Iraq. See more in Robinson, J. (1943), Were the Minorities Treaties Failure?, New York: Institute of Jewish Affairs.  


He argued: “The League of Nations shall require all new States to bind themselves as a condition precedent to their recognition as independent or autonomous States to accord to all racial or national minorities within their several jurisdictions exactly the same treatment and security, both in law and in fact, that is accorded to the racial or national majority of their people”. Later, Wilson proposed an additional article: "Recognizing religious persecution and intolerance as fertile sources of was, the Powers signatory hereto agree, and the League of Nations shall exact from all new States and all States seeking admission to it the promise, that they will make no law prohibiting or interfering with the free exercise of religion, and that they will in no way discriminate, whither in law or in fact, against those who practice any particular creed, religion or belief whose practices are not inconsistent with public order or public morals". For more see: Azcarate, P. De. (1945), The League of Nations and National Minorities: An Experiment, Carnegie Endowment for International Peace: Washington.; Miller, D. H. (1928), The Drafting of the Covenant, vol. II, G. P. Putnam's Sons: New York

In February 1926, Mr. de Mello-Franco, the delegate of Brazil on the Council, and a special rapporteur to minority issues, stressed: It seems to me obvious that those who conceived this system of protection did not dream of creating within certain States a group of inhabitants who would regard themselves as permanently foreign to the general organization of the country. On the contrary, they wished the elements of the population contained in such a group to enjoy a status of legal protection which might ensure respect for the inviolability of the person in all its aspects and which might gradually prepare the way for the conditions necessary for the establishment of a complete national unity (Macartney, 1934 - cited in Welhengama, 2000, p. 8). The Mello-Franco thesis appeared to be the collective opinion of the League Council (previously supported by Great Britain, Czechoslovakia and Belgium).


The Sub-Commission was established in 1946 as a subsidiary body to the Commission on Human Rights. See at http://www.unwatch.org/site/cbdKKISNqEmG/b.1344111/k.A4F3/UN__Human_Rights.htm

France and Turkey refused to recognize the existence of minorities within their borders, these examples have become textbook examples of an extreme form of hostility (a sort of resistance). More in Rosas, A. & Helgesen, J. (eds.). The Strength of Diversity, Human Rights and Pluralist Democracy. Dordrecht/Boston/London: Martinus Nijhoff Publishers at 61.

The (then) Sub-Commission on the Promotion and Protection of Human Rights issued recommendations to that effect: e.g. UN Docs 2000/16, para. 9; 2001/19, para. 7; see also UN Doc. E/CN.4/2002/91/Add.1. – cited in (Pentassuglia, 2009)


From the UN Human Rights Committee (HRC) to the EurCrthR, from the European Court of Justice (ECJ) to the Inter-American Court of Human Rights (IACrthHR) and the Inter-American Commission of Human Rights (IACommHR), from the Committee on the Elimination of Racial Discrimination (CERD) to the African Commission on Human and People's Rights (AfrCommHPR), from international criminal tribunals to ad hoc bodies.


95 UN Doc. A/RES/217 (III), 10 December 1948

96 The 1948 Universal Declaration of Human Rights, the ICCPR two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights are generally referred to as the “International Bill of Rights”.


98 This Part III identifies the various rights protected in addition to the listed rights in the previous parts.

99 The committee’s members are elected by states parties but serve in their individual capacities. It is empowered to hear reports from states parties concerning their compliance with the terms of the covenant. However, it does not have the capacity to conduct its own investigations, but it may question governmental representatives concerning disturbing evidence contained in the state’s reports to the committee. The committee reports are sent on annual basis to the UN General Assembly through the ECOSOC. This committee, though its jurisdiction and capacities are limited, serves to put pressure on governments to comply with their obligations under the covenant. Under Article 42, the committee with the permission of the states party to the dispute may establish an ad hoc Conciliation Commission, consisting of five persons mutually acceptable to the parties. When the dispute does not admit of amicable resolution, the commission may make its own recommendations concerning its disposition, although the states in dispute are not required to follow or accept the commission’s findings. However, failure of the parties to cooperate may be duly noted by the Commission on Human Rights (CHR) in its annual report to the General Assembly. This function is now assumed by the United Nations Human Rights Council, which replaced the commission in 2006.

100 A doctrine/theory of human rights that says that all human rights are held by all persons in all states and societies regardless of race, color, nationality, religion, language, or ethnic traits and must be applied and interpreted in the same way in all states and regions, regardless of the legal system or political ideology. The doctrine of universality is opposed by those who believe in “Cultural Relativism,” a doctrine that claims that human rights are applied and interpreted differently in different societies based on various “Particularities” or “Specificities,” such as race, religion, and culture. The universality doctrine is now the predominantly accepted view. See Conde, V. (2004). A Handbook of International Human Rights Terminology (2nd ed.). Lincoln and London: University of Nebraska Press, p. 268

101 A draft minority provision prepared by the Sub-Commission did not receive endorsement by the Human Rights Commission, but the issue was not laid to rest. In the Third Committee of the General Assembly, representatives of the USSR, Denmark and Yugoslavia submitted draft recommendations for the inclusion of a minority rights article. See UN Doc E/CN.4/SR.74, 5 (by 10 votes to 6); 69 GAOR 3rd session, part 1, 3rd Committee Annexes, UN Doc A/C.3/307/Rev. 2, 45–6.


103 Ibid para 5.2. This view is different to that expressed in the Commission on Human Rights when ICCPR 27 was being drafted. There it was generally agreed that this article should cover only separate or distinct groups, well-defined and long-established on the territory of a state. It was then considered necessary not to encourage the creation of new minorities or obstruct the process of assimilation. It was felt that such tendencies could be dangerous for the unity of the state. In the Third Committee, many delegations representing countries of immigration expressed their anxiety that persons of similar background, who entered their territories voluntarily, through a gradual process of immigration, might be regarded as minorities, thus endangering the national integrity of the receiving states. While the newcomers could use their own language and follow their own religion, they ought to become part of the national fabric. It was emphasized that the provisions of this article should not be invoked to justify attempts which might undermine the national unity of any state. See UN documents A/2929, chap.VI, ss. 184, 186; A/5000, s.120.
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104 One representative contended that there were no minorities in the entire American continent, and the Australian delegate suggested that aborigines were too primitive to constitute a minority. See 3rd Committee of the GA A/C.3/SR.1103, SR.1104; A/5000, paras 116–126; and Ibid. para. 26.


106 Article 2 (1) - Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 - All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

107 CCPR/C/21/Rev.1/Add.5 26 April 1994 para 6.2. This view is in contrast to that which was expressed when ICCPR 27 was being drafted. A proposal that ‘the state shall ensure to national minorities the right’ was rejected. It was argued that, under such a text which imposed a positive obligation on the state, minority consciousness could be artificially awakened or stimulated. The formula ‘the persons belonging to such minorities shall not be denied the right’, which was adopted, was believed to imply that the obligations of the state would be limited to permitting the free exercise of the rights of minorities. See UN document A/2929, chap.VI, s.188.


109 The collective right of petition is not recognised; in the case Mikmaq Tribal Society v Canada the Human Rights Commission declared the petition inadmissible as the petitioner could not show that he was authorized to bring the case on behalf of the group. – cited in O’Nions, H. (2007). Minority Rights Protection in International Law: the Roma of Europe. (Research in migration and ethnic relations series ed.). Hampshire: Ashgate Publishing Limited at 195


112 CCPR/C/21/Rev.1/Add.5 26 April 1994 para 6.1

113 General Comment No 18 (1994) para. 3.2 states that the enjoyment of rights under Article 27 ‘does not prejudice the sovereignty or territorial integrity of a State party’


115 While Article 27 ICCPR does not explicitly address the situation of indigenous peoples, the text of Article 30 CRC does.


117 Article 1(1) – States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of that identity.

118 Articles 4(4), 2(2), 2(3) and 2(5).

119 Article 4(2)
Minority rights protection in multiethnic border regions

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129 See at http://ap.ohchr.org/documents/sdpage_e.aspx?s=93
130 See at http://www.ohchr.org/EN/Issues/Minorities/Pages/TheformerWGonMinorities.aspx
131 The mandate of the Independent Expert on minority issues complements and enhances the work of other UN bodies and mechanisms that address minority rights and minority issues, including the Forum on Minority Issues and the treaty monitoring bodies. Importantly, the Independent Expert can consult directly with Governments regarding minority issues, and is also mandated to take into account the views of NGOs, offering a unique opportunity for constructive engagement in country situations. The independent expert on minority issues, Ms Rita Izsák (as of 1st August 2011), guides the work of the Forum, prepares its annual meetings and reports on the thematic recommendations of the Forum to the Human Rights Council. See at http://www.ohchr.org/EN/Issues/Minorities/IExpert/Pages/IEminorityissuesIndex.aspx
132 For the full text of the Final Act of Helsinki, see http://www.osce.org/mc/39501.
133 The principles – later to become known as the ‘decalogue’ – are titled as follows: I. Sovereign equality, respect for the rights inherent in sovereignty; II. Refraining from the threat or use of force; III. Inviolability of frontiers; IV. Territorial integrity of States; V. Peaceful settlement of disputes; VI. Non-intervention in internal affairs; VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief VIII. Equal rights and self-determination of peoples; IX. Co-operation among States; X. Fulfillment in good faith of obligations under international law
134 For the full text of the Charter of Paris for a New Europe of November 1990, see http://www.osce.org/mc/39516.
135 Protocol No. 1 protects the rights of property, education and free elections by secret ballots, Protocol No. 4 prohibits imprisonment for civil debt and protects inter alia the rights of free movement and choice of residence and the right to enter one’s own country, Protocol No. 6 provides for the abolition of the death penalty, while Protocol No. 7 provides inter alia that an alien lawfully resident in a state shall not be expelled there from except in pursuance of a decision reached in accordance with the law, that a person convicted of a criminal offence shall have the right to have that conviction or sentence reviewed by a higher tribunal and that no one may be tried or punished again in criminal proceedings for an offence for which he has already been finally acquitted or convicted. Protocol No. 12 prohibits discrimination, while Protocol No. 13 abolishes the death penalty.
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137 Article 1 – Obligation to respect human rights: The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.


141 Three Council of Europe member states have omitted to sign or ratify the convention – France, Andorra and Turkey.


145 Recommendation 43 on Territorial Autonomy and national minorities (1998) at https://wcd.coe.int/ViewDoc.jsp?id=853855&Site=COE.


152 The FCNM for example, defines minority protection largely as a task to be fulfilled by states, and not as a set of objective rights that accrue to all national minorities or individuals belonging to national minorities. See Brusis, M. (2008). Enlargement and Interethnic Power-Sharing Arrangements in Central and Eastern Europe. In M. Weller, D. Blacklock, & K. Nobbs (Eds.), The protection of minorities in the wider Europe, New York: Palgrave Macmillan, at 234.

Will Kymlicka points out that the minority rights cannot be subsumed under the category of human rights. “Traditional human rights standards are simply unable to resolve some of the most important and controversial questions relating to cultural minorities which languages should be recognized in the parliaments, bureaucracies, and courts?” The problem according to him is that traditional human rights doctrines often give no answer at all to the questions such as the previous one or on whether should ethnic or national group have publicly funded education in its mother tongue; should internal boundaries be drawn so that cultural minorities form a majority within a local region; should political offices be distributed in accordance with a principle of national or ethnic proportionality or what are the responsibilities of minorities to integrate? See in Kymlicka, Will (1995), Multicultural citizenship. A liberal theory of minority rights, Oxford: Clarendon Press, 1995 at p. 5


Self-identification is an essential aspect of being a member of a minority. Persons belonging to minority groups also have the right to leave the group without fearing that the State will continue to label them as members thereof. Membership of a designated minority or indigenous community may be determined by three approaches: 1) reliance on objective or factual criteria; 2) self-identification; and 3) acceptance by other group members. See Hadden, Tom. 2005. Integration and Separation: Legal and Political Choices. [ed.] Nazila Ghania and Alexandra Xanthaki. Minorities, Peoples and Self-Determination. Essays in Honour of Patrick Thornberry. Leiden/Boston: Martinus Nijhoff Publishers, at 179


The rights of education in minorities’ language is a collective rights when establishing an autonomous educational system and programmes, and individual by giving the possibility to attend a bi-lingual school or educational program in the language of a certain minority to individual members of this minority. E.g. The Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities


These special rights, which take into account the differences of the minority members, can be granted as individual or collective rights.

For Kymlicka, a country which contains more than one nation is not a nation-state but a multination states, and the smaller cultures form ‘national minorities’. He uses the term ‘culture’ in a different sense; for him ‘multiculturalism’ arises from national and ethnic differences, using ‘culture’ as a synonymous with ‘nation’ or ‘people’ as an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history. And therefore, a state is multicultural if its members either belong to different nations (a multination state) or have emigrated from different nations (a...
polyethnic state). In these sense, avoiding confusion with the term 'multicultural' he uses the terms 'multinational' and 'polyethnic' to refer to two main forms of cultural pluralism.

166 Will Kymlicka develops an extended defence of the rights of ethnocultural groups based on the foundational values and ideals of liberal democracy. He shows that rights that promote the preservation of cultural traditions and that ensure self-governance for cultural minorities are not only compatible with principles of liberalism, but actually promote liberal ideals of freedom and equality.

167 However, according to Kymlicka, federalism can serve as a mechanism for self-government only if the national minority forms a majority in one of the federal subunits of the state.

168 Where exemption rights seek to allow minorities to engage in practices different from those of the majority culture, assistance rights are claimed for help in overcoming obstacles to engaging in common practices (most common are the language rights). According to Levy, the most controversial and explosive assistance rights are preferential policies common worldwide (affirmative action, preferential hiring and admissions, quotas, and land-allocations)

169 It is typically stated that the inequality comes from a historical injustice, actions of the state or the majority group or from the bare status of being a minority, rather than from choices made by individual members of the group.


171 The demand to have a minority language as one of a state’s official languages.

172 Basic equality is the cornerstone of all egalitarian thinking; the idea that at some very basic level all human beings have equal worth and importance, and are therefore equally worthy of concern and respect. See (Baker, et al., 2004)

173 Unlike immigrants who voluntarily left their home countries to integrate into a new society, national minorities lived in their own self-governing communities with their own socioeconomic and political institutions before their involuntary incorporation into their respective states.

174 Effect of division.

175 ‘In a liberal settlement among groups with different ways of life, the illiberal groups which are tolerated are illiberal precisely because they are intolerant’. See Chandran Kukathas (1997) ‘Cultural Toleration’, in Shapiro and Kymlicka, eds, Ethnicity and Group Rights, p.99. Kukatas belives that ‘toleration is important, in part, because it checks or counters moral certitude’.

176 For these reasons, Kymlicka believes that arguments for group-differentiated rights based on the value of cultural diversity are not sufficient, by themselves, to justify these rights. Nevertheless, he believes that there are important benefits to cultural diversity, but that these are best seen as desirable consequences derived from protecting the cultural rights of minority groups, rather than as providing the primary justification for group-differentiated rights.

177 As a great success agreement is seen the Gruber-de Gasperi Agreement of 1946 (later annexed to the Peace Treaty of 10 February 1947), which will be analysed in the chapter dedicated to the case study analysis on the Trentino-South Tyrol region.

178 For more see Kinga Gál (1999), Bilateral Agreements in Central and Eastern Europe: A New Inter-State Framework for Minority Protection?, ECMI Working Paper #4, Flensburg: European Centre for Minority Issues

179 The Stability Pact for South Eastern Europe, launched in 1999, was the first comprehensive conflict-prevention strategy aimed at strengthening the efforts of the SEE countries in fostering peace, democracy, respect for human rights, economic prosperity and security. For more see www.stabilitypact.org

180 For this scholar, a community can be a majority, minority or sub-group within the same state. It can also be irredenta (separated by borders) or diaspora (leaving abroad, elsewhere); it can have another community—a minority—within its territory.

181 This first solution forms a new independent actor (with new territory, boundaries and international recognition). This raises many questions such as economic viability, stability, and security.
The second scenario and as well the third one assume an (active) involvement of a third state in the region (causing boundaries changes), affecting the communities within that state, nonetheless it does not lead to a new independent state.

For Danspeckgruber the fourth and the fifth scenarios may prove to be more supportive of regional stability. Status quo, however, could be unacceptable and causing further problems if not conflict.

Multiple identities would mean that the members of the community in question accept that their community membership represents just one of perhaps several identities. For example South Tyrolian may also be an Italian citizen.


This right of self-determination is recognized in the Charter of the United Nations, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The right to self-determination includes the right of peoples to decide on their political status and their social, economic and cultural development without interference, and within the state where the peoples live. However, any attempt to destroy the national unity and territorial integrity of a state partly or as a whole, has been declared incompatible with the principles and aims of the United Nations (Declaration on the Granting of Independence to Colonial Countries and Peoples, UN Doc. A/RES/1514 (XV) of 14 December 1960). The independence or autonomy of peoples does not derive from the right to self-determination (Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, UN Doc. A/RES/2625 (XXV) of 24 October 1970).


The situation, which concerned the Swedish inhabitants of an island alleged to be part of Finland, was resolved by the League’s recognition of Finnish sovereignty coupled with minority guarantees. See J. Barros, The Aaland Islands Question, New Haven, 1968, cited in (Shaw, 2008)

For example, Chechnya, Corsica, the Basque country, Kosovo, etc.

For example, Bougainville, Sri Lanka, the Philippines, Burma, India in relation to tribal peoples

For example, Eritrea, Somaliland, Kashmir, perhaps Southern Sudan, and the Comoros and Mayotte.

Further distinguishes three different types of constitutional self-determination: 1) express self-determination status; 2) effective dissolution of a federal-type state; and 3) implied self-determination status.


Internal sovereignty would encompass concern for the areas of culture, education, language, religion, finance, judicial administration, and public safety, as well as certain industrial, energy, and infrastructure projects. Internal Sovereignty can be understood as ‘partial’ or ‘limited’ sovereignty, but the term sheds light on the will by the community to have certain sovereign rights for certain agenda, and the readiness of the central government to grant these rights.

External competencies should include as many dimensions as possible for permitting a community maximum freedom to interact with its neighbors, in the region, and with other states and international organizations. Such ‘external competencies’ could comprise cultural, educational, scientific, and technical contacts with other regions and sub-states, or even states and international organizations.

This changes the context in which the triangular relationship understood in terms of obligations owed by the State to minority groups, but rights only for the individual persons belonging to the minority group.

The closest that international human right law has come to dealing with this issue is in the OSCE Lund Recommendations. Addressing the responsibility of the minority group granted territorial autonomy vis à vis other minority groups within its jurisdiction, Recommendation 2 requires the minority group to respect and ensure the human rights of all persons, those who belong to the group and those who do not.

PART I Theories and Concepts


200 In A Theory of Justice Rawls responds to this difficulty by attempting to construct a system of justice in which individuals are taught to adopt a comprehensive theory of the good in which liberal principles of justice are valued for their own sake. Such a system of justice as Rawls then believed can at least be 'self-sustaining'. In Political Liberalism he abandons that attempt.


202 One form is the federalism - where all regions enjoy equal powers and have an identical relationship to the central government. Two old federations, Switzerland and Canada, were adopted in part to accommodate ethnic diversity. Classical federalism, where all regions have equal powers, may not be sufficiently sensitive to the peculiar cultural and other needs of a particular community, which require a greater measure of self-government.

203 Up to the period of time when the post-Cold War transitions in Central, Eastern and South Eastern Europe were beginning, it appeared to be at best a highly unusual tool of state construction, or at worst a highly dangerous one. See (Weller, et al., 2005). It was concept associated with self-determination struggles, seen with suspicion - towards irredentist or secessionist claims. Since the end of the Cold War, the so-called National minority question re-emerged in the transitional states of Central and Eastern Europe.

204 Autonomy was embraced by some states as a way of maintaining their territorial integrity. In addition to the more established case of Belgium, Spain and the United Kingdom have also made startling progress in this direction. France has attempted to move towards autonomy as a means of addressing the Corsica conflict.


206 The crucial factor is not residence in an autonomous territory but membership of the minority. The owner of personal autonomy is traditionally an association, a legal form able to organize a group of individuals. The personal autonomy is not bound to public law: associations also may exercise any rights of a private nature for its members, and it is also possible to give public functions to private associations, such as in the case of a private school in the minority language, whose qualifications are recognized by the public schools and for the management of the association that receives public subsidies. See (Palermo, et al., 2011)

207 To be further analysed.

208 The autonomous territory does not have its own legislature or judicial system. This can be seen in decentralised (or regionalised) forms of the institutional organisation of a state, for example, in Italy. In territorial autonomy, the subject of autonomous rights is a public body governing a given part of a country’s territory (province, region, state in federal system).

209 Full self-government reminds more of federal arrangements, such as in Germany.

210 In the case of South Tyrol in Italy or Corsica in France, for example.


212 There are basically two theories as to the nature of recognition. The constitutive theory maintains that it is the act of recognition by other states that creates a new state and endows it with legal personality and not the process by which it actually obtained independence. Thus, new states are established in the international community as fully fledged subjects of international law by virtue of the will and consent of already existing states. The second theory, the declaratory theory, adopts the opposite approach maintaining that recognition is merely an acceptance by states of an already existing situation. A new state will acquire capacity in international law not by virtue of the consent of others but by virtue of a particular factual situation. It will be legally constituted by its own efforts and circumstances and will not have to await the procedure of recognition by other states. See Shaw, M. N. (2008). International Law. New York: Cambridge University Press, at 446.

Minority rights protection in multiethnic border regions

A Case Study Analysis


215 “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); Examples of this design are numerous in past and recent history - 1. In 1939, German speaking citizens of the Province of Bolzano 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; 2. The case of Tibet, where the continuous influx of Chinese population has now turned Tibetans into a minority in their land; 3. Zimbabwe, where in 2007, was introduced a law under which the majority of each company operating in the country should be owned by Zimbabwean color citizens; 4. Repressive policies are still conducted in Latvia and Estonia against the abundant Russian-speaking minority in their respective territories, "inherited" from the Soviet Union. The legislation of the two countries for a long time prevented the members of this minority of obtaining citizenship of the new State, thus excluding them from any law. As a result of pressure from the Council of Europe and the European Union, legislation has been progressively modified and attenuated the number of stateless persons has been reduced. The Latvian Constitutional Court has considered legitimate a law that severely restricts education in Russian because the Russian-speaking population cannot be considered minority, but descendants of occupant.

216 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 acquisition 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 (Palermo, et al., 2011 p. 56)

217 Article 11(4) of the Bulgarian Constitution from 1991: There shall be no political parties on ethnic, racial, or religious lines, nor parties which seek the violent usurpation of state power. In 2000 the Bulgarian Constitutional Court has watered the criteria for elections and declared the dissolution of the Macedonian Ilinden party. Despite the ruling by the European Court of Human Rights in 2005, which considered illegitimate the dissolution of the political party (Application number 59489/00), and the subsequent invitation of the Committee of Ministers of the Council of Europe to admit the party elections in September 2007, the Court of Sofia again refused to register the party. See the European Court of Human Rights Judgment at http://cmiskpechr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=59489/00&sessionid=83201933&skin=hudoc-en

218 In this respect, it is interesting the case in Finland, where some areas are traditionally settled by a Swedish minority, a ‘legacy’ or the many centuries of Finland belonging to the Kingdom of Sweden. For this historical legacy, the Finnish Constitution provides that the country’s official languages are Finnish and Swedish (Article 17). This does not mean that the state is fully bilingual in fact, bilingualism can be operated only in the (few) areas where the Swedish minority accounts for at least 8% of the population. Still different is the reality of the Aland Islands, where the only official language is Swedish.

219 To be seen in Part II the case of Republic of Macedonia. The ‘numeric’ criteria is seen in the case of Republic of Macedonia with the Ohrid Framework Agreement of 2001; in this case the threshold is 20%, both at national and municipal level for transformation of the municipalities involved into bilingual areas; a law on territorial reorganization involved the fusion of many municipalities to facilitate the frequent cases where the threshold was exceeded at the municipal level. On this delicate issue there was a referendum in 2004 to prevent the entry into force of the law, but it failed because of lack of a quorum: with the new legal provisions, many municipalities (including the capital Skopje) have become officially bilingual, and the state as a whole
has assumed the character of a bi-national state (as required by the Albanian minority) rather than 'just' promotional (as strenuously sought by the Macedonian majority).

220 In Slovenia, with the Constitution (Article 64) it is established the right of the Italian and Hungarian communities to form partnerships for the maintenance of their national identity and for information and publishing, the right to self-government bodies and the duty of the state is to decentralize the powers of interest to minorities and to finance their activities.


223 The principle of effective participation is generally accepted, as reflected in Paragraph 35 of the 1990 OSCE Copenhagen Final Document, and by its guarantee in Article 15 FCNM.


225 19th and early 20th century versions of civil citizenship did extend clearly into democratic representation; political rights to vote, or stand for office, *prima facie*, could be considered to be invoking older ideas of civic citizen participation. See (Vincent, 2010 p. 209)

226 The origin can be mapped out in the 16th century. Johannes Althusius, Karl Renner and Otto Bauer and more recently Sir Arthur Lewis – cited in (O'Leary, 2005)

227 His “Consciociational Democracy,” published in 1969, is often regarded as the “classic” statement of consociational theory. In this article, his main examples of consociational and partly (or temporary) consociational systems are the Netherlands, Belgium, Luxembourg, Austria, Switzerland, Lebanon, Nigeria, Colombia, and Uruguay. In ‘Democracy in Plural Societies’ (Lijphart 1977), the new cases are Malaysia, Cyprus, Suriname, the Netherlands Antilles, Burundi, Northern Ireland, and the two semi-consociational systems of Canada and Israel. More recent examples are Fiji, Bosnia-Herzegovina, Macedonia, Kosovo, and Afghanistan. O'Leary identifies as well Afghanistan, Republic of Macedonia, Bosnia-Herzegovina and adding Northern Ireland as countries where it has been evident the internationally supported, implemented and maintained consociational institutions.

228 In Lijphart's writings after 1969, he started using the term “power sharing” democracy as a synonym for consociational democracy. The main reason, as he says, is that he started to use consociationalism not only as an analytical concept but also as a practical recommendation for deeply divided societies. In scholarly writings, the term “consociational” worked well enough but he found it to be an obstacle in communicating with policymakers. “Using ‘power sharing’ instead has greatly facilitated the process of communication beyond the confines of academic political science”. See (Lijphart, 2008)

229 As the most typical and obvious, (but not the only possible), consociational solution for a fragmented system, with the essential characteristic of consociational democracy, is not so much any particular institutional arrangement as the deliberate joint effort by the elites to stabilize the system. The most comprehensive form of the cartel of elites is in Austria, but can be found a variety of other devices in the other Western consociational democracies and, outside Western Europe, in the consociational politics of Lebanon, Uruguay (until early 1967), and Colombia. See (Lijphart, 2008)


234 Belgium, Switzerland Bosnia-Herzegovina, Canada, Nigeria etc.

235 Variants can be seen in Belgium, Bosnia, South Tyrol (‘suspensive’ veto) and Slovenian (‘absolute’ veto). See (Palermo, et al., 2011)


Owen Lattimore (1900-1989) was an American author, educator, and influential scholar of Central Asia, especially Mongolia. See Lattimore, O. (1970), La frontiera. Popoli e imperialismi alla frontiera tra Cina e Russia, Torino, Einaudi.


The idea of a European association for border regions was discussed for the first time in 1965 at the International Regional Planning Conference. Subsequently, the Association of European Border Regions (AEBR) was founded in June 1971 by 10 border regions (AEBR 2000a). Since 1979, the association has been an official observer at the European Council (Council of the European Union 2000; Committee of the Regions 2000). The AEBR also initiated the release of a European Charter for Border and Cross-Border Regions in 1981, and in late 1983 it assisted in the preparation of the first regional cross-border development programs. The AEBR was also one of the founding members of the Assembly of European Regions (later the Committee of the Regions) in 1985. The AEBR's goals are to: (1) implement programs and projects, apply for funds, and receive and dispose of them; (2) organize events concerning cross-border problems; (3) help solve cross-border problems and support special activities; (4) prepare and implement common campaigns; (5) extend the Center for European Border and Cross-Border Regions in close cooperation with the European Union and the Council of Europe; and (6) inform European political bodies and the public about cross-border issues. Furthermore, the AEBR tries to assist border and cross-border regions to articulate their problems, opportunities, tasks, and project interests to national and international authorities. It is concerned with the coordination of regional development in border areas and issues affecting those who live there. Through their networks, cooperation throughout Europe is supposed to be guaranteed and the regions are supported in


251 In Austria, for example, bilateral agreements based on the Madrid Convention have been concluded with Italy and Slovakia. See Engl, A., “Future perspectives on territorial cooperation in Europe: the EC Regulation on a European Grouping of Territorial Cooperation and the planned Council of Europe third protocol to the Madrid Outline Convention concerning Euroregional Cooperation Groupings”, European Diversity and Autonomy Papers EDAP, 03/2007, p.8, in: www.eurac.edu/edap (6.5.2010).

PART II
CHAPTER 1
TRENTINO-ALTO ADIGE (SOUTH TYROL)
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1.1 LEGAL INSTRUMENTS FOR MINORITY RIGHTS PROTECTION IN ITALY

1.1.1 MINORITIES’ PROTECTION AT STATE LEVEL

The Italian model for minority rights’ protection is an example of the ‘promotional’ model discussed in the first chapter of Part I. However, it is a paradigm one. Italy has progressively and distinctively different legal order distinguishing it from the liberal and the French ‘civic’ settings. Through the years and the republican experience, the Italian legal order has developed in a rich and complex instrument in regards to the juridical treatment of differences, making a sophisticated model studied even abroad (Palermo & Woelk, 2011, p. 282).

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, making Italy one of the European countries with the highest number of indigenous minorities. 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, which led to the formation of two numerically substantial national minorities. 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 (section 6 of the Constitution). The Constitution uses exclusively as a distinctive feature of minorities the linguistic criteria, 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 here and there in some regional statutes (Trentino-Alto Adige, Friuli-Venezia Giulia), the intention was in fact clearly circumscribe the sense of protection minorities on a linguistic and cultural factor, eliminating references to political-national and ethnic-racial issues. The term "ethnicity", therefore, has no legal significance in Italy, unlike other systems that are based on
different settings. Italy is therefore today a nation-demos that recognizes different ethnoi, with promotional features -as a nation connotes linguistically plural community (Palermo & Woelk, 2011).

The protection of the historic minorities is founded by the linguistic criteria. 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. Until the approbation of the law on linguistic historic minorities’ protection of 1999, the distinction was made between recognized and not-recognized linguistic minorities; after the approval of this law, the differentiation is made according to the level of protection since it recognizes all the historic linguistic minorities in the territory. In doctrine, the following distinction is made:

- **Extra-protected (superprotette) minorities** – the most protected minority groups in the special autonomous regions in the alpine area (Trentino-South Tyrol, Friuli Venezia Girulia, Val d’Aosta) and within those they are diverse in the intensity and modality of protection;

- **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);

- **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 protection of minorities in the Italian legal system is thus based on very different degrees of protection and regulation of a marked territorial symmetry, asymmetry of which is in part the origin and partly the consequence. To understand the recognition and protection of minorities guaranteed by the Italian constitutional order, 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 - Article 6\(^3\) - , while for the later, it is not specifically mentioned the term "minorities", the protection can be found in other fundamental rights and standards (e.g., religious minorities are protected according to articles
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 (Article 3 paragraph 1). Based on the pluralistic principles which underpins the republican system, the Constitution requires the development of all social formations in which there is the personality of man (Article 2), including linguistic minorities, which are therefore deserving of constitutional protection primarily as social formations, then according to the principle of substantive equality, because of the same fact that they are linguistic minorities. The enforceability of the rights of minorities protected area is subject to the criterion: a person belonging to a linguistic minority can rise from a series of legal situations only being tied to a specific territory associated with protecting minority rights, precisely because he recognized in principle to a given area prior to the individuals living there (territorial principle) are generally not of a personal nature. In general, also (with the exception of the Autonomous Province of Bolzano) belonging to minorities is not established officially, and is still based (even in the Province of Bolzano) on the mere will of each individual that claimed in line with the general principle affirmed by the Framework Convention for the protection of national minorities (art. 3). Should be noted as well that the arrangement of Article 6 of the 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. In Italy the difference in treatment of various minorities is of particular intensity. A profile of particular interest focused on the key constitutional question of the immediate applicability of Article 6, given the continued absence, for half a century, a general standard for implementation of the constitutional principles concerning the protection of minorities. For a long time, the special rules laid down by Article 6 came to fruition only in the statutes of certain special region (in particular, Trentino-Alto Adige/South Tyrol, Valle d’Aosta.
and Friuli Venezia Giulia, and their respective implementing rules) and in the few regional laws approved since the seventies of last century.

Italy has long been characterized to be at the same time one of the most advanced systems in the protection of (some) minorities (as well as legal instruments for the economic efforts employed) and a State which tended to assimilate other minority groups, whose future survival is strongly doubted, at least until the enactment of the 1999 Law. After several failed attempts in previous legislatures, it was approved the law for the protection of historical linguistic minorities (Law n.482/1999). This law stands as explicit implementation of the constitutional Article 6 and the general principles established by the European and international legal standards; it identifies the criterion for recognition (must be of historical linguistic minorities) and lists the groups recognized consequent damages, with an exhaustive list of types. Under the Article 2 "The Republic protects the language and culture of the Albanian, Catalan, Germanic Greek, Slovenian and Croatian peoples and those speaking French, Franco-Provençal, Friulian, Ladin, Occitan and Sardinian" 9. This formulation is heterogeneous with respect to the Italian constitutional tradition, as it seems to make a distinction between "ethnic" and "language", including Albanian, Catalan, Germanic, Greek, Slovenian and Croatian, and those speaking French, Franco-Provençal, Friulian, Ladin, Occitan and Sardinian. It is true that this second group of minorities has historically been present for a long time on Italian soil, but so many centuries is the presence of populations of Albanian, Catalan, Greek and Slavic origin. “So where to draw the line distinguishing between the two categories? Perhaps not all minority cultures are equally part of the cultural heritage of the composite "nation" Italian?” (Palermo & Woelk, 2011). Are well recognized all (or almost) minor indigenous minorities on the Italian territory. Since the Act does not apply directly to special regions, the rights contained therein may be extended (if more extensive than those already in place) to the groups recognized in these settled only with the implementing rules of the respective statutes (Article 18) 10. The law gives the power to provincial councils to identify areas in which the rights provided can be
applied, sets out the involvement of citizens or municipal councillors belonging to
the minorities concerned. The decision of the provincial council adopted (after
consultation with the municipalities involved) on the initiative "of at least 15% of
citizens in the electoral rolls and writings residents in the municipalities
themselves or to 1/3 of the councillors of the municipalities themselves." It
therefore emphasizes the criterion of total self-identification of belonging to the
minority or even the simple desire of individuals to flourish minority cultures in
their municipalities, even the City Council or the ordinary citizen who does not
belong to the protected minorities may in fact be activated so that local council
falls within the scope of the law. The law provides a series of linguistic and cultural
rights activities in favour of minority groups subject to protection. The teaching of
minority language is enabled for individual pupils at the request of parents, while
teaching the customs and traditions of minorities may be decided by individual
schools for all, as part of their autonomy. With reference to public use of the
language, the law provides for the possibility of using the language protected in the
collective bodies of local authorities concerned, with the right translation in Italian
for those claiming not to know the minority language. The law also provides for
municipalities to adopt, in addition to official place names, even those "in
accordance with traditions and local customs" as well as the right for citizens
whose real last name were Italianized to obtain the same in the original form.
Ultimately, the law reaffirms the three fundamental pillars on which the
constitution for minorities is laid on: 1) the language criterion as an element
identifier; 2) the need for recognition and; 3) the anchoring of territorial rights
recognized.

1.1.2 MINORITIES’ PROTECTION AT REGIONAL LEVEL

In the current regional structure of the Italian State two types of regions are
at existence: those of special statute (five) and the remaining (fifteen) of ordinary
statute. Those of special statute are 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. The Statutes of these regions were drawn up in early 1948, with the exception of Friuli Venezia Giulia (whose Constitution was not approved until 1963). On the other hand, 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 outlined in Art. 117 and 118, as well as financial autonomy within limits established by national law. The Constitution, in addition to the regions, outlines two additional levels of government: the provinces and the municipalities. The Regional Autonomy Statute is the basic law of each region. In order to increase the level of security for the special arrangements, the national Constitution provides that the autonomy statutes of the special regions must be adopted by the national parliament with a constitutional law (Art. 116 para. 1).

In addition to the regional statutes (and special) and the General Act of 1999, there are few ordinary laws of the State to recognize and guarantee a set number of minority language rights. Among these, could be mentioned, the provisions of the Code of Civil Procedure (Rule 122 c.1) and of criminal procedure (Article 109 para.2) that recognize the right to work in the process of a language other than Italian with the intervention of an interpreter, the rules providing for the recognition of the political representation of (some) minorities in the European Parliament, the possibility of setting up schools with teaching language other than Italian (German, French and Slovenian), special rules for the broadcasting sector (in the same languages, etc.). However, these provisions do not recognize rights generalized but take note of the situation of regional diversification sanctioned by the statutes and - above all - the socio-political realities of the various minorities and are often limited to certain minorities to recognize that these rights were still already received by way of fact. State laws do not cover some of the regulatory framework regarding minorities. In a predominantly territorial protection settings as in the Italian case the autonomy of the areas where minorities are located is one
of the most powerful tools of protection: the greater the power of self-government of sub-state bodies, the easier it will be minorities in its territory who get adequate recognition and protection. It is clear that, within a given territory, minority groups that are numerically negligible compared to the national population becomes numerically more significant, if not majorities (as in the Autonomous Province of Bolzano). It is no coincidence that the specialty of at least three of the five special statute regions, with a greater degree of autonomy guaranteed and most of the other is due to the presence in those areas of significant linguistic minorities, whose effective protection is directly proportional recognized the power of self-government to the regions in question.

The fact that there is now an extensive regional legislation aimed at protecting and promoting minorities (although having to supplement State regulations limit in order not to affect the principle of equality), must not, however believe that there is a "competence" of the Regional "matter", but simply shows that the minorities’ protection is a general objective of which standards (and administration) of all levels of government can at times be taken into account, this is a field without an explicit competence. Ultimately, minorities’ protection is the responsibility of regional (provincial in the case of the autonomous provinces) as it occurs in the exercise of its powers by local authorities. It is abundantly clear that the protection of minorities cannot be considered a skill in the strict sense, but rather a mode of exercise of powers by local authorities that are "building" the "Republic" under the constitutional article 114 (Palermo & Woelk, 2011).

It was noted previously the distinction of three types of protected minorities in Italy, extra-protected (superprotette) minorities, minorities eventually protected and not recognized minorities (and unprotected). In regards to the first one, it can be said that it regards the language groups that enjoy the protection of the most intense (in terms of the guarantee) and extended (in material terms) level, settled in the special regions of the Alps (Trentino-Alto Adige, Valle d’Aosta, Friuli-Venezia Giulia). These groups are, in numerical terms, the vast majority of non-native populations present in Italy, and for a long time, represented the only
protected linguistic minority groups. The more complex situation (due to the presence of three language groups) but also because of the institutional reality, is that most advanced protection in the region of Trentino-Alto Adige in general and the Autonomous Province of Bolzano in particular. The minority that has the most rights in Italy are in fact the German-speaking groups in South Tyrol, having the basis of their protection legally in one international treaty (to be analysed further). After approval of the General Law of 1999, with the recognition of a large number of non-native minorities, the so-called "small minorities" have obtained a legal basis for their protection - in particular, as we have seen, to allow activation a plurality of rights - in the presence of substantive and procedural requirements required by law. Linguistic minorities listed in the law can therefore be defined as recognized, but the actual activation of minority rights established by various rights in the legal act n. 482/1999 is only potential. Referring to what has been described above as to the contents of the law, rights therein and means for its activation are here underlined briefly in two special profiles. First, the groups benefiting from the recognition of the law of 1999, is of some interest in the position of the Ladin. They are geographically spread across three provinces (Bolzano, Trento and Belluno), are therefore at the same time "extra-protected" minorities (Bolzano), a strong minority guaranty (in Trento) and easily recognized minorities (Belluno). This is a logical consequence of the combination of the territorial criterion and the principle of asymmetric protection, could also provide some additional critical issue in relation to the delicate and never stable relationship between the protection of minorities and the principle of equality, where the breach of the latter would the fact that the territorial application of the criterion (married to the specialty of the region Trentino-Alto Adige and the different protection of Ladins) would be to discriminate between individuals belonging to the same linguistic minority.

It is worth mentioning as well the condition of the minorities who are not recognized by the 1999 Act, and therefore not protected. These are groups that, while in possession of the subjective requirement of the request for recognition as
a distinct group, are not in the objective requirement of recognition by the public power, and are therefore legally irrelevant to the differentiated treatment. They are therefore without forms of collective protection, but only with the individual guarantees of the principle of non-discrimination and "the inviolable rights of man, as an individual and in social groups where human personality" (Article 2 of the Constitution). The Roma and Sinti communities are excluded from the list of recognized historical minorities and therefore cannot enjoy any of the minority rights under the Law of 1999. There are different regional laws regarding Roma and Sinti communities, and providing for limited forms of recognition of rights and public bodies to deal with their problems, thus providing a legislative recognition of these populations such as minority groups at least according to regional legislation.14

Despite its complex regulatory changes and case law, 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.

1.2 THE CASE OF TRENTINO - SOUTH TYROL

1.2.1 HISTORY – SOME CONSIDERATIONS

Trentino-Alto Adige/South Tyrol is located in north-eastern Italy and borders with Austria on the north. This region is divided into two territories Trentino and South Tyrol15. South Tyrol has represented a coveted strategic region for centuries; formerly a part of a greater Tyrol, constituting by what are today North and East Tyrol (in Austria) and South Tyrol (in Italy). The area has been associated with Austria since the mid-1300s, with the exception of the years under
Napoleonic rule (1810-1814). In 1915, Italy entered in World War I (WWI) through a secret agreement promising extensive territorial compensation in exchange for Italy's entrance on the Entente side. This agreement was the Treaty of London (26 April 1915), signed by Britain, France and Russia. It was by this Treaty that Italy was promised South Tyrol, a region whose population in 1910 was 89% German-speaking. With the Treaty of St. Germain-en-Laye, the German-speaking region was officially signed over to Italy. After the WWII, the borders were reconfirmed in the Peace Treaty signed with Italy on 10th of February 1947, and South Tyrol was ensured autonomy by the Gruber – De Gasperi Agreement, signed on 5th September 1946. The official settlement of the dispute before the UN was in 1992, in which South Tyrol, Austria and Italy agreed that a satisfactory situation had been reached. The region Trentino-South Tyrol has evolved together with the concept of self-determination. After the World War II (WWII), South Tyrol reappeared as a topic of debate at the Peace Conference, where the request for a return to Austria was once more set aside for political and strategic considerations such as matters of power politics and the defensibility of the Italian frontier. South Tyrol served to elucidate the divide between the internal and external sides of the principle: South Tyrol was refused its right to choose its own international status, yet granted a territorial autonomy under Italian sovereignty. At the Paris Peace Conference of 1919 Italy presented arguments founded upon strategy for her claims to the Brenner pass; these arguments were considered sufficient to withdraw the Italian border so as to include the southern section of Tyrol, the regions of Trentino and South Tyrol. Austria did not accept the initial allied decision in 1945 and attempted various tactics, in the hopes of regaining South Tyrol. Talks and negotiations started in 1946 between Karl Gruber, the Austrian Foreign Ministers and the Italian foreign ministry representative Maurilio Coppini. Gruber recognized that the return of South Tyrol was highly unlikely and that autonomy was the only viable option for the South Tyroleans. The allies once again confirmed the maintenance of the Brenner frontier and extensive bilateral negotiations between Gruber and Alcide De Gasperi, the Italian Prime Minister.
ensued. The negotiations finished with signing the Gruber – De Gasperi Agreement. South Tyrol was to achieve an autonomous status within Italy, where the German language was to be ranked equal to Italian as the official language, school instruction was to be guaranteed in the mother languages, and public posts were to be filled in accordance with the numerical ratio of the ethnic groups. This agreement is significant in that it introduces the internal element of self-determination; South Tyrol was guaranteed a degree of autonomy, cultural and lingual protection, and representation in government. These elements constitute the foundations of internal self-determination, or as noted previously, self-governance. The agreement was included as Annex IV of the Peace Treaty signed with Italy in 1947, making it internationally enforceable. A year after, the first autonomy statute for South Tyrol was issued. The Statute provided for the creation of an Autonomous Region Trentino-Alto Adige, composed of the provinces of Bolzano and Trento, each constituting autonomous entity and therefore exercising a particular provincial autonomy within the framework of the larger regional autonomy. The primary problem with this structure lays in the fact that in 1948 the Province of Trento had an almost exclusively Italian population of 400 000. South Tyrol consisted of 180 000 German, 110 000 Italian and 20 000 Ladin-speaking inhabitants. As a result, the total population of the region being Italian speaking inhabitants, outvoted in the regional council and in the regional government of South Tyrol. The issue of South Tyrol was internationalized back in 1957 when the Legal Committee of the Consultative Assembly (now Parliamentary Assembly) of the Council of Europe (CoE), prompted by some circles in the CoE, particularly Scandinavian representatives, set up a sub-committee to examine the situation in South Tyrol. The report from the Legal Committee stated that it was desirable to ensure satisfaction of the collective interests of minorities “to the fullest extent compatible with safeguarding the essential interests of the states to which they belong”. This is seen as one of the exceptional occasions in which a European organization intervened in the South Tyrol issue. The UN General Assembly on 31 October 1960 unanimously adopted the Resolution 1497/XV; it called upon Italy
and Austria to resume their negotiations in order to achieve a friendly solution to all the differences relating to the implementation of the Paris Agreement, thereby resolving the South Tyrol question. The UN involvement in the South Tyrol question had an impact that went far beyond initial expectations. The Austrian decision to refer the case to the UN had a new value to the entire question: the South Tyrol question had definitely become an international issue, resulting in pressure to find a peaceful solution exerted by the international community on the parties involved, particularly on Italy. The UN resolutions confirmed therefore that South Tyrol was a problem and that Italy could no longer ignore Austria’s concern and South Tyrol’s protests but, rather, that the issue needed to be addressed. Italy responded to this pressure by establishing the Commission of Nineteen as a means to seek a solution to the problem. By calling for further bilateral talks, the UN resolutions confirmed the legitimacy of Austria’s being involved in the South Tyrol issue, which Italy had called into question in its attempt to maintain the South Tyrol case as a domestic affair: in other words, the UN reaffirmed Austria’s role as protector of South Tyrol before the international community. In fact, the UN General Assembly’s decision was considered “one of the greatest Austrian foreign policy successes after the war”.

The Austrian Foreign Minister Bruno Kreisky brought the South Tyrol dispute before the UN General Assembly, and filed an inter-state complaint before the European Convention on Human Rights. It was presented not as a self-determination dispute but as a minority rights protection problem. Austria’s tactics highlights the distinction between internal and external dimension of self-determination. External self-determination, the rights to determine one’s international status, was rejected as a possibility; it was internal self-determination, which then became the goal. Italy appointed the “Commission of 19” in 1961, composed of eleven Italians and eights South Tyroleans with the duty of investigating and looking for possible solutions to the South Tyrol Question. This Commission presented its results in April 1964, which subsequently became the grounds for the 1969 Agreement known as the “Package”. The Package is
composed of 137 administrative and legislative measures intended to expand the South Tyrolean autonomy, 97 of which concern modification of the first Autonomy Statute. The Package was accompanied by the Operations Calendar which served as the political guarantee for the fulfilment of the package. It did not set specific deadlines but focused primarily on the substantive aspects, setting up a framework and general plan for the precise steps required for the resolution of the conflict. Once accepted, the implementation of the Package measures began immediately, and a new and revised Autonomy Statute was issued in January 1972. The execution of the 137 measures was completed in 1992, and the conflict was officially declared resolved by all three parties before the United Nations and the International Court of Justice.

The history of South Tyrol Autonomy is illuminating the search for solutions to problems in other areas of Europe with culturally divided communities. It is about a struggle for the establishment of autonomy for the German-speakers and Ladin-speakers living compactly in a homeland which had been theirs for very many centuries (Alcock, 2001).

As a conclusion, it can be said that the case of South Tyrol, representing an ethnic conflict, in which a minority group (South Tyrolese German speakers) challenged the Italian state over its discriminatory policy, epitomizes the development of minority protection under international law.

1.2.2 REGIONAL GOVERNANCE

Italy was the first country to test the devolutionary asymmetry. The international obligations imposed by the Paris Peace Treaty had to be taken into account (the Gruber-Degasperi Agreement on the protection of the German-speaking minority in South Tyrol), mandating a substantial amount of self-government for national minorities followed by concrete fears of the possible secession of parts of the national territory. In order to avoid too strong an asymmetry between the areas where national minorities are present, and the rest of the country and to experiment with a ‘third way’ between a federal and a unitary
system, regions were foreseen for the whole country, although enjoying a much lesser degree of autonomy than the five autonomous regions seen above.

The Region of Trentino-South Tyrol, represents a particular case both within Italy as well as within the already special regional framework of the Italian state. Created in 1948 and reformed in 1972 – like all other Italian regions – is governed by three primary organs: the Assembly (or Council), the Government, and its President. However, Trentino-South Tyrol differentiates itself from all other regions in that almost all of its legislative and administrative powers and financial resources are diverted to the two provinces that constitute it. The Province of Trento and the Province of Bolzano are equitable to regions in terms of authority (true and effective holders of autonomous power, while the region has become a body with a few residual functions35. The structure of this region is a variation of the hierarchy between the various levels of government.

![Intergovernmental Relations in Trentino-South Tyrol](source.png)

Figure 3: Intergovernmental Relations in Trentino-South Tyrol

The origin of the special institutional organization of the region Trentino-South Tyrol are routed in the Constitution of the Italian Republic, in force from 1 January 1948, in which Article 116 recognizes that Trentino-South Tyrol, together with four other regions, has special structures and conditions of autonomy according to a special Autonomy Statute (ASt) enacted by a constitutional law. The

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First Autonomy Statute of Trentino-South Tyrol was approved by the Constitutional Assembly through Constitutional Law No. 5 of 28 February 1948 and the first regional elections took place on 28 November 1948. In this phase, the autonomous powers devolved by the state to the region were less than those provided for in the Gruber-De Gasperi Agreement and were vested in the region (in which the German-speaking group continued to form a minority), which could then delegate powers (agriculture, crafts, commerce, etc.) to the two provinces, which only had a quarter of the regional budget. This system of organization suffered a crisis in the 1950s and 1960s, during which there were moments of opposition and strong tension, only finally reaching a solution at the end of the 1960s with the approval of a ‘Package’ of legislative and administrative measures (with an operative agenda for their implementation). With the statutory review of 1971, a new period of autonomy began, characterized by an intense review and extension of the implementation laws and by a strong recovery of the functions of government at the provincial level (with a notable increase in legislative and administrative powers) to the detriment of the region, which (together with a minimum nucleus of competences) only maintained a limited function in regulating some institutions that were common to both provinces.

In the second half of the 1990s there was a new phase of revision of the Autonomy Statute, which culminated in Constitutional Law No. 2 of 31 January 2001. This caused an enormous upset to the relationship between the region and the provinces by providing for the election of two provincial councils and no longer that of the regional council. Constitutional Law No. 3 of 18 October 2001 can be classified in the same way (amendments to Title V of the second part of the Constitution), as it confirms the special autonomy of the region with its new bilingual denomination (region Trentino-South Tyrol) and its special constitution (the region is made up of the two autonomous provinces: for the first time, the two autonomous provinces are named in the Constitution). Constitutional Laws No. 2 and No. 3 of 2001 therefore lay down the foundations for a redefinition of the strategic laws of the provincial legal system and a new phase of statutory reform.
This reform can only take place through the adaptation of the Autonomy Statute to the new constitutional principles regarding the regional and local legal systems.36

The organs that are named in the Autonomy Statute for the region and the province are the Council (and related presidents and vice-presidents), the Government and the President. The Council acts as a legislative organ (Art. 26 ASt); the Government as the executive or administrative body (Arts. 44 and 54 ASt); while the President is the organ of representation and political address (Arts. 40 and 52 ASt). The Regional Council is the electoral organ of the region, which has been accorded the exercise of legislative powers; however, regulatory powers have been taken away from it. It oversees the operation of the regional government, which is elected together with the president of the regional council internally by secret ballot and absolute majority (Art. 36 ASt).37 This normative body is one of the most significant parts of the special autonomy: it creates landmarks in the electoral system; for example, the necessary representation of the Ladin group and the requirements of the exercise of the right to vote, and today it relates to the election of the provincial councils. For this reason, it will be extensively discussed in the following pages. As a legislative body, is composed of 70 delegates, elected by the inhabitants of the region38. The number of delegates representing the two provinces is contingent upon their respective population.39 The characteristics that make the regional council - even symbolically - a sort of ‘condominium’ organ of the province is quite peculiar.40 The activity of the Council is carried in two sessions of equal duration in Trento and Bolzano;41 both Trento and Bolzano as being on an equal basis under the profile of territorial representation, where it is provided that the regional council is composed of the members presenting a equal representation of the linguistic groups through the mechanism of rotation of the top offices.42 The Regional Council elects the president and the two vice-presidents from its members. The president and the vice presidents serve a two and a half year period in their appointments; in the first 30 months of service the president is elected from the members of the council who belong to the Italian linguistic group. For the subsequent period, the president is elected from the members of the
council who belong to the German linguistic group and the vice-presidents are elected from those members belonging to a different language group to that of the president.43

The laws that regulated the elections of the members of the regional council prior to the recent reform of the Autonomy Statute were those laid down in the very same Article 25 of the Autonomy Statute, as well as the appropriate regional electoral law. The most important statutory provisions were the choice of the proportional electoral system, maintained by the Province of Bolzano, while in the Province of Trento the choice was passed over to the provincial council, which was to decide by a law passed with an absolute majority (it opted for the direct election of the provincial president). Also, the number of elected members of the regional council was set at 70; the necessary representation in the council of the Ladin language group was confirmed; and a requirement of residency in the provincial territory for an uninterrupted period in order to exercise one’s right to vote (four years in the Province of Bolzano and one year in the Province of Trento) is now required for both the active (right to vote) and passive (right to be elected) electorate. The allocation of electoral seats among the constituencies, according to the pre-reform electoral law, was calculated by dividing the number of inhabitants of the region (taken from the last general census of the population) by 70 and distributing the seats in proportion to the population of each constituency on the basis of complete quotients and the highest remainders - the D'Hondt method44. Voting takes place according to the list of candidates presented by the parties or political groupings in each of the two provinces. The reciprocal autonomy of the lists is useful to the special institutional organization of the autonomous region, where the members of the council are seated in both the regional assembly and the provincial council of the respective constituency that they belong to. Moreover, the Autonomy Statute of Trentino-South Tyrol conditioned and conditions the exercise of the right to vote (in the elections of the provincial council and in the elections for the municipal councils of the Province of Bolzano) upon the requirement of residence on the regional territory for an uninterrupted period of four years (Art.
This special electoral regime was and still is one of the important elements of the system to protect the ethnic minorities in the Province of Bolzano.45

The new arrangement that arose from the recent constitutional reform (the transition from the election of the regional council to that of the two provincial councils) has not resolved these doubts concerning the compression of electoral rights; however, it has raised new points to reflect upon. These include the requirement of an uninterrupted period of residence for one year for the right to vote in the Province of Trento and the compulsory assignment of a seat to the territory of the Ladin municipalities, a measure that shows a clear attempt to promote the representation of the Ladin-Dolomite linguistic group of Fassa, due to its prevalence in that territory.46

The most recent special element to result from the reform in electoral rights is the statutory provision that provides that in the Province of Bolzano each candidate must indicate the language group to which he/she belongs. 47 This law served as an important amendment to a prior regional law on the election of the regional council. It tended to introduce an electoral threshold to accede to the allocation of seats, stating that only those lists that had passed a threshold of 5% in the constituency of Trento could participate in such an allocation, while in the constituency of Bolzano the number of valid votes had to be at least equal to the natural quota.48

The provincial councils (of Bolzano and Trento) are the organs of direct popular ordination through elections.49 Under the system of statutory commitments, the Province of Trento, in Provincial Law of Trentino No. 2 of 5 March 2003, has regulated both the electoral system in the strict sense (the right to vote and passive suffrage, the regime of ineligibility and incompatibility, electoral procedure, calculation of seats, etc.) and the fundamental content of the formation of the provincial government (the constitution of the government, the status of the members of the government, fundamental relations between the statutory organs, fiduciary relations, etc.). The emergent electoral system is based on a quota system with compensation regarding the allocation of seats and provides for the following
cornerstones: a single constituency at the provincial level; a guarantee of the representation of the Ladin minority, when, as mentioned above, a seat is allocated to the list that has obtained the requisite number of overall valid votes in the Ladin municipalities.50

The Regional Government as an executive body is elected by the Assembly and must reflect the linguistic group composition of the legislative assembly. A particular element is the language requirements. For the first half of the five-year term the positions of the President and Vice-President of the Assembly must be members of the Italian and German language groups respectively, and from the German and Italian groups for the second half. The seat of the Assembly is in Trento for the first half and in Bolzano for the second. While the provinces of Trento and Bolzano (South Tyrol) enjoy the same autonomy, the latter has additional provisions regarding schools and education, culture, bilingualism, the right to use the mother tongue, and the ethnical proportions of employment. Because of these particularities, for this part (Case study Trentino-South Tyrol) only the Province of Bolzano will be taken into consideration. The President of the Region represents the region, presides over the regional government and is elected by the regional council within its members by secret ballot and by absolute majority. This organ intervenes in the sessions of the council of ministers, with questions that affect the region, although without the right to vote. Further functions of the president are the passing of regional laws and of regulations enacted by the government. These are both duties of the president. The powers of arrangement and the exercise of the activities of the government are characteristic in that they fully express the division by decree, to be published in the Official Journal, between the actual members of the council and the affairs that fall under the competence of the government. With the institutional weakening that the region suffered in the Constitutional Reform of 2001, there has been an affirmation in the current legislation of the conventional principle of alternating the two presidents of the autonomous provinces to lead the region. This is a political agreement between the provincial presidents approved by the regional council.
This choice determines the concentration of representative functions of the territory at the top only to the presidents of the provinces.

The Autonomous Province of Bolzano has an autonomy attributes to ensure and protect the cultural and linguistic development of both the cultural and linguistic development of both the Ladin and the German-speaking populations within the Italian State. The autonomy enjoyed is a territorial as well; all inhabitants of the province, regardless of origin, benefit from its self-governance. Its structure is laid out in the Autonomy Statute of 1972, which transferred the majority of the executive and legislative powers previously accorded to the region by the 1948 Statute, to the respective provinces. The fundamental aspects of the self-government framework are the proportional representation by language group in the provincial government and parity representation in the higher offices. The province has three governing organs (as the region). The delegates are the same representing the province in the Regional Council, and they elect the Provincial Government, which must reflect its linguistic group composition. The Presidency of the Government is composed of the President and two Vice-Presidents: one from the German and one from the Italian language group. The province has primary competences in most areas, concerning culture, social, and economic issues, ranging from the environment to place naming, and from education to handcrafts. Taxation, military, police and justice have remained under State control. An autonomous section for South Tyrol is contained in the Regional Tribunal of Administrative Justice. The members of this court must be equally representative of the Italian and German language groups and are appointed by the Provincial Council. The presidency alternates between the two language groups. The financing, together with the lingual and cultural elements, is among the areas in which the region stands out when compared to others. It is financed through the taxes paid by the inhabitants of the province. Moreover, it has a full independence with regards to budget appropriation or spending, something which is also lacking in other regions. The members of the provincial government of Bolzano are elected by the council within its members, by secret ballot with
absolute majority, and must be adjusted to reflect the composition of the linguistic groups as they are represented in the council. The consequence of this provision is the necessity to form a coalition every time with other parties whose members of the council belong to the other linguistic groups, even if a coalition party like the SVP\textsuperscript{57} reaches an absolute majority. Whenever a coalition is not possible, due to lack of accord on the coalition programme, an agreement must nevertheless be reached in order to guarantee the representation of the other linguistic groups at the heart of the government. In such a situation (which has never actually arisen), the presence of such linguistic groups in the government need not entail consequent political responsibilities, however, only ethnic representation. Art. 50 of the Autonomy Statute provides that the representation in the provincial government of Bolzano of the Ladin linguistic group may be recognized even to the detriment of exact proportional representation; moreover, the statutory reform introduced the possibility of electing government ministers who are not members of the council. These must be elected by the council with a majority of two thirds of its members on the proposal of one or more members of the council groups, on the condition that there is a consensus among the members of the linguistic group of the candidates but limited to the members that constitute the majority in the government.\textsuperscript{58} With regard to the functions of the provincial government, many of these are the same as those of the regional government, to which we have already referred; other functions, however, are more or less specific. One provision of particular relevance regards the power of oversight and protection of municipalities, public institutions of social security and welfare institutions, ad hoc consortia and other local bodies and institutes, including the ability to suspend and dissolve their organs according to the law and excluding only the adoption of extraordinary measures in this regard due to reasons of public order and referring to municipalities of more than 20,000 inhabitants (therefore, only Bolzano and Merano).\textsuperscript{59} To implement the Constitutional Reform of 2001, two years later, in 2003, the Provincial Council of Bolzano enacted Provincial Law No. 10, with an absolute majority. This law contained the ‘Provisions Regarding the Councils of
Municipalities’. This organ of representation of the local authorities is interpreted in terms of multi-level governance, where it is defined as an organ of consultation between the Autonomous Province of Bolzano/Bozen and the local authorities of the provincial territory; in other words, it is not directly situated within a provincial organ (president, government or council) but performs the function of consultation between the levels of government. In terms of composition, the council of municipalities is made up of 16 members, elected by the general assembly of mayors of the province, according to the criteria of linguistic proportions and representation of the territory of each involved; additionally, the president of the most representative organization of the local authorities of the provincial territory always forms part of the council of municipalities, in his/her capacity as president.

1.2.3 Euroregion

With the regional emancipation and involvement in the enactment of EC/EU law, the regions became increasingly interested and active in participating in the decision-making process, both at the European and the domestic levels (Woelk, Palermo, & Marko, 2008, p. 138). Regional participation in EU affairs, as well as the direct regional enactment and application of EC/EU law have been recognized in the constitutional reforms of 2001. Corresponding with the regional emancipation and their involvement in the enactment of EC/EU law, the regions became increasingly interested and active in participating in the decision-making process, both at the European and the domestic levels. This has pushed the process of further cross-border cooperation activities between the regions and especially when it comes to the case of Trentino-South Tyrol.

Levels and forms of cross-border cooperation are influences by internal (historical aspects, geographical and demographical dimensions as well as relationships with the central state) and external factors (social and economic situation of the respective regions). Both factors influenced the way that CBC between Tyrol (Austria), South Tyrol and Trentino developed. Historical aspects
and ‘old’ resentments prevented the establishment of an institutionalized form of CBC and thus led to the policy of establishing concrete initiatives and projects rather than creating a public law entity.\textsuperscript{61} Cross-border cooperation between Tyrol, South Tyrol and Trentino dates back to the end of World War II\textsuperscript{62}, and it is seen often as a concrete instrument to overcome the conflict but, on the other hand, also as a dangerous effort to establish an ethnically homogenous region or a kind of ‘mini-state’, where the national minority is gaining independence. In particular, the fear of creating an institutionalized entity established by Tyrol, South Tyrol and Italy, where the German-speaking population would represent the majority and which could be seen as the re-establishment of the old (until 1918) Austrian Land of Tyrol, led to the failure to institutionalize the Euroregion. Three phases are characterized: 1) International anchoring of CBC as a preparatory measure, ‘soft’ cooperation in the frame of two working communities including several alpine regions; 2) Initiatives concentrated on the three entities of Tyrol, South Tyrol and Trentino and aimed at institutionalizing a ‘Euroregion Tyrol’; 3) Negative attitude of national and regional representatives towards institutionalization impeded its full implementation, concrete and functional cooperation in certain areas replaced institutionalization as the guiding line.\textsuperscript{63} The perspective of Austria becoming a member state of the European Union\textsuperscript{64} and thus opening the possibilities for Tyrol, South Tyrol and Trentino to cooperate and use the funds and supportive means provided by the EU(INTERREG programmes); enhancing the will to intensify their cooperation. The final conflict settlement in 1992 opened the way for new perspectives and projects and, furthermore, in January 1993, Austria and Italy concluded a bilateral treaty implementing the Madrid Outline Convention and establishing a framework for CBC activities. In 1985, the Europa-Union-Tirol,\textsuperscript{65} which is a local association supporting ethno-federalism, has introduced the term ‘European Region Tyrol’ putting in position the question of self-determination for South Tyrol and the reunification of Tyrol by establishing an ethnically homogenous European region, representing a possibility to avoid future conflicts. A Draft Statute for a Euroregion Tyrol was presented in 1996, providing legal basis
for institutionalized CBC, however criticized by the Italian and the Austrian government, the Italian political parties and the South Tyrolean population.  This statute was rejected and the Euroregion was not established. In 1995, a joint bureau was created in Brussels; again an initiative criticized and contested by the Italian government. The representatives of Tyrol, South Tyrol and Trentino agreed in 1998 to adopt a Convention on Cross-border Cooperation in the Framework of a Euroregion. A ‘soft’ Euroregion was announced in 1998, between the three entities in various areas. The reactions, debates and fears from an institutionalization of a CBC are rooted in the legal (constitutional) analysis of the process itself. The question of state sovereignty and the function of state borders as barriers between different nation-states lost their significance due to recent processes towards regionalization and multilevel governance. Political and economic responsibilities are transferred to the sub-state entities and this is caused by the general trends towards decentralization and regionalization processes. In this regards, CBC activities constitute an important horizontal link between regions that are not necessarily neighbouring but are politically and socio-economically similar to each other.

None of the international law foundations for CBC are sufficient for the South Tyrolean context. EU Member states have exclusive competence in regard to the internal organization and distribution of powers between the various levels of governance. The EU regional policy, however, has a significant role in the development of this phenomenon with the financial support offered and the promotion of the CBC activities. This can be seen as an indirect influence to the members stated towards the improvement of the regions’ competences and collaboration with neighbouring regions, as it was outlined in Part I. For South Tyrol it became an advantage the period when there was the absence of constitutional provisions concerning external powers of the region (during the 1990s); this in term of the flexible evolution of CBC activities. This region has already some experience in cooperation.
As stated above, after the ratification of the Madrid Framework Convention on transnational co-operation (into force since 30 June 1985) a soil for further developments towards an Euroregion has been created. A series of common meetings and diplomatic conferences followed through the years, and at the end of 2009 the Presidents of the three lands inaugurated at Bolzano the Common office of the Euroregio Tirol - Südtirol/Alto Adige - Trentino. In October 2010 the Provinces of Bolzano and Trento, and the Land Tirol had sent to Rome, to the Presidency of the Council of Ministers a request for authorization of the establishment of EGTC-Group European territorial cooperation, in areas of common interest and thus to further strengthen cooperation between the three territories of the Euregio. In spring 2011 the government sent a green light for the participation in an EGTC under the name “Euregio Tyrol-Alto Adige-Trentino”, followed by a series of administrative and formal actions has been undertaken to give the official registration and launch of the EGTC. As under the EU regulation of 2006, this EGTC has a public legal personality, formed to facilitate and promote cross-border, transnational and interregional cooperation among its members.

1.3 ACCOMMODATING MINORITIES

According to the results of the census of 2001, there are 69.15% German speakers, 26.47% Italians and 4.38% of Ladins in South Tyrol. In the town of Bolzano/Bozen the composition is opposite: 73.00% Italians, 26.29% German speakers and 0.79% Ladins. Merano/Meran is the town where the balance between Italian and Germans is closest, with 51.50% German speakers, 48.01% Italians and 0.49% Ladins. Germans are a majority in almost all the municipalities, Italians are the majority in 5 municipalities and Ladins in 7 municipalities of Gröden (Gherdeina in Ladin) Valley and Badia Valley, with high percentages from 82% to 97%. Other expressions for the English name South Tyrol are “Südtirol” (German), “Sudtirol” (Ladin), “Alto Adige” or “Sudtirolo” (Italian). It is located in the north of Italy at the border to Austria and Switzerland and has about 476,000 inhabitants. Its population includes 69% German-speaker, 26% Italians, who are
especially situated in Bozen/Bolzano and Meran/Merano, and 4% Ladins, the oldest, smallest and most endangered linguistic minority group of South Tyrol.

The Gruber-Degasperi Agreement (as seen previously) represents a document containing a basic compromise in the case of South Tyrol, at the same time containing a *grundnorm*\(^7^4\) that establishes balances when it is most needed. This provision offers a concrete form of autonomy system respecting the unity and avoiding contradictions. The main elements of the agreement are quality and special rights in favour of the German-speaking population, as well as legislative and administrative territorial autonomy:

> "German speaking inhabitants of the Bolzano Province and the neighbouring bilingual townships of the Trento Province will be assured a complete equality of rights with the Italian-speaking inhabitants, within the framework of special provisions to safeguard the ethnical character and the cultural and economic development of the german-speaking element. In accordance with legislation already enacted or awaiting enactment the said German-speaking citizens will be granted in particular: (a) elementary and secondary teaching in the mother-tongue; (b) parification of the German and Italian language in public offices and official documents, as well as in bilingual topographic naming; (c) the right to re-establish German family names which were italianized in recent years; (d) equality of rights as regards the entering upon public offices, with a view to reaching a more appropriate proportion of employment between the two ethnical groups."\(^7^5\)

German-speaking inhabitants remain Italian citizens, however recognized as different and treated differently in order to guarantee their existence as a group. The compromise is obvious: the German speakers have to accept autonomy for their traditional area of settlement in Italy instead of a return to Austria. Italy has to renounce any attempt to assimilate this culturally and linguistically different group. Equality and non-discrimination are thus guaranteed but, at the same time and with a view towards the future, so are diversity and special measures in favour of the different group. The problem with this formulation is the balance and according to Woelk is “*that two at least partly contrasting principles are recognized, thus making a balance between both necessary in order to reach an equilibrium*” as “*a quite frequent phenomenon in constitutional law, where contradictory fundamental rights have to be balanced (as ‘unity of the State’ and ‘promotion of autonomy’)*".
1.4.1 Self-Government and Autonomy Rights

The Gruber-De Gasperi Agreement has been ‘translated’ into the Italian Constitution. Article 5, 6 and 116 represent the fundamental principles from the agreement and that is the minority protection and territorial autonomy:

Art. 5 - The Republic is one and indivisible. It recognises and promotes local autonomies, and implements the fullest measure of administrative decentralisation in those services which depend on the State. The Republic adapts the principles and methods of its legislation to the requirements of autonomy and decentralisation.

Art. 6 - The Republic safeguards linguistic minorities by means of appropriate measures.

Art. 116 - Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/Südtirol and Valle d’Aosta/Vallée d’Aoste have special forms and conditions of autonomy pursuant to the special statutes adopted by constitutional law. The Trentino-Alto Adige/Südtirol Region is composed of the autonomous provinces of Trent and Bolzano...

Article 5 recognizes the principle of unity and autonomy, article 6 gives special measures in favour of linguistic minorities and Article 116 establishes the five autonomous regions in Italy. On the other hand the autonomy statute of the region reflects as well the provisions of the Gruber-De Gasperi Agreement. Article 2 of the Autonomy Statute of 1948 recognizes equality of rights for all citizens, regardless of the linguistic group to which they belong, and respective ethnic and cultural characteristics. It is worth noting that instead of addressing German-speaking inhabitants (only), reference has been made to all citizens, this can be see partly because of the double nature of the Statute – territorial characters and protection of minority rights – since this region comprises two provinces with slightly different demographic characteristics (German-speaking minority, Ladin minority and Italian speakers are recognized and protected). The Autonomy Statute represents a complex and differentiated legal system, calling for a mix of rotation, parity and proportional representation; the main ingredients of the system are ‘power-sharing’ or ‘consociationalism’, which includes the diffusion of power from the centre to the periphery and comprises four main elements, all of which are present in South Tyrol (Woelk, Palermo, & Marko, 2008):

1. Participation of the representatives of all significant groups in the government;
According to the ‘Package’ compromise in 1969, the minority protection is a system of complex rules governing the cohabitation of the three linguistic groups. Power-sharing and sophisticated balances between contrasting principles are the main characteristics. Parity or equality is balanced by proportionality and the personal principle (protection as group members) is balanced by the territorial principle (the special status of the region and province). Statute’s dual nature, according to Woelk, is best illustrated by the example of the provisions on the use of language; framed as individual rights, formally reserved to the members of the minority group.\textsuperscript{76}

A combination of both principles is evident in the public administration and the system of proportional representation. The balanced combination of individual and group rights and integration is seen as necessary basis for making autonomy functional, and this should be achieved (Woelk, Palermo, & Marko, 2008).

A peculiar feature of the South Tyrol autonomy is the quota system.\textsuperscript{77} The system foresees that German, Italian and Ladin speakers shall be considered in certain fields according to their numerical strength inside the population. It is based on the Gruber –De Gasperi Agreement, transferred to the Autonomy Statute consequently:

"[t]he posts [in state offices in the Province of Bolzano] shall be reserved for citizens belonging to each of the three linguistic groups in proportion to the numerical strength of those groups, , as evidenced by statements made in the official census of the population",\textsuperscript{78}

Besides the provisions of the Autonomy Statute, the quota system is based as well on the Quota Decree No. 752 of 26 July 1976\textsuperscript{79}. It has been foreseen a system of gradual implementation. After the entry into force of the Decree the vacant places were filled up with German or Ladin speakers, in order to reach a proportional representation of the different linguistic groups. In cases where it was not possible to fill the vacant with a qualified candidate belonging to the group
for which the post was reserved, the post was given to the most qualified candidate of one of the other two linguistic groups. This latter group, however, has to return such ‘off-quota’ granted jobs during one of the subsequent selection procedures. This system is applicable also in regards to the allocation of financial resources, and as well as to the composition of certain political organs. In the cultural sphere, resources are distributed according to the quota. The respective share is administered separately by offices for the German, Ladin and Italian cultures. The application of the quota is present, as well, for the proportional representation of the various groups in different political bodies. As the principle of power sharing followed by the autonomy model, the mechanism should guarantee the participation of the underrepresented linguistic group also in the executive organs.

The legal tool used in the quota system, to identify the membership of a certain linguistic group is the declaration of linguistic affiliation or aggregation, linked to the general census of the population. In regards to the application for a vacant place in public administration, a deposit of an envelope containing the declaration of affiliation to a certain group is a ‘prove’ of one’s affiliation status. The modifications of the Quota Decree assure more than the former the secrecy of the declaration, in order to respect the fundamental right to privacy in regard to such a sensitive issue. The Declaration is consisted of forms in three copies. The first is the personal declaration (the Court of Bolzano/Bozen and its detached offices keep all nominal declarations in sealed envelopes). The second is anonymous and collected by the secretariat of the municipality and then transmitted to the provincial office of census for the calculation of the statistical strength of each linguistic group. The third copy is a copy that remains with the person who has provided the declaration. There is a distinction between the first and the second copy in terms of the validity. According to the last modifications of the Decree the personal declaration (first copy) is valid until the person wants to change it. Five years after the delivery, it can be modified by at any time and takes effect two years after the new delivery. In the Declaration form there are four options on which the person declares the affiliation of a linguistic group: 1)
German linguistic group; 2) Italian linguistic group; 3) Ladin linguistic group; and 4) Other. The fourth option states as follows:

“I declare that I do not belong to any of the foregoing language groups, to be “other”, and aggregate (for the purpose of determining the proportion of consistency groups) by ticking one of the boxes below...” 87

Those who do not believe that they belong to any of the three linguistic groups may declare so by crossing the option “other” but they must then nevertheless choose to be ‘aggregated’ to one of the three linguistic groups in order to be allowed to take advantage of certain rights that are granted to the three linguistic groups. In the case of the electoral law, the functioning of the local councils (region, province and municipalities) is closely linked to the possibility of identifying the linguistic affiliation of elected persons; thus, the duty to declare one’s affiliation before the elections is a duty for every candidate.

The Advisory Committee to the Framework Convention for the Protection of National Minorities (ACFC) expressed its concern about the declaration’s compatibility with Article 3 of the Framework Convention, considering that “[f]ailure to declare one’s linguistic affiliation has clear disadvantages” since it means that the person concerned is unable to exercise the right to run for elections. It recommended reviewing “this matter to identify methods fully keeping with the right of every person to choose to be treated or not to be treated as someone belonging to a minority”. 88

1.4.2 LANGUAGE RIGHTS

According to Cristina Fraenkel-Haeberle, for anyone living outside South Tyrol, it might be difficult to understand the heated debate that sometimes reaches the first pages of the local newspapers concerning linguistic rights and, more recently, the use of toponyms, especially in a Province (and therefore in a Region) where there is a full employment and economic well-being reign. The issue concerning the use of language came to the front with South Tyrol’s annexation to Italy after World War I. The denial of linguistic pluralism and the disregard of the presence of linguistic minorities on Italian territory therefore became almost
imperative at the end of the nineteenth century, considering that the primary goal was to streamline communication within the unified state.89 A much more radical linguistic nationalism operated during the twenty years of fascism.90 The population occupying the Italian territory was assimilated in terms of linguistic profile. Once the war was over, in the shape of a constitutional law and reinforced by an international agreement, became the conduit for consolidating tolerance and linguistic pluralism. The Paris Agreement6 of 5 September 1946, holds the foundations of the principles that would generate the subsequent regulation of the use of language in South Tyrol. In Article 1, the Paris Agreement starts by announcing that the

"German-speaking inhabitants of the Province of Bolzano [. . .] will be assured a complete equality of rights with the Italian-speaking inhabitants within the framework of special provisions to safeguard the ethnical character and the cultural and economic development of the German-speaking element".

According to the Autonomy Statute (ASt), German language is on a par with Italian. German-speaking citizens of the Province of Bolzano/Bozen are also granted the right to use their own language in their relations with judicial authorities and with other public administration bodies and offices located in the province and with regional powers, as well as with the companies with concessions to provide public utility services in the same province. As a general rule, for the public administration, a separate use of one or the other official language is established, and therefore of documents in a single language, with the exception of statutorily bilingual deeds. Consequently, when the public administration answers the citizen in writing, it must use the language employed by the applicant.91 The Official Journal of the Region also contains the German version of the laws and decrees affecting the region. The use of the Italian language alone is instead granted within the military sphere (Art. 100, para. 4 ASt). An exception is limited in case of internal communications.92 A heated debate was caused, however in the case of the implementation of the statutory regulations regarding the use of language in relations with judicial authorities. The issue at stake concerned whether trials were to be conducted in a single language (Italian or German) or in
both. A compromise is settled with a substantially single-language trial mitigated by two important facilitations: the defending counsel may elect to participate in a language different from that of the trial and the right to change language at all stages of jurisdiction. As a general rule, criminal proceedings are conducted in the language chosen by the defendant. From the moment of his/her first contact with the judicial authorities or with the police, the defendant is asked to state his/her mother-tongue. The trial is bilingual only in the presence of co-defendants of different languages or when the party joining prosecution as plaintiff chooses the other language. Civil proceedings are governed by a small number of provisions. It should be noticed that trials are conducted in a single language when the summons and the statement of defense are drafted in the same language; otherwise, it is bilingual. There is also the possibility, expressly introduced by Legislative Decree No. 283/2001, of transforming a bilingual trial into a single-language trial.

The toponymy issue has been a delicate question for the South Tyrolese for almost a century, ever since the Italian translation of place names was made official by Royal Decree No. 800 of 29 March 1923, which adumbrated the official names of the municipalities and other areas annexed to Italy. In this regard, as already mentioned, the Paris Agreement of 1946 stated the right to use the bilingual topographic nomenclature. Subsequently, Article 8 of the Autonomy Statute attributed to the province exclusive legislative powers on “place names, without prejudice to the requirement for bilingualism in the territory of the Province of Bolzano”:

“...the public administration must use German place names in relations with German-speaking citizens if provincial law has confirmed their existence and approved their idiom...”

Another aspect of the language rights in South Tyrol is apart from their individual protection as seen above, is their collective protection:

If a proposal for a law is determined to be detrimental for equality of rights between citizens of different language groups or the ethnic and cultural groups themselves, the majority of the councilors of a linguistic group in the Regional Council or in the
Province of Bolzano may request that a voting is made according to language groups.\(^98\)

In this case, the majority of a linguistic group is entitled to ask for separate voting by linguistic groups within the Regional or Provincial Council of Bolzano. A linguistic group is entitled to contest the law by collective appeal to the Constitutional Court when the request for separate voting is rejected by the Council or when the Council accepts the request but the law is approved with the contrary vote of at least two thirds of the members of the linguistic group making the request.\(^99\) This represents an ‘affirmative action’ that puts the linguistic groups in South Tyrol on equal, no matter what their size is.

### 1.4.3 Education, Culture and Media

Instruction in native language in public schools in South Tyrol, dates back from the Paris Agreement of 1946 as a right for a native-language elementary and secondary school instruction and as well a right to use either German or Italian in public offices and in official documents and place names, is specially delineated. The Autonomy Statute delineates educational powers and linguistic protections. A fundamental principle of South Tyrol’s autonomy is that elementary and secondary education be provided in the mother tongue of the child.

*In the province of Bolzano, teaching in kindergartens, primary and secondary are taught in Italian or German mother tongue of the pupils by teachers for whom this language is also the mother tongue. In elementary schools, starting from the second or third class, as may be established by provincial law binding on the proposal of the linguistic group concerned, and in secondary education is compulsory in the second language that is taught by teachers for whom this language is their native tongue.*\(^100\)

The Autonomy Statute establishes two separate and parallel school systems, with preschool, primary and secondary pupils taught in their mother tongue (be it Italian or German) by teachers of the same language. Solely in the case of Ladin-language schools, it provides for instruction on equal terms in the German and Italian languages alongside the use of Ladin as a language of instruction.\(^101\) The provinces have legislative control over kindergartens, school construction, professional education and vocational training. Instruction in South Tyrol is given
in separate German and Italian schools. Language instruction in the second language of the province is mandatory. All teachers must be native speakers of their teaching language. Ladin is taught in kindergartens and elementary schools; however, German and Italian are mandatory. Parents are able to choose the school system that they would like their children to attend; a child can be refused only because of insufficient knowledge of the language of instruction in order to guarantee the character of the school and the efficiency of the lessons.\textsuperscript{102} School administration is under the authority of the province.\textsuperscript{103} After decades-long discussions, in 1997 the Free University of Bolzano was founded. The university is one of the first institutions in the cultural sphere that caters to all three language groups.\textsuperscript{104}

The German school has been the core of language policy in South Tyrol (since the re-establishment of German-language instruction in 1943). In the Italian language group, initiatives promoting second-language education in schools have risen significantly over the last 15 years. German-speaking parents show greater interest in promoting the second language, while Italian-speaking political representatives are more interested in promoting the second language than the parents they represent. One thing that they share in common is a significant interest in promoting the English language (Woelk, Palermo, & Marko, 2008). The German-speaking group is the majority in 103 of 116 municipalities (with more than 90% of the population in 80 of them and an 80% majority in the remaining), excepting Meran (50.46%), Auer (70%), Brixen (72%) and Sterzing (75%). The Ladin language group holds the majority in eight municipalities (those in the Ladin valleys), while only five have an Italian-speaking majority: Bolzano/Bozen (72.59%), Leifers (69.34%), Salurn (61.31%), Branzoll (59.96%) and Pfatten (57.87%). 89,300 mother tongue Italian speakers live in these five municipalities, while 22,800 more live in the cities of Meran, Sterzing, Brixen and Bruneck. The remaining portion of the Italian-speaking population (13,814 people) is distributed throughout the larger towns, particularly Franzensfeste and Schlanders, as well as the Unterland area.\textsuperscript{105}
It can be said that the relationship between the Italian and German language has changed in favour of the German language as increasingly dominant. The problem of learning German language by the Italian population has become acute. In the economic life, knowing German language has become a determining factor, as the Italian language is no longer sufficient to find a desirable employment (in private sector in specific). In the public sector, the situation is slightly different since it is established a bilingualism as a prerequisite for employment in public sector. This cannot be said for the Ladin-language schools, which take a different position, calling for equal representation and trilinguism. The adoption of Legislative Decree No. 12 of 2000, which assigned the schools’ didactic and financial autonomy and legal character, opened a possibility to use resources for second-language instruction of German. The Legislative Decree No. 61 of 29 April 2003 also adopted “development guidelines for German as a second language at the Province of Bolzano/Bozen’s Italian-language high schools”, in order to establish a hermeneutic basis for second-language instruction at the high school level. Schools in Ladin areas have remained unaffected by all these measures; in these schools, in the context of their equal representation, proper bilingual instruction (German and Italian) was realized and furthered intensively by new didactical procedures such as integrated language didactics.

In regards to the cultural rights and preserving of cultural heritage, the province retains full legislative control in respect of the preservation and safeguarding of the province’s historic, artistic and cultural heritage. It may enact laws in respect of local customs and usage, and cultural institutions of provincial interest, as well as local artistic, cultural and educational performances and activities. In regard to culture, the Italian-, German- and Ladin-speakers enjoy group protection. Each group protects and promotes its cultural characteristics through their own cultural office, their own schools and proportionally allocated financing. The financial resources for culture are divided into three portions, in relation to the three cultural and linguistic groups on the territory, and
administered separately.\textsuperscript{108} There are three administrative entities with three different ministers in the provincial government.

Another aspect of minority rights’ protection is the access to media in their own language. To provide access to complementary information, in addition to press, radio and television in the Italian language, two different strategies have been applied: making foreign media in the German language accessible in South Tyrol and domestic media in the German language. German-, Ladin- and Italian-speakers have excellent access to media and culture in their respective languages.\textsuperscript{109} The media tend to follow the principle of ethnic division. There is a tendency to strongly privilege the reporting of and on one’s own language group.

1.4.4 SELF-REPRESENTATION RIGHTS

The brief history of South Tyrol can be described as the constant experimentation of a community characterized mainly by two factors: identity and territory, around which a third one arises and that is the government and, more generally, the institutional arrangements.\textsuperscript{110} A plurality of internal and external parties and plural identities are combined with the sharing of common autonomous governmental institutions, which are modelled accordingly and decisively.

South Tyrol seen as a 'case study' is a phenomenon worthy of study and being studied for years by international doctrine. Quasi artificial buoyancy of the constitution of autonomy with regard to testing the institutional autonomy and the social experience itself: it is now fitting out that this character is presented as a function of the plurality of cultures, the sharing of land and autonomy, on the political guarantees of consociational democracy, the balance of the groups in the institutions created through the appropriate judicial guarantees and partial forms of internal self-government language groups, the availability and use of internal and external negotiation method, the practice self-determination/self-government. The first strong fact that expresses the content of this case study is due to the structure of the three-pole autonomy and two autonomous provinces of Bolzano and Trento, the structure which has an apparent anomaly about the
correspondence between *nomen juris* of institutions and the respective substantial nature, as each of the two Provinces is reality an autonomous Region and the Region itself represents, in the Italian legal order, an institution, completely atypical.

The three-pole structure was confirmed by transforming the Regional Council of Trentino Alto Adige in a representative body of second degree, the composition of which is now derived from the two Provincial Councils which become recipients of a single direct election's legitimacy, thereby formalizing realistically the institutional outlook and its legislative powers (in particular, in electoral matters) the effectiveness of the existence of two distinct political systems.

In Part I, the core elements and features of the model of consociational democracy (associated with Lijphart) were illustrated. In this sub-chapter, it is going to be shown how the South Tyrol’s political system corresponds to the model. The model reduces political competitiveness and the majority principle, emphasizing cooperation among the (language) groups, in order to have a distribution of political power that partly is reflected in election results. The model comprises cooperation of different parties and political groupings, veto power of minorities and consensus of elites.

As basic elements of the consociational model in South Tyrol are: 1) the relationships between the elites of the German (and Ladin) and the Italian language group; 2) the international safeguards and; 3) the relationship between Italy and South Tyrol.\textsuperscript{111} The procedural autonomy design includes all language groups; it proved its value also in the relations between the state and the province. Based on the procedural institutionalization of institutions and for a in charge of conflict resolution, this model also shapes the substance of the autonomy. The so called ‘quota system’ (explained before) is an element which is trying to achieve a balance between the three existing language groups in South Tyrol (allocation of vacancies, financial sources, public welfare, culture, education system). The system
is put into practice as well as in the case of the composition of political bodies as well as in the composition of all commissions governed by public law. The principle of alternation is followed, however, in the case of the institutional representation. The model for the elites stands in relation to the ethnic division of South Tyrolean civil society. The political parties in South Tyrol are organized by an ethnic division. The German-speaking parties do not compete with the Italian-speaking parties. Hence, in South Tyrol, two political arenas exist, separated by ethnic cornerstones. Whereas the German parties are pro-autonomy (SVP) or separatist parties (Union für Südtirol), the Italian party panorama always reflected the national situation. At the national level, eight relevant parties competed during the so called ‘first republic’ (1948–1992). At the national electoral level, regional German and national Italian parties seek arrangements and compromises to better represent their interests. In South Tyrol, the political climate is characterized by an alternating incitement resulting from the ethnicity question, on the one hand, and the interethnic normalization process, on the other hand. Even if there is a kind of ethnic standstill, one can observe how ethnic tension is used as a potential mobilizing factor for promoting one’s own aims. In the table below we can see the distribution of seats according to affiliation of a language group in the Provincial Council of South Tyrol. This is solely to depict a general image of mandates’ allocation.

The existing ethnic fragmentation certainly has also consequences on the distribution of financial resources. Through the ethnic quota system, two dimensions are identified: vertical and horizontal.

A right to vote to a person is giving upon the conclusion of four years of residence in the Province of South Tyrol (one year in Trentino). The right to vote in South Tyrol is not limited to a specific number of German- and Italian-speakers. The citizens from other EU member states residing in the province have the right to vote at the municipal level. EU citizens have to be treated equally, which may cause incompatibilities that may often only be resolved by privileging them. Different treatment of Italian citizens from other provinces does usually neither
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contrast with EU law nor—in cases of public interest and justification as a proportionate measure—with domestic Italian law (e.g., the equality principle). 118

Table 3: Distribution of Mandates according to Language Groups in the South Tyrolean Provincial Council 2003 and 1998

<table>
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<tbody>
<tr>
<td>Südtiroler Volkspartei (South Tyrolean People’s Party, ethnic catch-all’ Germanspeaking party)</td>
<td>20</td>
<td>1</td>
<td>3</td>
<td>21</td>
<td>3</td>
<td>3</td>
<td>+1</td>
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<tr>
<td>Alleanza Nazionale (National Alliance, Italian right-wing party)</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td></td>
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<tr>
<td>Grüne-DPS (Green Party)</td>
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<tr>
<td>Union für Südtirol (German right-wing party militating for self-determination)</td>
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<tr>
<td>Die Freiheitlichen (German nationalism liberals)</td>
<td>2</td>
<td>1</td>
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<tr>
<td>Pace e Diritti (Italian left-wing party)</td>
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<td>1</td>
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<tr>
<td>Unione Autonomista (Italian centre)</td>
<td></td>
<td></td>
<td>1</td>
<td>2</td>
<td>-1</td>
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<tr>
<td>Forza Italia (Italian centre-right party)</td>
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<td></td>
<td>1</td>
<td>1</td>
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<tr>
<td>Unitalia (Italian right-wing party) Ladins</td>
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<td>Alternativa Rosa (women’s party)</td>
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<td>1</td>
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<td>Comunisti Italiani (Party of Italian Communists)</td>
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<td>Lega Nord (Northern League)</td>
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<tr>
<td>Total</td>
<td>27</td>
<td>1</td>
<td>7</td>
<td>25</td>
<td>1</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>%</td>
<td>77.1</td>
<td>2.9</td>
<td>20.0</td>
<td>71.4</td>
<td>2.9</td>
<td>25.7</td>
<td></td>
</tr>
<tr>
<td>Proportional quota according to the census</td>
<td>69.2</td>
<td>4.4</td>
<td>26.5</td>
<td>68.0</td>
<td>4.4</td>
<td>25.7</td>
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</tbody>
</table>


All language groups have to be proportionally (according to their size in the provincial assembly) present in the provincial government due to the basic principle of consociational democracy, a principle partly implemented because of the existence of the principle of majority and the absence of an absolute veto power in decision-making processes in the fields of competence of the individual language groups, which rule in the South Tyrolean provincial government. The
South Tyrolean party system is characterized by a centrifugal dynamic, which tends to place emphasis on the antagonistic poles being focused politically on the autonomy. Günther Pallaver sees the continuation of this tendency as a core of the tense relationship between the extreme wings of the system, the anti- and semi autonomy-parties, and the autonomy parties, becoming tenser and tenser. the worst scenario could be the breakup of the autonomy. “The relationship between the members of the three language groups was tense and marked by conflicts, with the expansion of the protection of minority right, the consolidation of the German- and Italian-speaking minorities and the economic transformation that changed the status of the once oppressed minority into a dominant one, the model of strict separation among ethnicities is becoming increasingly criticized and questioned within civil society.” According to Günther Pallaver, the educational background plays a central role in all these questions. a more positive approach to the other language groups can be accomplished by a higher education – the level of knowledge of the second language for example – which increased positively in the last decades, especially among the Italian-speaking South Tyrolese. 119

An outline of the elements of the model of minority rights’ accommodation in South Tyrol will be presented in line with the comparative analysis in Part III of this research work.
ENDNOTES

1. See Appendix I.2.1 for official statistics.
3. Article 6 - “The Republic safeguards linguistic minorities by means of appropriate measures.”
4. 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.”
5. 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.”
6. 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.”
7. 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.”
8. Article 2 - “The Republic recognises and guarantees the inviolable rights of the person, both as an individual and in the social groups where human personality is expressed. The Republic expects that the fundamental duties of political, economic and social solidarity be fulfilled.”
9. “La Repubblica tutela la lingua e la cultural delle popolazioni albanesi, catalane, germaniche greche, Slovene e croate e di quelle parlianti il francese, il franco-provenzale, il friulano, il ladino, l’occitano e il sardo”.
10. Article 11 para 1 - In regions with special status to the application of more favorable provisions under this Act is governed by rules of implementation of the respective statutes. The regulations regarding the protection existing in the same regions with special status and the autonomous provinces of Trento and Bolzano. Para.2 - 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.”
11. 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 Palermo is as “devolutionary asymmetric federalism in the making”. See (Woelk, Palermo, & Marko, 2008)
12. As to finances, each special region has a different agreement with the state, mostly regulated in its respective regional autonomy statute. In general, all financial arrangements are very generous towards the special regions compared to the others. In particular, the Aosta Valley, Trentino and South Tyrol are practically excluded from the nationwide grants-in-aid system, meaning that they receive back from the state almost all the revenues directly or indirectly collected in their own territory.
13. The Provinces, whose role is generally inferior to that of the regions represent the third level: their importance has decreased since the 1970s, when both regional and local empowerment were carried out at their expense. There are also the municipalities, whose status as the closest level of government to the people has made them in core of Italian local government.
15. The Italian name is Alto Adige, the Austrian name is Südtirol and the English version is South Tyrol, used hereafter.
16. The years between 1700 and 1800 the Region was under the enlightened rule of Maria Theresa of Austria and her son Joseph II, while greatly reducing the traditional administrative autonomy that characterized hundreds of years of history, leading to a series of reforms, most notably the introduction of compulsory education, improving significantly the living conditions of the population. In 1796 Napoleon’s army invades Trent, who will return to Austria a few years later before moving to Bavaria under the peace agreements of Pressburg in 1805. The annexation to Bavaria in 1809 triggered a popular uprising led by Andreas Hofer, who led a team of farmers from the entire region, to get unexpected successes against the Franco-Bavarian troops engaged in the war undertaken by Austria for the reacquisition of the lost territory. Although the region will be part of the Austrian domains only with the efforts at the Congress of Vienna in 1815. The history of Trentino-South Tyrol continues without major shocks until 1848 when, following the nationalist
movements that raged across Europe, the people went out on the streets in Trento and Rovereto and asked for autonomy from the bonds of the territory of Austria in favour of the Italians. See Cenni di Storia: Il Trentino-Alto Adige attraverso i secoli dalle origini all’autonomia, retrieved from http://www.regione.taa.it/Storia.aspx.

17 Autonomous Province of Bolzano-Bozen, Astat, ed., Statistisches Jahrbuch für Südtirol 1998, (Bozen: La Nuova Grafica Ponticelli, S.a.s., 1998). The repression, carried out mainly against the German-speaking South Tyroleans continues until 1939, the year that sees signing the agreement between Mussolini and Hitler closely related to the infamous “options”, the obligation for residents of German and Ladin language origin to choice for a transfer in the Reich or the total abandonment of their ethnic identity.

18 As a framework agreement it is, above all, a very short text: only two pages and a mere 313 words. However, the principles laid down in September 1946, which had to be filled with detailed substance for implementation, were not only the starting point for the process leading to today’s autonomy but also an important point of reference against which to maintain course during a (long) process. Jens Woelk, from today’s perspective, sees this agreement as an innovative response to a conflict for two reasons: firstly, because instead of assimilation or expulsion of a national minority in order to create a homogenous population, the protection and autonomy of the minority-group were agreed upon; and, secondly, because of the modern method of addressing the controversy between host-state and kin-state bilaterally, giving the kin-state a (positive) role in the process, thus creating confidence and trust. See Woelk, Jens, “Individual and Group Rights in South Tyrol” in (Woelk, Palermo, & Marko, 2008). See Appendix I.1.2.

19 The territory was an issue at the birth of the term “self-determination”, in Woodrow Wilson’s Fourteen Points, and at the WWI Peace Conference. In a speech before Congress on 8th of January 1918, President Wilson announces his 14 points for a new and more peaceful world, which were to serve as the basis for a just peace settlement following WWI. On these occasions the case of South Tyrol served as an example of a violation of self-determination and of the ease with which the principle was dismissed in the face of more “compelling” factors: the will of the people and their national, lingual and cultural binds to Austria were ignored. See James Brown Scott cited in Magliana, M. (2000).

20 Austria had attempted to regain the region through a referendum or simply by virtue of the right to self-determination, yet these requests were rejected due to other factors.

21 The Italian interest in the annexation of the South Tyrol, to some, can be traced back to the late 19th century. A primary argument was founded upon the "Wasserscheide" theory elaborated in 1890 by two Italian geographers, Giovanni and Olinto Marinelli, claimed that the Brenner represented Italy’s natural water boundary with the Adriatic on the one side and the North Sea and the Black Sea on the other. See Mario Toscano cited in (Magliana, 2000). This theory has been questioned; it has been argued that Italy did not look upon the Brenner frontier as a primary goal, but rather as a bargaining tool to be used for the acquisition of more desirable territories (in the Adriatic). Italy was prepared to withdraw its claim to South Tyrol because of the problems associated with the necessary assimilation of the German population, but subsequently reconsidered in order to use it for the eventual support of other claims. See Viktora Stadlmeier cited in Magliana, M (2000) op.cit. Whether South Tyrol represented a priority for Italy, or whether it constituted a poor compensation for other unfulfilled claims is unclear.

22 Alcide De Gasperi was an Italian politician. First member of the Italian People's Party and later founder of the Christian Democrats with his written ideas reconstructive Christian Democrat, was the first President of the Council of Ministers of the Italian Republic. Is now considered one of the fathers of the Republic and, together with Robert Schuman, Konrad Adenauer, the German and Italian Altiero Spinelli, the founder of the European Union.


24 The population (of German-speaking origin) reacted with protests and in 1956, with the first demonstrative bomb attacks on symbols of Italian rule. The situation steadily worsened in late-1950s and in January 1959 the South Tyrolean Peoples Party (SVP) discontinued it cooperation in the regional assembly. In 1956, the Austrian foreign ministry notified the Rome Government of its concern for the German speaking minority living within Italy and requested that talks be held to resolve the issue. The Italian Government refused, claiming that the existing autonomy fulfilled the requirements stated in the Paris Peace Agreement
and that consequently, Austria was no longer in position to get involved. In reference to the protests, till this day, they are a subject of discussion. Depending on the point of view, the citizens protesting have been called ‘freedom fighters’, ‘idealists’, ‘patriots’, ‘South Tyrolean activities’, ‘bomb throwers’, ‘terrorists’ and so on. The bombings’ period can be divided into two phases: the first lasting till 1961 and the second till 1969. For more see Steininger, R. (2003). *South Tyrol: A Minority Conflict of the Twentieth Century*. London: Transaction Publishers at 123. Sepp Kerschbaumer was a leading member of the South Tyrolean Liberation Committee (Befreiungsausschuss Südtirol (BAS)) which campaigned for the break-away of South Tyrol from Italy. See Felici, A.L. (ed.) (2011). Sepp Kerschbaumer. South Tyrolean Liberation Committee, South Tyrol. SALV. On 11 June 2011 were celebrated 50 years of the “Night of fire”. See “FPS – Feuernacht 1961: politisch korrekte Geschichtenerzählung”, Südtirol News Achieve at http://www.suedtirolnews.it/d/artikel/2011/06/08/fps-feuernacht-1961-politisch-korrekte-geschichtenerzaehlung.html.


27 If, however, these negotiations should not be successful within a reasonable amount of time, the resolution admonished both treaty signatories to make use of ‘peaceful means’ provided for in the UN Charter, including the referral to the International Court of Justice. The UN General Assembly session of 1961 returned to the issue but merely referred the parties back to the resolution adopted a year earlier.

28 The UN resolutions, with their minimal content (simply encouraging bilateral negotiations and suggesting the use of the International Court of Justice), lack of direct intervention or predefined solutions, were, retrospectively, a very suitable instrument: on the one hand, they put pressure on the parties involved to negotiate and compromise; and, on the other hand, they led the parties to find a solution on their own instead of imposing one, thereby rendering the process and the resulting outcomes increasingly more stable. The settlement of the South Tyrol dispute before the UN – according to some – was foreseen by various factors, including events taking place at international level such as the crisis in the former Yugoslavia and the claim of self-determination by Croatia and Slovenia (which renewed the debate on self-determination in South Tyrol. See Medda-Windischer, Roberta in 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.

29 After the UN resolutions to South Tyrol, the benefits were not perceived immediately by the South Tyrolean population. Culmination effects were present caused by the people’s anger with their situation, dozens of explosion of high voltage power lines, infrastructure and remembrances of the fascist period were carried out, in order to obtain international attention and raise awareness.


31 Protection of local institutional autonomy and of the integrity of the local linguistic groups in particular; provincial autonomy and the German speaking group; provincial autonomy is recognized symbolically in the change of the official name of the Region to include the historic German language name of the Bolzano Province, Südtirol.

32 It was necessary, however, an approval by all three parties. While this was easily achieved in Italy and Austria, it posed a problem in South Tyrol, where it was ratified by the South Tyrolean Peoples Party with a slim majority of 52.8%.

33 As South Tyrol’s kin state—or, following Austria’s own definition in this context, ‘protecting power’—Austria has always had an interest in following the situation of its kin group living, since the aftermath of World War I, in Italy, immediately beyond the border. After World War II, with the signing of the State Treaty in 1955, Austria regained its sovereignty and the freedom to act on its own in foreign policy matters. At this point, South Tyrol became over the next several years one of the central issues of Austrian foreign policy, in particular as a result of massive pressure from Innsbruck. See Roberta Medda-Windischer in Woelk, Palermo, & Marko (2008) op.cit.

34 A model invented by the Spanish Republican Constitution of 1931. Especially since the 1990s onwards a strong factual, economical and political asymmetry among the ordinary regions has emerged, mirroring the cultural and economic divide between the north and the south of the country. The regions are increasingly relevant in political discourse, regional politicians play a much bigger role in national politics than before and
the regional economies and are crucial to determining national welfare. The constitutional reform of 2001 took into account the ‘differential aspirations’ of the regions.

35 The Region’s competences are few, and concern only matters of common interest to the two provincial populations, as well as matters that cannot be divided up between the provinces.


37 The laws that regulated the elections of the members of the council, prior to the recent reform of the Autonomy Statute, were those established by Article 25 of the Autonomy Statute, as well as the appropriate regional electoral laws. This law and its successive amendments, collated in a unified text in 1987, provides for the implementation of the electoral laws provided in the same statute.

38 In order to vote for the election, a residency of 4 years is required.


41 Article 27 of the AST

42 Article 25 of the AST

43 Art. 30 AST. Moreover it is true that the main functions of the regional council (the election of the president of the regional government and legislative power) were formally safeguarded by the reform (if we look at Art. 60 AST). However, it has definitely been reduced to an almost accessorical nature. So much so that there is no provision for the event that the regional council should become incapable of forming a majority, in stark contrast to the sanctioning of an early dissolution foreseen for each provincial council in the same situation, 90 days after the election (Art. 47 para 2 AST). This means that the entire legitimization of trust at the regional level now has its origins in the political and institutional dynamics that take place internally within the provincial councils.


45 The Constitutional Court upheld the provision, actually citing the principle of protection of minorities, considering that the statutory text would evidently be effective in preventing, through last-minute hasty and false electoral roll inscription, the “thin[ning] out” of the German and Ladin language minority groups Constitutional Court Judgment No. 240 of 1975.

46 Thus, for the Province of Trento, a criterion for the protection of minorities based on territorial rather than personal characteristics was chosen, unlike the protection of the Ladin linguistic groups in the Province of Bolzano.

47 The Supreme Court intervened on this point, especially regarding the terms upon which such a declaration must be made. It decided that a candidate who had not made any declaration regarding his/her language group in the regional Council elections of 21 November 1993 should be excluded. The question put to the Court was to clarify if the citizen “who had fulfilled all the other requirements requested by the regional laws and had indicated the language group he belonged to in the declaration of acceptance of the candidature, but had omitted on the general census of the population to declare if he belonged or was associated with one of the three language groups” had less right to be a candidate in the elections for the regional council. The argument used to decide on this point of law was taken from the jurisprudence of the Constitutional Court, which requires passive suffrage to be a political right that is fundamentally recognized and inviolable. The Supreme Court continued and said that, in this way, having the value of an intangible right, it can be disciplined by general laws, which can only limit it with a view to accomplishing other constitutional interests that are both fundamentally and generally of equal status. In light of the constitutionally guaranteed promotion of the exercise of political rights, the Court concluded by stating that a failure to declare belonging to a group on the census does not invalidate the declaration made for the acceptance of the candidature (Breach prescribed by Arts. 4 and 5 of the Unified Text of the Regional Laws for the Elections of the Regional Council in this case, the candidate in fact made a declaration of belonging when accepting the candidature) (tamquam non esset) and therefore the declaration must then be made upon such acceptance. In electoral
matters, a later judicial intervention was made by the Constitutional Court, which in 1998 declared Regional Law No. 5 of 15 May 1998 to be illegitimate. The Court held that such a threshold violated Article 25 of the Autonomy Statute and that this law, in view of the abovementioned corrections, blocked a list representing the Ladin language group from gaining representation in the Regional Council. However, the way in which the question was put before the Court is worthy of mention. The precedent in Constitutional Court Judgment No. 438 of 1993 provides that “there is a constitutional guarantee for minorities (especially of German and Ladin language) and also a constitutional guarantee for the right to express political representation itself in conditions of effective equality”. The question raised concerned the application of the threshold of 4% provided as the proportional quota of the electoral system for the national parliament. Though lacking a precise indication from the Court on how to protect the representation of linguistic minorities, who were clearly penalized by a law that, in practice, banned them from representation in the national parliament where proportional representation was concerned, the judge held that the group has a constitutionally legitimate right to proper representation as an ethnic party representing a linguistic minority.

This has happened in the wake of the statutory reforms of 2001. Previously, the election of the provincial council did not take place through the electoral process itself but through the election of the Regional Council of the region Trentino-South Tyrol. For the election of the latter, in fact, the region was divided between the two provincial electoral districts of Trento and Bolzano, which corresponded to the territory of the two autonomous provinces. The members of the regional council elected in the provincial district of Trento contemporaneously formed the Provincial Council of Trento and those of the provincial district of Bolzano formed the Provincial Council of Bolzano. Therefore, as an indirect consequence, the two provincial councils were also automatically and contemporaneously elected through the election of the regional council. Therefore, every member of the regional council was also contemporaneously a member of one of the two provincial councils. With the reforms of 2001, the relationship between the regional council and the provincial council was totally upset: in the new statutory system, the provincial councils are directly elected and the members of each provincial council also form part of the regional council.

50 The Province of Bolzano, unlike that of Trento, has not drafted a new electoral law for itself after the Constitutional Reform of 2001. The present political debate records the discussion on merits in a draft electoral bill elaborated by the party of absolute majority (the Südtiroler Volkspartei (SVP)), whose controversial points were: the possible introduction of a threshold; the incompatibility between the role of a member of the council and a minister; and the limitation of the powers of the executive.

51 One important innovation in the constitutional law of the reform of the Autonomy Statute (Constitutional Law No. 2 of 2001) revolved around the figure of the president of the province itself, which, with regard to the Province of Bolzano, may be elected directly, following a provincial law approved by the majority of two thirds of the members of the council. As long as this does not happen, the President of the Province will continue to be elected by the council, while that of the Province of Trento will be elected directly.

52 See Membri, La Giunta Provinciale, Provincia Autonoma di Bolzano Alto Adige, retrieved from http://www.provincia.bz.it/aprov/giunta-provinciale/membri.asp

53 The State is responsible for the maintenance of the public order; therefore the province and neither the region have authority over local urban and rural police.

54 Regional and provincial law may be challenged before the Constitutional Court for violation of the State Constitution, of the Autonomy Statute, or of the principle of parity of language groups. This right may be exercised by the Government, by one of the Provincial Council when concerning Regional Law, and by the Regional Council or by the other Provincial Council when concerning Provincial Law. The Central government (of the State) has the power to return laws which are passed by the provincial or regional assemblies, on the grounds, “that they go beyond their respective competencies or are in contrast with national interests of one of the two provinces in the Region”. The Assembly can use veto provided that they have an absolute majority vote, in which case the government can choose to challenge the law before the Constitutional Court. See Autonomy Statute.

55 The Province retains 90% percent of the tax revenue collected.

56 It also receives a variable amount from the State negotiated on a regular basis.

57 The Südtiroler Volkspartei.
This has already been criticized by scholars. See, for example, Palermo, which states that, according to this law, “a personality is conferred to the hybrid and until now (fortunately) unknown figure of the members of the council of the linguistic group of designated people, limited to the members that constitute the majority in the Executive”.

This is an *ultra vires* administrative power.

According to Article 117 paragraph 5 of the Constitution, after the reform, all regions are vested with a general power of direct enactment and application of EC/EU normative acts as well as international treaties, independent from the nature of the competence concerned (exclusive, concurrent or residual). However, the state still determines the fundamental principles regarding the exercise of the concurrent legislative powers (Art. 117 para. 3 Constitution) and continues to vest the power of substitution in case of regional inertia (Art. 120 para. 2 Constitution). Two state laws of 2003 and 2005 for the enactment of the constitutional reforms contain detailed provisions on the exercise of the general regional power to implement EC/EU law autonomously, as well as on the procedures for exercising the state power of substitution.


The Gruber-Degasperi Agreement (Article 3 paragraph d) provided for “special agreements aimed at facilitating enlarged frontier traffic” to promote the economically poor border area, however real transfrontier activities were impossible to establish. The so-called Accordino (bilateral treaty of 1949) permitted a minimum of pragmatic solutions for transborder trade and commerce. Italy and Austria signed a specific bilateral agreement for implementation, the so called Accordino (which literally means the ‘little agreement’), which contains additional provisions regarding the facilitation of cross-border trade and commerce between North and South Tyrol.

Transfrontier initiatives were firstly launched in the 1970s with the creation of the two working communities ARGE ALP and ALPE ADRIA.


Although the Province of Trento represented an equal partner during the elaboration of the project, with the consequence that the Euroregion would have included a higher amount of Italian-speaking persons than if only South Tyrol and Tyrol had constituted the Euroregion, this ethnic dimension and the fear that a kind of Tyrolean ‘mini-state’ would emerge in the borders of the historical Tyrol, with the German-speaking population in a dominant position, was still perceived as a threat, since the concrete advantages of institutionalization were not clearly visible to many.

The Italian government perceived this initiative as an act of regional foreign policy, which violated the Italian Constitution and thus initiated a claim before the Italian Constitutional Court.

In the same year, namely in April 1998, the Schengen Agreement between Italy and Austria entered into force, transforming the political Brenner border overnight into merely an administrative one.


The office is situated in the headquarters of the European Academy of Bolzano – EURAC.


For Statistics, graphs, tables and maps see appendices I.2.

With the Constitutional changes in 2001 this name was officially accepted by the Italian government.

The concept goes back to Hans Kelsen and legal positivism: in his attempts to avoid any reference to natural law or hidden ideologies on which the legal system is based, Kelsen considered the legal system to be the unity of all legal provisions (norms) which could not contradict each other. Hans Kelsen, *Reine Rechtslehre* (Franz Deuticke, Wien, 2nd ed. 1960) cited in (Woelk, Palermo, & Marko, 2008).

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75 Article 1 of the Gruber-DeGasperi Agreement, translated in English. See at http://www.regione.taa.it/codice/accordo.aspx and Appendix I.1.2.

76 Article 100 “German-speaking residents of the Province [. . .] are entitled to use their language [. . .]”. The territorial dimension, on the other hand, is expressed in Article 99 ASt, prescribing the equal standing of both languages in the province.

77 The reason for the introduction of this system goes back to the fascist period, where German and Ladin speakers were practically excluded from certain positions and resources. As one of the results of this policy, the public administration of the post-war period was, to a large extent, filled by Italian speakers. The proportional quota system was introduced as a means to redress such disproportional distribution among Italian, German and Ladin speakers.

78 Article 89 para. 3.


80 This was seen as a reason for certain unease among Italian speakers with regard to the horizontally implemented quota system. The main criticism is that this distribution is highly political and Italian speakers might feel disadvantaged with regard to their allocation to the most important positions in the administration. Another widely discussed issue is whether or not the quota system is a temporary measure in order to redress the disproportionate representation of language groups and whether or not it should come to an end once proportionate representation has been reached. As the quota system is a positive action, it has to be subject to the general rules that apply to such actions, among which is the temporary character of such measures. See Lantschner, E. and Poggeschi, G. ”Quota system, census and declaration of affiliation to a linguistic group” in (Woelk, Palermo, & Marko, 2008)

81 In the Provincial government, for example, the composition of which (in terms of language groups) has to reflect the numerical strength of the linguistic groups as represented in the Provincial Council.

82 From 2005, only the envelopes of the successful candidates are opened, whereas the others are destroyed.

83 See n.76

84 Only when the person, normally in the occasion of a public competition, needs the declaration does he/she make a request to the Court to receive an official copy. It is forbidden to require the submission of the declaration for aims not foreseen by the law

85 In fact, according to Article 2 paragraph 4 of Decree No. 99 of 2005, the declaration takes effect after 18 months of its delivery to the Court and it has a permanent validity.

86 Retraction of the declaration is also possible at any time that the declaring person so decides.

87 In Italian language: “Dichiaro di non appartenere ad alcuno dei predetti gruppi linguistici, ossia di essere “altro”, e di aggregarmi (ai fini della determinazione della consistenza proporzionale dei gruppi stessi) barrando una delle sotto indicate caselle..[italiano, deutsch, ladin]”. See The facsimile of the form for the declaration of linguistic affiliation or association in Appendix I.3.1.

88 Advisory Committee Opinion on Italy, ACFC/INF/OP/1/(2002)007, adopted on 14 September 2001, made public on 3 July 2002, paras. 18–20. A domestic source of criticism is found in the independent body that assures personal data privacy rights (Garante per la protezione dei dati personali), which does not condemn the technique of the census and the declaration of linguistic belonging in itself but only some details regarding the possibility that the data that is private, according to Article 22 of Act No. 675 of 31 December 1996 (the so called “Act on Privacy”), might not be duly filed in order to be really kept secret. Information about this independent government agency can be found at http://www.garanteprivacy.it/garante/navig/jsp/index.jsp

89 See Cristina Fraenkel-Haeberle in (Woelk, Palermo, & Marko, 2008)
On 1 October 1923, the fascist government promulgated a regulation forbidding German-language instruction in all of the region's first-year elementary school classes. This was a prelude to the gradual but determined dismantling of all schools conducting lessons in German in South Tyrol. Shortly after 8 September 1943, following the invasion of Italy by German troops, instruction in German was re instituted under District Head Hofer. On the language use and rights in Fascist Italy see Foresti, F. (ed.) (2003). “Credere, obbedire, combattere: Il regime linguistico nel Ventennio”, Edizione Pendragon: Bologna.


Art. 14 D.P.R. 574/1988. Moreover, all deeds drafted by the public prosecutor must be in the presumed language of the person undergoing investigation, which is entitled to ask, within 15 days from being informed that he/she is under investigation or from being served any other equivalent deeds, that the trial be conducted in the other language (Art. 15 D.P.R. 574/1988).

Article 13 of D.P.R. 574/1988 mentions “the citizens of the Province of Bolzano/Bozen” in their capacity as targets of the laws on the use of language, a fact that could entails, ab absurdo, that a German or Austrian citizen can use only the Italian language in their relations with judicial authorities. This provision is in contrast with the ban on discrimination based on nationality envisaged by Article 12 of the European Community Treaty. To this end, a ruling of the European Court of Justice ordained that, according to the principles of community law, the right to have a trial in the German language must be guaranteed also to citizens of other member states who are summoned to stand trial in the Province of Bolzano, therefore confirming non-compliance with community law of this “residence clause”. The Court therefore established the extension of the law also to citizens not belonging to the protected minority.


For an historical reconstruction of the toponymy issue see Peter Hilpold, "Die Regelung der Toponomastik in Südtirol", in Josef Marko et al., op. cit. note 12, 386–394. cited in (Woelk, Palermo, & Marko, 2008)
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98 Article 56 para.1 of the Autonomy Statute: “Qualora una proposta di legge sia ritenuta lesiva della parità dei diritti fra i cittadini dei diversi gruppi linguistici o delle caratteristiche etniche e culturali dei gruppi stessi, la maggioranza dei consiglieri di un gruppo linguistico nel Consiglio regionale o in quello provinciale di Bolzano può chiedere che si voti per gruppi linguistici”.

99 Article 56, para. 2. In the same direction, Article 84 para.2 of the Autonomy Statute offers a collective protection of the rights of linguistic groups: “The vote of the individual chapters of the budget of the Region and the Province of Bolzano takes place, at the request of a majority of a linguistic group, by language groups.”

100 Article 19 para. 1 Autonomy Statute D.P.R. No. 670 of 31 August 1972

101 The Ladin language is used in nursery schools and it is taught in primary schools in Ladin districts. This language is also used as a teaching instrument in every kind of school in the same districts. In such schools the teaching is given on equal basis of timetable and final result, in Italian and in German.

102 Article 19 para. 3 of Autonomy Statute

103 The Italian, German and Ladin language groups are represented on a Provincial Educational Council. Teacher representatives are selected in proportion to the number of teachers of the respective language groups, including not less than three Ladin representatives. The Council creates and dissolves schools, determines school programmes and hours as well as curricula and content of courses.

104 See for more http://www.unibz.it

105 Because of this geographic distribution, three linguistic areas (or 'socio-linguistic zones') can be identified, where it is possible, in various ways, to hear and speak a second language in a social context: the cities, the large valleys and the actual mountain areas. In the first linguistic area, pupils of the German mother tongue find motivation to learn the Italian language. This linguistic area corresponds to the settlement area in which the Italian-speaking group is represented by a proportion of 40% to 70%. In the second linguistic area, where the Italian-speaking group makes up between 10% and 40% of the population, there is moderate to marginal motivation for German-language pupils to practice Italian outside of school. Finally, in the third linguistic area, which includes mountain areas and their communities, less than 10% (and usually a negligible portion) of the population is of Italian mother tongue, so there is practically no motivation for German-speaking pupils to use Italian in a social context. See Baur, S and Medda-Windischer, R. “The Education System in South Tyrol” in Woelk, Palermo, & Marko (2008) op.cit.

106 With the Decree No. 752 of 1976

107 They may not always speak as formally proficiently as mother tongue German or Italian speakers but they have a good command of all three languages. This is said to be an ‘exemplary multilingualism’. See Theodor Rifesser, Drei Sprachen unter einem Dach. Das Schulmodell an den Schulen der ladinischen Tälern in der Autonomen Provinz Bozen (Istitut Pedagogich Ladin, Bozen, 1994) cited in (Woelk, Palermo, & Marko, 2008)

108 An illustrative example of the proportional quota principle in practice is the case of libraries. There are about 200 public libraries and one main library for each of the three languages.


111 The core principles of minority protection and the rules for the coexistence of the language groups in South Tyrol were thus established under the ‘Paris Agreement’. See more in Günther Pallaver, ”South Tyrol Consociational Democracy”, in Woelk, Palermo, & Marko (2008) op.cit.

112 Even though the SVP has gained an absolute majority of votes in the province since the first elections of 1948, this party cannot rule alone because of the principle of inclusion of the other language groups. On the one hand, the provincial government has to be composed according to the size of the language groups represented in the provincial assembly.

113 Art. 48-ter para 3 - In the first thirty months of the Provincial Council of Bolzano, the President shall be elected among the members belonging to the group of German; for the next period, the President shall be elected
among the members belonging to the group Italian language. To be elected a councilor belonging to the Ladin language group with the agreement, for the respective periods, the majority of the directors of German or Italian language group. Articles 48-bis and 48-ter are inserted by paragraph 1, point a) of Art. 4 of the Constitutional Law 31 January 2001, n. 2.

114 Note that the term ethnic is strictly correlated with the language, in this sense, the political parties are distinguished by their language group affiliation.

115 Nowadays, the South Tyrolean multi-party system is characterized by a deep ethnic cleavage. The SVP was founded immediately after World War II as an ethnic-catch-all party for German and Ladin speakers. For a long time, the SVP had an ethnic monopoly. Only in 1964 did the German-speaking liberal-conservative Tyrol Homeland Party (Tiroler Heimatpartei) get into the provincial assembly. See Günther Pallaver, “Die Südtiroler Volkspartei. Erfolgreiches Modell einer ethnoregionalen Partei. Trends und Perspektiven”, in Institute for Ethnic Studies (ed.), Razprave in Gradivo/Treaties and Documents (38/39) (Eurota, Ljubljana, 2001), 314–358.


117 Historically, there was a fear that if many Italians were to move into the area, the German-speakers would be outnumbered.

118 A discussion has been present on the proportional quota system and its conformity with the EU law. By the free movement of workers, a direct and indirect discrimination against EU citizens is prohibited and other measures that might place Community citizens at any sort of disadvantage when they wish to perform an economic activity in another member state. The Autonomy Statute reserves posts in the public administration for citizens belonging to each of the three linguistic groups in proportion to the numerical strength of those groups. Whereas it is obvious that an absolute exclusion of non-Italian citizens from the public service is not compatible with EU law, it remains a point under discussion, whether it is compatible with the free movement of workers (Art. 49 EC) to apply these “proportions” also to EU citizens. The experiences of South Tyrol do not advocate that the Common Market, on the one hand, and regional systems of minority protection, on the other, are two distinct systems heading for a final showdown. Quite to the contrary, any regional system within the Union forms an integral part of the Union system and has to take EC law into account. The Union, for its part, also has to integrate national impulses and has to respect national identities. Arguably, the protection of minorities—which is for example prominently laid out in the beginning of the Italian Constitution—can form part of that specific constitutional identity. In this sense, the linguistic and cultural diversity within states is protected by the notion of diversity under EU law. See Gabriel N. Toggenburg, “Regional Autonomies Providing Minority Rights and the Law of European Integration: Experiences from South Tyrol” in (Woelk, Palermo, & Marko, 2008).

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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.¹ A huge test to pass is to have a successful transition and to have successful framework for accommodating minority rights. “The most complicated and most difficult case of transition is definitely that in multiethnic societies (with or without a dominant national group)”, as in the case of Macedonia where a dominant national group is present living alongside with ethnically different groups.² In a constitutional model characterized by a multicultural society (Palermo, et al., 2011) the main aim is to accommodate diversity of institutional constituent groups and to design an organization structure of the state that can accommodate these diversities through different mechanisms and instruments. Multinational/multicultural models consider national communities as a constitute element of the state. “In chiefly homogenous states, the critical point was the corpus of minority rights, whereas in multiethnic countries, the mentioned issues of identity and endemic crisis of the political system were opened.” (Frckoski 2000)

One of the constituencies of the Macedonian independence and sovereignty is the relationship between state and the biggest minority group in Macedonia – the Albanian minority (Љ. Д. Фрчкоски 2005). This is seen from two main aspects: 1) implementation of the standards of minority rights in the corpus of human rights³; and 2) the creation of the multicultural society reflected in the institutions of the political system with a high tolerance towards the cultural differences. This according to Prof. Frckoski, created politics of inclusion and involvement of the Albanian community in the political system; this is seen as a rare case of solution in the Balkans and named as a melting pot approach. This also, according to some,
neutralized the possible plans for secession and conspiracies of creating a “bigger Albanian state”.4

In this part of the thesis, the case of the minority rights protection in Republic of Macedonia as a case study will be analysed. The main instrument and basis of analysis will be the Ohrid Framework Agreement (further in the text: OFA) and its implementation, alongside with the required Constitutional amendments and laws adopted concerning the rights of the minority groups in Macedonia. Republic of Macedonia according to the candidate, is seen as a ‘model in development’ considering the fact that the Republic has developed mechanisms and instruments for inclusion and co-habitation with different ethnic groups until recently (however the basis was established long ago). Although it has been ten years since the framework agreement, the system of minority rights protection is still fragile and subject to further modifications. As it will be seen further in the analysis of this model, 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.

2.1 HISTORY OF MINORITIES’ ACCOMODATION– SOME CONSIDERATIONS

The history of Macedonia is characterized by elements reflecting a true multicultural model of democracy. There are lot of historical happenings and facts to be presented through the centuries and years. 5 Encouraged by the occupation forces during the WWII, the Macedonian people started political and military preparations for the fight against the occupiers (in 1941). The period between 1941 and 1944 is characterized with lot of field battlers and reorganization of committees and anti-revolutionary forces in the territory of Macedonia, to be able to defend from the occupiers. Along with the development of the national liberation struggle in Macedonia issue of a national question and the future of the Macedonian people seriously highlighting the program goals of the Communist party in Macedonia. The national question was accompanied by some fear of the
expected charge of Macedonian separatism. On 27 – 28 February 1944, started the first consultations over the military and political situation in the country. As a result of the successful liberation struggles of the Macedonian people, there were few free territorial and operative zones in Macedonia. This called for an institutional body in order to control the free (from occupiers) territories. Therefore, on the 2nd and 3rd of August 1944 in the Monastery “St. Prohor Pčinski”, near Kumanovo the first session of the ASNOM (Anti-Fascist Assembly for the People’s Liberation of Macedonia) was convened. It was the supreme legislative and executive people’s representative body of the Macedonian state from 1944 until the end of World War II. With ASNOM, Macedonia gains the constituency as a Macedonian nation state (demos). The French concept of nation state (demos) is present in the ASNOM documents, viewing Macedonia as a democratic country for the people (narod) where the term people comprises all the citizens in its territory. According to some constitutional law scholars in Macedonia, the concept of nation state (demos) does not have its pure form as in France, in ASNOM it comprises the category “national minorities”, which gives the minorities all the rights of free life in the state.

In the context of the Socialist Federative Republic of Yugoslavia, the People’s Republic of Macedonia was established in August 1944 as a federal member state, in federation with Bosnia, Croatia, Herzegovina, Montenegro, Slovenia and Serbia. Under this political order, ethnically plural Macedonia developed political, educational and cultural institutions, and enjoyed relatively free (although economically challenging) circumstances as a semi-ignored “step-child” republic. In this historical period, the beginning of the multicultural Republic of Macedonia was developed. The 1974 Yugoslav Constitution set up a three-tiered identification system for its member republics: the first was nations (narod), groups with their own republics (six); the second consisted of nationalities (narodnosti) with kin-states in the SFRY, and the third tier was comprised of ethnic groups with neither of these but who were considered —ethnically distinct. Communist Yugoslavia resembled a state based on elite accommodation with elements of coercive
consociationalism built into the system. The new structure offered important symbolic satisfaction to the various ethnic groups in the newly constituted state. The Albanian community participated in Macedonian public, political and economic life, regardless of having no institutionally recognized autonomy within Macedonia, there were less public protests about the status of Albanians in Macedonian than was the case with Albanians in Kosovo and Serbia (Adamson and Jovic 2004, 297). As guaranteed in the Constitution of the federal Yugoslavia from 1974, all nationalities and communities have the right to use their own language in the Parliament, public administration and in judicial proceedings, and were free to express their nationality, race and religion. It is to be noted as an important fact, that during some periods in the Macedonia history the relation between the Macedonian and Albanian community were peaceful. During this Yugoslav period, the biggest ethnic community in the Republic of Macedonia (Albanian community) enjoyed self-representation rights in terms of full participation in the Parliament and enjoyment of the language rights in certain areas (as stipulated in the federal constitution). During this period, a Commission for inter-ethnic relations was formed having regular sessions between the representatives of the Macedonian government and the Albanian political parties - within the Commission on former Yugoslavia (the mission of Gerd Arens) – where many (around 8) questions were discussed concerning the rights of the Albanian ethnic community in the country. Those same raised questions were later transformed in 4 main arguments and included in the Ohrid Framework Agreement in 2001 (to be analysed further). The Commission on former Yugoslavia ended its mandate in 1997.

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, Romans 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. There were no terms in the 1991 Constitution for use minority languages in Parliament, or any group right to political representation. Ethnic Albanian community and its leadership developed specific demands for equality in group terms: formal recognition of the Albanian language as the official language of public authorities in Albanian-settled regions and in the Assembly; constitutive status for the Albanian community, with veto powers. Furthermore, there appeared to be more emphasis on rights than responsibilities by ethnic Albanian representatives, further alienating non-Albanian Macedonian government officials.

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. As such the structure reflects a relation between Macedonians and Albanians (Frckoski 1998). There is an evident cultural difference between these two communities, from one side, mostly orthodox religion and Slavic language, and from the other, mostly Muslim religion and Albanian language (from Indo-European family of languages). A distinctive line of conflict between these two groups is manifested through the struggle of cultural rights as education in the mother tongue, use of symbols of the ethnic group, establishments of cultural groups, media, etc. This cultural conflict, does not come alone (as independent), but it goes along with the political processes in the country. Following the first democratic multiparty elections in 1990, as well as in 1994 and the local elections in 1996, the participation of political parties representing the Albanians in Macedonia was maintained in the government (Frckoski 1998, 74).

The majority of the Macedonian general public and analysts both international and domestic asked many questions on what happened to Macedonia in 2001. At that time two dominant but contending explanations emerged: first, the
violent conflict was ‘essentially aggression’ from Kosovo and a spill-over effect from the battles fought by ethnic Albanians in Kosovo and south Serbia.\textsuperscript{18} A second account views the conflict as exclusively the result of internal factors resulting from the repression of and discrimination against Albanians in Macedonia. Many questions were raised on: the factors and their integration in a comprehensive theory explaining the conflict; the reason of the appearance of domestic and external factors; and how the initial claims to self-determination and territory are reconciled with the later claims for human rights, collective equality and power-sharing arrangements.\textsuperscript{19} The truth is to be considered present somewhere in the middle.

The conflict in 2001 began on 22 January, when an NLA (National Liberation Army)\textsuperscript{20} unit attacked the police station in the village of Tearce, near Tetovo, killing one police officer and injuring three others.\textsuperscript{21} As the 2001 conflict progressed, more domestic ethnic Albanians joined the insurgency. The NLA ratcheted up both rhetoric and action. In the final stage of the conflict, NLA rhetoric became notably more cohesive, asking for Albanians to be considered as equal to Macedonians; Albanian to be recognized as an official language; and to have the right of higher education in Albanian language; changes in the Constitution that guarantee equal status and treatment; and a new census observed by international institutions to guarantee the legitimacy of the numbers.\textsuperscript{22} This last position prevailed by the final stages of the conflict. Self-determination vs. human rights emerged as the critical dichotomy. ‘Human rights’ were used as basic requirement, although they were speaking of collective/ethnic rights and related demands for an ethnically-based power-sharing settlement. In sum, these were the concepts that intertwined through the conflict:

1. Self-determination or territorial aspirations as the optimal demand at the beginning of the conflict;
2. Ethnic power-sharing, cultural autonomy, and language and education rights as an achievable settlement at the finale of the conflict.
There are, listed in general, four main questions that raised the conflict situation in the country at that time:

1. The proportion of the population (demographics) of the ethnic Albanian community in Macedonia;
2. The present NLA military forces and their strength in comparison to the Macedonian security forces;
3. The struggle to find the balance between military and peaceful strategies for resolution; and
4. The constant pressure and the position of the international community.

Early July 2001, international mediators, Special Representative of the EU in Macedonia, Francois Leotard, US Special Envoy James Perdew, provided the parties with a basic document over which they could negotiate, thereby shaping the direction and tenor of discussions. The Framework Document was developed with the assistance of Robert Badinter.\(^{23}\) The Framework Document included both general principles and suggestions for solving concrete interethnic problems, including decentralization, non-discrimination in public service, special parliamentary procedures for changing the constitution and other major laws, and education and language matters, as well as the expression of identity. On August 13, 2001, the President Trajkovski, the international mediators and the four political parties' representatives (VMRO-DPMNE, DPA, PDP and SDUM) signed the Ohrid Framework Agreement (OFA) ‘the basic conflict settlement document’. The EU (particularly its High Representative for Common Foreign and Security Policy, Javier Solana), NATO\(^{24}\), the OSCE, the USA represented by Special Envoy James Perdew\(^{25}\) (collectively referred to in Macedonia as the - international community), and President Trajkovski were deeply influential in preventing the armed conflict in Macedonia from escalating into full scale civil war.

Concerning the conflict raised in 2001, in a survey conducted by the Macedonian Center for International Cooperation (MCIC)\(^{26}\) of public / informed persons the majority (65.0%) think that the rights could be achieved peacefully, and 13.0% that is justified struggle for human rights. 4.0% think that the reason for the conflict is the ethno-separatist struggle and aggression from Kosovo, and there were no respondents who declared that the conflict is in fact an international conspiracy. That the rights could be achieved by peaceful means, said nearly one in
three ethnic Macedonians (37.1%) and ethnic Albanians (31.8%) and most citizens of other ethnic affiliation (total 36.8% of citizens).27

2.2 LEGAL INSTRUMENTS FOR MINORITY RIGHTS PROTECTION

Before presenting the legal instruments for minority rights protection in the Republic of Macedonia it is essential to present some statistical data on the presence of ethnic communities in the country. 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 live 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%).1 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 northwestern 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 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% (See Annex II.2. for statistical data).

2.2.1 THE OHRID FRAMEWORK AGREEMENT

As presented earlier, in August 2001, in Ohrid, the Ohrid Framework Agreement was signed.28 As a consequence of the happenings, and seen as the only solution to the conflict, the agreement brought in light a new model of ethnic conflict resolution.29 The agreement can be analysed through two main questions:

1) Legal character and nature and
2) Type and character of the legal solutions offered in the agreement.

In terms of the legal character of the agreement it can be pointed out that it is an ‘agreement’ binding by its nature, entering into force after the deposit of the
signatures of the parties involved. The official language of the agreement is English, the Macedonian and Albanian version are seen only as translations. It is a ‘framework’:

“...for securing the future of Macedonia’s democracy and permitting the development of closer and more integrated relations between the Republic of Macedonia and the Euro-Atlantic community... [promotes] peaceful and harmonious development of civil society while respecting the ethnic identity and the interests of all Macedonian citizens.”

The agreement is signed by seven individuals, generally referred in three parties involved directly and indirectly in the ethnic conflict of 2001. Two are internal parties represented by the representative of the political parties defending different points of views in regards to the conflict and the official representatives of the republic, the president and the prime minister. The third party is the international community through the representatives of the USA and EU. In this respect OFA is a specific political agreement between the parties in the conflict with the involvement of and agreed by the international community. It is said to be specific, because as any other agreement of this type (and other) seeks to find solution to a specific problems in a specific situation. Some could see that this agreement is a two-party agreement, from one side the Republic of Macedonia and from the other the international community, the former guarantees full respect of the democratic principles, solution of the conflict and developing peaceful inter-ethnic relations and the latter, accepts the responsibility to assist the country in the reconciliation process and facilitation of the integration and membership in the international organizations such as NATO and EU. This in other words brings rights and duties for the Republic of Macedonia to respect the provisions and implement successfully the agreement, with results that significantly influence on the country's aspirations towards membership in the International Governmental Organizations (IGOs). On the character of the agreement itself Frckoski points out that the OFA is a political agreement (act); it is not an international agreement and it is certainly not a peace agreement despite its provisions towards promotion peace and stability. As pointed out by Frckoski, in the Republic of Macedonia, there
was never war or a state of emergency during the conflict in 2001. The influence and support of the international community is present not because of the high tensions between the conflict’s sides, but because of the importance of establishing peace and stability in the country and its influence for the Balkan region.\textsuperscript{32}

In terms of the solutions given in the agreement, Popovski underlines that the OFA belongs to the discourse present in many countries (plural societies) where the model of majoritarian democracy is in practice and where a marginalization of certain groups is present. In Republic of Macedonia, it can be said that, there is a higher intensity of contrasted demands from the minority groups vis-à-vis many systematic solutions given by the state (higher education, language use, symbols’ use, representation etc.) and low level of sensitivity with high irresponsibility of the state towards those demands (Поповски 2007, 43-45).

It was evident that six factors were present, influencing the model development, from a majoritarian democracy to a consociation (plural) democracy: 1) the existence of the Albanian community; 2) the importance of the compact character of the population belonging to the Albanian community in some parts of the state; 3) the existence of strong conscience identity and formed intellectual and political elite capable to formulate the interests and needs of its own community; 4) discrimination towards the Albanian community in higher education, in state and public administration, army, police, public finances; 5) inappropriate treatment of the use of language and symbols on local and national level and the influence of this condition on the political division in the inter-ethnic relations; and 6) the exclusion of the other minority communities from the possibility to defend their own interests and needs through the local self-government, because of the centralized system and the concentration of resources at state level. According to Popovski, all these factors influenced greatly the cause of the conflict and the extreme need to find suitable solutions. As a consequence, the model of consociational democracy allows power-sharing between the majority and the communities and ethnic groups when it comes to the positions and interests
related to the preservation of the identity development (of those communities and groups).

Frckoski, sees the changes in the OFA by dividing them into three pillars:

I. The first pillar refers to the language rights and their extension (used in the Parliament and in the public institutions, to be analyzed further);

II. The second refers to the parliamentary procedure of voting, voting rights – the so called ‘Badinter principle’ 33. which refers directly to the minority protection for questions directly linked to their cultural rights (Љ. Д. Фрчкоски 2005). According to Frckoski, is a defensive instrument and not introducing a consensus democracy.

III. The third pillar is the precise moment (timing) when to recruit the members of the Albanian minority into the public administration. Outside these three pillars, stand the local democracy and the process of decentralization.

In regards to the Constitution from 1991, some questions have been raised on whether it, from the beginning, could include the changes made 10 years later (regarding the minority rights) and to absorb easily the conflict that rose in 2001. On this, some scholars categorically say “no”.34 As most of the strategic institutes in the world notice, the 2001 conflict was provoked from outside (not inside), coming from Kosovo and the situation present at that time there.35 Moreover, he underlines that the framework agreement had two objectives: 1) to bring to an end the conflict; and 2) to change the minority rights corpus (in terms of representation and language rights). The agreement is not a new start, but it is a continuation of a long tradition of respect for human rights and protection of ethnic communities in Macedonia. OFA, for Frckoski, is state-building agreement.36 The agreement is founded on two general principles. The first one is decentralization of the ethnic rights, and the second is the principle of inclusion.

The preamble of the agreement asserts the following goals:

- Euro-Atlantic integration,
- Development of democracy and civil society
- Development of a multicultural society.

Among scholars and politicians the goals were interpreted differently. There are still (after 10 years) different perspectives regarding the agreement’s goals. For some the agreement has ceased the hostilities (it is a political agreement that
stopped the armed conflict), through peaceful means of dialogue.\textsuperscript{37} For other is it just an agreement defining the goals between the Albanian and the Macedonian community. \textsuperscript{38} The basic principles of the agreement are stimulated clearly at the beginning:

- Rejection of violence in pursuit of political aims;
- Inviolability of the Macedonia’s sovereignty and territorial integrity, and the unitary character of the state;
- The multi-ethnic character of Macedonia’s society must be preserved and reflected in public life.
- Guaranteeing protection of the citizens by the Constitution (continuously) and it comportment with the highest international standards;
- Development of local self-government as essential key aspect.

In the points that follow the agreement establishes provisions that state the necessary steps to ensure its goals and principles: 1) development of decentralized Government; 2) revision of municipalities’ boundaries; 3) non-discrimination and equitable representation; 4) special parliamentary procedures; 5) education and use of languages; and 6) expression of identity.

For successful implementation of the Ohrid Framework Agreement with the governmental decision on 05/04/2004, a Sector for implementation of the Ohrid Framework Agreement has been formed, which in the meantime, by the amendments to the Law on Government (Official Gazette of the Republic of Macedonia no. 115/2007) was transformed into the Secretariat for implementation of the framework agreement which started functioning from January 2008. The Secretariat has the task to fully implement the Ohrid Framework agreement and to provide administrative and expert support to the deputy Prime Minister of the Republic of Macedonia responsible for implementing the framework agreement; it supports the Government in realizing the strategic priorities related to obligations arising from the Framework Agreement, in particular to ensure equitable representation of citizens belonging to all communities in the state government and other public institutions.\textsuperscript{39}

The agreement provoked many debates and discussion among politicians and scholars. The discussions on the OFA were not only present in the political
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arena, they were far more present in the academic world, dividing intellectuals and distinguish professors on whether it offers solutions or it simply attracts more problems in long-term perspective. Critics were launched in the international community as well; reactions were received by the UN, Council of Europe, the European Union and NATO, as well as from USA, Russia, China, United Kingdom, France and Germany. The great fame brought to light and constantly present at national, regional and international level, significantly speaks of the great importance of the document and its implications not only in the country, but in the Balkan region as well. The reason is most centrally correlated to the peace and stability of the region, where a war is hard to localize but easy to spread and revolutionize the interests of many countries and values of regional and global systems (Поповски 2007, 30).

Different opinions and views are seen also for the implementation process of the agreement. After a decade, some see great number of issues improved and a better overall situation in the country in comparison to 2001, with the exception of the laws relative to the language us, which has been less successful. A contrasting view is that the Albanians are not completely equal and the area where unequal treatment is present should be corrected, considering, however, that a development of multiethnic state is a challenge and those developments are moving in right direction. For some, the OFA has accomplished partial success and the success comes down to equal representation, converting the agreement in the hiring of party members. This problem is observed also by the external experts, as greatest weaknesses, not considering the individuals’ expertise in the equal representation. Another perspective in regards of the overall implementation is presented by the smaller communities, seeing the just representation and protection as a majoritarisation, which does not yield results for the smaller communities. There are however perceptions that the smaller communities have ‘benefited’ from the agreement, in terms of education and participation in the public administration. A strong critic of the OFA is the element of consociation which according to Venkovska, ethicize politics and yields
a bi-national state. “Macedonians and Albanians live like prisoners of the ethnic security dilemma”\textsuperscript{47}. According to some, the agreement does not resolve the problems in the country but it certainly makes the state more secure.\textsuperscript{48}

\subsection*{2.2.2 Constitutional Amendments}

Before analyzing the constitutional amendments brought by the Framework Agreement, the main fundamental pillars of the Constitution of Macedonia from 1991 should be outlined. 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 Article 7 (para. 2 and 3), 8 (sub-para. 2 and 11) and Article 48. \textsuperscript{49} It should be noted that Macedonia ratified and signed practically all main international instruments for minority rights protection.\textsuperscript{50} According to some, however, the Constitution of 1991 was a generator of a serious political crisis in the country which resulted in a serious consequence (the armed conflict in 2001).\textsuperscript{51} This could not be said, since the Constitution brought the basis for minority rights development and further protection.

The OFA required amendments in the Constitution of Republic of Macedonia; therefore, it was amended pursuant to the stipulations of the agreement in an attempt to reflect better the multiethnic character of the country. Amendments to the constitution included an explicit acknowledgement of the country’s Albanian, Turkish, Vlach, Serbian, Roma, and Bosniak minorities in the Preamble. It provides for minority language rights, and provisions for the use of minority languages at the local level:

\begin{quote}
"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..."\textsuperscript{52}
\end{quote}

The amendments furthermore establish “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 new 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”. While there is a state guarantee for “the protection of the
ethnic, cultural, linguistic and religious identity of all communities”, “in schools
where education is carried out in another language, the Macedonian language is
also studied”.53

Constitutional articles that required amending by the Ohrid Framework
Agreement are Article 7 (language rights); Article 8 (fundamental values
mentioned above); Article 19 (freedom of religion); Article 48 (ethnic, cultural,
linguistic and religious identity protection); Article 56 (historical and artistic
heritage promotion and protection); Article 69 (double majority voting); Article 77
(Public Attorney); Article 78 (Committee for Inter-Community Relations); Article
84 (Council for Inter-Ethnic Relations to be deleted); Article 86 (Security Council of
the Republic); Article 104 (Juridical Council); Article 109 (Constitutional Court);
Article 114 (Local self-government); Article 115 (units of local self-government
decision making); and Article 131 (voting on Constitutional modifications and
amendments); 54

2.2.3 LAWS ENSURING MINORITY RIGHTS PROTECTION

As a first legal instrument protecting minority rights in general, should be
mentioned the Law on prevention of protection against discrimination from 2010.55
This law guarantees prohibition of and protection from discrimination in the
exercise of the rights guaranteed by the Constitution, laws and ratified
international agreements.56 It prohibits any direct or indirect discrimination57,
reference and incitement to discrimination and assisting discriminatory treatment
on the ground of gender, race, color of skin, belonging to a marginalized group,
etnic 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).\textsuperscript{58} Affirmative action measures (according to this law) are the measures taken by the competent authorities aiming at prevention and protection from discrimination, i.e. reducing or eliminating factual inequalities that arise as a result of prior discrimination. An effective protection, on the other hand, is the existence of a system of accessible and usable mechanisms to initiate proceedings in cases of discrimination, being independent and objective structures that act on appeals based on advance procedures and having previously provided for sanctions for specific violations of rights.\textsuperscript{59} It is not considered discrimination an affirmative action taken by authorities, state administration, bodies of local self-government, other bodies and organizations exercising public powers, public institutions or by natural or legal persons identified as legitimate in the past, present or future, which may take until you reach complete factual equality: 1) in favor of a person, group of persons or community, in order to eliminate or to reduce the factual discrepancies, if the distinction is justified and proportional to the target, and in order to ensure their natural development and effective achievement of their right to equal opportunities in comparison with other persons, groups of individuals or communities and 2) affirmative measures aimed at protecting vulnerable groups, to eliminate or reduce actual discrepancies, if the distinction is justified and proportionate to the purpose and to ensure their natural development and effective achievement of their right to equal opportunities compared with other persons, groups of individuals or communities.

The Framework agreement from 2001 required adopting and amendment of several laws in the country. Annex B (Legislative Modifications) stated:

"The parties will take all necessary measures to ensure the adoption of the legislative changes set forth hereafter within the time limits specified: Law on Local Self-Government \[to be adopted\]...Law on Local Finance \[to be adopted\]...Law on Municipal Boundaries \[to be adopted\]...Laws Pertaining to Police Located in the Municipalities \[to be adopted\]."
adopted]...Laws on the Civil Service and Public Administration [to be adopted]...Law on Electoral Districts [to be adopted]...Rules of the Assembly [to be amended]...Laws Pertinent to the Use of Languages [to be adopted]...and Law on the Public Attorney [to be adopted]..."

The Law on Local Self-Government was adopted in 2002\textsuperscript{60} and regulates: the responsibilities of the municipality; direct participation of citizens in decision making, organization and work of the municipality the municipal administration; acts bodies; property - owned by the municipality; oversight of municipal bodies; dissolution of the municipal council; mechanisms of cooperation between municipalities and the Government of the Republic Macedonia, the local government, protection of local government; establishment of official languages in municipalities and other issues of importance to local authorities. The Law on territorial organization of local self-government in the Republic of Macedonia was adopted in 2004.\textsuperscript{61} The law regulates the territorial organization of the local government in the Republic of Macedonia founding municipalities as units of local self-government, establishing areas of the municipalities and the city of Skopje as a separate unit of local self-government, names, seats and boundaries of the municipalities, determines the type and names of settlements, mergers, division and change the boundaries of municipalities and City of Skopje, and other issues related to territorial organization of local government.\textsuperscript{62} The Law on financing the units of the Local self-government was adopted in 2004.\textsuperscript{63} This law regulates the financing of local Government and funding of the City as a separate unit of local government is regulated by this law and with the City.\textsuperscript{64}

The Law on the organization and work of the Public Administration from 2002\textsuperscript{65} regulated the organization, responsibilities and operation of the public administration organs. With the amendments brought in 2002, a couple of provisions were introduced in relation to the development and improvement of the language education of the members of the different ethnic communities in the country. The Law for civil servants (adopted in 2000) regulates the status, rights, duties and responsibilities of civil servants, and the system of salaries and allowances paid to civil servants.\textsuperscript{66} This law was amended several times. In line
with the rights of the minority groups in Macedonia, the most important amended
is brought by the Law amending the Law for Civil servants from 2002. Modification has been introduced in terms of the terminology used in the Law regarding the units of the local self-government and the city of Skopje. A significant modification is the provisions on the employment in the public administration bodies applying the principle of equitable representation of citizens belonging to all communities in all positions established by the law and respect the criteria of professionalism and competence.

With the new Electoral Code from 2006 are regulated the manners, terms and procedures for election of the President of the Republic, election of Members of Parliament, members of municipal councils and the Council the city of Skopje, selection of mayors of the municipalities and mayor of the Skopje, the procedures of recording the votes, keeping the voter list, determining the boundaries of electoral units and the establishment, alteration and publication of voting places, and conditions for the operation of voting places.

The Law on Members of the Parliament (MPs) regulates the issues of the function an MP, and the rights and duties of MPs of Republic of Macedonia (adopted in 2005), whereas the provisions on the work of the Parliament of the Republic of Macedonia are established in the Law on the Parliament of the Republic of Macedonia. It should be however noted that before the adoption of the new laws, old laws were existing in the legal system of the country, concerning the above listed questions. The new enacted laws provide provisions amended and required by the framework agreement.

In regards to the requirements for adaptation of laws related to the use of language, a specific law concerning the use of the language spoken by at least 20% of the population in Macedonia and in the units of the local self-government has been adopted in 2008, establishing provision on the use of the language in the Parliament, in the communication between the citizens and the Ministries’ offices, in the Court, in other legal procedures, during elections, personal identification documents, personal registry files, police authorizations, media, local self-
government, economy and financial sector, education, science and culture, free access to public information, and publications of legal acts. This law will be analyzed further. In the line of the language use should be mentioned as well the modifications of the Law on Identity Card. This law dates back to 1995 (with entry into force on 23 February 1995) and has been till now amended couple of times. Two amendments that concern the right of minority groups to use their own language and alphabet will be brought to light further. The Law on Personal Registry Files, dating back to 1995 (entering into force on the 23 February 1995) was amended in 2002, when a new article was introduced (Art. 3-a) stating that the form in the Registry and the data contained in it, in the units where more than 20% of the population speak a language different than the Macedonian language, will be printed on Macedonian language and its Cyrillic alphabet and the language spoken by 20% of the population. This is also the case of the statements printed from the Registry Books.

Another legal instrument to be taken into consideration and which ensures the rights of the members of the other communities in the country (smaller in size), is the 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 has been adopted in 2008. This law regulates the procedure for monitoring the implementation and promotion, protection of rights of communities that are less than 20% of the population in Macedonia and supervision over the implementation of the provisions of laws establishing those rights. The realization and promotion of rights of communities that are less than 20% of the population in Macedonia, in accordance with this law concerns the rights in employment in accordance with the principle of equitable representation of communities, the use of language, education (primary, secondary and tertiary), culture and other areas in which the law regulates the rights of communities. The members of those communities have the right to be employed in the state government and other public institutions at all levels applying the principle of equitable representation in according with law. They also have the rights to: 1) education in their own language; 2) media in...
their own language; 3) establish associations of citizens and foundations for the realization of their cultural, educational, artistic and scientific purposes; and use of their symbols according to law. For the purposes of protection of their rights an Agency is established according to this law as an independent body as part of the government with its headquarters in Skopje.

Another legal instruments for guaranteeing language rights of minority groups is the law that regulates the conditions and manner of determination of names of streets, squares, bridges and other infrastructure facilities, numbering of buildings for residence and work setting and maintain boards with street names and house numbers, and keeping a register and record the names of streets and house number, establishing the name of the streets, squares bridges and other infrastructure facilities in the municipality in which at least 20% of residents use other official language other than Macedonian language; in that municipality the name of the infrastructure facilities shall be written as well as in the language of the residents used by at least 20%.

2.3 ACCOMMODATING MINORITIES

The multicultural model of accommodating minority rights in the Republic of Macedonia (as discussed briefly before) is distinguished by few important points for consideration further in this section. As a first and crucial aspect in the discussion of minority rights’ protection in the case of the Republic of Macedonia is the fact that on the basis of a unitary state, this country is building a multinational and a multicultural society. In this analysis this is seen as a very important aspect to consider. Difficulties in accommodating minority rights are far more present and encountered in a unitary state in which many minority groups difference in race, language and culture co-exist for decades. For this reason the Republic of Macedonia is seen as a successful model in development; the multicultural character of this country facilitates the accommodation of minority rights. As a second issue to be considered along the unitary character of this state is the de-territorialisation of the ethnic rights. This is going to be examined further, however
it is crucial at this point to distinguish that the self-government rights in this case study are not correlated with the territorial autonomy, they are de-territorialized (minority rights enjoyed at state and local level). The minority rights’ protection model in this case study further is distinguished by the language rights recognition and protection at state and local level as well. The policy of inclusion and the proportional representation (recruitment in the public administration) are also elements of this model. Following the structure of the first case studies, all these raised model’s characteristics will be further analysed in this chapter.

2.3.1 TERRITORIAL GOVERNANCE AND SELF-GOVERNING RIGHTS

The Ohrid Framework Agreement brought along provisions directed to territorial arrangements of Republic of Macedonia. As stated before, the principle of decentralization of the minority rights is one of the general principles of the agreement. In the general European practice, the minority rights and the territorial autonomy are correlated with de-cantonization and federalism (as seen in the case of Trentino-South Tyrol). In the case of Macedonia, the territorial principle, through the implementation of the agreement will be replaced with the ethnic rights and the link with the subject of the rights not the territory. This however, cannot be realized, since the solutions given by the agreement and the decentralization and local self-government the ethnic rights are connected with the territory (at least 20% of the population in the units of local self-government).

The Constitution and the amendments dedicate special section for the territorial governance of the country (Section V – Local self-government, Arts. 114 – 117 and Amendment XVII):

“...Local self-government is regulated by a law adopted by a two-thirds majority vote of the total number of Representatives."

“...The municipality is autonomous in the execution of its constitutionally and legally determined spheres of competence; supervision of the legality of its work is carried out by the Republic."

“The City of Skopje is a particular unit of local self-government the organization of which is regulated by law.”
The laws regulating the local self-government (previously mentioned) are: the law of local self-government; the law on territorial organization of local self-government in the Republic of Macedonia; and the law on financing the units of the local self-government. The municipalities in accordance with the principle of subsidiarity are entitled within their boundaries to perform the duties of public interest of local importance, which is not excluded from their competence or the competence of state authorities.\textsuperscript{80}

Republic of Macedonia, while not directly providing territorial autonomy to its minorities, has devolved extensive powers of self-governance to the local level. In combination with a redrawing of local boundaries, this has considerably enhanced the level of local autonomy for the ethnic Albanian minority. The Law on local self-government prescribes a Commission for relations between communities in those municipalities in which at least 20% of the population of the municipalities established at the last census of population are members of an ethnic community.\textsuperscript{81} The commission shall be consisted of equal number of representatives from each community represented in the municipality, and shall consider matters relating to relations between the communities represented in the municipality and provide opinions and suggestions on ways to address them.\textsuperscript{82}

The Ministry for local self-government of the Republic of Macedonia enacted the fourth Programme for Decentralisation Process Implementation. This “coincides with the observance of the 10th anniversary of the Ohrid Framework Agreement signing, wherein government decentralisation is one of the pivotal elements and a prerequisite for its successful implementation.”\textsuperscript{83} The decentralization process and its initial challenges have not been fully overcome; the local self-government units have made a significant step forward in their capacity building for proper governance at the local level. The programme identifies the progress state of art and the key challenges focusing on the following areas: 1) legal framework for transfer of competencies and resources; 2) fiscal decentralization; 3) service delivery and institutional capacity of LSGUs; 4) local democratic practice and
citizen participation, and 5) communication, coordination, monitoring and evaluation of policies, both on horizontal and vertical levels.

2.3.2 LANGUAGE RIGHTS

Language rights for minority groups are regulated both at state and local level. The Law on the use of a language spoken by at least 20% of the population and in the units of local-self government 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. In the Macedonian parliament the official language is Macedonian language and the Cyrillic alphabet. A MP who speaks a language other than Macedonian language, spoken by at least 20% of the population in Macedonia, 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. On the use of language in the Parliament, Prof. Frckoski comments that it is acceptable for an Albanian MP, elected by the Albanian voters, to use the Albanian language in the Parliament and its Commissions, but it is not acceptable for the President of the Parliament to speak in Albanian language, because he we do not have a (right) holder of an identity (Albanian) but it is a representative of the National Parliament acting on the name of the whole Parliament not a minority group.

When communicating with the units of local self-government and with the offices of the ministries in that unit in which at least 20% of the citizens speak other language than the Macedonian, the citizens can use that language and its alphabet. The responses by the public administration in those units are in
Macedonian and in the language used by the citizen. In criminal proceedings the official language is Macedonian language and the language spoken by at least 20% of the population. The procedure is conducted before the Ombudsman the second official language is the language spoken by at least 20% of the population. During municipalities’ elections the Election Commissions and Electoral Boards where at least 20% of citizens speak an official language other than Macedonian, used by at least 20% of citizens in that municipality. In local elections, the lists from the Electoral Code in the unit of local government in which at least 20% of citizens speak an official language other than Macedonian are written in the language and alphabet used by citizens in that unit of local government. The same case is also in parliamentary elections. For the personal documents the law stipulates the following:

“For the citizens speaking an official language other than Macedonian the form of ID is also printed in the official language and alphabet used by the citizen.”

“...the data entered in the passport and travel document is written in Macedonian language and Cyrillic alphabet and the official language and alphabet used by the citizen. Citizens who speak a language other than the official language of their own request the data is written in Macedonian language and Cyrillic alphabet and the language and alphabet used by the citizen.”

In this relation, Prof. Frckoski notes that it is not acceptable to have the Albanian alphabet on the passports of Republic of Macedonia, because it is an international document (representing the state) and not a document to be used within the country.

In terms of the opportunity and possibility for enjoying language rights at local level, the size of the community has become an important mark. The framework agreement establishes 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 in a given municipality 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. The following laws have been enacted, in other to ensure legal protection of language rights for minority groups: Law on the use of a language
spoken by at least 20% of the population in Macedonia and in the units of local self-government; Law on Identity Card; and The Law on Personal Registry Files.

The names of streets, squares, bridges and other infrastructure facilities are regulated with a specific law. The infrastructure facilities are written in Macedonian language and Cyrillic alphabet. In a municipality in which at least 20% of residents use an official language other than Macedonian language, the names are written in the language and alphabet used by at least 20% of citizens in that municipality. In regards to the use of language in the city of Skopje, the official language is the Macedonian language, however for the use of language spoken by less than 20% of residents of the City Council decided the City. In the municipalities of the Skopje the official language is Macedonian language and Cyrillic alphabet. The municipalities in the City of Skopje, besides the Macedonian language and Cyrillic alphabet, use, as official language, the language and alphabet used by at least 20% of residents in the municipality.

2.3.3 EDUCATION, MEDIA AND CULTURE

“A well-developed system of minority language education exists in “the former Yugoslav Republic of Macedonia”.”

The primary education is Republic of Macedonia is regulated with the Law for primary education in which Article 2 stipulates:

“...prohibition of discrimination based on sex, race, color, national, social, political, religious, financial and social background in exercising the rights of primary education...”

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. In primary schools where teaching is conducted in another language and alphabet different from the Macedonian language, the name of the school is written in Macedonian language and its Cyrillic alphabet and the language and alphabet in which the reaching is
When choosing associates, educators and other non-teaching staff the principle of equitable representation of citizens belonging to all communities and respect the criteria of expertise and competence is applied. For the students, members of an ethnic community who follow educational activities in a language other than Macedonian language, the pedagogical documentation is maintained and issued in Macedonian language and Cyrillic alphabet and the language and alphabet in which the instruction is being performed. For these students are provided textbooks in the language and alphabet of which is the teaching is performed. Moreover, the primary education activities are founded by the budget of the Republic of Macedonia, however in manners determined also by the law on financing of local self-government. In the secondary education the rights to use the language of the minority communities are the same as in the primary education; for example in the public announcement for selection of teachers, professional associates and tutors should be published in at least one of newspapers in Macedonian language and in newspapers in the language spoken by at least 20% of citizens who speak an official language other than Macedonian; when choosing associates, educators and other non-teaching staff in public secondary schools, apply the principle of appropriate and equitable representation of citizens belonging to all communities.

In terms of the higher education provisions, the Law on higher education regulates the autonomy of the universities, conditions and procedure for the establishment and termination of higher education institutions, the system of providing and evaluating quality of higher education, the basics of organization, management, development and financing of higher education. In regards to the enrolment of students members of a minority group the provisions in the law establish that

"The Government of the Republic of Macedonia adopts a decision for additional quotas for enrollment of students belonging to all minority communities in Macedonia."

The number of ethnic minority students who received secondary education in their native languages continued to increase; however, ethnic Albanians
complain that distribution of public educational resources was not proportional to ethnic groups’ representation within the general population. Ethnic minorities remained underrepresented in university-level education, although there has been progress in increasing the number of minority students since the 2004 recognition of the predominantly ethnic Albanian State University of Tetovo (founded according to the Law for establishing the State University in Tetovo.\textsuperscript{102} In 2000, was founded the South East European University.\textsuperscript{103} In these two universities the Albanian language is a teaching language. In the State University of Tetovo: teaching and lectures are carried out in Albanian; two study subjects from the study plan are taught in Macedonian; the entire documentation is written in Macedonian and its Cyrillic alphabet and in Albanian, and it is filled and given in two languages, in Macedonian and in Albanian (diplomas, certificates, confirmations, etc); the registry is kept in Macedonian and in Albanian; the index (student’s booklet) is written in two languages, and it is filled only in the student’s mother tongue; the entire communication with state institutions is carried out in Macedonian. In the South East European University: teaching and lectures are carried out in Albanian and in a foreign language, depending on the lecturer; the documentation is written in three languages: Albanian, Macedonian and English, and it is filled in the student’s mother tongue, the documentation is kept and given in Albanian; students do not have an index (student’s booklet); the communication with state institutions is carried out in Macedonian; the registry is kept in the mother tongue; the administration regarding exams is kept in the mother tongue of the student or of the lecturer that carries out the teaching; two subjects are taught in Macedonian; the diploma is written and given in three languages: Albanian, Macedonian and English. According to Murati, in both universities in Tetovo, the language policy is treated correctly, although a decisive constitutional and legal articulation is absent, whereas in two institutions in Skopje (Teachers Faculty in Skopje and the Department of Albanian language and Literature in the Philological Faculty in Skopje) there is a radical reduction of the implementation of Albanian,
which is totally incomprehensible, since the language is not used in the
documentation and in communication with institutions.\textsuperscript{104}

In terms of quotas at the Universities in Macedonia, the Government as an
affirmative action, introduced quota for the national minorities of 10%, at later
stage corrections of the percentages was made in order to correspond to the
situation of certain minorities. (22.7\% for the Albanians).\textsuperscript{105} In 2004 there were
intentions of the Ministry of Education and Science to introduce quotas for
minority Macedonians of Tetovo University which was seen as contrary to the Law
on Higher Education and the Law establishing a State University in Tetovo.\textsuperscript{106}

According to the CoE Advisory Committee, Albanian minority language,
bilingual (Macedonian/Albanian, Macedonian/Turkish and Macedonian/Serbian)
and trilingual language schools and have been well-established and provide
education to a large number of children belonging to these ethnic groups; in
addition, elective subjects on the language and culture of the Bosniaks, Vlachs and
Roma language and culture classes are taught in some schools and are attended by
significant numbers of children belonging to these national minorities. On the
other hand, it is noted that not all schools attended by children belonging to
national minorities offer such elective subjects and consequently a substantial
number of children belonging to national minorities have no opportunity to study
their language and culture.\textsuperscript{107}

\textit{“Broadcasters are obliged to broadcast at least 30\% program originally produced in
Macedonian language or languages of minority communities in Macedonia, where the
daily broadcasting time is not considered a time for news, sports events, games,
advertising, teletext and teleshopping services.”}\textsuperscript{108}

The Law on the use of a language spoken by at least 20\% of the population in
the Republic of Macedonia and in the units of local-self government dedicates
several provisions on the broadcasting regulations and use of language of ethnic
minorities (Arts. 33-39). The Macedonian National Television (MTV) is obliged to
provide, on every television program, at least 40\% program originally in
Macedonian or the language of minority communities in the period from 18:00 to
22:00. MNT is required over a day, on every radio-program to produce at least 40\%
program originally produced in Macedonian or language of minority communities in Macedonia. Programs in foreign languages or parts of them as broadcast programs of broadcasters should be translated in Macedonian language or the language of the minority community.\(^{109}\)

The freedom of expression and press are constitutionally guaranteed rights. Besides the three public television channels, there are more than 100 commercial TV and radio stations. The second channel of MTV broadcasts programmes exclusively in the languages of national minorities (Albanian, Turkish, Serbian, Romani, Vlach and Bosnian. The Macedonian public radio broadcasts programmes in the languages of the six national minorities, including Albanian (69 hours per week) and Turkish (35 hours per week) and Bosnian, Romani, Serbian and Vlach for 30 minutes each per day. There are also a number of commercial TV stations broadcasting in Albanian, Turkish and Romani languages. Despite this arrangements the CoE Advisory Committee notes that only one Albanian language TV channel broadcasts bilingual programmes on a regular basis, thus actively contributing to greater mutual understanding between the Albanian and Macedonian communities, thus advising for more strenuous efforts to develop and support initiatives to increase mutual understanding and intercultural dialogue through the media and to promote dialogue between the different communities.\(^{110}\)

According to Daskalovski, the parallel world (between Macedonians and Albanians) reflected in the media situation during the conflict in 2001. Some ethnic Albanians, especially the highly educated, read Macedonian language newspapers, however most do nothing; majority of Macedonians does not know the Albanian language and follow the media in the Macedonian language. During the war the media, in both languages, presented two different ‘truths’ (Daskalovski 2009).

In a study published by OSCE Mission in Macedonia are shown three main factors affecting the hostile behaviour between students of different ethnicities: students’ prejudice (43%), the political parties’ influence (43,8%) and cultural differences (44,2%) (see Appendix II.3.4.). According to the study, there is a
significantly higher number of Albanians than Macedonian who believe that the most salient factors are teachers, cultural differences and the ways schools are managed.

Concerning the need to have bilingual and multilingual television programs and other multicultural programs in the media, the survey made by the Macedonian Center for International Cooperation (MCIC) showed that the population on this question has a split opinion, 48.5% think that there is no need to learn the languages of the other communities in the country, and 47.0% think that there is such a need.111

Under the cultural aspect, it can be underlined that, various programmes are funded from the Ministry of Culture, establishing also a Bureau for Affirmation and Promotion of the Culture of Communities to monitor the promotion and the advancement of cultural identities of persons belonging to the (minority) communities. CoE Advisory Committee notes, however that, according to representatives of national minorities, they are not adequately involved in the decision-making process on the allocation of funds for cultural projects. Some opinions should be taken into consideration here. For some in Macedonia there is a segregated education system that doesn’t promote dialogue and communication between the communities.112 In this regard, the study undertaken by the OSCE mission in Skopje demonstrates a viewpoint that schools actively promote positive interethnic relations most commonly among the Turkish students, while there are more Albanians than Macedonians who reported that schools take active measures (See Annex II.3.4.). Case study (conducted in Struga) results reveal a major discrepancy between ethnicities in regard to level of acceptance of the statement that mixed ethnic composition of schools contributes to improved interethnic relations (see Annex II.3.4). For Josef Marko, the intransigent insistence of some leaders of Albanian political parties to sustain a closed education cycle seems an indicator that they are not really interested in a multi-cultural society based on full social cohesion for whatever political purposes (Marko, 2005).
2.3.4 **Self-representation Rights**

It was already mentioned before that OFA responds to the power-sharing ‘claims’ from the Albanian ethnic community in Macedonia. In the process of its implementation it is clear that it also provides for an improvement in their representation in the Macedonian civil service. Statistical data shows a commendable increase of the number of ethnic Albanians participation in the civil service (to be shown further), a case that is not present when it comes to the other small ethnic and linguistic communities in the country. Before presenting some data and percentage on the representation of the ethnic communities in the public administration, it is relevant to present the situation of the political representation.

While the Balkan countries and some European countries had issues to recognize and support the different ethnic communities living in its borders, Macedonia, since its independence, has always recognizes the existence of different communities as a given fact. Since the independence, it is constitutionally guaranteed to all citizens the freedom of association for “accomplishment and protection of their political, economical, social, cultural and other rights and beliefs”\(^{113}\), as well as the free expression of the national belonging\(^{114}\). In a period of 10 years (from 1991 to 2001), many political parties were formed representing different minorities. Some of those parties won seats in the Parliament, local council and positions of Mayors in different municipalities. Some parties representing minorities have entered the Government coalitions. Each and every government coalition has consisted of parties representing ethnic minorities. The practice up to 2002 has applied mainly to the parties representing Albanians, from 2002 onwards, there are coalitions formed of parties that represent practically all ethnic communities represented in the Parliament.

One of the main principles introduced by the OFA the ‘Badinter majority’ principle of double voting. The Badinter majority is a majority of the total number of representatives in the Parliament that includes a majority of the total number of representatives claiming to belong to the communities not in the majority in the
population of Macedonia. This principle is used for adopting a number of Constitutional amendments, laws and other legislative acts (for example: the Law on Local Self-Government) that directly affect culture, use of language, education, personal documentation, use of symbols, laws on local finances, local elections, the city of Skopje, and boundaries of municipalities. This element in the Macedonian model of accommodating minorities as seen in the consociational theory of Lijphart (observed in Part I) represent a type of veto rights for minority groups. Minorities do not enjoy full veto rights; however they have a right for a double voting on laws that concerns their interests. Parliamentary adoption of laws relating directly to minorities must follow this principle, requiring a majority vote of deputies representing ethnic minorities. The aim of this principle is to protect ethnic minorities in parliamentary decision-making, meaning that laws with a significant impact on ethnic minority communities may not be adopted by a simple majority but require a ‘double’ majority, including a majority among political representatives of the minority. The Badinter majority or principle is used also for adopting legislative acts in the units of local self-government. This double voting right gives possibilities for the ethnic communities to decide on laws that directly address their concerns and interests. This principle functions as their mechanism for protection.

Another principle introduced by the OFA is the equitable representation (found in the text also as ‘just representation’ or ‘equal representation’). This principles assures a representation of communities on equal basis in all central and local public bodies at all levels of employment, election of one-third of the members of the Constitutional Court, three members of the Juridical Council, as well as the Public Attorney by a special parliamentary procedure with a “Badinter majority”. The equitable/proportional representation in the public administration during its implementation phase gave significant negative results in terms of the quality of the employed personnel. In this regard, data from the Central Registry of Civil Servants shows a commendable increase of the number of ethnic Albanian participation from 5.61% in 2004 to 24.18% in 2010. The situation is different with
the other minority groups (Turks and Roma); in 2010 they participated with only 1.49% or 0.64% in the civil service respectively. Critics go in direction to the implementation of the framework agreement noting that the government is only ensuring representation of only one community (Albanian), whereas the other communities do not feel the implementation process in a just and equal manner. (Risteska 2011). Nevertheless, according to the Agency for Public Administration underlines that in the period of 2010, within the Governmental Program K15 – Equitable representation, are published eight listings for employment of 53 civil servants members of the communities not in a majority. Among scholars and experts flows the opinion that the employment in the state administration is an unsuccessful project. Members of the minority groups are employed on the basis of their political party affiliation, pressing and forcing for the equal representation ignoring the qualifications of the persons employed (meritocracy) (Risteska 2011).

With the Constitution from 1991, a special Council was introduced. It is 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 framework agreement the Council is renamed into a Committee and it is 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. It seemed that this body is the highlight of the development of the inter-ethnic relations in Macedonia and potentially the most potent agent of discussing and developing the minority rights. However, it has never become functional. From 1991 to 2001, the integration model in the Republic of Macedonia, has tended to be more multi-ethnic, even though it has some elements of integration. The functionality of the political parties has lined to multi-ethnic, while the instruments, educational and social provisions had some integration characteristics.
In regards to the elections, since the independence, Macedonia had seven cycles of Parliamentary elections, bringing seven MP’s. The election legislation for the parliamentary election has changed several times. In 1991 and 1994 the parliamentary elections were organized in a two-round majority system, in 1998 there were a mixed system featuring two-round majority and proportional voting, while from 2002 a system of proportional voting with six electoral units was established.

Table 4: Distribution of Mandates in the Assembly of the Republic of Macedonia, 1991 - 2015

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</thead>
<tbody>
<tr>
<td>PDP - Party for Democratic Prosperity</td>
<td>17</td>
<td>11</td>
<td>11</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>DPA – Democratic Party of the Albanians</td>
<td>5</td>
<td>4</td>
<td>10</td>
<td>7</td>
<td>11</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>NDP – Peoples Democratic Party (later National Democratic Revival)</td>
<td>5</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>1</td>
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<tr>
<td>PCER - Party for Full Emancipation of the Roma</td>
<td>1</td>
<td>1</td>
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<td>1</td>
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<tr>
<td>DST - Democratic Party of Turks</td>
<td>1</td>
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<td>1</td>
<td>1</td>
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<tr>
<td>SR – Union of Roma</td>
<td>1</td>
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<td>1</td>
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<tr>
<td>DPT - Democratic Party of Turks in Macedonia</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<tr>
<td>DPS - Democratic Party of Serbs in Macedonia</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<tr>
<td>DUI - Democratic Union For Integration</td>
<td>15</td>
<td>13</td>
<td>18</td>
<td>14</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<tr>
<td>Democratic League of Bosniaks</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<td>1</td>
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<tr>
<td>OPE – United Party for Emancipation of Roma</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<tr>
<td>PEI - Party For European Future</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<tr>
<td>PDTM - Party for the movement of Turks in Macedonia</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<tr>
<td>SDAM - Party for Democratic Action in Macedonia</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<tr>
<td>SRPM – Serbian Progressive Party</td>
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<td>1</td>
<td>1</td>
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<td>1</td>
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<tr>
<td>PDAM – Party of Democratic Action (Bosnian)</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>28</strong></td>
<td><strong>21</strong></td>
<td><strong>22</strong></td>
<td><strong>30</strong></td>
<td><strong>24</strong></td>
<td><strong>29</strong></td>
<td><strong>34</strong></td>
</tr>
</tbody>
</table>

*Source: Author’s elaboration*
Parties representing different minorities have won seats in all cycles of parliamentary elections; however with the change of the electoral system, they have changed their campaigning and platforms. The Albanian political parties are more oriented towards their collective rights, such as the usage of the language, education and symbols, but also promoting more equitable representation. See table below for the number of mandates through the years.

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.

According to some, Republic of Macedonia since its independence has shown to be a multicultural state. However, the Ohrid Framework Agreement is seen as a success story in number of issues concerning minority rights and their protection. Mainly a success story in ending an escalating conflict and banning the fear of a renewed conflict, but most of all, from a present point of view, is a legal foundation for guaranteeing certain rights for the national minorities in Macedonia. Some see it as well as a failure, as agreement which unable to fundamentally transform interethnic relation and ethnicity remains a potent force in the political debates. In overall the agreement restores stability and security and prevented a territorialization and preserving the unity of the state. Most of all, it has to be noted that the agreement is merely a framework aiming for a new legislation to be implemented and the new one to be amended. The legislation was briefly examined; the implementation is going step by step slowly and carefully, a process which seems complicated and difficult. The complete implementation is a model and the future of Macedonia (Клековски 2011). Bieber points out that it is wrong and naïve to assume that there is a possibility for a final agreement which resolves all disputes; the interethnic accommodation is never a complete process and is likely to be subject to repeated and continuous negotiations (Bieber 2008). According to him the threshold of 20% of the population of the state and on local level creates further problems, and further politicized the population census. The problems with its implementation are not in OFA’s principles, it is the process of implementing that
asks for time and interethnic dialogue. Of course, in order to fully implement the provisions there is a necessity of resources and funds. Some solutions given in the agreement according to some go out of proportion and do not go in the line with its principles.\textsuperscript{127} Besides the fact that the agreement was described as merely a document regulating the relations between the Macedonians and the Albanians, it has a wider value, and what was achieved for the ethnic Albanians, should be ensured for other minorities, as well.\textsuperscript{128} There are views expressing that a \textit{de facto} Macedonian-Albanian bi-national state is created, rather than promoting a civic oriented, multiethnic state, laid down by the power-sharing provisions in the framework agreement.\textsuperscript{129} The model has its own original characteristics, and as every model, it is implemented on the basis of a factual situation in a country. How the model’s development and it process of implementation is confronted with the model of the first case studies, in a comparative perspective, will be discussed further in Part III.
ENDNOTES

1 Transition societies are characterized by complexity “by the lack of more significant democratic experiences and of traditional institutions and habits determined by such experience” (Frckoski 2000).

2 In this regards, Prof. Frckoski defines a multiethnic society as “one in which there are two or more ethnic groups that are different in an ethnic, linguistic, religious or racial sense”. "People who belong to a group view themselves as different cultural communities, think of this difference as important and try to preserve and develop it. In some cases, that struggle to preserve the particularity becomes negatively determined as hostility or bad feelings toward persons belonging to other ethnic groups.” Whereas a multiethnic democracy means “lifting socio-cultural and ethnic diversity to the level of the collective bearer of divided sovereignty.” See (Frckoski, Certain aspects of democracy in multiethnic societies 2000). Prof. Ljubomir Frckoski is professor of International Law and International Relations at the Faculty of Law "Iustinianus Primus", University "Ss. Cyril and Methodius", Skopje.


6 In Macedonian: Антифашистично Собрание на Народното Ослободување на Македонија (Antifašističko Sobranje na Narodnoto Osloboduvanje na Makedonija, abbr. ASNOM).

7 АСНОМ (Документи), Том 1, ДАРМ, Скопје, 2004, 41-52.


12 According to Adamson and Jovic, the context in which Macedonian and Albanian identities had been defined, however, changed with the rise of Slobodan Milošević in Serbia, and the crisis of the Yugoslav communist ideology through the country.

13 Art. 154 of the Constitution from 1974 see equal all citizens of the federation no matter their nationality, race, religion and language. Arts 170 and 171, Art. 214, Arts. 243, 246 and 246 give language rights for all nationalities within the federation. It is guaranteed the use of language in the Parliament, public administration and judicial proceedings.

14 The history documents for the Macedonian national development show facts where there are joint institutions between Macedonians and Albanians. For example, the Macedonian Albanian League, Macedonian-Albanian Revolutionary League, Central Committee of the Macedonian-Albanian League in London, having common programs. During the Turkish revolution there are already parallel institutions. At the Berlin Congress seemed that Albania is threatened by neighbouring states, Greece, Montenegro and Serbia, and in that sense the new-development Albanian national forces estimated that the Macedonians and Albanians are in the same danger. The question on the boundaries between Albania and Republic of Macedonia was not a generator for conflict; Albanians were always sure that in Macedonia lives a large number of Albanians and they were sure that the Albanians living in Macedonia will seek for a solutions for their status together with the Macedonians. When it
comes to ordinary life and families there is a period of coexistence, respect of the customs of both communities and their security. See the interview with Prof. Vlado Popovski in (Клецовски 2011).

15 Interview with Prof. Ljubomir Danailov Frckoski, conducted in May 2011. Prof. Frckoski was actively involved in the sessions.

16 In April, 1992, it became a member of the United Nations under the provisional name of the Former Yugoslav Republic of Macedonia (FYROM). Around 120 states recognize it under its constitutional name, the Republic of Macedonia. According to Frckoski the crucial points for the gaining independence were pointing out towards the answers of the following questions of political relations: the breakout from Yugoslavia (Serbia) and learning its own geostrategy in the region – “cross-land country”; the Albanian question in the region; the fight for identity with Greece through the name issue, and with Bulgaria through the language and ‘nation’ questions; learning the international political relations of small states and the first contacts with the IGOs; gaining allies with the great powers as USA, Russia and EU; identity dilemmas for creating a Macedonian nation of citizens with different ethnic identities; and the dynamics and dilemmas over the majority-minority relations and the Macedonian nation plan. See Фрчкоски, Љ. Д. (2005) [Frckoski, Lj. D (2002). Стекнување на независноста на Република Македонија: Политика и процедура. Република Македонија 60 години по АСНОМ, Зборник од научниот собир по повод шесестогодишниот од АСНОМ одржан во Скопје на 15-16 Декември 2004 година (pp. 133-146). Скопје: Македонска Академија на Науките и Уметностите.

17 See Robert Elsie on the Albanian language at www.albanianlanguage.net.

18 The signing and ratification of a 2001 border treaty between Macedonia and Yugoslavia, demarcating Yugoslav-Macedonian borders including that between Kosovo and Macedonia, is seen as the ‘spark’.

19 One theory responsive to the above questions is Mincheva’s: The 2001 Macedonian crisis was caused by external and domestic factors at once. More specifically, the crisis was instigated by a trans-border actor, the Albanian Ethnoterritorial Separatist Movement (ETSM), operating at both sides of the Kosovo-Macedonian border, and utilizing favorable opportunities of domestic and international environment. Therefore the Albanian ETSM: (1) was a non-state actor, whose activities had significant impact on domestic and international politics; (2) evolved from a regionally (trans-border) concentrated ethnic group; (3) mobilized by ethnic affinity; (4) was engaged in a quest for self-determination; (5) was a rational actor; and (6) may be characterized as a social movement. See Ljubov G. Mincheva, “Dissolving Boundaries between Domestic and Regional/International Conflict: The Albanian Ethnoterritorial Separatist Movement and the Macedonian 2001 crisis”, New Balkan Politics, Issue 9 (2005), at http://www.newbalkanpolitics.org.mk/napis.asp?id=33&lang=English.

20 The National Liberation Army’s acronyms are ONA in Macedonian and UCK in Albanian. The latter is also the acronym of the Kossovo Liberation Army.

21 Weeks later, a private Macedonian TV station (A1 TV) sent a crew to an isolated mountain village on the Kosovo border that was inhabited by Macedonian Albanians. When men in NLA uniform harassed the crew and did not allow filming, the Macedonian police sent a patrol unit to investigate. Macedonian special police units had defeated the rebels by driving them across the border into Kosovo, but in mid-March NLA forces reappeared in the hills above Tetovo, a key northwestern town with a Macedonian Albanian majority. As the NLA began firing indiscriminately on that district, there were worries about conflict escalation. On 25 March, the government launched an offensive, which eventually led to the withdrawal of the NLA forces to Kosovo. See Daskalovski, Z. (2009). Spinning out of control: Mutual Reinforcement Discourse in Macedonia? In P. Kolsto, Media discourse and the Yugoslav conflicts: representation of self and other (pp. 173-195). Burlington: Ashgate, at 173.


23 He was a popular figure in Macedonia, and considered an appropriate choice by the international community.

24 The General Secretary of NATO George Robertson was actively involved in the negotiation process by a so called ‘shuttle diplomacy’. See [Лятип, Џ. Љатифи, В. (2008). Преговарање за постигнување на Охридскиот договор, Negotiations for the Ohrid Agreement] Скопје.

25 The American councilor Mr. Paul Williams was also actively involved in the preparation of the meetings with the president of the Albanian political party DPA Mr. Arben Gafieri and Mr. Perdew.
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27 See the Graph depicting the results of this survey in Annex ___.

28 See the full text of the Ohrid Framework Agreement in Appendix ___.

29 OFA was signed by: Mr. Boris Trajkovski (President of the Republic of Macedonia), Mr. Ljupco Georgievski (Prime-Minister and President of the political party VRMO-DPMNE), Mr. Arben Gaferi (President of the political party DPA), Mr. Branko Crvenkovski (President of the political party SDSM), Mr. Imer Imeri (President of the political party of PDP), Mr. François Gerard Marie Léotard (Representative of the European Union mission in R. Macedonia) and Mr. James Perdue (Special representative of the USA).

30 Officially the international community has a testimonial role, however, as seen previously, has been involved in the negotiation process constantly and actively as a sort of mediator.

31 According to some the agreement in 2001 was imposed by the international community and "the demands given before the conflict would have by all means been fulfilled on time". See the interview with Ismail Bojda in (Клековски, Охридски рамковен договор: интервјуа 2011)

32 Interview with Prof. Frckoski, conducted in May 2011.

33 The principle is named after the French constitutional scholar and former Minister of Justice Robert Badinter, who served as a consultant during the Ohrid negotiations.


35 According to Frckoski, there was no space for provisions similar to the ones in the OFA, in the Constitution of 1991, as it was; the constitutional design in 1991 showed to be successful and it created the ground for further provisions for inclusion and greater protection of ethnic communities. The Constitution verified and developed the experience and the practice of inclusion, the institutional inclusion of the minorities in the system which showed to be fruitful for the real Macedonian independence and stability.


37 See the interviews of Mr. Buckovski, Prof. Frckoski, Ms. Sekerinska, Mr. Kadriu, Ms. Vankovska and Ms. Jankulovska in Klekovski, op.cit. For Prof. Frckoski, the goals are: improvement of minority rights, use of their languages as well as inclusion in the state administration. According to Ms. Vankovska the goal is the change of the political system with the introduction of consociation.

38 See the interview made with Ms. Ahmeti in [Klekovski, S.] Клековски, С. (Ed.). (2011).op.cit. He sees the agreements as a regulation of the relations between Albanians and Macedonians, and it is a compromise that is guaranteed by the EU and NATO. The similar view is observed in the statements of Mr. Aliti, as he considers that the objective of the Agreement is to define Macedonia as a state of Macedonian and Albanians equally, whereas the challenge is not a multiethnic society because it exists already, but whether the state functioned like a multiethnic one.


40 Prof. Ljubomir Frcoski and Prof. Vlado Poposki (professor of Political Sociology, Political Systems, and History of Law) from the Faculty of Law “Justinianus Primus”, University of Ss. Cyril and Methodius”, Skopje. These experts see the OFA as a model offering not only resolution of the conflict, but a far reaching solution in terms of multiethnic co-habitation and full respect of minority rights in a multicultural country such as Macedonia. Another (opposite) perspective is presented by the critics of the agreement, among them, Prof. Svetomir Skaric (professor of Constitutional Law) and Prof. Tatjana Petrujevska (professor of International Law, International Organizations and European Union Law).
The great interest in the OFA was caused by the question of its successfulness of the inter-ethnic conflict settlement different from the resolutions given in the other Balkan countries, as well as the proceeding of the implementation process and what it means for the unity of the country.


See the interview with Mr. Ahmeti in Klekovski, S. (Ed.). (2011). op.cit.

See the interview with Mr. Osmani and Mr. Mehmeti in Klekovski, S. (Ed.). (2011). op.cit.

See the interview with Erwan Fouere in Klekovski, S. (Ed.). (2011). op.cit. While for Fouere the greatest improvement is in the legislation and in the decentralization. Erwan Fouere was a EU Special Representative for the Former Yugoslav Republic of Macedonia and Ambassador, Head of European commission Delegation in the Former Yugoslav Republic of Macedonia.

See Mr. Ali Cupi and Mr. Hasipi interviews in Klekovski, S. (Ed.). (2011). op.cit.. It must be noted that some understand the implementation process as a philosophy of life, and not as a process of implementation expressed in percentage. See Mr. Aliti interview in Klekovski, S. (Ed.). (2011). op.cit.


See the Constitution of the Republic of Macedonia with the amendments in Annex II.1.1.

The International Covenant on Civil and Political Rights, the Framework Convention for the Protection of National Minorities, the European Charter for Regional and Minority Languages. Have been accepted the CSCE Copenhagen Document and the CEI Instrument for Protection of Minority Rights. The UN Declaration on Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities has been fully implemented.

See the interview with Osman Kadriu (was judge in the Municipal Court in Kicevo, a professor at the Faculty of Pedagogy at Ss Cyril and Methodius Skopje and President of the Helsinki Committee since January 2011) in Klekovski, S. (Ed.). (2011). op.cit.

Amendment V replacing Article 7 of the Constitution of the Republic of Macedonia.

Amendment VIII replacing Article 48 of the Constitution of the Republic of Macedonia.

See the Ohrid Framework Agreement in Annex II.1.2.


Direct discrimination on any discriminatory basis is inconvenient treatment, distinction, exclusion or restriction which consequently has or could have a seizure, disruption or limit equal recognition or enjoyment of human rights and fundamental freedoms, compared with treatment that has or could have another person in the same or similar conditions. See Article 5. Indirect discrimination on any discriminatory basis is placing a person or group at a disadvantage compared with other persons, decision apparently neutral provisions, criteria or by taking certain practices, unless such provisions, criteria or practices resulting from the justified purpose and means of achieving that aim are appropriate and necessary. See Idem.

Article 3.

Art. 1 para 1.

Official Gazette No. 5 from 29.01.2002.


The previously existing law (Law for the territorial division of Macedonia and defining the areas of local government, Law governing relations between new units of local government and local self-government and Law on Local Elections) are abolished.


Sources of funding for the municipality are: own sources of revenue grants from the Budget of the Republic of Macedonia and budgets funds and borrowing.


“Закон за изменување и дополнување на законот за државни службеници” Official Gazette No. 43 from 26.06.2002.

Official Gazette No. 40 from 31.03.2006.

It includes provisions under the principle of equitable representation in electoral organs (Art. 21)

Official Gazette No. 84 from 03.10.2005.

Official Gazette No. 104/09 from 20.08.2008.


Article 1

Article 3

Law on determining the names of streets, squares, bridges and other infrastructure facilities, Official Gazette N. 66/2004 from 01.10.2004


Art. 20, Law on local self-government.

Art. 55, Law on local self-government.

See the territorial division (Statistical region and municipalities in the Republic of Macedonia) in Annex II.2.4 as well as the Population density in Annex II.2.2.


Art. 2 para. 2, The Law on the use of a language spoken by at least 20% of the population in the Republic of Macedonia and in the units of local self-government, Official Gazette No. 150 from 12.12.2007.

That language can be used by the MP as well as in the case when it presides with a session of a parliamentary working group.

The support for learning the language of other ethnic communities in Macedonia, among the Macedonians is 38,5%, 34,3% think that the languages should be learn in some cases, and 24,4% think that they should not be learned at all. See the Survey conducted by the Macedonian Center for International Cooperation (MCIC), in the publication [Klekovski, S.] Клековски, С. (Ed.). (2011).op.cit. and the chart of this results in Annex II.3.2.

The court shall provide written to translate the written material that is relevant to the proceedings or the defense of the accused. Other parties, witnesses and participants in the proceedings before the court are entitled to free assistance of an interpreter if they do not understand or speak the language of the proceedings. The translation is done by a court interpreter. According to some however “it is not logical for the court process to be carried out with an interpreter if all parties are Albanian and the judge is Macedonian”. See Murati, X. (2008). Education and use of language. In Power Sharing and the Implementation of the Ohrid Framework Agreement (pp. 165-179). Skopje: Friedrich Ebert Stiftung, at 176.

Arts. 29 and 30.

See Note 69.

Point 6.6. of the Ohrid Framework Agreement: ”With respect to local self-government, in municipalities where a community comprises at least 20 percent of the population of the municipality, the language of that community will be used as an official language in addition to Macedonian. With respect to languages spoken by less than 20 percent of the population of the municipality, the local authorities will decide democratically on their use in public bodies.”

Art. 7 - Law for determining the names of streets, squares, bridges and other infrastructure facilities, Official Gazette N. 66/04 from 01.10.2004
The Municipality Council decides on the use of the language spoken by less than 20% of residents in the municipality.


"Закон за основно образование", Official Gazette No. 103/08 from 19.08.2008.

The Council of the Municipality of Cair in the city of Skopje recently decided to rename four primary schools in the municipality instead of Macedonian names (of important persons from the Macedonian history) in names in Albanian and Turkish names (instead "Cvetan Dimov", "Hasan Prishtina", "Rajko Zinzifov" to be "Ismail Kemal", "Jane Sandanski" be renamed "Yasar Bey" and "Nikola Vaptzarov" in "Imri Elezi") The decision on renaming the four primary schools in Skopje municipality Cair is abolished and these primary schools should have their old names back. Such a decision, according to still unofficial information, is being made by the State Inspectorate for Local Government within the Ministry for Local Self-Government. The decision to rename was disputed and it is claimed by the councilors from ethnic Macedonian community that it did not follow the Badinter principle of voting when it comes to naming primary schools. See News Release from the Newspaper "Dnevnik" on 02.03.2012, available in Macedonian language only at http://www.dnevnik.com.mk/default.asp?ItemID=9CB74EB5AFBEC24AA68047ED155D788A.

Art. 82 para. 4.
Art. 100, para. 2
Art. 162, para. 1


Art. 110, para. 6. This

"Закон за основање на државен универзитет во Тетово", Official Gazette No. 8 from 23.02.2004. According to Frckoski, the appearance of the politic action called "Tetovo Univerity" is linked with the situation in the region, in the context of closing down the University in pristine (de facto for the Albanians) and the reduction and deterioration of conditions for education at the University of Tirana for Albanians from Macedonia; as well as the small number of Albanian students at the Universities in Skopje and Bitola. See Frckoski, L.D. (1998)Model of the multiethnical relations in Macedonia. Skopje: Krug.

The establishment of the University is linked with the OSCE High Commissioner for National Minorities who in spring 2000 initiated discussions for establishment of a new university in Macedonia, which was supported by international donors followed by the adoption of the Law on Higher Education by the Parliament of the Republic of Macedonia, that allowed the founding of universities that are not related to the state and supported higher education in Albanian language. "It is now regarded as a model for multi-ethnic, multi-lingual higher education in South East Europe." See at http://www.seeu.edu.mk/en/about/profile/history.


A part from the belonging to a national minority another requirement is present and that is passing the entrance exam. See Frckoski, L. D. (1998).op.cit Model of the multiethnICAL relations in Macedonia. Skopje: Krug.

The new state university would use the model of "SS. Cyril and Methodius", except that the Skopje in regular groups can compete with anyone interested, and if minorities have achieved a high enough success on the exams, then use the positive quota of 20 percent.

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108 Art. 34, para.1, The Law on the use of a language spoken by at least 20% of the population in the Republic of Macedonia and in the units of local-self government, Official Gazette No. 150 from 12.12.2007.

109 Art. 36, para. 1. Moreover, the programs that are not translated; are announced in Macedonian language or the language of the minority community.

110 ACFC/OP/III(2011)001 at 20. One of the key Issues for immediate action according to the Advisory Committee is to "...undertake further measures to promote tolerance, mutual understanding, respect and intercultural dialogue, and further measures to combat prejudice towards persons belonging to national minorities, including through the effective implementation and monitoring of the laws adopted to implement the Ohrid Framework Agreement; create opportunities for interethnic dialogue in all spheres of life, in particular aiming to involve in joint activities children and young people living in ethnically-mixed areas;...". Prejudices are still present, a phenomenon that is hard to combat, especially between children and young people. A lot of cases on violence are reported through the years, between young people of Macedonian and Albanian ethnicity. See a recent news release published from the daily online newspaper “24 News” on 03.03.2012 “Серија инциденти во Скопје и Кичево, претепани момчиња” at http://24news.mk/357200/indexed.html.

111 See Annex Survey conducted by the Macedonian Center for International Cooperation (MCIC), in the publication [Klekovski] (2011) op cit. at 38.


114 Article 8, Ibid

115 There are 46 laws that can be adopted using the Badinter principle, secretly agreed during the so called “May Agreement” between the Prime Minister Nikola Gruevski and the leader of the biggest Albanian political party Ali Ahmeti.

116 The principle in practice did not demonstrate many positive results. Disputes and debates on its misuse were present in the political arena. The lack of a ‘double majority’, i.e. a majority of representatives among the minority community as well as an overall parliamentary majority, affects the implementation of the Framework Agreement as well as the government’s ability to enact its legislative programme." See OSCE, Law Drafting and Regulatory Management in the former Yugoslav Republic of Macedonia: An Assessment, from November 2007 at http://www.osce.org/odihr/34685. See also news-releases at http://micnews.com.mk/node/6036 and http://www.setimes.com/cocon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2006/11/13/nb-07.


118 See note 69

119 On the same position stands also Mr. Ismail Kadriu (president of the Association of Macedonians with Islamic Religion - SMIR), stating that “the increase of the employment of the Albanians in the administration is justified only if they are professionals in their work”. See the interview with Ismail Kadriu in [Klekovski] (2011) op cit.

120 The programmes of some parties representing minorities of different ethnic communities are limited only to advancing minority rights. Some of these parties have been present for the entire period of political pluralism in Macedonia, such as: the Party for Democratic Prosperity in Macedonia (PDP), the Party for Full Emancipation of the Roma (PCER), the Peoples’ Party of Macedonia (NDP), the Democratic Alliance of the Turks (DST), and the Democratic Party of the Turks (DPM). The other parties representing minorities include the United Party of Emancipation, the Democratic Party of the Serbs in Macedonia (DPS), the Democratic Party of the Albanians (DPA), the Democratic Union for Integration, the Party for European Future (PEI), the
The Republic of Macedonia


See the interview with Radzep Ali Cupi (member of the Roma community in Macedonia, Director of the Directorate for Development and Promotion of the Languages of the Communities within the Ministry of Education and Science) in Klekovski, (2011) op.cit.


The Population Census planned for 2011, was delayed in spring for autumn because of the Parliamentary elections in the country, however when it had to be performed, a lot of irregularities appeared, ending the census with resignation of the members of the Census Commission and officially stopping the Census. Officially, the reason for termination of the census is the methodology and the uneven enumerators from various districts applied in field. Enumeration with photocopies of personal documents, not originals only as prescribed by law, enumeration of distant relatives and those who does not have residence in Macedonia for a year. The Macedonian Parliament with the parliamentary majority voted for passing the Law on termination of validity of the Law on Census of population, households and dwellings in Macedonia in 2011, by a shortened procedure and with that official census was considered terminated.

See note 69.

For Prof. Vlado Popovski, the fiscal decentralization and enabling financial conditions for implementing rights is an important issue for consideration. For. Prof. Fckovski, the use of the language in state administration should be further discussed, as well as the adoption of the budget with a double majority.

See note 36.

## CONTENTS OF PART III – COMPARATIVE ANALYSIS AND PERSPECTIVES

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By recalling the theoretical foundations analysed in Part I, the attention can be centered on some key theories and concepts. At first and far most important issue is the question on the accommodation of the cultural (linguistic, ethnic, religious) differences in one society. From individual to communitarian perspective, a light has been brought to a middle ground solution; the key concept which describes both (the individual right and the group/collective right) are the group-specific (or differentiated) rights guaranteed by special constitutional or legal measures (Kymlicka, Young, Levy). These group-differentiated rights include self-government rights (through different kind of models from full autonomy to partial non-territorial autonomy), polyethnic rights (culture, language, education, religion, etc) and special representation rights (representation in the governmental bodies). The question of their justification brings to light the existence of some historical developments and documents, which according to Kymlicka, can fully justify the arguments on the group-differentiated rights. These historical documents give birth to different political systems and jurisdictions, which according to their forms and solutions offered, justify the actual situation and need for protection of the marginalized (minority) groups. To implement rights’ protection every constitutional legal order in a country has its own different modalities of accommodating rights and thus different procedures of implementation. Constitutional designs and states’ policies offer many solutions, and every country is different in this regards, however in general there is a tendency to follow some models for minorities’ accommodation. The policies can be distinguished as: assimilative, integrative and policies towards separation (Hadden). The models can be from nationalistic repressive, ‘agnostic’ liberal, to ‘promotional’ and ‘multinational’ [Toniatti &Marko (1994), Palermo & Woelk (2011)]. In specific, the models presented in the selected case studies of this research work have been analysed through the protection mechanisms and solutions towards guarantying the three types of group-differentiated rights. The third type, the self-representation rights asks for a certain kind of political system
and this question has been analysed through the different theories of political systems, among which the prevalent is the theory of consociationalism (Ljiphart). Power-sharing arrangements greatly influence the minorities’ situation in one country; therefore these arrangements are seen important and necessary for the comparative analysis. This part of the research work, brings in a comparative perspective all above mentioned characteristics when it comes to the minority rights protection.

1. **Historical Developments and Their Influence on the Minority Rights Protection Legal Corpus**

To be able to understand the progress path of minority rights protection in the two case studies, and draw some comparison lines, at first it is necessary to revisit some of the historical developments and their influence and link them to the present legal corpus protecting minority rights. As Aristotle said "If you would understand anything, observe its beginning and its development". This certainly does not mean that history will give the solutions and the plan for the future developments, but as Robert Penn Warren said “it can give us a fuller understanding of ourselves, and of our common humanity, so that we can better face the future”. This section, however will not attempt to give again the history behind the models of protection implemented in the two case studies; it will only present a brief overview and attempt to make a comparison, in order to show that behind every model there is a certain background explicitly defining the model itself.

It was observed in Part I, that one of the justifications of the group-differentiated rights is according to Kymlicka the arguments based on historical documents. Therefore, the historical documents presented in both the case studies will show that the states - and the minority groups in order to justify their demands for protection - use history as a main argument. In this sense the protection has two sides; from one side the state is protecting itself from the sometimes ‘excessive’ demands of the minority groups living in its territory, asking
for bigger autonomy and sometimes even self-determination, and on the other hand, the minority groups are asking for protection within the state, to ensure their co-habitation and avoid marginalization within the society.

In the following table 5, three variables will be taken into consideration; variables that are seen as strictly linked to the historical facts of importance for the research question and have an impact in both case studies when it comes to the development of the minority rights and their protection. The history of both case studies is rich in its content, and this makes difficult the selection of facts from which the analysis can start, therefore the candidate from personal thought and understanding has selected some facts to be considered further.

Table 5: Historical facts and developments in the case of the Autonomous region Trentino-South Tyrol and the Republic of Macedonia

<table>
<thead>
<tr>
<th>Historical Facts</th>
<th>Autonomous Region Trentino – Alto Adige (South Tyrol)</th>
<th>Republic of Macedonia</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Territorial borders</strong></td>
<td>- Associated with Austria since the mid-1300s;^2</td>
<td>- Part of the Socialist federative Republic of Yugoslavia (1944)</td>
</tr>
<tr>
<td></td>
<td>- Territorial compensation (1915)</td>
<td>- Independent unitary Republic since 1991</td>
</tr>
<tr>
<td></td>
<td>- Official assignment to Italy (1919)</td>
<td>- No territorial autonomy but territorial self-government (division - decentralization) since 1995 and 2004 (modifications)</td>
</tr>
<tr>
<td></td>
<td>- Ensured autonomy (1946)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Special Autonomy Status of the Region Trentino – South Tyrol (1948)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Revised autonomy (1972-1992)</td>
<td></td>
</tr>
<tr>
<td><strong>Historical documents concerning minority rights</strong></td>
<td>- Peace Treaty of St. Germain (the area was promised to Italy)</td>
<td>- The Constitution of the SFRY (reference to articles regarding language rights)</td>
</tr>
<tr>
<td></td>
<td>- The First Autonomy Statute 1948</td>
<td>- The Ohrid Framework Agreement from 2001</td>
</tr>
<tr>
<td></td>
<td>- UN resolutions n. 1497 from 31/10/1960 and from 28/11/1961</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Package measures from 20/01/1969</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- New Autonomy Statute (modification of the Package) (1972)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Constitutional Amendments from 2001</td>
<td></td>
</tr>
<tr>
<td><strong>International support</strong></td>
<td>- Question brought before the UN Assembly (1960)</td>
<td>- With the support of the International Community (UN, EU, NATO) 2001 conflict resolution with the signature of the Ohrid framework agreement</td>
</tr>
</tbody>
</table>

Source: Authors’ elaboration
As discussed before, the Region Trentino-Alto Adige (South Tyrol) represents a particular model of autonomy and minority rights protection studied for many years, discussed and presented as a role model for other European countries. As one of the five autonomous regions in Italy it gained its special autonomous status in 1948, after a series of historical developments. Not going too far in history, however South Tyrol was associated with Austria for many years; with a territorial compensation during the WWI Italy gained this territory in return for Italy’s entrance on the Entente side; few years later (in 1919) it has been annexed by Italy (St. Germain Treaty) although at that time more than 93% of its population were German speaking Tyroleans. This brought many questions and conflict situations in the region and disagreements by the German speaking population asking for protection and self-government. The protection finally came when the in 1946 the Gruber-De Gasperi Agreement was signed (internationally enforceable as Annex in the Paris Peace Treaty) and few years later a better ground for minority protection was introduced by the recognition of a special autonomous status within the Italian state, having two united provinces with the decision power vested in the Region of Trentino-Alto Adige (with Italians as majority). This has not given satisfactory solutions for the German speaking population, therefore further actions needed to be taken by asking for UN to intervene and ensure that the German speaking minority in that part of Italy is protected.

As it can be seen from the few points showed in the table, the two case studies have a different dynamics in history. Of course, this is due to some main reasons (geographical position and geopolitics strategy), which are not going to be discussed here; however some features are evident, the territorial division and organization and the demand for rights. In the first case study of South Tyrol as an Italian case of minorities’ protection, first, the (territorial) administrative division and organization appear to be recognized immediately as a solution for the German-speaking population and its protection. On the basis of the territorial settlement and organization of autonomy status, later the various provisions giving special rights to the German speaking minority are built. In the case of Macedonia,
however, historically, the territorial division is not even a question to be asked and imposed at the beginning. It is formed as an independent unitary state, leaving behind the federal Yugoslav model which did not recognize minority rights in specific but considered all citizens (narodnosti) as equal; however the Constitution of Yugoslavia from 1974 gave the foundations for protection of certain rights of minority groups such as the right to use their language. These historical patterns greatly influence the consequent development of the minority rights corpus. In Italy, the model of Trentino-South Tyrol was developed following the territorial principle and implementing a model of autonomy ensuring self-government rights. This is the main feature of this model; justified by one of the two types of historical agreements (Kymlicka, 1995), that is the bilateral agreement between Italy and Austria. Here we have also a feature of the second type of agreement - the political agreement, by putting the De Gasperi - Gruber Agreement as an annex in the Peace Treaty of Paris to ensure international recognition and confirmation. Under the basis of this agreement the corpus of territorial minority rights protection was later formed. On the other hand, the Republic of Macedonia has a short history (compared to the historical developments of the first case study) when it comes to developing the corpus of minority rights protection. Being a federal state within Yugoslavia, gaining independence in 1991 and handling 10 years later an ethnic conflict are the three significant historical periods in this case study. And as in the case of South Tyrol, the Republic of Macedonia had as well an international intervention in order to settle the raised conflict in 2001. The intervention by the international community was perceived crucial in the negotiation process and essential for the international recognition of the agreement as such.

The narratives and historical developments of both case studies as essentially different, however they give similar solutions to decisive problems encountered in one multiethnic society. The accommodation of minorities and the establishment of mechanisms for their protection is a difficult task to achieve. It is observed in the first case study that it asks for a strong determination showed by both, minority groups and the state; however it also asks for a long period of
implementation and adaptation. The presented chart clearly illustrates the timeline of both case studies.

Chart 1: Historical Timeline

**AUTONOMOUS PROVINCE BOLZANO-ALTO ADIGE (SOUTH TYROL)**

- Treaty of St. Germain (annexation by Italy)
- Gruber-De Gasperi Agreement (1946)
- First Autonomy Statute (1948)
- The “Package” (1969)
- The “Package” fully implemented (1992)
- Euregio Tyrol-Alto Adige-Trentino (2011)

**REPUBLIC OF MACEDONIA**

- Federal state within FPRY and SFRY (1945-1991)
- The First Constitution as an independent Republic (1991)
- The Ohrid Framework Agreement (2001)

2. **LEGAL INSTRUMENTS FOR MINORITY RIGHTS PROTECTION**

   Before the comparative analysis in this section, it is essential to take into consideration few main important points. At first, in the attempt to compare legal instruments present in the two selected case studies, the first case study is
analysed both as a model of protection and as a legal constitutive part of a state. To be more precise, a legal framework comparison cannot be made when on one side there is a part of a state (an autonomous region) and on the other a unitary state. As mentioned, the methodological approach in the process of comparison is asking for a frame of reference or the “tertium comparationis” as a common denominator, and in a cross-national comparison such as this one, the two elements of comparison should be on equal level (state legislation in one country vs. state legislation in another); for the later, this is not the case here, since the elements of the comparative research are not equal political systems. Therefore the legal instruments (laws, constitutional acts, regional acts etc.) will be depicted in the table below for a general illustration, but this does not mean that the type of laws of the first case study will be compared with the ones in the second. Since the selected method requires finding a common denominator and use it for the comparison, not the types of legal sources (instruments) but the legal solutions and provisions offered by the legal instruments will be analysed and compared. The denominator is “the solutions for minority rights protection in the political systems” not the political/legal order. Evidently, when it comes to the question of ratification of international legal documents it is most centrally that the comparison will be made on a state level.

For the first case study, it can be said that the (Italian) state legal system represents a paradigmatic example of the model, defined by Palermo, as ‘promotional’ that assumes the existence (by acknowledgment) of minority groups by giving them legal personality, distinct from those of the individuals who belong to them (Palermo & Woelk, 2011). One of the Italian constitutional values is the recognition and promotion of diversity among the recognized groups, thus in a way the Italian constitutional order distinguishes itself from the liberal setting of a civil state (French model). The Republic of Macedonia is founded on similar values and principles, as it was seen before; its constitutional preamble from 1991 clearly reflects intentions of basic civic state foundations by promoting equality and co-existence for the nationalities living in the state territory, whereas features of
individual rights are present. At a later stage with the constitutional amendments a shift to group rights emerges. As an asymmetric federal system Italy poses a particular difficulty to be compared with the Republic of Macedonia (it can be said that this is an asymmetric comparison *per se*).

Table 6: Overview of the legal framework of minority rights protection

<table>
<thead>
<tr>
<th>Legal instruments</th>
<th>Italy / Autonomous Region Trentino – Alto Adige (South Tyrol)</th>
<th>Republic of Macedonia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signed / Ratified International Conventions:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ICCPR</td>
<td>✓ Signature – 18/01/1967</td>
<td>✓ Ratified with Succession – 18/01/1994</td>
</tr>
<tr>
<td></td>
<td>✓ Ratification – 15/09/1978</td>
<td></td>
</tr>
<tr>
<td>ICERD</td>
<td>✓ Signature – 13/03/1968</td>
<td>✓ Ratified with Succession – 18/01/1994</td>
</tr>
<tr>
<td></td>
<td>✓ Ratification – 05/01/1976</td>
<td></td>
</tr>
<tr>
<td>ICESCR</td>
<td>✓ Signature – 18/01/1967</td>
<td>✓ Ratified with Succession – 18/01/1994</td>
</tr>
<tr>
<td></td>
<td>✓ Ratification – 15/09/1978</td>
<td></td>
</tr>
<tr>
<td>ECHR</td>
<td>✓ Signatory to ECHR and protocols (party to the Protocol No. 12)</td>
<td>✓ Signatory to ECHR and protocols</td>
</tr>
<tr>
<td>FCNM</td>
<td>✓ Signature - 01/02/1995</td>
<td>✓ Signature - 25/07/1996</td>
</tr>
<tr>
<td></td>
<td>✓ Ratification 03/11/1997</td>
<td>✓ Ratification - 10/04/1997</td>
</tr>
<tr>
<td></td>
<td>✓ Into force - 01/03/1998</td>
<td>✓ Into force - 01/02/1998</td>
</tr>
<tr>
<td>ECRML</td>
<td>✓ Signature - 27/6/2000 (not ratified yet)</td>
<td>✓ Signature - 25/7/1996 (not ratified yet)</td>
</tr>
<tr>
<td>EU instruments (Race Directive, 29 June 2000)</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

**Legal definition for 'minority'**

- Historical linguistic minorities (Constitutional Art.6): "The Republic safeguards linguistic minorities by means of appropriate measures."
- Law 15/12/1999, n. 482 - Norme in materia di tutela delle minoranze linguistiche storiche. [Norms for historical linguistic minorities protection].

- Does not give a definition *per se*. (Constitutional Art. 48): "The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of the nationalities."

**Constitution/Autonomy Statute**

- Constitution Article 3, 6, 8, 19 and 20;
- Autonomy Statute Art. 2, Title XI.

- Constitution of SFRY from 1974 (arts. 154, 170, 171, 214, 243, 246 and 247)
- Constitution Article 7 (para. 2 and 3), 8 (sub-para. 2 and 11) and 48.

**Bilateral / Political Agreements**

- Treaty Agreement between Italy and Austria (1946);

- Political Agreement : The Ohrid Framework Agreement between
Minority rights protection in multiethnic border regions
A Case Study Analysis

<table>
<thead>
<tr>
<th>Laws (or other legal sources in addition to the Constitution and Statute) protecting minority rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Bilateral Agreement for establishing the Euroregion Tyrol.</td>
</tr>
<tr>
<td>- Constitutional Law from 18.10.2001, n. 3 amending Title V from Part II of the Italian Constitution.</td>
</tr>
<tr>
<td>- LN 482/1999 [&quot;Rules on protection of historical linguistic minorities&quot;];</td>
</tr>
<tr>
<td>- Legge Regionale 4 gennaio 1993, n. 1 [New provisions of the municipalities in the Region of Trentino-Alto Adige];</td>
</tr>
<tr>
<td>- Decreto Legislativo 23 maggio 2005, n. 99 &quot; [Provisions implementing the Special Statute of Trentino-Alto Adige concerning amendments and additions to the Decree of the President July 26, 1976, n. 752, relating to statements of the language group affiliation or association in the province of Bolzano];</td>
</tr>
<tr>
<td>- Legge regionale 22 dicembre 2004, n. 7 [Reform of the local self-government];</td>
</tr>
<tr>
<td>- Legge regionale 6 aprile 1956, n. 5 and further amendments including Legge regionale 22 febbraio 2008, n. 2 [Composition and election of municipal bodies];</td>
</tr>
<tr>
<td>- the biggest political parties (Macedonian and Albanian)</td>
</tr>
<tr>
<td>- Law on prevention of protection against discrimination (2010);</td>
</tr>
<tr>
<td>- The Law on territorial organization of local self-government in the Republic of Macedonia (2004);</td>
</tr>
<tr>
<td>- The Law on the organization and work of the Public Administration (2002) and The Law for civil servants (2002);</td>
</tr>
<tr>
<td>- Electoral Code (2006), Law on Members of the Parliament (2005);</td>
</tr>
<tr>
<td>- Law concerning the use of the language spoken by at least 20% of the population in The Republic of Macedonia and in the units of the local self-government (2008);</td>
</tr>
<tr>
<td>- Law on Identity Card, Law on Personal Registry Files;</td>
</tr>
<tr>
<td>- 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 (2008);</td>
</tr>
</tbody>
</table>

1. main legal instruments

Source: Author’s elaboration

The Italian Constitution (1948) sees only the language as a distinctive feature for identifying minorities, due to the basic assumptions that all Italian citizens are members of the Italian nation, which is therefore a nation of nations. For the other minorities (identified by their racial, sexual, religious features) the general provisions of equality and the non-discrimination principle of the Constitution (Art.3) apply. Therefore, it can be said that the linguistic minorities enjoy ‘special protection’ with ‘special measures’ ensured by the constitutional order in Italy. Another distinctive characteristic of this case is the territorial allocation of minority rights. Rights to minority groups are connected with the territory where they settle. As an example, a member of the German speaking
minority group cannot claim its linguistic rights outside the territory where those rights are protected and guaranteed. In this sense, Palermo points out that the when the territory is the basic reference for minority rights, it is evident that the territorial structure is closely linked with minority issues (Palermo, 2004). As a result there is a strong relationship between the Italian regionalism and minority rights; a causal effect is the asymmetric regional system and the complex machinery for minority protection. It was seen before, that in Italy there are three types of minority protection, the most protected minorities are the larger linguistic groups living in the border areas adjacent to the respective national states (German speakers along the Austrian border, French speakers along the French and Swiss border, Slovenian speakers near Slovenia). Minorities are protected through regional autonomy, since they are related to the territory: regional autonomy seems and it is in effect the most suitable model for protection; where that model does not exist, the minorities tend to assimilate with the rest of the population and in terms of numbers, stay in a significant marginal position compared to the total Italian speaking population. The Italian constitutional law opens two main protection paths: 1) with Art. 6 gives a general recognition and protection; and 2) allows the domestic law to develop accordingly (in line with the international law in this field).

So far we have close similarities with the constitutional law of the Republic of Macedonia, the differences however may lay in the following two points related with the Macedonian constitution: 1) it does not strictly apply the minority protection on the basis of solely linguistic features; and 2) it does not place a territorial principle as a basic ground on which the domestic law on minority protection should be developed further. The preamble of the Macedonian constitution establishes full equality for different nationalities living in the Republic of Macedonia and it guarantees human rights, freedoms and ethnic equality. Whereas the Italian constitution avoids the concept of ethnicity (legally speaking there are no ethnic minorities but only linguistic ones), in the Republic of Macedonia the term ethnicity is strictly linked with the different nationalities
living on the territory and their right to be treated equally is correlated with their ethnical background (understood as *ethnos*); however in the preamble it is also underlined that the equality is provided for the nationalities (understood as *demos*)\(^9\). And whereas Italy is a multi-national quasi-federative state, the Republic of Macedonia is a multi-ethnic unitary state. The language as an element (as seen before) plays, however, a crucial role in terms of distinguishing the ethnic groups in The Republic of Macedonia, and not only, it creates the first pillar (Фрчкоски, 2005) in the legal framework for minority rights protection (as established in the Ohrid Framework Agreement and later confirmed with the adopted laws on the matter). The territorial principle established in Italy, reflected in the regional autonomy as a form of minority rights protection does not have in the case of the Republic of Macedonia the same implementation characteristics (this will be analysed further). What can be said here it that, certainly, the Macedonian Constitution (Art. 8) among the fundamental values gives a place for the local self-government but not for minority protection *strictu sensu*. As in the case of Italy, the Republic of Macedonia recognizes linguistic identities, nevertheless extending further the recognition to ethnic, cultural and religious identities. Whereas Italy gives a sort of definition for minorities (linguistic), the Republic of Macedonian constitution gives minority definition just *latu sensu*, having ethnicity, culture, language and religion as elements characterizing the different nationalities. Following the distinction in the definition of ethnic and national minorities (seen in Part I) and the ambiguity that these terms have, Republic of Macedonia has national minorities, identifying them however by the objective criteria distinguished in language, religion and culture, where the language is the key criterion.\(^{10}\) Furthermore, with the term ‘culture’ used in the minority discourse (Kymlicka, 1995), The Republic of Macedonia is a multicultural state; the members belong to different nations (state of reference or kin-state) representing in other terms a multinational state. Cultural minorities in The Republic of Macedonia can be defined both as linguistic and as national.
The Bolzano Recommendations on National Minorities in Inter-State Relations encourage bilateral agreements for increasing the protection of national minorities:

“States should co-operate across international frontiers within the framework of friendly bilateral and multilateral relations and on a territorial rather than an ethnic basis. Transfrontier co-operation between local and regional authorities and minority self-governments can contribute to tolerance and prosperity, strengthen inter-State relations and encourage dialogue on minority issues.”

“States are encouraged to conclude bilateral treaties and make other bilateral arrangements in order to enhance and further develop the level of protection for persons belonging to national minorities.”

With regards to this, Italy historically developed a line (willing or not) of cooperation with the neighbouring countries (Slovenia and Austria as examples), especially in the case of Trentino-South Tyrol where the cooperation further developed in building a Euroregion Tyrol. Even the set up of the long path of protection in this case is initiated by a bilateral agreement. In the Republic of Macedonia, referring to a specific minority group (Albanians), this cannot be the case. For good neighbouring relations, a series of bilateral agreements have been signed with Albania (economic, education, customs, trade, visa issues, etc.) except for agreements concerning the rights of the Albanian minority. The only agreement, as seen in the table above, it the political agreement signed ‘internally’ by the biggest political parties in the Republic of Macedonia with the support of the international community in 2001.

The legal sources for minorities’ protection in the two case studies are different in terms of type. In the first case it is a matter of regional legislation: from provisions in the Statute, to regional laws and decrees; whereas in the second case study we have a national legislation (laws determining certain rights for the minority groups). These differences, of course, come from the fact that the two case studies are two different political systems (as emphasised before). As concerns the provisions established by these legal sources, they outline and reflect the situation in the society; to be discussed in the next section.
3. **ACCOMMODATING MINORITIES**

It has been said from the perspective of conflict resolution in divided societies that institutional design needs to address a number of issues: 1) composition and powers of the executive, legislative and juridical branches of government and their interrelationships; 2) structure and organization of the state; 3) the relationship between the citizens, the minority groups and the state (Wolff, 2008). The different theories of conflict resolution (consociationalism, integrative power-sharing and power dividing) give different perspectives on how one society and one state should be organized to avoid deep differences that could cause further escalations and conflicts. In his comparison Wolff draws some lines distinguishing in the following table the solution given by these theories.

<table>
<thead>
<tr>
<th>Principle recommendation</th>
<th>Integrationist power sharing (Horowitz)</th>
<th>Consociational power sharing (Ljiphart)</th>
<th>Power dividing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Interethnic cooperation and moderation induced by electoral system design</td>
<td>Interethnic cooperation at elite level induced by institutional structure requiring executive power sharing</td>
<td>Cooperation between different changing coalitions of interest induced by separation of powers</td>
</tr>
<tr>
<td>Government system</td>
<td>Presidential</td>
<td>Parliamentary</td>
<td>Presidential</td>
</tr>
<tr>
<td>Executive system</td>
<td>Plurality preferential</td>
<td>PR (proportional representation) list or PR preferential</td>
<td>Plurality</td>
</tr>
<tr>
<td>Independent juridical branch</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Unitary vs. Federal territorial organization</td>
<td>Federal: heterogeneous units</td>
<td>Federal: homogeneous units</td>
<td>Federal: heterogeneous units</td>
</tr>
<tr>
<td>Structural symmetry</td>
<td>Yes</td>
<td>Possible but not necessary</td>
<td>Yes</td>
</tr>
<tr>
<td>Functional symmetry</td>
<td>Yes</td>
<td>Possible but not necessary</td>
<td>Yes</td>
</tr>
<tr>
<td>Individual vs. Group rights</td>
<td>Emphasis on individual rights</td>
<td>Emphasis on combination of individual and group rights</td>
<td>Emphasis on individual rights</td>
</tr>
<tr>
<td>Recognition of distinct identities</td>
<td>Yes but primarily as private matter</td>
<td>Yes but as private and public matter</td>
<td>Yes but primarily as private matter</td>
</tr>
</tbody>
</table>

**Source:** (Wolff, 2008, p. 339)
This table tackles a lot of questions for analysis that are going to be discussed in this section, and it is going to be used for facilitating the comparison study. It is important also at this point to distinguish a very important fact; according to the theory of constitutional models for accommodating minority rights - presented in the work of Palermo and Woelk (2011) according to the theories of Toniatti and Marko (1994) - analysed in Part I, the two case studies belong to two different constitutional models (see Table 8 below).

### Table 8: Constitutional models in comparison

<table>
<thead>
<tr>
<th>Promotional Model</th>
<th>Multicultural Model</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>Republic of Macedonia</td>
</tr>
</tbody>
</table>

*Source: Authors; elaboration according to the constitutional models presented by Palermo and Woelk (2011) pp.51-81.*

#### 3.1 Territorial Governance and Self-Government Rights

In the Italian asymmetric ‘quasi-federal’ political system, the Region Trentino-South Tyrol, and to be more precise the Province of Bolzano (South Tyrol) is in an asymmetric position with the central government in Rome. This as a consequence gives a certain kind of autonomy entitled to the province within the Region of Trentino-Alto Adige (South Tyrol) with the Autonomy Statute. The statute gives these entities a decentralised self-government and by that provides protection for the German and Ladin-speaking minorities in its territory. The Province of Bolzano (South Tyrol) enjoys primarily legislative competences (for education and culture, economy, environment, housing, communication and transport, tourism, welfare and provincial political and electoral structures), secondary competences (teaching, employment, public health, aviation, energy, foreign trade and relations, science and technology), and tertiary competences (some areas of transport, public health services and pay structures in the education system). According to these competences it can be said that the province has first of all, a territorial autonomy, and moreover, a non-territorial or cultural
autonomy (education and culture, schooling, language use etc.) (see Table 9). To summarize, South Tyrol is an example of protecting minority rights through territorial autonomy.

Table 9: Autonomies in comparison

<table>
<thead>
<tr>
<th>Autonomous Province Bolzano-South Tyrol</th>
<th>Republic of Macedonia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Territorial autonomy</td>
<td>Yes</td>
</tr>
<tr>
<td>Non-territorial (cultural) autonomy</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Source: Author's elaboration

The second case study however is slightly different in terms of the principle of territory. The framework given by the Ohrid agreement in terms of local self-government shows that from one side there is no territorial autonomy provided for the minorities, but from another side there are extensive powers of self-governance on local level. It was underlined when examining this case that the principle of decentralization is one of the main principles of the framework agreement but the minority groups’ rights are not correlated directly with the territory, even if the provisions of the agreement state otherwise when guaranteeing language rights of at least 20% of the population in the units of local self-government. The principle of territory and autonomy, as seen before, when it comes to the protection of minority rights is clearly established (as in the case of South Tyrol). A territorial autonomy exists when there is an autonomous status of an ethnic population living in a certain territory, enjoying executive (administrative autonomy) and legislative independence (adopting legislation). When a minority group, no matter its territorial concentration, has a certain autonomy rights (language, education and cultural rights) within the territory where it resides, it enjoys a non-territorial (cultural) autonomy. This is the case of the Republic of Macedonia; no matter the territorial concentration of the Albanian...
minority group in the country (mainly the municipalities in the West Macedonia near the border with Albania and Kosovo), certain cultural rights are guaranteed for this minority group (as mentioned language rights). The solution given by the OFA simply facilitates the territorial organization of the state, and further simplifies and allows minority groups to have self-government instruments to be able to defend their interests and protect their rights. While South Tyrol enables a full self-government for the minority groups, The Republic of Macedonia gives partial self-government rights.

To have a clearer overview picture of the territorial arrangements, the nomenclature of territorial units for statistics will show some features for both case studies and their territorial division. For the first case, the Province of Trento and the Province of Bolzano/South Tyrol are NUTS 2 level; the municipalities within these provinces have a LAU 2 level (Italy does not have the LAU 1 level). In the case of The Republic of Macedonia, there are eight statistical regions with NUTS 3 level, and furthermore LAU 1 for the municipalities (општини) and LAU 2 level for the areas of settlements (населени места). Whereas according to the Autonomy statute the NUTS 2 for the first case has a guaranteed autonomy, the second case study does not have this status (see Table 10).

Table 10: Decentralization types and territorial division

<table>
<thead>
<tr>
<th>Italy/Autonomous Province Bolzano (South Tyrol)</th>
<th>Republic of Macedonia</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Type of Decentralization</strong></td>
<td>Administrative, Fiscal and Executive^{15}</td>
</tr>
<tr>
<td><strong>NUTS levels</strong></td>
<td>NUTS 1(Italy); NUTS 2 (the Province); LAU 2 (the Municipalities)</td>
</tr>
</tbody>
</table>

*Source: Author's elaboration*
In the Republic of Macedonia with the OFA, the decentralized government was further developed; a revised law on local self-government gives powers for certain matter (public services, urban and rural planning, environmental protection, local economic development, culture, local finances, education, social welfare and healthcare). In addition, the municipalities’ boundaries were revised. The amendments to the decentralization system were not welcomed with enthusiasm, an indicator for the overall acceptance are the facts presented by Josef Marko: in 2003, 53.0% Macedonians and 58.9% Albanians saw the process as ‘acceptable’; figures increased next year (before the referendum) and in 2005 increased to 73.7% and 81.2% respectively; however on the question whether the new territorial organization will improve the ethnic relations in the municipalities, positive answers were noticeable solely from the Albanian community (Marko, 2004). In fact the reason is quite obvious; the municipalities’ boundaries marking had an ethnic meaning and the Albanian community wanted to maximize the number of municipalities where the community is settled in order to make up 20% of the population and therefore have certain rights guaranteed by the framework agreement.

3.2 CULTURAL RIGHTS

The ‘polyethnic’ right (as seen in Part I) according to Kymlicka is one of the three forms of group-differentiated rights for minorities’ accommodation. This right involves formal protections ensuring cultural groups maintenance of their cultural practices and preservation of their cultural norms and beliefs without limiting their successful functioning in the social and economic institutions in the society. Language rights and state policies in the education system (introduced to preserve minority cultural traditions) and state funding for minority arts and cultural associations and events are seen as group-specific measures intended to assist ethnic groups in expressing their cultural particularity without obstructing their success in the economic and political institutions of the dominant society and they are usually intended to promote integration, not self-government. In line with
these theoretical foundations built by Kymlicka, in this section, these rights, will be compared.

3.2.1 Language rights.

The CoE European Charter for Regional or Minority Languages (ECRML), considering that the right to use a regional or minority language in private and public life is an inalienable right, and its protection is an important contribution to the building of a Europe based on the principles of democracy and cultural diversity, established provisions and measures for the use of languages in different spheres within a state. In specific:

"Regional or minority languages" means languages that are: traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population; and different from the official language(s) of that State;”16

It can be said and seen from the table below, that both countries (case studies) examined in this research work have signed this Charter, however neither ratification nor entrance into force has been set up yet.

It was seen in the case of Italy and the Region of Trentino-Alto Adige (South Tyrol), that the minority languages enjoy a firm and special protection. As guaranteed rights, the language rights are constitutionally acknowledged and protected (considering the fact that the definition for minority groups is based on the linguistic criteria), no matter the fact that Italy did not ratify the ECRML up till now. There can be many reasons for the missed ratification (it will not be the subject of discussion here) however the ratification itself does not have a great influence on the national framework, since the linguistic rights of minority groups have been established and confirmed long ago.

The Republic of Macedonia on the other hand, managed to sign all important conventions and charters in the first few years after its independence, the process of their ratification is however as in the case of Italy, another argument for discussion. The fact that the Republic of Macedonia has signed much earlier the charter did not have influence on the national legislation in regards.
Table 11: Language rights

<table>
<thead>
<tr>
<th>CoE European Charter for Regional or Minority languages</th>
<th>Italy/Autonomous Province Bolzano (South Tyrol)</th>
<th>Republic of Macedonia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signed on 27/6/2000</td>
<td>Signed on 25/7/1996</td>
<td></td>
</tr>
<tr>
<td>- Constitutional Art. 6;</td>
<td>- Constitution of Yugoslavia from 1974 (Arts. 154, 170, 171, 214, 243, 246, 247)</td>
<td></td>
</tr>
<tr>
<td>- Law 482/1999: “The Republic protects the language and culture of the Albanian, Catala, Germanic Greek, Slovenian and Croatian peoples and those speaking French, Franco-Provençal, Friulian, Ladin, Occitan and Sardinian”.</td>
<td>- Constitutional Art. 7;</td>
<td></td>
</tr>
<tr>
<td>- D.P.R. No. 752/1976 - Provisions implementing the Special Statute of Trentino-Alto Adige on proportional job placement in state offices in the province of Bolzano and knowledge of two languages in the public sector</td>
<td>- 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 (2008)</td>
<td></td>
</tr>
<tr>
<td>- D.P.R. (Presidential Decree) No. 574/1988 - Provisions implementing the Special Statute for Trentino - Alto Adige concerning the use of German and Ladin language in relations between citizens and the public administration and judicial processes</td>
<td>- Law on the use of a language spoken by at least 20% of the population in the Republic of Macedonia and in the units of local-self government (2007)</td>
<td></td>
</tr>
<tr>
<td>- Autonomy Statute (Title XI- Use of the German and Ladin languages)</td>
<td>- Law on the conditions and procedures for determining names of streets, squares, bridges and other infrastructure facilities (2004)</td>
<td></td>
</tr>
<tr>
<td>- Draft Proposal of the Provincial Law n. 71/10-XIV on toponyms</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<sup>1</sup> main sources of law

Source: Author’s elaboration

In the analysis of the minority rights’ protection in the Republic of Macedonia, it was observed that the foundations of language rights were established even before the Macedonian independence. The constitution of SFRY guaranteed to all nationalities to use their language in the public sphere. At present, the Macedonian Constitution in Art. 7 recognizes language rights taking into consideration the territorial principle and it stipulates that in the units of local self-government where the national minorities are a majority of the inhabitants,
their language has an official status (to be determined in details by law) in addition to the Macedonian language. Moreover, apart from the constitutional guaranty for language use, several laws establish specific provisions in regards, taking into consideration a numerical threshold of 20%. This is seen through the provisions of several laws regarding the use of language spoken by at least 20% of the population of the country and in the units of local-self government; toponym provisions; the use of language and writings on official documents (identity card, passport, registry files); and not only, legal provisions in laws concerning elections, public administration, civil servants, parliament members, local self-government, education and culture (to be seen further), etc.

In regards to the Autonomous Region of Trentino-Alto Adige there are several legal instruments establishing provisions for language use within the territory. The Presidential Decree from 1988 establishes provisions concerning the use of the German and Ladin languages in the communication with the public administration and the judicial proceedings (Arts. 13,14,15). In 2001 with the Decree n. 283, amendments have been introduced. The Autonomy Statute recognises the German language as official language along with the Italian (Art. 99). In the Province of Bolzano, the use of the German language is guaranteed in the communication with the public administration and judicial authorities. As in the case of the Republic of Macedonia, the Region of Trentino-Alto Adige (South Tyrol) and the Province of Bolzano in specific, regulates the use of language with specific legal instruments (election, public administration, civil servants, education).

In the South Tyrol the German language has parity with the Italian language. In the Provincial Parliament of Bolzano the use of the three languages, Italian, German and Ladin is allowed, with translation provided. The German-speaking citizens have the right to use the German language in relation to public administration and judicial authorities (their bodies and offices) and with companies providing public services in the territory of the Province. As a general rule, it is established that there is a separate use of one of the official languages or
both (Italian or German) in terms of issuing documents, having the same layout (documents can be issued also in both languages and as well in Ladin language). The public administration replies to each citizen in the language used by the citizen (applicant). In terms of language use in judicial proceedings and in the communication with the Court, as a general rule, criminal proceedings are conducted in the language chosen by the defendant. There is a bilingual use, with a single-language feature which means that one language is used from the beginning till the end of the court proceeding however the defendant party has the right to change language at all stages of jurisdiction. The distinctive feature is the language declaration; the party is asked to state the mother tongue. Proceedings other than criminal, for example civil, are bilingual with the exception when the trial has been conducted through all the duration on a single language. The Official Journal (Gazette) of the Region is published both in Italian and German language. In addition to the rights of the German-speaking population it should be also noted here (however not examined in details) that the Ladin-speaking citizens have also the right to use their language in the communication with the public administration (court, police, etc.) and as well as in the Provincial Parliament. The language regulations are very strict; if the use of the mother language in oral and written relations with the public offices is violated and not allowed, the proceedings as such are considered annulled. The right to use the mother language and its protection is guaranteed by a very specific instrument applied in the recruitment of civil servants; it is requested the knowledge of both Italian and German and partial knowledge of Ladin language, and the proof through a certificate is compulsory. The knowledge assessment is made by a special Commission through a bilingualism/trilingualism examination geared towards four different career levels.

When it comes to the use of language by the Albanian speaking population in the case of the Republic of Macedonia the situation is similar, with some considerable difference such as the language declaration and certification which is nonexistent in this case. The Albanian speaking population in the Republic of
Macedonia comprise more than 20% of the total population according to the last census (2001/2), therefore, the use of the Albanian language in the Parliament by an MP during a parliamentary session, in the communication with the public administration, in the education system, electoral process, police forces and judicial proceedings is allowed. This is what refers to the application of the language use at the state level. Personal files, identity documents (ID and passport) are issued for the Albanian speaking citizens in Albanian language as well. In the municipalities where the percentage is less than 20% the Macedonian language is the only official language in use. In administrative proceedings in the units of local-self government where there is more than 20% Albanian-speaking population, the citizens can communicate with one of the official languages (Macedonian or Albanian) and the civil servants respond in Macedonian or other language used by the citizen (Albanian). In judicial (criminal) proceedings an Albanian speaking citizen can use the Albanian language, and in that case a translation is provided by the court from Albanian to Macedonian (official language of the criminal proceedings). The communication with the juridical authorities (appeals, submissions, complaints) can be submitted in Albanian language, and later translated by the Court in Macedonian language. It should be noted that the translation costs for the judicial proceedings and communication with the courts are covered by the Courts. If the court has a seat in the area of a local self-government unit where in addition to the Macedonian language and Cyrillic alphabet, another official language is the Albanian language, the seal of the court, the name and seat of the court is written in Albanian language as well. Laws are published, in the Official Gazette of the Republic of Macedonia, in Macedonian and in Albanian language.

It can be seen in the table above, the very close similarities of minorities’ language rights and use in both case studies. In both case studies it is seen that the minority language use is allowed and enjoys a guaranteed legal protection. The use of the German (in the first case study) and the Albanian language (in the second case study) is allowed in the Assembly/Council/Parliament, public administration offices, juridical proceedings, official
documents etc. The only apparent difference is in the declaration of affiliation in a linguistic group (to be discussed further) and the linguistic requirement for employment for a public civil servant.

Whereas in the first case study there is a necessary requirement to prove knowledge of both languages (Italian and German), in the second case study this is not the case. In the Republic of Macedonia, a civil servant can be employed if it meets the general (Macedonian citizenship, to be of age, general health condition, does not have a sentence decision for interdiction of profession, activity or duty)
and special criteria (adequate education, a necessary work experience requested in the sector and not to be convicted) established by the Law for Civil Servants.\textsuperscript{27} The Agency for civil servants publishes a public notice on its website and in at least two daily newspapers (one newspaper should be in Albanian language).

When it comes to the language use in the election procedures and ballots, in the case of South Tyrol, there is bilingualism since as we mentioned before the German language is put in parity with the Italian language. The ballots for local elections are printed in Italian and in Italian and Ladin for the municipalities in the Province of Trento and in Italian and German and in Italian, German and Ladin for the municipalities in the Province of Bolzano.\textsuperscript{28} Moreover, for the position for president of the electoral office among other conditions established by law, it is required as well the knowledge of the Italian and German language (by submitting a certificate).\textsuperscript{29} In the Republic of Macedonia the ballots for the parliamentary elections are printed in Macedonian language only, however they are printed both in Macedonian and Albanian in those municipalities where more than 20\% of the inhabitants speak a different language than Macedonian (meaning Albanian) language.\textsuperscript{30} For (local) elections in the municipalities where reside more than 20\% Albanian speaking inhabitants, the ballots are as well written in both languages, however in those municipalities where there is less than 20\% the only official language used is the Macedonian language.

In the Province of Bolzano, the government must use, in respect of nationals of the German language, German place names also, if the Provincial law has established the existence and approved the conditions. The problem here arises of the long debate on approving the provincial law which is still in process. As seen in Table 10 till this date there is only a Draft Proposal of the Provincial Law n. 71/10-XIV. In the case of the Republic of Macedonia, names of infrastructure facilities such as streets, squares and bridges are written in Macedonian language, the only applicability of the language of the biggest minority group in Macedonia is in the units of local self-government where this minority enjoys the status of majority. In these units of local self-government the names of infrastructure facilities are
written in both languages. This is established by the Art. 40 of the Law on the use of a language spoken by at least 20% of the population in the Republic of Macedonia and the provision in the Law for determining the names of streets, squares, bridges and other infrastructure facilities. In this specific case we can say that while the Province of Bolzano has still ongoing discussions on approving a specific law for names of infrastructure facilities, in the Republic of Macedonia it is already adopted and implemented.

### 3.2.2 EDUCATION, MEDIA AND CULTURE

Before the comparative analysis of the educational rights of the minority groups in the two case studies, it is important to highlight the language rights in the educational system.

In the first case study as noted before, the education powers and the linguistic protection are well defined in the Autonomy Statute. As fundamental principle is the establishment of the elementary and secondary education in the mother tongue of the child. Therefore we have a double language system, the use of both Italian and German language (see Table 12). Educational activities are performed by teachers speaking the child’s mother tongue. There is also the possibility for free choice of the school, with a proof of a sufficient knowledge of the language as a pre-condition for enrolment. In schools where teaching is performed in German language, it is mandatory to learn Italian. The use of language in the education system is similar in Republic of Macedonia. All educational activities are taught officially in Macedonian language and the Cyrillic alphabet. Children belonging to a minority group (Albanian) can follow the activities on their language, but they are obliged to learn the Macedonian language. This is the case for the preschool, primary and secondary schools as well. What is observed from both case studies is the motivation to learn the ‘other’ language. In the second case study, in municipalities and units of local self-government where the percentage of the minority group is higher, the motivation is lower and vice versa. In the first case study it can be said that the motivation is growing not
because of this factor solely, but also because of the impact of the languages’ knowledge on the professional development and the economy in the region. In the Republic of Macedonia this is still not the case. Since the knowledge of both languages is not compulsory for employment in the public service sector, to learn the ‘other’ language is neither a challenge nor a request.

Table 13: Language use and education

<table>
<thead>
<tr>
<th></th>
<th>Autonomous Province Bolzano (South Tyrol)</th>
<th>Republic of Macedonia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preschool level</td>
<td>Italian and German language</td>
<td>Macedonian and Albanian language</td>
</tr>
<tr>
<td>Primary school level</td>
<td>Italian and German language</td>
<td>Macedonian and Albanian language</td>
</tr>
<tr>
<td>Secondary school level</td>
<td>Italian or German language</td>
<td>Macedonian and Albanian language</td>
</tr>
<tr>
<td>University level</td>
<td>Italian and/or German language</td>
<td>Macedonian and/or Albanian language</td>
</tr>
</tbody>
</table>

*Source: Author’s elaboration*

In the higher education system, in both case studies we have a common element. The University of Bolzano is seen as a unique example and establishment promoting multilingualism and multiculturalism (founded in 1997) having courses taught in German, Italian and English (as lingua franca). In the second case study the South East European University is a sort of ‘duplicate’ of the Bolzano one. This university promotes as well multilingualism (courses taught in Albanian, Macedonian and other international languages) and with students coming from different national minority groups presents a multicultural society and learning environment (see Table 14). It should be noted here, that in the case of the educational system in both case studies the quota system applies. In the case of the Republic of Macedonia, the other universities apply this system, however the courses are thought in Macedonian language (in the state universities) and in
English language (in some private universities). The Table 14 shows also a parallel school system as characteristic for the preschools, primary and secondary schools in both case studies.

Table 14: Educational rights

<table>
<thead>
<tr>
<th></th>
<th>Autonomous Province Bolzano (South Tyrol)</th>
<th>Republic of Macedonia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preschool</td>
<td>Parallel school system</td>
<td>Parallel school system</td>
</tr>
<tr>
<td>Primary school</td>
<td>Parallel school system</td>
<td>Parallel school system</td>
</tr>
<tr>
<td>Secondary school</td>
<td>Parallel school system</td>
<td>Parallel school system</td>
</tr>
<tr>
<td>University</td>
<td>Free University of Bozen – Bolzano (trilingual – German, Italian and English)</td>
<td>South East European University (trilingual – Albanian, Macedonian and English)</td>
</tr>
</tbody>
</table>

*Source: Author’s elaboration*

This characteristic means that there is a teaching environment in one language or another; there are no teaching activities where both languages are used for the education activities. Learning the second language is not included in this characteristic. For example, in the case of the Republic of Macedonia, in a primary school, the activities for the Macedonian pupils in Macedonian language are performed in the morning and for the Albanian pupils in Albanian language in the afternoon. How this reflects the inter-ethnic relations and the multiculturality in this society is another topic (not to be discussed here). One of the fundamental rights is the freedom of expression and press. This right in both case studies is fully guaranteed with specific modalities for each case. In the first case study the German-speaking population has access not only to domestic broadcast but as well to foreign media channels in German language from Tyrol. It is hard however to measure the real and effective access to media, since there are also private televisions broadcasting in different languages. It is also noticed the privileged
reporting in one language or another. The same situation is observed in the second case study, where the different ethnic communities have access to media broadcasting in their mother language. There are also channels from foreign broadcasting stations such as channels from Serbia and Albania and Kosovo. The national television according to law is obliged however to broadcast news reports and programmes in the languages of the (six) ethnic communities living in the Republic of Macedonia. It is perceived however that, the full access to media on the mother language does not encourage mutual understanding and relations between the different ethnic communities. The preference is and will always be towards the mother tongue and this does not give boost to the young population to learn the language and culture of the other communities and share the everyday life.

Table 15: Media

<table>
<thead>
<tr>
<th></th>
<th>Autonomous Province Bolzano (South Tyrol)</th>
<th>Republic of Macedonia</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>National Media</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Programme in Italian, German and Ladin language</td>
<td>Programmes in Macedonian, Albanian, Turkish, Serbian, Romani, Vlach and Bosnian</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>International Media</strong></td>
<td>Access to Foreign Media Channels</td>
<td>Access to Foreign Media Channels</td>
</tr>
</tbody>
</table>

*Source: Author’s elaboration*

The preservation of minorities’ culture and cultural heritage is also a very important point when it comes to the analysis of minority rights protection. In both case studies, the cultural activities, local artistic, cultural and educational performance focused on preserving minorities’ customs and usage are well protected and safeguarded; in the first case study by the provincial authorities and councils, and in the second case study by the Ministry for Education and Culture (and the Bureau for Affirmation and Promotion of the Culture of Communities) and by the units of local self-government as well, by funding different projects and making financial resources available to the community.
3.3 **Self-representation rights**

Whereas linguistic and cultural rights enhance multiculturalism and promote linguistic and cultural diversity, pull for better co-habitation with the rest of the society and eliminate marginalization of the minority groups, the real power over decision and guaranty for minority rights lies in the self-representation rights. The establishment of these rights - the legal framework which guaranties their protection and their implementation - gives the actual and effectual protection of the minority groups in one country. These questions are correlated to the Table 7, at the beginning of this part. According to the elements and the characteristics depicted by Wolff, the two case studies can be presented in the Table 16.

The theory of consociationalism (see Part 1) argues that power-sharing arrangements have important consequences in divided societies. Rules which recognize and seek to accommodate parties and representatives drawn from distinct ethnic groups are thought most likely to consolidate fragile democracies by facilitating accommodation and building trust among diverse communities living in deeply divided societies (Norris, 2008). This theory distinguishes some core steps. At first the society where the consociationalism can brings successful results should be plural containing distinct ethnic communities; it can have either proportional electoral systems with low thresholds or positive action mechanisms for minorities (boundary delimitation, communal rolls, and reserved seats); as a consequence this facilitates the elections of representatives and parties drawn from minority communities; community leaders have incentives to cooperate within legislatures and coalition governments, building trust at elite level; by this there is also a support for democracy among community members; and the ultimate goal is a strengthened democratic consolidation and reduced ethnic conflict (Norris, 2008, p. 105). Consociationalism sees the proportional representation (PR) electoral system as the simplest, least arguable, and most flexible way to facilitate the elections of parties representing minority groups. This facilitates the election of smaller parties34, roughly in proportion to their share of support in the electorate.
### Table 16 Main institutional arrangements in the selected case studies

<table>
<thead>
<tr>
<th>Principle recommendation</th>
<th>Integrationist power sharing</th>
<th>Consociational power sharing</th>
<th>Power dividing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Interethnic cooperation and moderation induced by electoral system design</td>
<td>Interethnic cooperation at elite level induced by institutional structure requiring executive power sharing</td>
<td>Cooperation between different changing coalitions of interest induced by separation of powers</td>
</tr>
<tr>
<td></td>
<td>Trentino-Alto Adige (South Tyrol)</td>
<td>Republic of Macedonia</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Government system</th>
<th>Presidential</th>
<th>Parliamentary</th>
<th>Presidential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republic of Macedonia</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Executive system</th>
<th>Plurality preferential</th>
<th>PR (proportional representation) list or PR preferential</th>
<th>Plurality</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republic of Macedonia</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Independent judicial branch</th>
<th>Yes</th>
<th>Yes</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republic of Macedonia</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Individual vs. Group rights</th>
<th>Emphasis on individual rights</th>
<th>Emphasis on combination of individual and group rights</th>
<th>Emphasis on individual rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republic of Macedonia</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recognition of distinct identities</th>
<th>Yes but primarily as private matter</th>
<th>Yes but as private and public matter</th>
<th>Yes but primarily as private matter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Republic of Macedonia</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Source: Authors’ elaboration according to Wolff’s table (see Table 7)*

PR electoral systems do not need to specify and thereby congeal the size of any such minority representation (as in the case of affirmative action policies); any groups and communities may freely organize to mobilize voting support in
proportion to their size. It should be noted that the conosciationalism regards PR as primary but not the only mechanism; positive action strategies can also be used to achieve the goal. After elections, leaders of minority groups have strong encouragement for cooperation, bargaining, and compromise; they can influence their position to negotiate and gain ministerial office in coalition governments. Moreover, they can represent and safeguard the interests of their constituents, especially where specific minority vetoes are recognized constitutionally (for issues involving language policies, cultural rights). Veto rights are seen according to the conosciationalism theory as particularly important for minority groups and their security.

Another aspect to be considered (already seen in comparison above see Table 9 and 10) is the territorial arrangements in one political system and its influence on the power-sharing mechanisms. Federalism and decentralization lead toward vertical power-sharing among multiple layers of government (Norris, 2008). Arguments on these political arrangements have been particularly influential in fragile multinational states where decentralization has been advocated as a potential constitutional solution for reducing conflict, building peace and protecting the interests of marginalized communities (such as in the case of Italy toward South Tyrol and the Republic of Macedonia). According to Norris, federal constitutions and regional autonomies represent some of the most important strategies safeguarding some guaranteed areas of self-government for geographically concentrated minorities (the case of the asymmetrical federalism in Italy). Formal constitutional structures can be distinguished as ‘unitary state’, ‘federal state’ or a ‘hybrid’ union and each of these can be further characterized by specific degrees of decentralized governance, with fiscal, administrative, and political power and functions transferred to provincial and local levels. Classical theorists suggest that decentralization governance has many advantages especially for democratic participation, representation and accountability, for public policy and governmental effectiveness and for the representation and accommodation of territorially based ethnic, cultural and linguistic differences. In this regards,
following what has been previously mentioned about the levels of decentralization in the selected case studies, in this section their effectiveness will be seen in comparison.

Table 16 shows the institutional arrangements of the two selected case studies. South Tyrol’s model of political system corresponds to the model of consociational democracy emphasised with the core principle of ‘power sharing’. The elements of the consociational model here are identified by the relations between the elites of German (and Ladin) and the Italian language group\textsuperscript{36}, the ‘ethnic quota system’ (public administration posts, financial sources allocation, study grants, social housing, composition of political bodies, commissions of public law), the coalition between the German and Italian ethnic groups and rotation of offices in the presidency of the provincial assembly. The society in South Tyrol is divided along ethnic lines and this pervades the whole political-administrative system with its intertwined systems (Pallaver, 2008); political parties are organized from an ethnic point of view and they do not compete with each other (German with Italian speaking), and consequently creating two political arenas. Pallaver points out that “such a party-political ethnic separation has far-reaching consequences, reflected in individual policy fields... elections to the provincial assembly and the national parliament are driven by the ‘we’ and the ‘others’, despite the fact that there are no longer serious threats to the continuance of the German- and Ladin-speaking minorities” (Pallaver, 2008, p. 310). The present ethnic fragmentation has consequences on the resources’ distribution through the ethnic quota system.\textsuperscript{37} The proportional representation is also the core element in South Tyrol model. Language groups have to be proportionally present in the provincial governmental institutions (Assembly, government, different councils etc.), however it should be noted that this principle is partly implemented because of the principle of majority (in existence) and the absence of an absolute veto power in the decision-making processes (in the fields of competence of the individual language groups, which rule in the South Tyrolean provincial government). As there is an absence of veto power, specific voting procedures and
other mechanisms have been established for adoption of provincial laws. These mechanisms allow for a ‘separate voting’ and if the request for separate voting is denied or the law is passed against two-thirds of representative from one ethnic group voting against it, the group opposing the law could take the matter to the Italian constitutional court in Rome. In relation to provincial and regional budget however, separate majorities are required from within both the German and Italian ethnic groups, if this does not occur, all chapters of the budget are voted on individually; failing to receive the required double majority brings the question to a special commission of the assembly, and if no agreement is reached there either, the administrative court in Bozen/Bolzano makes a final and binding decision.38 This feature gives a type of double majority voting rights for the linguistic communities. Moreover, scholars see a party system characterized by a centrifugal dynamic, which tends to place emphasis on the antagonistic poles being focused politically on the autonomy.39 The emphasised combination of the individual and groups rights in South Tyrol is due to the double legal nature of the Autonomy Statute. The emphasis on group rights is noted in the territorial autonomy granted to the Region Trentino-Alto Adige (South Tyrol) and in the Province of Bolzano/Bozen (and Trento), incorporating a series of collective/group rights for the protection of the minority groups on the territory.40 However, the granted autonomy is on the other hand for all citizens living in that territory regardless of their belonging to a group recognized by the Autonomy Statute, among the citizens there are also immigrants, bilingual socialized citizens etc. The declaration of affiliation with one of the linguistic groups illustrates the collective dimension of the minority rights’ protection. The ethnic quota principle is calculated according to the declarations presented (anonymously). For the sake of the protection of the group, in this case, the individual right to choose whether to be treated as a person belonging to a national minority or not is limited.

The Republic of Macedonia is quite similar to the South Tyrolean model of consociationalism. As seen in the table above, it goes basically everywhere in line with the institutional arrangements of the first model, save some particularities
and characteristics (see Table 16). The OFA introduces some features of consociational power-sharing: double majority, a degree of decentralization and proportional representation. According to some international scholars, the Republic of Macedonia made transitional steps, from an informal to a formal power-sharing system.\(^41\) It did not introduce strict representative quotas for communities in the government or parliament, or establish substantial territorial self-government, allowing for non-institutionalised, but nonetheless cooperative politics. It gives elements of power-sharing and elevates the status of Albanians as a community by affording them rights comparable to those of the Macedonian majority. The electoral system of Republic of Macedonia is as follows: Presidential elections are according to the majoritarian model; Parliamentary elections take the proportional model (120 MPs; six electoral districts) and the majoritarian model (three MPs from three Diaspora districts) with a threshold of 5 per cent.\(^42\) And unlike majority systems, PR systems tend not to provide clear majorities in legislative assemblies and therefore often result in coalition government; which is the case of the Republic of Macedonia, using the preferential voting system (preferential lists) and governed by multiethnic coalitions. The parliamentary voting mostly follows ethnic lines while presidential voting involves substantial cross-ethnic voting. Another element, introduced in 2001 (explained before) is the double-majority voting (a consent of a majority of the deputies representing all non-dominant groups is required in a number of areas of legislation and local-self government). The same occurs in the case of South Tyrol, a compensation for the lack of veto power (characterized by the consociation model of power-sharing). In the public administration posts are distributed according to the equitable representation system, proportionally. According to some the Republic of Macedonia fails achieve full representation of minorities and is not responsive to minorities’ demands. It should ensure citizens from minority communities an interaction with civil servants from their own community; however placing less importance on the interaction between the majority and minorities and assuming
that the equitable representation of one community equals equitable representation within the community. \textsuperscript{43}

Table 17: Power-sharing systems in comparison

<table>
<thead>
<tr>
<th></th>
<th>Autonomous Province Bolzano (South Tyrol)</th>
<th>Republic of Macedonia</th>
</tr>
</thead>
</table>
| **Elections**\textsuperscript{44} | - A combination of majoritarian and proportional system \textsuperscript{45}  
- Closed (non-blocked) PR list | - A combination of majoritarian and proportional system  
- Closed (blocked) PR list |
| **Voting** | - Limited Double majority vote (Provincial and Regional budget)  
- Separate voting (laws considered to affect the rights of a particular ethnic group) | - Double majority vote (legislation: culture, language use, education, personal ids, use of symbols; local-self government) |
| **Executive power characteristics** | - Rotation between ethnic groups  
- Proportionality (Provincial Assembly)  
- Coalition government \textsuperscript{46} | - Informal arrangements for governmental positions (Ministries)  
- Coalition government |
| **Public Administration** | - Ethnic quota system  
- Proportionality | - No strict quota  
- Proportionality |

Source: Author’s elaboration

It can be seen, as a last feature seen in the table 17, the difference between the case studies in terms of electoral lists. Modalities and in-depth characteristics of the electoral systems have not been discussed in details, but at this point it seems necessary to illustrate their features. The first case study uses closed (non-blocked) electoral lists, meaning that a voter can rank an individual candidate from a party (have one vote for a party) but can register a preference as to who would like to see in the assembly. On the other side, the second case uses a model of closed blocked lists characterized only by an offered choice of voting for a predetermined party lists (choosing a party or coalition list on which the ranking of candidates is predetermined by the party itself). When examining the choice of electoral system, Lijphart prefers the PR lists, and according to him, closed lists are better than open lists because this asserts the dominance of elites (Lijphart, 2002, p. 53).
4. **Observations and Concluding Analysis**

The basic purpose of the solutions given by the consociational theory is that in the long term the given solutions should serve to stabilize deeply conflict-ridden societies and manage, or even reduce, broader ethnic tensions. It was observed in the case studies, that the aim, by the power-sharing systems implemented, is achieved: stabilization of the region, the elimination of the ethnic conflicts and the improvement of the relations between the state and the minority groups. What has been missed by the theory and the power-sharing systems is the elimination of the ethnic tensions (the relations between the groups themselves). The low inclusion of the minority groups within Parliament (and Government bodies) is one source causing ethnic tensions. Small minority groups are still marginalized without a significant power to make decisions and defend their own interests (in the case of the Republic of Macedonia). Exclusion as such encourages alienation and - in worst case scenario - more violence. In divided societies – in terms of ethnic and cultural differences, not borders – this situation is quite dangerous if it tends to continue and develop further, especially in societies emerged from deep-rooted (in history) conflicts. Political parties, for example, in these cases, organize around issues of communal identity (ethnocentrism), rather than around programmatic or ideological lines (for the sake of the whole society); politics is viewed by each community as a win or lose situation.

Consociational theory recognized ethnic identities in diverse communities; however it sees the community boundaries as fairly secure recognizing as well that the real challenge for one democracy is how to include all diverse communities in the decision-making process (an outcome would be a single-party cabinet based on a secure parliamentary majority with a key positive characteristic: producing stable and durable government). Norris sees this as particularly important in ‘failed’ states (Norris, 2008). The failure by some states to safeguard and promote the interests of others, particularly when those others have (or are perceived to have) a different group identity, has been a principal justification for establishing political systems based on power-sharing.
Table 18 shows the similarities and the dissimilarities of the two selected case studies and in this part each of the elements of the analysis will be revisited. According to some, the model in South Tyrol is likely to be wrecked. Reasons can be found in some main important elements. At first the power-sharing system as such, characterized by the breach in the continuity within the political elites of the Italian speaking population and the concurrent exclusion of a consistent part of civil society from vital decision-making processes in the province (Pallaver, 2008, p.314). The implemented consociational model, with the primary aim to guaranty ethnic inclusion, is slightly falling apart, leading further to tensions between collective and individual (minority) rights.

Table 18: Similarities and Dissimilarities

<table>
<thead>
<tr>
<th>Similarities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Historical documents</strong></td>
</tr>
<tr>
<td>NO</td>
</tr>
<tr>
<td><strong>Legal instruments/solutions</strong></td>
</tr>
<tr>
<td>YES (partly in terms of solutions)</td>
</tr>
<tr>
<td>NO (in terms of type of legal sources)</td>
</tr>
<tr>
<td><strong>Territorial Governance</strong></td>
</tr>
<tr>
<td>NO (Territorial autonomy vs. Non-territorial autonomy)</td>
</tr>
<tr>
<td>YES (in terms of language policies and use of language in Public Administration)</td>
</tr>
<tr>
<td>NO (declaration of affiliation; threshold of 20%)</td>
</tr>
<tr>
<td><strong>Language rights</strong></td>
</tr>
<tr>
<td>YES (parallel education system)</td>
</tr>
<tr>
<td>(media rights)</td>
</tr>
<tr>
<td>(support for cultural activities)</td>
</tr>
<tr>
<td><strong>Education, Media and Culture</strong></td>
</tr>
<tr>
<td>YES (proportional representation)</td>
</tr>
<tr>
<td>(double majority vote)</td>
</tr>
<tr>
<td><strong>Self-representation rights</strong></td>
</tr>
<tr>
<td>YES</td>
</tr>
<tr>
<td>NO (electoral system)</td>
</tr>
</tbody>
</table>

*Source: Author’s elaboration*
There is a tense relationship between historically legitimized protection measures on a collective level - whereas the individuals take the benefit – and the present overall situation in the society that cannot justify this deviation from individual rights. Taking this into consideration, there is a great possibility for ethnic tensions by following dogmatically the legal conceived model. This is seen through the example of the declaration of affiliation to a linguistic group, as a pass from individual to collective right, observed first as a privacy violation (however later modifications made it anonymous), and not only. The declaration causes problem in terms of allocation of resources (human and/or financial). Citizens with a German ethnic background can declare to be affiliated to the Italian language group (or to the German language group) (off course with the pre-condition of knowing the language at the mother tongue level) for the purpose of being infiltrated into the system and take benefits for certain services. The only detail that confirms this as a good solution is the fact that the declaration is to be given every 10 years (as a long period without a space for manipulation) and it represents an instrument on which the language use in the government is based on. This key element is missing in the second case study, where many problems and discussions have been raised – for example in the Parliament – for the enjoyment of certain (self-representation) rights by the members of the minority groups. Without this instrument, one member can easily change its ethnic belonging, depending on the situation and the circumstances in place. Moreover, for a long time, in South Tyrol, it has been observed that the principle of proportionality has been at the centre of criticism and was viewed as a particularly heavy burden by the Italian-speakers. To be precise, it is not a matter of nationalistic views; it is simply a matter of benefit. It is true that the arrangement of South Tyrol through the course of thirty years has proved to be valid and successful from many aspects, but some interests were and are at stake. The Italian-speaking population perceived itself as a minority in the Province of Bolzano, renouncing some privileges to eliminate minority discrimination. In a deep-rooted conflict society such as South Tyrol, the mentality of a population is difficult to transform and
adjust to the implemented integration and anti-discriminatory measures.\textsuperscript{49} Problematic questions have been also posed concerning the ethnic quota in the public administration (and other public bodies) wondering what will happen if the quota cannot be filled.\textsuperscript{50} This question has been partly answered establishing a preference order (with limits not exceeding 30 per cent of the unfilled posts). More recently this has developed in a more flexible quota system allocation which poses another question on what will happen next. Quota system is generally not applied in the private sector which can push forward the integration within the society. When it comes to the employment policies, it is worth mentioning another aspect of concern and that is the linguistic examination. This certainly improves the quality of the public services (giving at any time a service to a citizen in its mother language) however it goes towards discrimination. One should be bilingual in order to work in the public administration, besides the fact that there is a certain language quota system. It is a given fact that in a bilingual society the inter-ethnic relations are peaceful and avoid conflict, however it is also a given fact that every individual has the right to choose whether to learn another language or not. This can be viewed also as another aspect of the transition from individual to group rights in the minority rights’ discourse. In the language use discussion a problem of a very recent concern are the toponyms’ regulations. As analysed before, the regulations are still in a pending phase, this gives us the idea that still, in a society that tends to be presented as a role model of ethnic conflict resolution, some issues cannot be solved easily and the language and ethnic barriers are still an ongoing problem for discussion. An additional critic to the model of minority rights protection in South Tyrol is the separation according to linguistic group in the education system. It is clear that a members of a minority groups has the right to be educated on their mother language, however if the policy of separation continues it is likely to keep on a division in the South Tyrolean society.\textsuperscript{51} It is certain as well that, South Tyrol is in overall a successful model. It was able to keep peaceful relations (without violence) for a long period of time. Based on a principle of integration without attempts to assimilate the minority groups, it has given the
basis for a further development of minority rights’ protection. The autonomy granted by the Statute gave this province a ‘dynamic’ autonomy (from territorial to cultural and vice versa). The flexibility among all language groups in the process of its implementation certainly shifted the focus from the memories from the past to the economic prosperity and development and therefore decreased significantly the inter-ethnic tensions. The autonomy is given to all citizens, and by this fact all citizens benefit and feel as their own. Another point is the economic progress and growth in the region, triggered by the restored peaceful relations within the Italian state (region) and externally (between Italy and Austria) and the birth of the Euregion. The arrangements established and implemented in South Tyrol can certainly be imposed as an example, however their applicability is questionable. In regards to the ‘separate voting’ in the Provincial Parlament (or in another terms ‘double majority voting’) it has been observed as a positive implemented instrument towards minority rights’ protection.

In the case of the Republic of Macedonia, as in South Tyrol, the legal framework for minority rights’ protection and the established solutions were able to achieve a peace ‘treaty’, peaceful relations and to stop an escalation of the ethnic conflict in the country. This framework or model introduces both positive and negative measures for protection. As the first observed negative consequence of the implemented arrangements is the continued marginalization of the smaller communities. These were not analysed in details in this research work, however this does not mean that they were marginalized here as well. As seen, in the first case, the focus has been given to one minority group. Exactly this fact – focusing on one numerically superior community – is causing still tensions in the Macedonian political arena. While the largest minority group (Albanian) is exercising powers given by the legal framework, the small minority groups are still left behind without a significant power to make decisions. The only positive measure addressing their rights as minority groups in the Republic of Macedonia is the introduction of the proportional representation. The focus, on the other hand, on the Albanian speaking community in the Republic of Macedonia has raised also a
lot of questions on whether the Republic of Macedonia is becoming a bi-national state. During election (since its independence) the Albanian political parties have been always present in coalition governments, and this is still the case. The relationships between the state and the minority groups have become dual (state vs. one minority group); the attention is always directed to one minority group and the protection of their rights, and therefore ignoring the rights of smaller communities. This is preserved as a great weakness in this case study and the fear of bi-national state as a threat. The power-sharing model in the Republic of Macedonia is relatively ‘young’ in comparison to the development of the South Tyrol model. Some scholars mark it as a ‘weak consociationalism’.\(^5\) Even if this is the case (and the previous analysis confirms that it is), it is worth mentioning that as young democracy the Republic of Macedonia proved to be a unitary state respecting and protecting all its citizens no matter their ethnic background and identity. The significant reforms and adjustments of the legal provisions for minority rights’ protection cannot be ignored; however they have not to be overstated either. Some observed that it is crucial for the Republic of Macedonia to be internationally recognized under its constitutional name in order to address the fears of the majority; but one thing has to be taken seriously into consideration.\(^5\) Despite the international recognition, one sovereign state, internally, has to deal with its issues and problems by itself. This imposes another question at this point - solving internally the problems is not enough - this can cause isolation from the international governmental organizations (EU and NATO) of the country (this is happening now to the Republic of Macedonia), and further create fertile ground for future (possible) demands by the minority groups (Albanian in specific) and another ethnic conflict. The support from the international community is seen as crucial. The success of the implemented instruments and the given solutions cannot be measured easily\(^5\). What has been seen as a success is the framework agreement itself (the OFA), since it succeeded in creating a platform of discussion and cooperation and in giving solutions for the confronted problems. It should also be mentioned that the agreement gives legal provisions for constitutional
amendments and for adoption of additional legal instruments which were effectively realized. Regardless of these reforms, there is a strong disagreement in the interpretation of the OFA provisions. It is certainly that its implementation cannot be measured in numbers; however the legal instruments that were implemented after the agreement strengthen the protection of the minority group(s) in the country. They were able to restore stability and reinforce the legal order – from language rights to decentralization – they certainly re-established the political system. Moreover the framework agreement was able to generate cooperation between the dominant communities (Macedonians and Albanians). What was forgotten in the course of the implementation process was the inclusion, despite the provisions on the proportional representation. Here by inclusion it is meant the relationships between the ethnic communities in different sectors of the society as for example in the education system whereas the parallel system is seen as a weakness in this case study (as in the case of South Tyrol). Another point to be considered is the threshold linked to the enjoyment of certain rights for minority groups, and that is the percentage (20%) from the total population in the country and in the units of local self-government. It has been observed that this is one of the characteristics distinguishing the two case studies. In this regards, it should be pointed out that this numerical threshold is controversial in practise causing census incidents and as a worst case an annulment of the census itself (which happened at the last census in 2011). Furthermore, apart from the criticism towards the decentralization process and the notion of a certain kind of self-government for the Albanian minority group in the Republic of Macedonia, it is observed that: the decentralization per se is not an unproblematic process for establishment and implementation; the OFA and legal instruments did not establish a self-government for the Albanian community nor created a territorial autonomy as such (and this represents another dissimilarity with the first case study); it did create however certain room for special rights’ protection and enjoyment at local level and fostered a certain level of self-government for the biggest minority group (a non-territorial autonomy). This model of decentralization has been seen as a
successful tool for managing ethnic conflicts (as pointed out before, Lijphart favours decentralization as an important factor for stability, peace building, and democratic consolidation in fragile multinational states). In terms of the proportional representation of the minority groups in the public administration, it can be examined that this principle has encountered major problems. In order to fill the quotas in the public administration a negative trend has been observed and that is employment of low qualified applicants. Furthermore, in the case of the applicability of the double majority voting is has been observed that, as instruments is a strength in this case study, however a lot of debates have been raised on its practical implementation and use; it should be used for adopting laws and decision on matters of concern to minorities and related to their use of language, cultural and education rights but it specific laws which acquire double majority are not listed; therefore the process of giving positive results has been showed to be hard and slow (with some exceptions in some units of local self-government).

Tables 19 and 20 illustrate the two case studies and their strengths, weaknesses and as well as the opportunities for the future and possible strengths. It has been observed that both case studies have almost equal solutions seen as strengths. The question of the territorial principle and the relation with the minorities has been analysed as first. A particular feature in this case is the fact that for the first case study the territorial (almost full) autonomy is seen and it has been proved to be a significant step towards minorities’ protection and therefore a strength; on the other hand in the case of the Republic of Macedonia a full territorial autonomy is a fear and a threat (leading to possible federalization and territorial segregation) and the cultural (non-territorial) autonomy as a strength, giving a certain self-government rights to minority groups is seen as a significant step forward and, as observed in practice, also very successful.
As a second element seen as strength in the case of South Tyrol is the ethnic quota or proportional representation – in spite of passing some difficulties in the implementation period and questions on its development in the future – is a constructive instrument for minorities’ protection. This can be said as well for the declaration of affiliation in one linguistic group for the purposes of ethnic quota calculation. The modification (by which the right to declare to belong to ‘other’ linguistic group is allowed). On the other side of the table the proportional representation is seen still as weak no matter its main purpose and utility for minorities’ inclusion and protection, in the case of the Republic of Macedonia, this instrument is misused. The solutions towards protecting language rights of the minority groups in both case studies are thought to be positive. Another
characteristic that these two case studies share is the ‘separate voting’ and ‘the
Badinter majority’ or in other terms the double majority vote reserved to the
members of the minorities in the executive power. This is an element of the
consociational democracy that both case studies have. The fostered cooperation
between the majority and the numerically bigger minority group in the second case
study is perceived to be a strong aspect during the development of the present
model of minority rights’ protection. In the second case study however it is noted
the need to address the issue of its perplexing utilisation and the question
regarding its applicability in the adoption of certain legislative acts.

The perceived weaknesses that these two case studies divide are the
ethnocentrism and the ‘partization’ in the political arena by ethnic lines. Parallel
education system or educational segregation is marked as a weakness to be
considered carefully in terms of its influence on the inter-ethnic relations in the
future. For the first case study, the still open issue on adoption of the legislative act
on the names of streets and other infrastructure facilities give a negative mark for
the model, whereas there is a law in force for this matter in the second case study,
the first case study shows clearly that despite the positive evaluation of the model
itself, there are still issue to be resolved and on which a further reflection and
discussion is needed. The marginalization of the small minority groups in the
Republic of Macedonia is perceived to be a unconstructive element for the overall
model of minority rights’ protection. In this regards, the failure to perform a
Census in 2011 is mark also as an event which can have negative consequence and
repercussions.

The strengthened cross-border cooperation in the Region Trentino-Alto
Adige and the Austrian region of Tyrol is showing remarkable success and
potential to have a great impact on the economic prosperity in the area and for the
minority groups residing on that territory. This structure is seen through the prism
of economic development addressed not only for the wellbeing of the German-
speaking and Ladin-speaking population, but also for the Italian-speaking
population and other residents/foreigners living in the region. In terms of inter-
PART III Comparative analysis and perspectives

ethnic relations the economic growth and the improved quality of life has a great and deep influence that can change significantly people’s lives. Apart from the opportunities ahead of the Province Bolzano and the Region of Trentino-Alto Adige (South Tyrol), there are still some possible threats to be considered. The history never forgets does not mean that the past can become present, however it can ‘hunt’ the present and influence on the future.

Table 20: Strengths and Weaknesses

<table>
<thead>
<tr>
<th>Opportunities</th>
<th>Autonomous Province Bolzano (South Tyrol)</th>
<th>Republic of Macedonia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic growth and prosperity (Euregion Trentino-South Tyrol-Tyrol)</td>
<td>Improved cooperation with neighbouring countries (Albania and Kosovo)</td>
<td></td>
</tr>
<tr>
<td>Increasing inter-ethnic interaction (on economic level)</td>
<td>EU and NATO approximation</td>
<td></td>
</tr>
<tr>
<td>Threats</td>
<td>Inter-ethnic tensions (“history never forgets”)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bi-nationalism (Bi-National State)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Territorial segregation (Federalization)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>State’s isolation (from the International Community)</td>
<td></td>
</tr>
</tbody>
</table>

Source: Author’s elaboration

On the other side of Table 20 we have the Republic of Macedonia facing crucial opportunities which if not taken into consideration can cause easily some considerable consequence for the whole country. The Republic of Macedonia needs the international community support and urgently needs integration in the international governmental organization such as NATO and in the European Union. This is seen crucial to preserve the stability and avoid one of the mentioned threats in the table and that is the isolation of the state. If this happens, the Republic of Macedonia might face another internal incident and conflict and in worst case
scenario a possible escalation of a civil war. The later can be triggered also by a possible bi-nationalism and territorial segregation and a reconstruction from a unitary state into a federative state. In his theory of consociationalism, Lijphart recommends federalism structure as one of the key components highlighting that “a federal system is undoubtedly an excellent way to provide autonomy for [ethnic] groups” (Lijphart, 2004, p.104). However in the case of the Republic of Macedonia this recommended component would lead to a profound territorial division threatening the unity of the state. Studies showed that incorporating federal system in divided societies can – and leads – to increase of secessionist tendencies (Bunce & Watts, 2005; Hardgrave, 1993; Kymlicka, 1998). To be able to keep the territorial integrity and postponed such possible demands from the minority groups, the Republic of Macedonia needs to redirect the attention and focus on the opportunities such as a possibility of a further cooperation with the neighbouring countries and enhancing a fruitful cross-border cooperation including actively the minority groups.

The comparative analysis revealed many interesting elements from the selected case studies, taking into account both legal instruments as such, and their implementation and influence in the political systems and minority groups. It discovered many similarities between the two models of minority rights’ protection, something that was not expected at the beginning of this research work. The main findings and some main recommendations are to be presented in the next few pages as conclusions.
PART III – Comparative analysis and perspectives

ENOTE

3 See Provincia Autonoma di Bolzano Alto Adige (2009), Manuale dell’ Alto Adige, at http://www.provincia.bz.it/usp
4 The Italian constitutional and administrative system has been modeled on the French tradition of a Unitarian, centralized, and bureaucratic form of government, since the achievement of national unity in the second half of the nineteenth century.
5 Francesco Palermo calls it ‘quasi-federal’ regionalism or ‘devolutionary asymmetric federalism in the making’. The very differentiated asymmetrical regional system reflects in the five special regions (each of it different from the others), and at second level the ordinary regions with the opportunity to reach more powers (in the north) and on third level the ordinary regions that will never acquire more powers but accommodate their needs by approving their own statutes. See Palermo, F. (2004). Asymmetric "Quasi-Federal" Regionalism and the Protection of Minorities: The Case of Italy. In G. A. Tarr, R. F. Williams, & J. Marko (Eds.), Federalism, Subnational Constitutions, and Minority Rights (pp. 107-132). Westport: Praeger.
6 The former Yugoslavia had signed and ratified the Covenant on 8 August 1967 and 2 June 1971, respectively. See status at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#1.
9 Ethnos is constituted as the specific characteristics of an ethnic community and is contrasted to the different – other ethnos. Following Karl Mannheim distinction between two forms of knowledge ‘conjunctive’ and ‘communicative’, ethnos is closer to conjunction than to communication. Demos comes near to communication since everyone who accepts its discursive norms and regulations can become a member, demos is understood as universal, rational and non-personal as communication. See Göram Dahl (1999), Radical Conservatism and the Future of Politics, London/New Delhi: Sage Publications Ltd. at 91.
13 The NUTS Regulation defines minimum and maximum population thresholds for the size of the NUTS regions; favours administrative divisions applied in the states; and favours geographical units. NUTS 1 level is for the major socio-economic regions; NUTS 2 for basic regions for the application of regional policies and NUTS 3 for small regions for specific diagnoses. Apart from the NUTS levels there are also two LAU levels (Local Administrative Units); whereas LAU 1 is defined for most, but not all countries LAU 2 consists of municipalities or equivalent units in the states. For more on this classification see EUROSTAT, European Commission, NUTS – Nomenclature of territorial units for statistics at http://epp.eurostat.ec.europa.eu/portal/page/portal/nuts_nomenclature/introduction.
Article 5 of the Italian Constitution recognizes and promotes local autonomies; implements services and measures of administrative decentralization according to principles and methods established by the national legislation and the requirements of autonomy and decentralization.


The Presidential Decree was further modified with the Legislative Decree n. 354 from 09.09.1997 concerning the proportionality principle in the public administration in the Province of Bolzano and the use of the two languages by the civil servants; available in Italian language only at http://lexbrowser.provinz.bz.it/doc/it/dlgs-1997-354/decreto_legislativo_9_settembre_1997_n_354.aspx; and the Legislative Decree from 23.05.2005, n. 99; - in terms of the declaration of belonging and aggregation to a linguistic group in the Province of Bolzano; available in Italian language only at http://lexbrowser.provinz.bz.it/doc/it/dlgs-2005-99/decreto_legislativo_23_magio_2005_n_99.aspx.

Modified with the Legislative Decree n. 172 from 14.09.2011—in terms of the protection of the Ladin speaking population in the Province of Bolzano.

Relating to use of language in criminal trials and civil proceedings, as well as on assignments of notary offices, and writing in two languages on the labels and printed leaflets of medicines.

Karl Rainer points out that the experience in this area shows that most comlains by citizens in this regards are taken very seriously, in fact, most complains by Italian citizens regard local authorities, whereas most cases involving German speaking citizens involve relations with the central administrations. See Rainer, K. (2002). The Autonomous Province of Bozen/Bolzano - South Tyrol. In K. Gál (Ed.), Minority Governance in Europe (pp. 91-103). Budapest: Open Society Institute.

More important for South Tyrol is the fact that bilingualism has become a main factor for economic competition, due to its strategic geographic position. Together with the benefits of territorial autonomy, plurilingualism has been decisive for the creation of highly specialized jobs, for the settlement of a large number of promising modern enterprises and also for increasing scientific research, particularly after the foundation of the European Academy (EURAC) and the Free University of Bozen/Bolzano. Analyses in 1997 refer that the knowledge of the other language varies according to different age groups; these analyses prove that, among German-speaking South Tyrolese aged 25-44, bilingualism is highly developed, while this high level of bilingualism is visible in Italian-speaking South Tyrolese in the age group 18-24.51 In 2004, one German speaker out of four declared to be able to speak spontaneously and fluently in Italian; one out of three can express him/herself in the other language without problem and easily communicate in daily life. Merely 5.1% declared that they are not able to do so at all. According to this study, the Ladins speak the Italian language at a level that is almost comparable with their mother tongue. In regard to the Italians, 27.2% stated that they are able to properly speak and interact in German, whereas 38.8% do not have this ability. See Werther, C. (2006) “Sprachidentität/Identità linguistica”, in ASTAT (ed.), Südtiroler Sprachbarometer. Sprachgebrauch und Sprachidentität in Südtirol 2004—Barometro linguistico dell’Alto Adige. Uso della lingua e identità linguistica in provincia di Bolzano 2004 (pp. 143–152). Bolzano/Bozen: La Bodoniana.

Art. 6 of the Law on the use of a language spoken by at least 20% of the population in The Republic of Macedonia.

Art. 1 of the Presidential Decree n. 752 from 26 July 1976: “The knowledge of Italian and German, according to the needs of the good performance of the service, is requisite for recruitment...”. See at http://lexbrowser.provinz.bz.it/doc/it/dpr-1976-752/decreto_del_presidente_della_repubblica_26_luglio_1976_n_752.aspx. Another general criteria is the obligation to present a declaration for affiliation in one of the linguistic groups, however this should not be mixed as a linguistic criteria, this is part of the proportionality principle to be discussed further under the self-representation rights. See at http://lexbrowser.provinz.bz.it/doc/it/dpgp-2003-20%C2%82A720/decreto_del_presidente_della_provincia_30_maggio_2003_n_20/art_2_assunzione_all_impiego_provinciale.aspx.
PART III Comparative analysis and perspectives

27 See Consolidate version of the Law for Civil Servants published in the Official Gazette n. 76 on 07.06.2010.
28 Art. 39, para.2 from the Regional President Decree (DPReg) from 1 February 2005 n.1/L, “Testo unico delle leggi regionali sulla composizione ed elezione degli organi delle amministrazioni comunali” available in Italian language at http://www.regione.ta.it/Moduli/674_TUEL%20italiano%20libro%20maggio%202010%20definitivo.pdf.
30 For members of other communities, the name of the candidate in the electoral lists, the name and surname of the holder of the list, are written in Macedonian language and Cyrillic alphabet and the language and the alphabet of the community to which they the voters belong to. Art. 25, para. 3 - Law on the use of language spoken by at least 20% of the population in Republic of Macedonia.
31 To be highlighted also here, that the use of Ladin language will not be examined and compared, since there is no third language in use in the second case study, the analysis is limited to bilingualism.
32 Although particular emphasis is placed on the languages in the region, the University is also committed to endorsing English, the lingua franca of the international scientific community. See Mission Statement of the Free University of Bozen/Bolzano at http://www.unibz.it/it/public/press/Documents/leitbild_profilo_mission.pdf.
33 The Educational activities of the University according to its Statute are performed in the Albanian, Macedonian and international languages. See Statute of the South East European University at http://www.seeu.edu.mk/files/statute_eng.pdf.
34 Small parties may also be disadvantaged by the state rules on public funding, indirect state subsidies and access to campaign broadcasting.
35 In Italy (on a state level) there is a vertical power-sharing system, however on a regional level, in the Region of Trentino-Alto Adige (South Tyrol) for example there is a horizontal power-sharing system. Horizontal power-sharing shares also the Republic of Macedonia (considering that most important issues are still determined by the central government).
36 And the relationship between Italy as a unitary state and Bolzano (South Tyrol) as an Autonomous Province.
37 Although the quota has to be respected on all the different levels of the administrative hierarchy, there is a tendency that Italians generally fill positions as vice-presidents, vice-delegates, etc. See Norbert Dall’O, “Der Frust der Ausgeschlossenen”, ff-Südtiroler Wochenmagazin, 5 October 2006, 16–21, cited in Günther Pallaver (2008), “South Tyrol Consociational Democracy”.
39 Günther Pallaver, in 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. According to Pallaver “if this tendency continues, it would mean that, in the longer run, the tense relationship between the extreme wings of the system, the anti- and semi autonomy-parties, and the autonomy parties, will become tenser and tenser...sooner or later there will be a breaking test for both the centre-autonomy pole and the parties belonging to the extreme poles...the final consequence could be that the autonomy system will break apart.”
40 This can be seen as an overlap of territorial and personal principles.
42 The Elections of City and Municipality Councils are on the basis of the proportional model; whereas the election of Mayors on the basis of majority model. See Art. 4 Electoral Code, consolidated version published in the Official Gazette n. 54 from 14.04.2011. The election reforms however do not favor small ethnic communities.
43 See n. 40.
An election system includes a number of different aspects such as: electoral formula (majority, PR, mixed), assembly size regulation, district magnitude, voting and ballots regulation and threshold criteria.

The election of the South Tyrol Parliament is an integral part of the elections of the Parliament of the Region Trentino-Alto Adige (South Tyrol). The Region is divided into the two provincial constituencies of Trento and Bolzano, and the deputies elected in each province automatically become members of the Provincial Parliament. The number of deputies is seventy (thirty-five each from Trento and Bolzano). The deputies are elected by proportional representation through a secret ballot. See Alcock, A. (2001) The South Tyrol Autonomy. A Short Introduction. Bozen/Bolzano: County Londonderry at http://www.provinz.bz.it/en/downloads/South-Tyrol-Autonomy.pdf.

The government in South Tyrol must be composed in a way that reflects the ethnic proportion of the Parliament. If the majority in the parliament is not sufficient to create a government if that majority come from only one linguistic group, there is the obligation to seek a coalition.

A MP in the Parliament of the Republic of Macedonia declared herself to be an ethnic Macedonian, however in the Committee for relations between ethnic communities for the sake of the voting (double majority) she declared to be Vlach. See the online article of the Macedonian daily newspaper “Dnevnik” “Во парламентот се испитува владашкото потекло на охридската пратеничка?”, 16.10.2006 at http://star.utrinski.com.mk/?pBroj=2194&stID=77668&pR=3 in Macedonian language only. Every person belonging to a national minority has the right to choose freely to be treated or not to be treated as such (see Art. 3 of the FCNM), however in this case it is essential to have an instrument that can facilitate the exercise of certain minority rights. And in this specific case that instrument would be an official declaration (compulsory for the MPs).

"It was not easy to reach the special majority necessary for the approval of the constitutional autonomy law within the Italian Parliament, owing partly to a strong Fascist political movement in South Tyrol. " See Günter Pallaver Op. cit.

The language is seen as a crucial for the South Tyrolese identity; attempts have been made towards integration in the education system, however without success. As Alcock explains "the South Tyrolese did not want – or need – a mish-mash society, "half spaghetti – half knödel". See Alcock, Op.cit.

See Florian Bieber op.cit.


Despite this opinion, some tried to measure the OFA successfulness with the Failed State Index, presenting the results which depict The Republic of Macedonia on a medium position with a slight improvement since 2006 (in company of countries such as Tunisia, Namibia or Kazakhstan). See the assessment of Florian Bieber in Risteska, M. & Daskalovski, Z. (Eds.) (2011). "One decade after the Ohrid Framework Agreement: lessons (to be) learned from the Macedonian experience”. Skopje: Friedrich Ebert Stiftung and Center for Research and Policy Making.


Another scholar, by examining EU and national documents (evaluation progress reports) notes that the strategies for proportional (equal) representation in the public administration and police, have been partially implemented and it is a common occurrence for these governmental sector to employ on paper, rather than in practice. See Simonida Kacarska in Risteska, M. & Daskalovski, Z. (Eds.) op.cit.

As a successful implementation of this principle is the example of the modification of the names of streets, bridges and other infrastructure facilities in the municipality of Tetovo. See “Бадинтерово мнозинство во Тетовското собрание” [The Badinter majority in the municipal parliament of Tetovo] published in the online newspaper OnlinePress available in Macedonian language only at
Providing a detailed analysis of the minorities’ accommodation in the selected case study, this thesis explored in theory and in practise some of the key issues and questions in the present political and legal theory dedicated to minority rights. This thesis: examined the development of minority rights as part of the legal corpus of international human rights; considered the different definitions of minorities and minority groups; focused on the nature of minority rights and the dichotomy between individual and group/collective rights; and explored the models of states’ accommodation in reference to the distinct features of the political system in practice.

Starting from the research hypothesis and by applying the comparative method, this research work succeeds to identify the similarities and differences between the minorities’ protection models in the two case studies and it also succeeds to confirm in part the hypothesis stated at the beginning of this work: Presented political systems accommodating group-differentiated rights of minority groups as best solutions for guaranteeing protection of minority rights. As a general conclusion in this regards, this thesis is signalizing that there are no ideal models for minority rights protection; and no models that can be duplicated and implemented from one country to another. In specific the thesis establishes the following findings:

1. Historical documents (bilateral and political agreements) influence greatly on the policies and models for accommodating minorities in one country
It was examined at the beginning of every case study and in the comparative analysis, that historical documents (pacts, agreements, constitutions) form the foundations for minority rights protection and through the years of development influence on the states’ policies and constitutional orders when it comes to protecting the rights of the minority (linguistic or ethnic) groups. As in the case study of South Tyrol, the first autonomy statute granted by the Gruber-De Gasperi Agreement build the foundations of the minorities’ protection model and triggered further the development of this model in the future; through the years - influenced also by the historical developments in that part of Italy – showed that its existence shaped many policies and legislative and constitutional acts. In the Republic of Macedonia the situation is similar; the Constitution of the Socialist Federal Republic of Yugoslavia, the Macedonian Constitution from 1991 and the Ohrid Framework Agreement in 2001 had a major influence on the present model of minority rights’ protection. The theory of justifying the minority (group-differentiated) rights (of Kymlicka) by historical documents and acts is therefore confirmed.

2. Different Constitutional Models give similar solutions for minority rights protection

By analysing the theory of constitutional models given by Toniatti and Marko (1994) (cited in the work of Palermo and Woelk), it was observed that the two case studies belong to two different constitutional models for accommodating minority rights. The first case study – Italy and South Tyrol, as a constitutive part of the Italian Republic - belongs to the promotional model; a model in which the minority groups and their rights are promoted and protected. The second case study – the Republic of Macedonia – belongs to the multicultural model; a model with an aim to integrate the cultural diversities and create a multicultural society and therefore a multicultural state establishing, confirming and protecting human rights and values. These two different constitutional models however bring to light very similar solutions and share a common power-sharing system seen through the theory of consociational democracy. Within their own legal order, with different
legislative acts and legal sources, they tend to give similar outcomes and solutions for minorities’ protection within their territories. It was noted in the comparative analysis that they have different legal order in terms of legal instruments (laws, decrees, and other legislative acts) yet they produce and share the same the principles of consociational democracy and power-sharing.

3. Group-differentiated rights reflect the best the minority rights protected in the two case studies

In Part I the concept of group-differentiated rights was analysed and it was stated that these rights belong to a particular group and they are differentiated from the fact that they tend to protect specific rights for the minorities within one society or state. Group-differentiated rights can be special territorial rights in a certain form of self-government; they can be rights protecting the culture and cultural traditions and beliefs of the minority group and here also belong the language rights; and these rights can be also special representation rights, intended to rectify minority group political underrepresentation in governing bodies. Under these theoretical foundations given by Kymlicka, it was observed in this research work that these rights reflect the best the nature of minority rights in the selected case studies. The observation also clearly notice (in the first case study) that conflicts can be caused between individual and collective rights of minority group and that can give sometimes solutions which are not in favour of the government nor of the minority groups. Rights should protect the individuals within one group that enjoys certain protection within the political system. This is accomplished through the guaranty of the three rights reflected in the theory of group-differentiated rights.

4. The Similarities and Dissimilarities

In the comparative analysis in Part III, the two case studies produce some interesting findings. As the tables in Part III shows, the case studies - seen both as successful models for resolving ethnic conflicts and guarantying minority rights
protection - have many similar solutions and characteristics. What can be observed in both case studies are the common solutions towards the protection of language rights with exception of different elements (the declaration of affiliation and the threshold of 20%). These case studies both share similar solutions for protecting rights in the education system, media rights and rights enhancing cultural traditions and heritage. Another similarity that these two case studies have is the solutions given towards protecting representation rights of minority groups. The only exceptions in this case are the small differences found in their electoral systems. In terms of the differences evident from the analysis that was carried out in Part III, it can be said that the two case studies are very much different in their historical and actual legal documents and acts. And another point that distinguishes them as different from each other is the territorial solutions for minorities' protection; whereas in the first case study we have a territorial and cultural autonomy, for the second case study there is only a cultural autonomy realized through a system of de-territorialisation.

5. Strengths and Weaknesses

Despite the fact that the two models analysed in this research work are considered to be successful and can give examples to many societies based on cultural differences and characterized with ethnic conflicts, they do tend to produce solutions characterized as weak making them sources of discussion and debates. At first it can be acknowledged that the models offer many positive solutions perceived as strengths. For South Tyrol these are: the territorialisation of minority rights through autonomy; the ethnic quota; the protection of language rights and the declaration of affiliation; and the system of separate (double) voting. For the Republic of Macedonia the following strengths elements are identified: the cultural autonomy of minority rights through the de-territorialisation/self-government system (decentralization); the solutions given towards the protection of language rights and the Badinter (double) majority principle of voting. For the later in some cases in the implementation process it is perceived to be a weakness
in the system, however in overall belongs to one of the positive elements in this case study. It has been discovered that the two case studies share two weak elements in their models of minority rights’ protection. The first one is the ethnocentrism in the political arena because -as analysed separately and in the comparative analysis – in the electoral systems the ethnic lines are very much present in both case studies. This has reflect the campaign and the electoral process and furthermore the political arena, however at some point it is minimized with the coalition governments (present in both case studies as well). The first case study has one characteristic preserved as a weakness and that is the still ongoing debate on the regulation of toponyms, whereas the second case study has already completed that process. For the second case study, the misuse of the proportional representation, the census manipulation and the focus on one minority group in specific are detected as strong weaknesses with an urgent need to be addressed. On the question whether some strengths in the first case studies - such as the territorial autonomy – can be implemented in the second case study, it has been observed that implementing a territorial autonomy in the Republic of Macedonia can cause further problems and can lead to territorial segregation threatening the unity of the state (seen as potential threat in the future).

6. Opportunities and Threats

It has been acknowledged in the comparative analysis that if the opportunities for both case studies are ignored and neglected they can cause significant inter-ethnic tensions and conflicts. One thing that these two case studies have in common as an opportunity is the enhancement of cooperation with the neighbouring countries. Whereas the first case study has established the groundings for cooperation (through the establishment of the Euregion), in the Republic of Macedonia this is not the case. Cooperation (in the economic sphere) can further give fruitful results and readdress some possible tension in the direction of economic growth and prosperity.
This research work aimed at producing some recommendations to be taken under consideration. In this regards, based on the findings in the comparative and case study analysis the following recommendation are presented:

1. **In general, it is strongly recommended that models of minority rights’ accommodation should be considered as unique in both case studies, and not only; every country with its specific internal and external circumstances is unique. Every attempt to implement a model used in another country will give probably negative results and consequences.** What can be observed however is that there is a possibility of success if some elements (depending on the circumstances) of the models are implemented step by step, carefully examining their influence and impact.

2. **There is a strong need for a more quality based inclusion programmes for the minority groups** by enhancing inter-ethnic relations and constructing policies and programmes directed towards mutual dialogue and respect (especially in the education system). Minority rights action plan can be considered as a possible tool and national and regional education plans and guidelines as well.

3. **In relation to the previous recommendation, it is strongly recommended to have and organize awareness raising campaigns** oriented towards the relations between the majority and the biggest minority group; however more importantly towards the small minority groups that are perceived to be still marginalized (in the second case study, for example).

4. **A research (academic) community focused on minority rights** and their protection is strongly needed in the case of the Republic of Macedonia, taking as example the South Tyrol and the academic society concentrated in Bolzano (for example the European Academy - EURAC).

5. **A more organized deliberative participation** is needed in terms of involving citizens in the decision-making process in the small local areas of self-government. This can be accomplished by nurturing the principles established by the consociational democracy and carefully implementing them in the everyday life.

6. **It is perceived that an urgent attention should be given to the quota/proportional representation systems used for recruitment in the public administration.** Whereas in the first case study this is not a crucial problem, the second case study experiences a misuse in this regard, therefore a more detailed and firm action plan focusing on the
Criteria used for recruitment of civil servants (by giving a priority to the quality of the potential and selected applicants) is needed. Apart from an action plan - that can be easily ignored, can cause different interpretations and can be manipulated - there is a need for a creation of a special independent commission for evaluation composed not only by national but also including international experts.

The thesis hypothesis through the case study and comparative analysis has been confirmed in part. The reason for the partial affirmation of the research hypothesis is because of the findings which showed some weak solutions and negative trends in the process of legal instruments’ implementation. At the starting point of this research work, with the establishment of the hypothesis the candidate believed that the first case study will give a lot of solutions which are not yet implemented in the second case study. It was considered at first that the implemented solution in South Tyrol create an ‘ideal’ model for conflict resolution and minorities’ accommodation; on the other hand the Republic of Macedonia was considered to be a model in development. As the results of the comparative analysis indicate, the solutions in South Tyrol are very much similar with those implemented in the Republic of Macedonia, calling attention to the fact that the Republic of Macedonia has development a model of minority rights’ protection in line with the some of the most successful models in Europe (South Tyrol). What can be expected in the future for both – South Tyrol and the Republic of Macedonia – is the great possibility of economic growth that can influence significantly the situation of minority groups. While for South Tyrol is perceived to be an easier task to accomplish, the Republic of Macedonia (due to political tensions internally and political disputes with neighbouring countries, externally) is likely to experience still a long path of economic and political progress.

It seems that the social movement slogan “No justice, no peace” and its’ other version “No peace, no justice” fits perfectly in the analysis of the two selected case studies and in general for the inter-ethnic conflicts and their peaceful settlements. Justice and protection of human rights are build upon a peaceful arrangement; on the other hand, if there is a conflict present, justice can be hardly restored and preserved. It seems also radical to see always only one side (at a
CONCLUSIONS

time) of the coin. It should be strongly avoided building justice after a conflict and that actually was the case in South Tyrol and in the Republic of Macedonia. Important changes in these two case studies were introduced after a dispute or a conflict. The restored peace however does not offer a guaranty for neither peace nor justice. What should be kept in mind for the future is that models of minority rights protection and their development need constant validation and improvement, a careful analysis and planning; legal instrument and policies are likely to be successful if they enter through the back door.
## APPENDICES I

**CASE STUDY: TRENTINO-ALTO ADIGE (SOUTH TYROL)**

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I.1 LEGAL DOCUMENTS

I.1.1 THE CONSTITUTION OF THE ITALIAN REPUBLIC (EXTRACT OF RELEVANT ARTICLES)

adapt the principles and methods of its legislation to the requirements of autonomy and decentralisation.

Art. 6
The Republic safeguards linguistic minorities by means of appropriate measures.

Art. 7
The State and the Catholic Church are independent and sovereign, each within its own sphere. Their relations are regulated by the Lateran pacts. Amendments to such Pacts which are accepted by both parties shall not require the procedure of constitutional amendments.

Art. 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.

Art. 9
The Republic promotes the development of culture and of scientific and technical research. It safeguards natural landscape and the historical and artistic heritage of the Nation.

Art. 10
The Italian legal system conforms to the generally recognised principles of international law. The legal status of foreigners is regulated by law in conformity with international provisions and treaties. A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law. A foreigner may not be extradited for a political offence.

Art. 11
Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes. Italy
agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. Italy promotes and encourages international organisations furthering such ends.

Art. 12

The flag of the Republic is the Italian tricolour: green, white and red, in three vertical bands of equal size.

PART I

RIGHTS AND DUTIES OF CITIZENS

TITLE I

CIVIL RELATIONS

Art. 13

Personal liberty is inviolable.
No one may be detained, inspected, or searched nor otherwise subjected to any restriction of personal liberty except by order of the Judiciary stating a reason and only in such cases and in such manner as provided by the law.
In exceptional circumstances and under such conditions of necessity and urgency as shall conclusively be defined by the law, the police may take provisional measures that shall be referred within 48 hours to the Judiciary for validation and which, in default of such validation in the following 48 hours, shall be revoked and considered null and void.
Any act of physical and moral violence against a person subjected to restriction of personal liberty shall be punished.
The law shall establish the maximum duration of preventive detention.

Art. 14

The home is inviolable.
Personal domicile shall be inviolable.
Home inspections, searches, or seizures shall not be admissible save in the cases and manners complying with measures to safeguard personal liberty. Controls and inspections for reason of public health and safety, or for economic and fiscal purposes, shall be regulated by appropriate laws.
Art. 15
Freedom and confidentiality of correspondence and of every other form of communication is inviolable.
Limitations may only be imposed by judicial decision stating the reasons and in accordance with the guarantees provided by the law.

Art. 16
Every citizen has the right to reside and travel freely in any part of the country, except for such general limitations as may be established by law for reasons of health or security. No restriction may be imposed for political reasons.
Every citizen is free to leave the territory of the republic and return to it, notwithstanding any legal obligations.

Art. 17
Citizens have the right to assemble peaceably and unarmed.
No previous notice is required for meetings, including those held in places open to the public.
In case of meetings held in public places, previous notice shall be given to the authorities, who may prohibit them only for proven reason of security or public safety.

Art. 18
Citizens have the right to form associations freely and without authorization for those ends that are not forbidden by criminal law.
Secret associations and associations that, even indirectly, pursue political aims by means of organisations having a military character shall be forbidden.

Art. 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.

Art. 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.

Art. 21
Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication.
TITLE V

REGIONS, PROVINCES - MUNICIPALITIES

Art. 114

The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State. Municipalities, provinces, metropolitan cities and regions are autonomous entities having their own statutes, powers and functions in accordance with the principles laid down in the Constitution.

Rome is the capital of the Republic. Its status is regulated by State Law.

Art. 115

(Repealed)

Art. 116

Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/Südtirol and Valle d’Aosta/Vallée d’Aoste have special forms and conditions of autonomy pursuant to the special statutes adopted by constitutional law.

The Trentino-Alto Adige/Südtirol Region is composed of the autonomous provinces of Trent and Bolzano.

Additional special forms and conditions of autonomy, related to the areas specified in art. 117, paragraph three and paragraph two, letter l) - limited to the organisational requirements of the Justice of the Peace - and letters n) and s), may be attributed to other Regions by State Law, upon the initiative of the Region concerned, after consultation with the local authorities, in compliance with the principles set forth in art. 119. Said Law is approved by both Houses of Parliament with the absolute majority of their members, on the basis of an agreement between the State and the Region concerned.

Art. 117

Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations.

The State has exclusive legislative powers in the following matters:

a) foreign policy and international relations of the State; relations between the State and the European Union; right of asylum and legal status of non-EU citizens;
b) immigration;
c) relations between the Republic and religious denominations;
d) defence and armed forces; State security; armaments, ammunition and explosives;
e) the currency, savings protection and financial markets; competition protection; foreign exchange system; state taxation and accounting systems; equalisation of financial resources;
f) state bodies and relevant electoral laws; state referenda; elections to the European Parliament;
g) legal and administrative organisation of the State and of national public agencies;
h) public order and security, with the exception of local administrative police;
i) citizenship, civil status and register offices;
j) jurisdiction and procedural law; civil and criminal law; administrative judicial system;
m) determination of the basic level of benefits relating to civil and social entitlements to be guaranteed throughout the national territory;
n) general provisions on education;
o) social security;
p) electoral legislation, governing bodies and fundamental functions of the Municipalities, Provinces and Metropolitan Cities;
q) customs, protection of national borders and international prophylaxis;
r) weights and measures; standard time; statistical and computerised coordination of data of state, regional and local administrations; works of the intellect;
s) protection of the environment, the ecosystem and cultural heritage.

Concurring legislation applies to the following subject matters:
- international and EU relations of the Regions; foreign trade; job protection and safety; education, subject to the autonomy of educational institutions and with the exception of vocational education and training; professions; scientific and technological research and innovation support for productive sectors; health protection; nutrition; sports; disaster relief; land-use planning; civil ports and airports; large transport and navigation networks; communications; national production, transport and distribution of energy; complementary and supplementary social security; harmonisation of public accounts and co-ordination of public finance and taxation system; enhancement of cultural and environmental properties, including the promotion and organisation of cultural activities; savings banks, rural banks, regional credit institutions; regional land and agricultural credit institutions. In the subject matters covered by concurring legislation legislative powers are vested in the Regions, except for the determination of the fundamental principles, which are laid down in State legislation.
The Regions have legislative powers in all subject matters that are not expressly covered by State legislation. The Regions and the autonomous provinces of Trent and Bolzano take part in preparatory decision-making process of EU legislative acts in the areas that fall within their responsibilities. They are also responsible for the implementation of international agreements and EU measures, subject to the rules set out in State law which regulate the exercise of subsidiary powers by the State in the case of non-performance by the Regions and autonomous provinces.

Regulatory powers shall be vested in the State with respect to the subject matters of exclusive legislation, subject to any delegations of such powers to the Regions. Regulatory powers shall be vested in the Regions in all other subject matters. Municipalities, provinces and metropolitan cities have regulatory powers as to the organisation and implementation of the functions attributed to them.

Regional laws shall remove any hindrances to the full equality of men and women in social, cultural and economic life and promote equal access to elected offices for men and women.

Agreements between a Region and other Regions that aim at improving the performance of regional functions and that may also envisage the establishment of joint bodies shall be ratified by regional law.

In the areas falling within their responsibilities, Regions may enter into agreements with foreign States and local authorities of other States in the cases and according to the forms laid down by State legislation.

Art. 118

Administrative functions are attributed to the Municipalities, unless they are attributed to the provinces, metropolitan cities and regions or to the State, pursuant to the principles of subsidiarity, differentiation and proportionality, to ensure their uniform implementation.

Municipalities, provinces and metropolitan cities carry out administrative functions of their own as well as the functions assigned to them by State or by regional legislation, according to their respective competences.

State legislation shall provide for co-ordinated action between the State and the Regions in the subject matters as per Article 117, paragraph two, letters b) and h), and also provide for agreements and co-ordinated action in the field of cultural heritage preservation.

The State, regions, metropolitan cities, provinces and municipalities shall promote the autonomous initiatives of citizens, both as individuals and as members of associations, relating to activities of general interest, on the basis of the principle of subsidiarity.
Art. 119

Municipalities, provinces, metropolitan cities and regions shall have revenue and expenditure autonomy. Municipalities, provinces, metropolitan cities and regions shall have independent financial resources. They set and levy taxes and collect revenues of their own, in compliance with the Constitution and according to the principles of co-ordination of State finances and the tax system. They share in the tax revenues related to their respective territories. State legislation shall provide for an equalisation fund - with no allocation constraints - for the territories having lower per-capita taxable capacity. Revenues raised from the above-mentioned sources shall enable municipalities, provinces, metropolitan cities and regions to fully finance the public functions attributed to them. The State shall allocate supplementary resources and adopt special measures in favour of specific municipalities, provinces, metropolitan cities and regions to promote economic development along with social cohesion and solidarity, to reduce economic and social imbalances, to foster the exercise of the rights of the person or to achieve goals other than those pursued in the ordinary implementation of their functions. Municipalities, provinces, metropolitan cities and regions have their own properties, which are allocated to them pursuant to general principles laid down in State legislation. They may resort to indebtedness only as a means of funding investments. State guarantees on loans contracted for this purpose are not admissible.

Art. 120

Regions may not levy import or export or transit duties between Regions or adopt measures that in any way obstruct the freedom of movement of persons or goods between Regions. Regions may not limit the right of citizens to work in any part whatsoever of the national territory. The Government can act for bodies of the regions, metropolitan cities, provinces and municipalities if the latter fail to comply with international rules and treaties or EU legislation, or in the case of grave danger for public safety and security, or whenever such action is necessary to preserve legal or economic unity and in particular to guarantee the basic level of benefits relating to civil and social entitlements, regardless of the geographic borders of local authorities. The law shall lay down the procedures to ensure that subsidiary powers are exercised in compliance with the principles of subsidiarity and loyal co-operation.

Art. 121

The bodies of the Region are: the Regional Council, the Regional Executive and its President.
The Regional Council shall exercise the legislative powers attributed to the Region as well as the other functions conferred by the Constitution and the laws. It may submit bills to Parliament. The Regional Executive is the executive body of the Region. The President of the Executive represents the Region, directs the policy-making of the Executive and is responsible for it, promulgates laws and regional statutes, directs the administrative functions delegated to the Region by the State, in conformity with the instructions of the Government of the Republic.

Art. 122
The electoral system and the cases of ineligibility and incompatibility of the President, the other members of the Regional Executive and the Regional councillors shall be established by a regional law in accordance with the fundamental principles established by a law of the Republic, which also establishes the term of elective offices. No one may belong at the same time to a Regional Council or to a Regional Executive and to either House of Parliament, another Regional Council, or the European Parliament. The Council shall elect a President and a Bureau from amongst its members. Regional councillors are unaccountable for the opinions expressed and votes cast in the exercise of their functions. The President of the Regional Executive shall be elected by universal and direct suffrage, unless the regional statute provides otherwise. The elected President shall appoint and dismiss the members of the Executive.

Art. 123
Each Region shall have a statute which, in compliance with the Constitution, shall lay down the form of government and basic principles for the organisation of the Region and the conduct of its business. The statute shall regulate the right to initiate legislation and promote referenda on the laws and administrative measures of the Region as well as the publication of laws and of regional regulations. Regional statutes are adopted and amended by the Regional Council with a law approved by an absolute majority of its members, with two subsequent deliberations at an interval of not less than two months. This law does not require the approval of the Government commissioner. The Government of the Republic may submit the constitutional legitimacy of the regional statutes to the Constitutional Court within thirty days of their publication. The statute is submitted to popular referendum if one-fiftieth of the electors of the Region or one-fifth of the members of the Regional Council so request within three months from its publication. The statute that is submitted to
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referendum is not promulgated if it is not approved by the majority of valid votes.
In each Region, statutes regulate the activity of the Council of local authorities as a consultative body on relations between the Regions and local authorities.

Art. 124
(Repealed)

Art. 125
Administrative tribunals of the first instance shall be established in the Region, in accordance with the rules established by the law of the Republic. Sections may be established in places other than the regional capital.

Art. 126
The Regional Council may be dissolved and the President of the Executive may be removed with a reasoned decree of the President of the Republic in the case of acts in contrast with the Constitution or grave violations of the law. The dissolution or removal may also be decided for reasons of national security. Such decree is adopted after consultation with a committee of Deputies and Senators for regional affairs which is set up in the manner established by a law of the Republic.
The Regional Council may adopt a reasoned motion of no confidence against the President of the Executive that is undersigned by at least one-fifth of its members and adopted by roll call vote with an absolute majority of members. The motion may not be debated before three days have elapsed since its introduction.
The adoption of a no confidence motion against a President of the Executive elected by universal and direct suffrage, and the removal, permanent inability, death or voluntary resignation of the President of the Executive entail the resignation of the Executive and the dissolution of the Council. The same effects are produced by the simultaneous resignation of the majority of the Council members.

Art. 127
The Government may question the constitutional legitimacy of a regional law before the Constitutional Court within sixty days from its publication, when it deems that the regional law exceeds the competence of the Region. A Region may question the constitutional legitimacy of a State or regional law or measure having the force of law before the Constitutional Court within
sixty days from its publication, when it deems that said law or measure infringes upon its competence.

Art. 128
(Repealed)

Art. 129
(Repealed)

Art. 130
(Repealed)

Art. 131
The following Regions shall be established:
Piedmont;
Valle d’Aosta;
Lombardy;
Trentino-Alto Adige;
Veneto;
Friuli-Venezia Giulia;
Liguria;
Emilia-Romagna;
Tuscany;
Umbria;
The Marches;
Latium;
Abruzzi;
Molise;
Campania;
Apulia;
Basilicata;
Calabria;
Sicily;
Sardinia.

Art. 132
By a constitutional law, after consultation with the Regional Councils, a merger between existing Regions or the creation of new Regions having a minimum of one million inhabitants may be agreed, when such request has been made by a number of Municipal Councils representing not less than one-
third of the populations involved, and the request has been approved by referendum by a majority of said populations.

The Provinces and Municipalities which request to be detached from a Region and incorporated in another may be allowed to do so, following a referendum and a law of the Republic, which obtains the majority of the populations of the Province or Provinces and of the Municipality or Municipalities concerned, and after having heard the Regional Councils.

Art. 133

Changes in provincial boundaries and the institution of new Provinces within a Region are regulated by the laws of the Republic, on the initiative of the Municipalities, after consultation with the Region.

The Region, after consultation with the populations involved, may establish through its laws new Municipalities within its own territory and modify their districts and names.

TITLE VI
CONSTITUTIONAL GUARANTEES

Section I
The Constitutional Court

Art. 134

The Constitutional Court shall pass judgement on:
- controversies on the constitutional legitimacy of laws and enactments having force of law issued by the State and Regions;
- conflicts arising from allocation of powers of the State and those powers allocated to State and Regions, and between Regions;
- charges brought against the President of the Republic and the Ministers, according to the provisions of the Constitution.

Art. 135

The Constitutional Court shall be composed of fifteen judges, a third nominated by the President of the Republic, a third by Parliament in joint sitting and a third by the ordinary and administrative supreme Courts.

The judges of the Constitutional Courts shall be chosen from among judges, including those retired, of the ordinary and administrative higher Courts, university professors of law and lawyers with at least twenty years practice.

I.1.2 GRUBER–DE GASPERI AGREEMENT

AUTRIIAN DELEGATION
TO THE PARIS CONFERENCE

10. German-speaking inhabitants of the Bolzano Province and of 23 neighboring bilingual townships of the Trento Province will be assured a complete equality of rights with the Italian-speaking inhabitants, within the framework of special provisions to safeguard the ethnical character and the cultural and economic development of the German-speaking element.

In accordance with legislation already enacted or awaiting enactment the said German-speaking citizens will be granted in particular:

(a) elementary and secondary teaching in the mother-tongue;
(b) purification of the German and Italian languages in public offices and official documents, as well as in bilingual toponymic naming;
(c) the right to re-establish German family names which were Italianized in recent years;
(d) equality of rights as regards the entering upon public offices, with a view to reaching a more appropriate proportion of employment between the two ethnical groups.
2° - The populations of the above mentioned zones will be granted the exercise of an autonomous legislative and executive regional power. The frame within which the said provisions of autonomy will apply, will be drafted in consultation also with local representative German-speaking elements.

3° - The Italian Government, with the aim of establishing good neighbourhood relations between Austria and Italy, pledges itself, in consultation with the Austrian Government and within one year from the signing of the present Treaty:

(a) to revise in a spirit of equity and broad-mindedness the question of the options for citizenship resulting from the 1935 Hitler-Thussolini agreements;

(b) to find an agreement for the mutual recognition of the validity of certain degrees and University diplomas;

(c) to draw up a convention for the free passengers and goods transit between Northern and Eastern Tyrol both by rail and, to the greatest possible extent, by road;

(d) to reach special agreements aimed at facilitating enlarged frontier traffic and local exchanges of certain quantities of characteristic products and goods between Austria and Italy.

[Signature]

5, September 1946

I.1.3 Autonomy Statute of Trentino – South Tyrol

### Appendices I

#### Statuto Speciale / Sonderstatut

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#### TITOLO I

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| Capo I |
| Disposizioni generali |

**Art. 1.** Il Trentino-Alto Adige, comprendente il territorio delle Province di Trento e di Bolzano, è stato istituito in Regione autonoma, fornita di personalità giuridica, entro l'unità politica della Repubblica italiana, una e indivisibile, sulla base dei principi della Costituzione e secondo il presente Statuto.

La Regione Trentino-Alto Adige ha per capoluogo la città di Trento.

**Art. 2.** Nella regione è riconosciuta parità di diritti ai cittadini, qualunque sia il gruppo linguistico al quale appartengono, e sono salvaguardate le rispettive caratteristiche etniche e culturali.

**Art. 3.** La Regione comprende le province di Trento e
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#### di Bolzano


Alle Province di Trento e di Bolzano sono attribuite forme e condizioni particolari di autonomia, secondo il presente Statuto.

Ferme restando le disposizioni sull’uso della bandiera nazionale, la Regione, la Provincia di Trento e quella di Bolzano hanno un proprio gonfalone ed uno stemma, approvati con decreto del Presidente della Repubblica.

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### Capo II

**Funzioni della Regione**

**Art. 4.** In armonia con la Costituzione e i principi dell’ordinamento giuridico della Repubblica e con il rispetto degli obblighi internazionali e degli obblighi istituzionali, la Regione:

1. Parola così sostituita dal comma 1, lettera c) dell’art. 14 della legge costituzionale 31 gennaio 2001, n. 2.

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<table>
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<th>Art. 20. - I Presidenti delle Province⁸ esercitano le attribuzioni spettanti all’autorità di pubblica sicurezza, previste dalle leggi vigenti, in materia di industrie pericolose, di mestieri rumorosi ed incendi, esercizi pubblici, agenzie, tipografie, mestieri girovaghi, operai e domestici, di malati di mente, intossicati e mendicanti, di minori di anni diciotto.</th>
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**Art. 21. - I provvedimenti⁸**

8) Vedi nota n. 5.
9) Vedi nota n. 5.

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di Fassa, Pozza di Fassa, Mazzin, Campitello di Fassa e Canazei, ove è insediato il gruppo linguistico ladino-dolomitic di Fassa, ed è attribuito secondo le norme stabilite con la legge di cui al secondo comma dell’articolo 47.

Le elezioni del nuovo Consiglio provinciale sono indette dal Presidente della Provincia e hanno luogo a decorrere dalla quarta domenica antecedente e non oltre la seconda domenica successiva al compimento del quinquennio. Il decreto che indica le elezioni è pubblicato non oltre il quarantacinquesimo giorno antecedente la data stabilita per la votazione.

La prima riunione del nuovo Consiglio provinciale ha luogo non oltre il ventesimo giorno dalla proclamazione degli eletti su convocazione del Presidente della Provincia in carica.

Art. 48-bis. I membri del Consiglio provinciale rappresentano l’intera Provincia. Prima di essere ammessi all’esercizio delle loro funzioni essi prestano giuramento di essere fedeli alla Costituzione.

I membri del Consiglio provinciale non possono essere chiamati a rispondere delle opinioni e dei voti espressi nell’esercizio delle loro funzioni.

Art. 48-ter. Il Consiglio provinciale di Trento elegge tra i suoi componenti il Presidente, un vice Presidente e i Segretari.

Il Consiglio provinciale di Bolzano elegge tra i suoi componenti il Presidente, due vice Presidenti e i Segretari. I vice Presidenti sono eletti tra i consiglieri appartenenti a gruppi linguistici diversi da quello del Presidente. Il Presidente designa il vice Presidente chiamato a sostituirlo in caso di assenza o impedimento.

Nei primi trenta mesi di attività del Consiglio provinciale di Bolzano il Presidente è eletto tra i consiglieri appartenenti al gruppo di lingua tedesca; per il successivo periodo il Presidente è eletto tra i consiglieri appartenenti al gruppo di lingua italiana. Può essere eletto un consigliere appartenente al gruppo linguistico ladino previo assenso, per i rispettivi periodi, della maggioranza dei consiglieri del gruppo linguistico tedesco o italiano.

46) Gli articoli 48-bis e 48-ter sono inseriti dal comma 2 lettera a) dell’art. 4 della legge costituzionale 31 gennaio 2001, n. 2.

47) Vedi nota n. 46.

47) Siehe Anmerkung Nr. 46.

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TITOLO III

Approvazione, promulgazione e pubblicazione delle leggi e dei regolamenti regionali e provinciali

Art. 55. - I disegni di legge approvati dal Consiglio regionale o da quello provinciale sono comunicati al Commissario del Governo in Trento, se trattasi della Regione o della Provincia di Trento, e al Commissario del Governo in Bolzano, se trattasi della Provincia di Bolzano. I disegni di legge sono promulgati trenta giorni dopo la comunicazione, salvo che il Governo non li rinvi rispettivamente al Consiglio regionale od a quello provinciale col rilievo che eccedono le rispettive competenze o contrastano con gli interessi nazionali o con quelli di una delle due Province nella regione.

Ove il Consiglio regionale o quello provinciale li approvi nuovamente a maggioranza assoluta dei suoi componenti sono promulgati, se, entro quindici giorni dalla comunicazione, il Governo non promuove la questione di legittimità davanti alla Corte costituzionale, o quella di merito, per contrasto di interessi, davanti alle Camere. In caso di dubbio la Corte decide di chi sia la competenza.

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III. ABSCHNITT

Genehmigung, Beurkundung und Kundmachung der Gesetze und Verordnungen der Region und der Provinzen

Art. 55. - Die vom Regionalrat oder vom Landtag genehmigten Gesetzesvorschläge werden, wenn sie sich um die Region oder die Provinz Trient handelt, dem Regierungs-Kommissar von Trient, wenn es sich um die Provinz


Se una legge è dichiarata urgente dal Consiglio regionale o da quello provinciale a maggioranza assoluta dei componenti rispettivi, la promulgazione e l’entrata in vigore, se il Governo consente, non sono subordinate ai termini indicati. Le leggi regionali e quelle provinciali sono promulgate rispettivamente dal Presidente della Regione(55) e dal Presidente della Provincia(56) e sono vistate dal Commissario del Governo competente.

Art. 56. - Qualora una proposta di legge sia ritenuta lesiva della partà dei diritti fra i cittadini dei diversi gruppi linguistici o delle caratteristiche etniche e culturali dei gruppi stessi, la maggioranza dei consiglieri di un gruppo linguistico nel Consiglio regionale o in quello provinciale di Bolzano può chiedere che si voti per gruppi linguistici.

Art. 56. - Wenn angenommen wird, dass ein Gesetzesvorschlag die Gleichheit der Rechte zwischen den Bürgern verschiedener Sprachgruppen oder die völkliche und kulturelle Eigenart der Sprachgruppen verletzt, so kann die Mehrheit der Abgeordneten einer Sprachgruppe im Regionalrat oder im Südtiroler Landtag die Abstimmung nach

55) Vedi nota n. 12.
56) Vedi nota n. 5.
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Nel caso che la richiesta di votazione separata non sia accolta, ovvero qualora la proposta di legge sia approvata nonostante il voto contrario dei due terzi dei componenti il gruppo linguistico che ha formulato la richiesta, la maggioranza del gruppo stesso può impugnare la legge dinanzi alla Corte costituzionale entro trenta giorni dalla sua pubblicazione, per i motivi di cui al precedente comma.

Il ricorso non ha effetto sospensivo.

Art. 57. - Le leggi regionali e provinciali ed i regolamenti regionali e provinciali sono pubblicati nel Bollettino Ufficiale della Regione, nei testi italiano e tedesco, ed entrano in vigore il quindicesimo giorno successivo a quello della loro pubblicazione, salvo diversa disposizione della legge.

In caso di dubbi l'interpretazione della norma ha luogo sulla base del testo italiano.

Copia del Bollettino Ufficiale è inviata al Commissario del Governo.

Art. 58. - Nel Bollettino Ufficiale della Regione sono altresì

Sprachgruppen verlangen.

Wird der Antrag auf getrennte Abstimmung nicht angenommen oder wird der Gesetzesvorschlag trotz der Gegenstimme von zwei Dritteln der Abgeordneten einer Sprachgruppe beschlossen, die den Antrag gestellt hat, so kann die Mehrheit dieser Sprachgruppe das Gesetz innerhalb von dreißig Tagen nach seiner Kundmachung aus den im vorhergehenden Absatz angeführten Gründen beim Verfassungsgerichtshof anfechten.

Die Anfechtung hat keine aufschiebende Wirkung.

Art. 57. - Die Gesetze und Verordnungen der Region in italienischem und deutschem Wortlaut werden im Bollettino Ufficiale della Regione in Italien veröffentlicht, wenn das Gesetz bestimmt, treten fünfzehnten Tage nach Ihrer Verkündung in Kraft.

In Zweifelsfällen hat die Rechtsprechung die Entscheidung, die auf Grund des Wortlautes der Gesetze getroffen wurde, die am besten zur Rechtssicherung beitragen kann.

Art. 58. - Im Bollettino Ufficiale der Region werden auch

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TITOLO VIII

Ruoli del personale di uffici statali in provincia di Bolzano

Art. 89. - Per la provincia di Bolzano sono istituiti ruoli del personale di uffici statali, distinti per carriere, relativi alle amministrazioni statali aventi uffici in provincia. Tali ruoli sono determinati sulla base degli organici degli uffici stessi, quali stabiliti, ove occorra, con apposite norme.

Viene istituito il ruolo di personale di uffici statali per la provincia di Bolzano, distinti per carriere, relativi alle amministrazioni statali aventi uffici in provincia. Tali ruoli sono determinati sulla base degli organici degli uffici stessi, quali stabiliti, ove occorra, con apposite norme.

Il comma precedente non si applica per le carriere di funzionari alla pubblica sicurezza e per quello amministrativo del Ministero della difesa.

I posti dei ruoli di cui al primo comma, considerati per amministrazione e per carriera, sono riservati a cittadini appartenenti a ciascuno dei tre gruppi linguistici, in rapporto alla consistenza dei gruppi stessi, quale risulta dalle dichiarazioni di appartenenza rese nel censimento ufficiale della popolazione.

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VIII. ABSCHNITT

Stellenpläne der Bediensteten von Staatsämtern in der Provinz Bozen

Art. 89. - Für die Provinz Bozen werden, getrennt nach Laufbahnen, Stellenpläne für die Zivildienststellen der staatlichen Verwaltungen geschaffen, die Ämter in der Provinz haben. Diese Stellenpläne werden auf Grund des vorgesehenen Personalstandes der einzelnen Ämter aufgestellt, wie es - falls erforderlich - mit eigenen Bestimmungen festgelegt wird.

Der vorhergehende Absatz wird nicht angewandt für die Laufbahnen des höheren Dienstes der Zivilverwaltung des Inneren, für die Bediensteten der Sicherheitspolizei und für die Verwaltungsbediensteten des Verteidigungsministeriums.

Die Stellen in den Stellenplänen nach Abs. 1 werden, nach Verwaltung und Laufbahn gegliedert, Bürgern jeder der drei Sprachgruppen vorbehalten, und zwar im Verhältnis zur Stärke der Sprachgruppen, wie sie aus den bei der amtlichen Volkszählung abgegebenen Zugehörigkeitserklärungen
STATUTO SPECIALE / SONDERSTATUT

L’attribuzione dei posti riservati a cittadini di lingua tedesca e ladina sarà effettuata gradualmente, sino al raggiungimento delle quote di cui al comma precedente, mediante le nuove assunzioni in relazione alle vacanze che per qualsiasi motivo si determinano nei singoli ruoli.

Al personale dei ruoli di cui al primo comma è garantita la stabilità di sede nella provincia, con esclusione degli appartenenti ad amministrazioni o carriere per le quali si rendano necessari trasferimenti per esigenze di servizio e per addestramento del personale.

I trasferimenti del personale di lingua tedesca saranno, comunque, contenuti nella percentuale dei dieci per cento dei posti da esso complessivamente occupati.

Le disposizioni sulla riserva e ripartizione proporzionale tra i gruppi linguistici italiano e tedesco dei posti esistenti nella provincia di Bolzano sono estese al personale della magistratura giudicante e requirente. E’ garantita la stabilità di sede nella provincia stessa ai magistrati appartenenti al gruppo linguistico tedesco, ferme le norme dell’ordinamento giudiziaro sulle incompatibilità. Si applicano anche

hervorgeht.

Die Zuteilung der für Bürger deutscher und ladinischer Sprache vorbehaltenen Stellen erfolgt schrittweise bis zum Erreichen der Anteile gemäß vorhergehendem Absatz durch Neueneinstellung in jene Stellen, die in den einzelnen Stellenplänen aus irgendeinem Grunde frei werden.

Den Bediensteten der Stellenpläne gemäß Abs. 1 wird die Beständigkeits des Dienstszites in der Provinz gewährleistet mit Ausnahme der Angehöigen von Verwaltungen oder Laufbahnen, für die dienstlichen zur Weiterbildung sich als notwendig.

Die Bediensteten werden jeden zehn Prozenter insgesamt be

überschreiten.

Die Bestätigungen werden in de

bestehenden und unter der deutschen Verhältnis aufzuteilen in den Bediensteten, für die in der Bediensteten

rechtsprechung untersuchend ausgedehnt. Die deutschen

angehören, wird die Beständigkeits des Dienstszites in der Provinz gewährleistet, vorbehaltlich der Bestimmungen der Gerichtsordnung über die Unvereinbarkeiten. Die im vierten Absatz dieses Artikels festgelegten Richtlinien für die Zuteilung der den Bürgern deutscher Sprache vorbehaltenen Stellen werden auch auf die Gerichtsbediensteten in der Provinz Bozen angewandt.
STATUTO SPECIALE / SONDERSTATUT

impugnazione e del ricorso per
confitto di attribuzione deve
estre sia inviati al Commissario del
Governo in Trento, se trattasi della
Regione o della Provincia di
Trento, e al Commissario del
Governo in Bolzano, se trattasi
della Provincia di Bolzano.

tungsschrift und des Rekurses
wegen Zuständigkeitskonfliktes
muss dem Regierungskommissar
in Trient übermittelt werden, wenn
es sich um die Region oder um die
Provinz Trient handelt, dem
Regierungskommissar in Bozen
hingegen, wenn es sich um die
Provinz Bozen handelt.

TITOLO XI

XI. ABSCHNITT

Uso della lingua tedesca
e del ladinono

Gebrauch der deutschen
Sprache und des Ladinischen

Art. 99. - Nella regione la
lingua tedesca è parificata a quella
italiana che è la lingua ufficiale
dello Stato. La lingua italiana fa
testo negli atti aventi carattere
legislativo e nei casi nei quali dal
presente Statuto è prevista la
redazione bilingue.

Art. 100. - I cittadini di lingua
tedesca della provincia di Bolzano
hanno facoltà di usare la loro
lingua nei rapporti con gli uffici
giudiziari e con gli organi e uffici
della pubblica amministrazione
situate nella provincia o aventi
competenza regionale, nonché con
i concessionari di servizi di
pubblico interesse svolti nella

Art. 99. - Die deutsche
Sprache ist in der Region der
italienischen Sprache, die die
amtliche Staatsssprache ist,
gleichgestellt. In den Akten mit
Gesetzeskraft und immer dann,
 wenn dieses Statut eine
zweisprachige Fassung vorsieht,
ist der italienische Wortlaut
maßgebend.

Art. 100. - Die deutschsprachigen Bürger der Provinz Bozen
haben das Recht, im Verkehr mit
den Gerichtsamtmern und mit den
Organen und Ämtern der
öffentlichen Verwaltung, die ihren
Sitz in der Provinz haben oder
regionale Zuständigkeit besitzen,
so wie mit den
Konzessionsunternehmen, die in
der Provinz öffentliche Dienste
versehen, ihre Sprache zu
gebrauchen.

In den Sitzungen der Kolle-
gialorgane der Region, der Provinz
Bozen und der örtlichen
Körperschaften dieser Provinz
kann die italienische oder die
deutsche Sprache gebraucht
werden.

Die Ämter, die Organe und
die Konzessionsunternehmen
gemäß Abs. I verwenden im
schriftlichen und im mündlichen
Verkehr die Sprache dessen,
der sich an sie wendet, und antworten
in der Sprache, in der der Vorgang
von einem anderen Organ oder
Amt eingeleitet worden ist, wird der
Schriftverkehr von Amts wegen
eröffnet, so wird er in der
mutmaßlichen Sprache des
Bürgers geführt, an den er
gerichtet ist.

Unbeschadet der ausdrücklich
vorgesehenen Fälle - und
unbeschadet der Regelung mit
Durchführungsbestimmungen der
Fälle des gemeinsamen
Gebrauchs der beiden Sprachen in
Akten, die an die Allgemeinheit der
Bürger gerichtet sind, sowie in zum
öffentlichen Gebrauch bestimmten
Einzelakten und in Akten, die an
mehrere Ämter gerichtet sind -,
werden in den anderen Fällen der
getrennte Gebrauch der
italienischen oder der deutschen
Sprache anerkannt. Unberührt
I.1.4 Letter from the Autonomous Region Trentino –South Tyrol to the EU Committee of the Regions

Vertretung der Europaregion Tirol - Südtirol - Trentino
Ufficio della Regione Europea del Tirolo – Trentino – Alto Adige

Brussels, 22/09/2011

Dear President of the Committee of the Regions, dear Ms Bresso,

It is with pleasure that we inform you on behalf of our three Presidents – Mr Günther Platter, Mr Luis Durnwalder and Mr Lorenzo Dellai - that we have recently received the formal communication of the registration of the EGTC “Euregio Tirolo-Alto Adige-Trentino”. This EGTC has been registered in Italy on 13th September.

Now, following the procedures we would kindly ask the Committee of the Regions to inscribe the EGTC – the first based in Italy – in the European Registry on New EGTCs and to let us know the registration number.

Please find attached the statute, the agreement as well as the communication sent by the Presidency of the Ministers’ Council of Italy.

Thank you very much in advance.

Yours sincerely,

[Signatures]

Source: Autonomous Region of Trentino-South Tyrol at [http://www.regione.taa.it/](http://www.regione.taa.it/).
I.1.5 EGTC “EUREGIO-TIROLO-ALTO ADIGE-TRENTINO” REGISTRATION

Source: Autonomous Region of Trentino-South Tyrol at http://www.regione.taa.it/.
I.2 Maps and Statistical Data

I.2.1 Resident Population by Language Group in the Population Censuses from 1880 to 2001

Legend:
- Jahre/Anni – Years
- Italiener/Italiani – Italians
- Deutsche/Tedeschi – Germans
- Ladiner/Laidni – Ladin
- Andere/Altri – Others
- Insgesamt/Totale – Total

Absolute Werte/Dati assoluti – Absolute data
Prozentuelle Verteilung/Composizione percentuale – Composition in percentage

### I.2.2 STATEMENTS OF AFFILIATION AND ASSOCIATION TO A LANGUAGE GROUP - 2001 CENSUS

#### Table: Statements of Affiliation and Association to a Language Group

<table>
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</tr>
<tr>
<td>Italienisch</td>
<td>110.206</td>
</tr>
<tr>
<td>Deutsch</td>
<td>290.774</td>
</tr>
<tr>
<td>Ladinisch</td>
<td>18.124</td>
</tr>
<tr>
<td><strong>Insgesamt</strong></td>
<td><strong>419.104</strong></td>
</tr>
</tbody>
</table>

#### Table: Percentage Composition by Type of Statement

| | Absolute Werte | Prozentuale Zusammensetzung nach Erklärungsart | Composizione percentuale per tipo |
| | Dati assoluti |
| Italienisch | 97.10 | 100.00 | Italiano |
| Deutsch | 96.08 | 100.00 | Tedesco |
| Ladinisch | 96.73 | 100.00 | Ladin |
| **Insgesamt** | **97.76** | **100.00** | **Totale** |

#### Table: Percentage Composition by Language Group

| | Prozentuale Zusammensetzung nach Sprachgruppe | Composizione percentuale per gruppo linguistico |
| | | |
| Italienisch | 26.30 | 100.00 | Italiano |
| Deutsch | 69.38 | 100.00 | Tedesco |
| Ladinisch | 4.32 | 100.00 | Ladin |
| **Insgesamt** | **100.00** | **100.00** | **Totale** |

#### Table: Percentage Composition According to 1991 Census

| | | |
| Italienisch | 27.42 | 27.65 | Italiano |
| Deutsch | 68.27 | 67.99 | Tedesco |
| Ladinisch | 4.30 | 4.36 | Ladin |
| **Insgesamt** | **100.00** | **100.00** | **Totale** |

---

I.2.3 Map of the Municipalities in the Province of Bolzano/Bozen – South Tyrol

I.3 FACSIMILES AND IMAGES

I.3.1 FACSIMILE OF THE FORM FOR DECLARATION OF LINGUISTIC AFFILIATION OR ASSOCIATION

Minority rights protection in multiethnic border regions
A Case Study Analysis

AVERTENZE per la compilazione

1. La presente dichiarazione di appartenenza o di aggregazione al gruppo linguistico resa al 15° Censimento generale della popolazione ai sensi dell’art. 69 dello Statuto speciale per il Trentino-Alto Adige

Dichiarazione di appartenenza o aggregazione al gruppo linguistico resa al 15° Censimento generale della popolazione ai sensi dell’art. 69 dello Statuto speciale per il Trentino-Alto Adige

Comune di
Gemeinde
Comun de

Si dichiara che il/la minore apparte ne al gruppo linguistico sotto indicato barrando la casella:

☐ italiano

OPPURE

O DER

Si dichiara che il/la minore non appartiene al gruppo linguistico sotto indicato barrando le caselle sotto indicate:

☐ italiano

Durch Ankreuzen des entsprechenden Kästchens wird erklärt, dass der/die Minderjährige folgender Sprachgruppe angehört:

☐ deutsch

HINWEISE zum Ausfüllen


3. Gemeinsam die italienische Gewalt Ausübende, die unterschiedlichen Sprachgruppen angehören, sind nicht zur Abgabe der Erklärung verpflichtet, wenn sie sich nicht über die Sprachgruppenzugehörigkeit des oder der Minderjährigen einigen können.

4. Der Wähler oder die Wählerin nimmt den Umschlag entgegen und leitet ihn direkt an das zuständige Amt weiter.

AVERTIMENTO per la compilazione

1. Chiesta dichiarazione de portignènza o de agregaziun a n grup linguistich, fata aladì di

Dichiarazione de portignènza o de agregaziun a n grup linguistich, fata aladì di

B

2. Il foglio B deve essere inserito nell’apposita busta rosa (recante l’indicazione del Comune), che deve essere chiusa e rimanere anonima. Detto foglio e la relativa busta non devono recars la pena di nullità, alcuna firma né alcun segno che consentano l’identificazione della persona dichiarante.

3. Coloro che esercitano congiuntamente la potestà parentale non sono tenuti a rendere la dichiarazione se, appartenendo a gruppi linguistici diversi, non concordano tra loro sul gruppo di appartenenza linguistica dei/der minore.

4. La busta rosa viene ritirata da un rilevatore o una rilevatrice, che la trasmette direttamente all’ufficio di competenza.
I.3.2 TRILINGUAL IDENTITY CARD

## APPENDICES II

### CASE STUDY: REPUBLIC OF MACEDONIA

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II.1.1  THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA

CONSTITUTION OF THE REPUBLIC OF MACEDONIA

Taking as the points of departure the historical, cultural, spiritual and statehood heritage of the Macedonian people and their struggle over centuries for national and social freedom as well as for the creation of their own state, and particularly the traditions of statehood and legality of the Krusevo Republic and the historic decisions of the Anti-Fascist Assembly of the People's Liberation of Macedonia, together with the constitutional and legal continuity of the Macedonian state as a sovereign republic within Federal Yugoslavia and the freely manifested will of the citizens of the Republic of Macedonia in the referendum of September 8th, 1991, as well as 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, Romanies and other nationalities living in the Republic of Macedonia, and intent on:

- the establishment of the Republic of Macedonia as a sovereign and independent state, as well as a civil and democratic one;
- the establishment and consolidation of the rule of law as a fundamental system of government;
- the guaranteeing of human rights, citizens, freedoms and ethnic equality;
- the provision of peace and a common home for the Macedonian people with the nationalities living in the Republic of Macedonia; and on
- the provision of social justice, economic wellbeing and prosperity in the life of the individual and the community,

the Assembly of the Republic of Macedonia adopts THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA

CONSTITUTION OF THE REPUBLIC OF MACEDONIA

I. BASIC PROVISIONS

Article 1

The Republic of Macedonia is a sovereign, independent, democratic and social state. The sovereignty of the Republic of Macedonia is indivisible, inalienable and nontransferable.

Article 2

Sovereignty in the Republic of Macedonia derives from the citizens and belongs to the citizens. The citizens of the Republic of Macedonia exercise their authority through democratically elected Representatives, through referendum and through other forms of direct expression.

Article 3

The territory of the Republic of Macedonia is indivisible and inalienable. The existing borders of the Republic of Macedonia are inviolable. The borders of the Republic of Macedonia may be changed only in accordance with the Constitution.

Article 4

Citizens of the Republic of Macedonia have citizenship of the Republic of Macedonia. A subject of the Republic of Macedonia may neither be deprived of citizenship, nor expelled or extradited to another state. Citizenship of the Republic of Macedonia is regulated by law.

Article 5

The state symbols of the Republic of Macedonia are the coat of arms, the flag and the national anthem. The coat of arms, the flag and the national anthem of the Republic of Macedonia are adopted by law by a two-thirds majority vote of the total number of Assembly Representatives.
The capital of the Republic of Macedonia is Skopje.

Article 7

The Macedonian language, written using its Cyrillic alphabet, is the official language in the Republic of Macedonia. In the units of local self-government where the majority of the inhabitants belong to a nationality, in addition to the Macedonian language and Cyrillic alphabet, their language and alphabet are also in official use, in a manner determined by law. In the units of local self-government where there is a considerable number of inhabitants belonging to a nationality, their language and alphabet are also in official use, in addition to the Macedonian language and Cyrillic alphabet, under conditions and in a manner determined by law.

Article 8

The fundamental values of the constitutional order of the Republic of Macedonia are:

- the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution;
- the free expression of national identity;
- the rule of law;
- the division of state powers into legislative, executive and judicial;
- political pluralism and free, direct and democratic elections;
- the legal protection of property;
- the freedom of the market and entrepreneurship;
- humanism, social justice and solidarity;
- local self-government;
- proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development; and
- respect for the generally accepted norms of international law.

Anything that is not prohibited by the Constitution or by law is permitted in the Republic of Macedonia.

II. BASIC FREEDOMS AND RIGHTS OF THE INDIVIDUAL AND CITIZEN

1. Civil and political freedoms and rights

Article 9

Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law.

Article 10

The human right to life is irrevocable. The death penalty shall not be imposed on any grounds whatsoever in the Republic of Macedonia.

Article 11

The human right to physical and moral dignity is irrevocable. Any form of torture, or inhuman or humiliating conduct or punishment, is prohibited. Forced labour is prohibited.

Article 12

The human right to freedom is irrevocable. No person’s freedom can be restricted except by a court decision or in cases and procedures determined by law. Persons summoned, apprehended or detained shall immediately be informed of the reasons for the summons, apprehension or detention and on their rights. They shall not be forced to make a statement. A person has a right to an attorney in police and court procedure. Persons detained shall be brought before a court as soon as possible, within a maximum period of 24 hours from the moment of detention, and the legality of their detention shall there be decided upon without delay. Detention may last, by court decision, for a maximum period of 90 days from the day of detention. Persons detained may, under the conditions determined by law, be released from custody to conduct their defence.

Article 13

A person indicted for an offence shall be considered innocent until his/her guilt is established by a legally valid court verdict. A person unlawfully detained, apprehended or convicted has a right to legal redress and other rights determined by law.
Article 14

No person may be punished for an offence which had not been declared an offence punishable by law, or by other acts, prior to its being committed, and for which no punishment had been prescribed. No person may be tried in a court of law for an offence for which he/she has already been tried and for which a legally valid court verdict has already been brought.

Article 15

The right to appeal against individual legal acts issued in a first instance proceedings by a court, administrative body, organization or other institution carrying out public mandates is guaranteed.

Article 16

The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed. The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed. Free access to information and the freedom of reception and transmission of information are guaranteed. The right of reply via the mass media is guaranteed. The right to a correction in the mass media is guaranteed. The right to protect a source of information in the mass media is guaranteed. Censorship is prohibited.

Article 17

The freedom and confidentiality of correspondence and other forms of communication is guaranteed. Only a court decision may authorize non-application of the principle of the inviolability of the confidentiality of correspondence and other forms of communication, in cases where it is indispensable to a criminal investigation or required in the interests of the defence of the Republic.

Article 18

The security and confidentiality of personal information are guaranteed. Citizens are guaranteed protection from any violation of their personal integrity deriving from the registration of personal information through data processing.

Article 19

The freedom of religious confession is guaranteed. The right to express one’s faith freely and publicly, individually or with others is guaranteed. The Macedonian Orthodox Church and other religious communities and groups are separate from the state and equal before the law. The Macedonian Orthodox Church and other religious communities and groups are free to establish schools and other social and charitable institutions, by way of a procedure regulated by law.

Article 20

Citizens are guaranteed freedom of association to exercise and protect their political, economic, social, cultural and other rights and convictions. Citizens may freely establish associations of citizens and political parties, join them or resign from them. The programmes and activities of political parties and other associations of citizens may not be directed at the violent destruction of the constitutional order of the Republic, or at encouragement or incitement to military aggression or ethnic, racial or religious hatred or intolerance. Military or paramilitary associations which do not belong to the Armed Forces of the Republic of Macedonia are prohibited.

Article 21

Citizens have the right to assemble peacefully and to express public protest without prior announcement or a special license. The exercise of this right may be restricted only during a state of emergency or war.

Article 22

Every citizen on reaching 18 years of age acquires the right to vote. The right to vote is equal, universal and direct, and is exercised at free elections by secret ballot. Persons deprived of the right to practice their profession by a court verdict do not have the right to vote.

Article 23

Every citizen has the right to take part in the performance of public office.

Article 24
Every citizen has a right to petition state and other public bodies, as well as to receive an answer. A citizen cannot be called to account or suffer adverse consequences for attitudes expressed in petitions, unless they entail the committing of a criminal offence.

Article 25

Each citizen is guaranteed the respect and protection of the privacy of his/her personal and family life and of his/her dignity and repute.

Article 26

The inviolability of the home is guaranteed. The right to the inviolability of the home may be restricted only by a court decision in cases of the detection or prevention of criminal offences or the protection of people's health.

Article 27

Every citizen of the Republic of Macedonia has the right of free movement on the territory of the Republic and freely to choose his/her place of residence. Every citizen has the right to leave the territory of the Republic and to return to the Republic. The exercise of these rights may be restricted by law only in cases where it is necessary for the protection of the security of the Republic, criminal investigation or protection of people's health.

Article 28

The defence of the Republic of Macedonia is the right and duty of every citizen. The exercise of this right and duty of citizen is regulated by law.

Article 29

Foreign subjects enjoy freedoms and rights guaranteed by the Constitution in the Republic of Macedonia, under conditions regulated by law and international agreements. The Republic guarantees the right of asylum to foreign subjects and stateless persons expelled because of democratic political convictions and activities. Extradition of a foreign subject can be carried out only on the basis of a ratified international agreement and on the principle of reciprocity. A foreign subject cannot be extradited for political criminal offences. Acts of terrorism are not regarded as political criminal offences.

2. Economic, social and cultural rights

Article 30

The right to ownership of property and the right of inheritance are guaranteed. Ownership of property creates rights and duties and should serve the wellbeing of both the individual and the community. No person may be deprived of his/her property or of the rights deriving from it, except in cases concerning the public interest determined by law. If property is expropriated or restricted, rightful compensation not lower than its market value is guaranteed.

Article 31

Foreign subjects in the Republic of Macedonia may acquire the right of ownership of property under conditions determined by law.

Article 32

Everyone has the right to work, to free choice of employment, protection at work and material assistance during temporary unemployment. Every job is open to all under equal conditions. Every employee has a right to appropriate remuneration. Every employee has the right to paid daily, weekly and annual leave. Employees cannot waive this right. The exercise of the rights of employees and their position are regulated by law and collective agreements.

Article 33

Everyone is obliged to pay tax and other public contributions, as well as to share in the discharge of public expenditure in a manner determined by law.

Article 34

Citizens have a right to social security and social insurance, determined by law and collective agreement.

Article 35

The Republic provides for the social protection and social security of citizens in accordance with the principle of social justice. The Republic guarantees the right of
assistance to citizens who are infirm or unfit for work. The Republic provides particular protection for invalid persons, as well as conditions for their involvement in the life of the society.

Article 36

The Republic guarantees particular social security rights to veterans of the Anti-Fascist War and of all Macedonian national liberation wars, to war invalids, to those expelled and imprisoned for the ideas of the separate identity of the Macedonian people and of Macedonian statehood, as well as to members of their families without means of material and social subsistence. The particular rights are regulated by law.

Article 37

In order to exercise their economic and social rights, citizens have the right to establish trade unions. Trade unions can constitute confederations and become members of international trade union organizations. The law may restrict the conditions for the exercise of the right to trade union organization in the armed forces, the police and administrative bodies.

Article 38

The right to strike is guaranteed. The law may restrict the conditions for the exercise of the right to strike in the armed forces, the police and administrative bodies.

Article 39

Every citizen is guaranteed the right to health care. Citizens have the right and duty to protect and promote their own health and the health of others.

Article 40

The Republic provides particular care and protection for the family. The legal relations in marriage, the family and cohabitation are regulated by law. Parents have the right and duty to provide for the nurturing and education of their children. Children are responsible for the care of their old and infirm parents. The Republic provides particular protection for parentless children and children without parental care.

Article 41

It is a human right freely to decide on the procreation of children. The Republic conducts a humane population policy in order to provide balanced economic and social development.

Article 42

The Republic particularly protects mothers, children and minors. A person under 15 years of age cannot be employed. Minors and mothers have the right to particular protection at work. Minors may not be employed in work which is detrimental to their health or morality.

Article 43

Everyone has the right to a healthy environment to live in. Everyone is obliged to promote and protect the environment. The Republic provides conditions for the exercise of the right of citizens to a healthy environment.

Article 44

Everyone has a right to education. Education is accessible to everyone under equal conditions. primary education is compulsory and free.

Article 45

Citizens have a right to establish private at schools at all levels of education, with the exception of primary education, under conditions determined by law.

Article 46

The autonomy of universities is guaranteed. The conditions of establishment, performance and termination of the activities of a university are regulated by law.
Article 47

The freedom of scholarly, artistic and other forms of creative work is guaranteed. Rights deriving from scholarly, artistic or other intellectual creative work are guaranteed. The Republic stimulates, assists and protects the development of scholarship, the arts and culture. The Republic stimulates and assists scientific and technological development. The Republic stimulates and assists technical education and sport.

Article 48

Members of nationalities have a right freely to express, foster and develop their identity and national attributes. The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of the nationalities. Members of the nationalities have the right to establish institutions for culture and art, as well as scholarly and other associations for the expression, fostering and development of their identity. Members of the nationalities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in the language of a nationality, the Macedonian language is also studied.

Article 49

The Republic cares for the status and rights of those persons belonging to the Macedonian people in neighbouring countries, as well as Macedonian expatriates, assists their cultural development and promotes links with them. The Republic cares for the cultural, economic and social rights of the citizens of the Republic abroad.

3. Guarantees of basic freedoms and rights

Article 50

Every citizen may invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of Macedonia, through a procedure based upon the principles of priority and urgency. Judicial protection of the legality of individual acts of state administration, as well as of other institutions carrying out public mandates, is guaranteed. A citizen has the right to be informed on human rights and basic freedoms as well as actively to contribute, individually or jointly with others, to their promotion and protection.

Article 51

In the Republic of Macedonia laws shall be in accordance with the Constitution and all other regulations in accordance with the Constitution and law. Everyone is obliged to respect the Constitution and the laws.

Article 52

Laws and other regulations are published before they come into force. Laws and other regulations are published in "The Official Gazette of the Republic of Macedonia" at most seven days after the day of their adoption. Laws come into force on the eighth day after the day of their publication at the earliest, or on the day of publication in exceptional cases determined by the Assembly. Laws and other regulations may not have a retroactive effect, except in cases when this is more favourable for the citizens.

Article 53

Attorneyship is an autonomous and independent public service, providing legal assistance and carrying out public mandates in accordance with the law.

Article 54

The freedoms and rights of the individual and citizen can be restricted only in cases determined by the Constitution. The freedoms and rights of the individual and citizen can be restricted during states of war or emergency, in accordance with the provisions of the Constitution. The restriction of freedoms and rights cannot discriminate on grounds of sex, race, colour of skin, language, religion, national or social origin, property or social status. The restriction of freedoms and rights cannot be applied to the right to life, the interdiction of torture, inhuman and humiliating conduct and punishment, the legal determination of punishable offences and sentences, as well as to the freedom of personal conviction, conscience, thought and religious confession.

4. Foundations for economic relations

Article 55

The freedom of the market and entrepreneurship is guaranteed. The Republic ensures an equal legal position to all parties in the market. The Republic takes measures against monopolistic positions and monopolistic conduct on the market. The freedom of the market and entrepreneurship can be restricted by law only
for reasons of the defence of the Republic, protection of the natural and living environment or public health.

Article 56

All the natural resources of the Republic of Macedonia, the flora and fauna, amenities in common use, as well as the objects and buildings of particular cultural and historical value determined by law, are amenities of common interest for the Republic and enjoy particular protection. The Republic guarantees the protection, promotion and enhancement of the historical and artistic heritage of the Macedonian people and of the nationalities and the treasures of which it is composed regardless of their legal status. The law regulates the mode and conditions under which specific items of general interest for the Republic can be ceded for use.

Article 57

The Republic of Macedonia stimulates economic progress and provides for a more balanced spatial and regional development, as well as for the more rapid development of economically underdeveloped regions.

Article 58

Ownership and labour form the basis for management and sharing in decision-making. Participation in management and decision-making in public institutions and services is regulated by law, on the principles of expertise and competence.

Article 59

Foreign investors are guaranteed the right to the free transfer of invested capital and profits. The rights obtained on the basis of the capital invested may not be reduced by law or other regulations.

Article 60

The National Bank of the Republic of Macedonia is a currency-issuing bank. The National Bank is autonomous and responsible for the stability of the currency, monetary policy and for the general liquidity of payments in the Republic and abroad. The organization and work of the National Bank are regulated by law.

III. THE ORGANIZATION OF STATE AUTHORITY

1. The Assembly of the Republic of Macedonia

Article 61

The Assembly of the Republic of Macedonia is a representative body of the citizens and the legislative power of the Republic is vested in it. The organization and functioning of the Assembly are regulated by the Constitution and by the Rules of Procedure.

Article 62

The Assembly of the Republic of Macedonia is composed of 120 to 140 Representatives. The Representatives are elected at general, direct and free elections and by secret ballot. The Representative represents the citizens and makes decisions in the Assembly in accordance with his/her personal convictions. A Representative’s mandate cannot be revoked. The mode and conditions of election of Representatives are regulated by a law adopted by a majority vote of the total number of Representatives.

Article 63

The Representatives for the Assembly are elected for a term of four years. The mandate of Representatives is verified by the Assembly. The length of the mandate is reckoned from the constitutive meeting of the Assembly. Each newly-elected Assembly must hold a constitutive meeting 20 days at the latest after the election was held. The constitutive meeting is called by the President of the Assembly of the previous term.

If a constitutive meeting is not called within the time laid down, the Representatives assemble and constitute the Assembly themselves on the twenty-first day after the completion of the elections.

Elections for Representatives to the Assembly are held within the last 90 days of the term of the current Assembly, or within 60 days from the day of dissolution of the Assembly.

The term of office of the Representatives to the Assembly can be extended only during states of war or emergency. Cases where a citizen cannot be elected a Representative, owing to the incompatibility of this office with other public offices or professions already held, are defined by law. The Assembly is dissolved when more than half of the total number of Representatives vote for dissolution.
Article 64

Representatives enjoy immunity. A Representative cannot be held to have committed a criminal offence or be detained owing to views he/she has expressed or to the way he/she has voted in the Assembly. A Representative cannot be detained without the approval of the Assembly unless found committing a criminal offence for which a prison sentence of at least five years is prescribed. The Assembly can decide to invoke immunity for a Representative without his/her request, should it be necessary for the performance of the representative's office. Representatives may not be called up for duties in the Armed Forces during the course of their term of office. A Representative is entitled to remuneration determined by law.

Article 65

A Representative may resign his/her mandate. The Representative submits his/her resignation in person at a session of the Assembly. The mandate of a Representative terminates if he/she is sentenced for a criminal offence for which a prison sentence of at least five years is prescribed. The Representative can have his/her mandate revoked for committing a criminal offence making him/her unfit to perform the office of a Representative, as well as for absence from the Assembly for longer than 6 months for no justifiable reason. Revocation of the mandate is determined by the Assembly by a two-thirds majority vote of all Representatives.

Article 66

The Assembly is in permanent session. The Assembly works at meetings. The meetings of the Assembly are called by the President of the Assembly. The Assembly adopts the Rules of Procedure by a majority vote of the total number of Representatives.

Article 67

The Assembly elects a President and one or more Vice-Presidents from the ranks of the Representatives by a majority vote of the total number of Representatives. The President of the Assembly represents the Assembly, ensures the application of the Rules of Procedure and carries out other responsibilities determined by the Constitution and the Rules of Procedure of the Assembly. The office of the President of the Assembly is incompatible with the performance of other public offices, professions or appointment in a political party. The President of the Assembly issues notice of the election of Representatives and of the President of the Republic.

Article 68

The Assembly of the Republic of Macedonia
- adopts and changes the Constitution;
- adopts laws and gives the authentic interpretation of laws;
- determines public taxes and fees;
- adopts the budget and the balance of payments of the Republic;
- adopts the spatial plan of the Republic;
- ratifies international agreements;
- decides on war and peace;
- makes decisions concerning any changes in the borders of the Republic;
- makes decisions on association in and disassociation from any form of union or community with other states;
- issues notice of a referendum;
- makes decisions concerning the reserves of the Republic;
- sets up councils;
- elects the Government of the Republic of Macedonia;
- elects judges to the Constitutional Court of the Republic of Macedonia;
- carries out elections and discharges judges;
- selects, appoints and dismisses other holders of public and other office determined by the Constitution and law;
- carries out political monitoring and supervision of the Government and other holders of public office responsible to the Assembly;
- proclaims amnesties; and
- performs other activities determined by the Constitution.

In carrying out the duties within its sphere of competence, the Assembly adopts decisions, declarations, resolutions, recommendations and conclusions.

Article 69

The Assembly may work if its meeting is attended by a majority of the total number of Representatives. The Assembly makes decisions by a majority vote of the Representatives attending, but no less than one-third of the total number of Representatives, in so far as the Constitution does not provide for a qualified majority.

Article 70

The meetings of the Assembly are open to the public. The Assembly may decide to work without the presence of the public by a two-thirds majority vote of the
The right to propose adoption of a law is given to every Representative of the Assembly, to the Government of the Republic and to a group of at least 10,000 voters. The initiative for adopting a law may be given to the authorized instances by any citizen, group of citizens, institutions or associations.

An interpellation may be made concerning the work of any public office-holder, the Government and any of its members individually, as well as on issues concerning the performance of state bodies. Interpellation may be made by a minimum of five Representatives. All Representatives have the right to ask a Representative’s question. The mode and procedure for submitting and debating on an interpellation and Representative’s question are regulated by the Rules of Procedure.

The Assembly decides on issuing notice of a referendum concerning specific matters within its sphere of competence by a majority vote of the total number of Representatives. The decision of the majority of voters in a referendum is adopted on condition that more than half of the total number of voters voted. The Assembly is obliged to issue notice of a referendum if one is proposed by at least 150,000 voters. The decision made in a referendum is binding.

The Assembly makes decisions on any change in the borders of the Republic by a two-thirds majority vote of the total number of Representatives. The decision on any change in the borders of the Republic is adopted by referendum, in so far as it is accepted by the majority of the total number of voters.

Laws are declared by promulgation. The promulgation declaring a law is signed by the President of the Republic and the President of the Assembly. The President of the Republic may decide not to sign the promulgation declaring a law. The Assembly reconsiders the law and the President of the Republic is then obliged to sign the promulgation in so far as it is adopted by a majority vote of the total number of Representatives. The President is obliged to sign a promulgation if the law has been adopted by a two-thirds majority vote of the total number of Representatives in accordance with the Constitution.

The Assembly sets up permanent and temporary working bodies. The Assembly may set up survey commissions for any domain or any matter of public interest. A proposal for setting up a survey commission may be submitted by a minimum of 20 Representatives. The Assembly sets up a permanent survey commission for the protection of the freedoms and rights of citizens. The findings of the survey commissions form the basis for the initiation of proceedings to ascertain the answerability of public office-holders.

The Assembly elects the Public Attorney. The Public Attorney protects the constitutional and legal rights of citizens when violated by bodies of state administration and by other bodies and organizations with public mandates. The Public Attorney is elected for a term of eight years, with the right to one re-election. The conditions for election and dismissal, the sphere of competence and the mode of work of the Public Attorney are regulated by law.

The Assembly establishes a Council for Inter-Ethnic Relations. The Council consists of the President of the Assembly and two members each from the ranks of the Macedonians, Albanians, Turks, Vlachs and Romanies, as well as two members from the ranks of other nationalities in Macedonia. The President of the Assembly is President of the Council. The Assembly elects the members of the Council. The Council considers issues of inter-ethnic relations in the Republic and makes appraisals and proposals for their solution. The Assembly is obliged to take into consideration the appraisals and proposals of the Council and to make decisions regarding them.

2. The President of the Republic of Macedonia

The President of the Republic of Macedonia represents the Republic. The president of the Republic is Commander-in-Chief of the Armed Forces of Macedonia. The
President of the Republic exercises his/her rights and duties on the basis and within the framework of the Constitution and laws.

Article 80

The President of the Republic is elected in general and direct elections, by secret ballot, for a term of five years. A person may be elected President of the Republic two times at most. The President of the Republic shall be a citizen of the Republic of Macedonia. A person may be elected President of the Republic if over the age of at least 40 on the day of election. A person may not be elected President of the Republic if, on the day of election, he/she has not been a resident of the Republic of Macedonia for at least ten years within the last fifteen years.

Article 81

A candidate for President of the Republic can be nominated by a minimum of 10,000 voters or at least 30 Representatives. A candidate for President of the Republic is elected if voted by a majority of the total number of voters. If in the first round of voting no candidate wins the majority required, voting in the second round is restricted to the two candidates who have won most votes in the first round. The second round takes place within 14 days of the termination of voting in the first round. A candidate is elected President if he/she wins a majority of the votes of those who voted, provided more than half of the registered voters voted. If in the second round of voting no candidate wins the required majority of votes, the whole electoral procedure is repeated. If only one candidate is nominated for the post of President of the Republic and he/she does not obtain the required majority of votes in the first round, the whole electoral procedure is repeated.

The election of the President of the Republic takes place within the last 60 days of the term of the previous President. Should the term of office of the President of the Republic be terminated for any reason, the election of a new President takes place within 40 days from the day of termination. Before taking up office, the President of the Republic makes a solemn declaration before the Assembly of his/her commitment to respect the Constitution and the laws.

Article 82

In case of death, resignation, permanent inability to perform his/her duties, or in case of termination of the mandate in accordance with the provisions of the Constitution, the office of the President of the Republic is carried out by the President of the Assembly until the election of the new President. Decisions on the applicability of the conditions, for the cessation of office of the President of the Republic are the official duty of the Constitutional Court. Should the President of the Republic be temporarily unable to perform his/her duties, the President of the Assembly deputizes for him/her. While the President of the Assembly is performing the office of President of the Republic, he/she takes part in the work of the Assembly without the right to vote.

Article 83

The duty of the President of the Republic is incompatible with the performance of any other public office, profession or appointment in a political party. The President of the Republic is granted immunity. The Constitutional Court decides by a two-thirds majority vote of the total number of judges on any case for withholding immunity and approving of detention for the President of the Republic.

Article 84

The President of the Republic of Macedonia
- nominates a mandator to constitute the Government of the Republic of Macedonia;
- appoints and dismisses by decree ambassadors and other diplomatic representatives of the Republic of Macedonia abroad;
- accepts the credentials and letters of recall of foreign diplomatic representatives;
- proposes two judges to sit on the Constitutional Court of the Republic of Macedonia;
- proposes two members of the Republican Judicial Council;
- appoints three members to the Security Council of the Republic of Macedonia;
- proposes the members of the Council for Inter-Ethnic Relations;
- appoints and dismisses other holders of state and public office determined by the Constitution and the law;
- grants decorations and honours in accordance with the law;
- grants pardons in accordance with the law; and
- performs other duties determined by the Constitution.

Article 85

The President of the Republic addresses the Assembly on issues within his/her sphere of competence at least once a year. The Assembly may request the President of the Republic to state an opinion on issues within his/her sphere of competence.

Article 86

The President of the Republic is President of the Security Council of the Republic of Macedonia. The Security Council of the Republic is composed of the President of the Republic, the President of the Assembly, the Prime Minister, the Ministers heading the bodies of state administration in the fields of security, defence and foreign affairs and three members appointed by the President of the Republic. The Council considers issues relating to the security and defence of the Republic
and makes policy proposals to the Assembly and the Government.

Article 87

The President is held accountable for any violation of the Constitution in exercising his/her rights and duties. The procedure for determining the President of the Republic’s answerability is initiated by the Assembly with a two-thirds majority vote of all Representatives. It is the Constitutional Court that decides on the answerability of the President by a two-thirds majority vote of all judges. If the Constitutional Court considers the president answerable for a violation, his/her mandate is terminated by the force of the Constitution.

3. The Government of the Republic of Macedonia

Article 88

Executive power is vested in the Government of the Republic of Macedonia. The Government exercises its rights and competence on the basis and within the framework of the Constitution and law.

Article 89

The Government is composed of a prime Minister and Ministers. The Prime Minister and the Ministers cannot be Representatives in the Assembly. The Prime Minister, and Ministers are granted immunity. The Government decides on their immunity. The Prime Minister, Deputy Prime Ministers and Ministers cannot be called up for duties in the Armed Forces. The office of Prime Minister or Minister is incompatible with any other public office or profession. The organization and mode of working of the Government are regulated by law.

Article 90

The President of the Republic of Macedonia is obliged, within 10 days of the constitution of the Assembly, to entrust the mandate for constituting the Government to a candidate from the party or parties which has/have a majority in the Assembly. Within 20 days from the day of being entrusted with the mandate, the mandator submits a programme to the Assembly and proposes the composition of the Government. The Government is elected by the Assembly on the proposal of the mandator and on the basis of the programme by a majority vote of the total number of Representatives.

Article 91

The Government of the Republic of Macedonia
- determines the policy of carrying out the laws and other regulations of the Assembly and is responsible for their execution;
- proposes laws, the budget of the Republic and other regulations adopted by the Assembly;
- proposes a spatial plan of the Republic;
- proposes decisions concerning the reserves of the Republic and sees to their execution;
- adopts bylaws and other acts for the execution of laws;
- lays down principles on the internal organization and work of the Ministries and other administrative bodies, directing and supervising their work;
- provides appraisals of drafts of laws and other acts submitted to the Assembly by other authorized bodies;
- decides on the recognition of states and governments;
- establishes diplomatic and consular relations with other states;
- makes decisions on opening diplomatic and consular offices abroad;
- proposes the appointment of ambassadors and Representatives of the Republic of Macedonia abroad and appoints chiefs of consular offices;
- proposes the Public Prosecutor;
- appoints and dismisses holders of public and other office determined by the Constitution and laws; and
- performs other duties determined by the Constitution and law.

Article 92

The Government and each of its members are accountable to the Assembly. The Assembly may take a vote of no-confidence in the Government. A vote of no-confidence in the Government may be initiated by a minimum of 20 Representatives. The vote of no-confidence in the Government is taken after three days have elapsed from the day of its proposal. Another vote of no-confidence in the Government may not be proposed before 90 days have elapsed since the last such vote, unless proposed by a majority of all Representatives. A vote of no-confidence in the Government is adopted by a majority vote of all the Representatives. If a vote of no-confidence in the Government has been passed, the Government is obliged to submit its resignation.

Article 93

The Government itself has the right to raise the question of confidence before the Assembly. The Government has the right go submit its resignation. The resignation of the Prime Minister, his/her death or permanent inability to perform his/her duties entail the resignation of the Government. The Government ceases its term of office when the Assembly is dissolved. When a vote of no-confidence in the Government has been passed, it has submitted its resignation, or its term
of office has ceased owing to the dissolution of the Assembly, the same Government remains on duty until the election of a new Government.

Article 94

A member of the Government has the right to submit his/her resignation. The Prime Minister may propose the dismissal of a member of the Government. The Assembly decides on the proposal for the dismissal of a member of the Government at its first meeting following the proposal. If the Prime Minister dismisses more than one-third of the initial composition of the Government, the Assembly follows the same procedure as for the election of a new Government.

Article 95

The state administration consists of Ministries and other administrative bodies and organizations determined by law. Political organization and activities within bodies of state administration are prohibited. The organization and work of the bodies of state administration are regulated by a law to be adopted by a two-thirds majority vote of all Representatives.

Article 96

The bodies of state administration perform the duties within their sphere of competence autonomously and on the basis and within the framework of the Constitution and laws, being accountable for their work to the Government.

Article 97

The bodies of state administration in the fields of defence and the police are to be headed by civilians who have been civilians for at least three years before their election to these offices.

4. The Judiciary

Article 98

Judiciary power is exercised by courts. Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution. There is one form of organization for the judiciary. Emergency courts are prohibited. The types of courts, their spheres of competence, their establishment, abrogation, organization and composition, as well as the procedure they follow are regulated by a law adopted by a majority vote of two-thirds of the total number of Representatives.

Article 99

A judge is elected without restriction of his/her term of office. A judge cannot be transferred against his/her will.

A judge is discharged:
- if he/she so requests;
- if he/she permanently loses the capability of carrying out a judge,s office, which is determined by the Republican Judicial Council;
- if he/she fulfills the conditions for retirement;
- if he/she is sentenced for a criminal offence to a prison term of a minimum of six months;
- owing to a serious disciplinary offence defined in law, making him/her unsuitable to perform a judge,s office as decided by the Republican Judicial Council; and
- owing to unprofessional and unethical performance of a judge,s office, as decided by the Republican Judicial Council in a procedure regulated by law.

Article 100

Judges are granted immunity. The Assembly decides on the immunity of judges. The performance of a judge,s office in incompatible with other public office, profession or membership in a political party. Political organization and activity in the judiciary is prohibited.

Article 101

The Supreme Court of the Republic of Macedonia is the highest court in the Republic, providing uniformity in the implementation of the laws by the courts.

Article 102

Court hearings and the passing of verdicts are public. The public can be excluded in cases determined by law.

Article 103
The court tries cases in council. The law determines cases in which a judge can sit alone. Jury judges take part in a trial in cases determined by law. Jury judges cannot be held answerable for their opinions and decisions concerning their verdict.

Article 104

The Republican Judicial Council is composed of seven members. The Assembly elects the members of the Council. The members of the Council are elected from the ranks of outstanding members of the legal profession for a term of six years with the right to one reelection. Members of the Republican Judicial Council are granted immunity. The Assembly decides on their immunity. The office of a member of the Republican Judicial Council is incompatible with the performance of other public offices, professions or membership in political parties.

Article 105

The Republican Judicial Council
- proposes to the Assembly the election and discharge of judges and determines proposals for the discharge of a judge’s office in cases laid down in the Constitution;
- decides on the disciplinary answerability of judges;
- assesses the competence and ethics of judges in the performance of their office; and
- proposes two judges to sit on the Constitutional Court of the Republic of Macedonia.

5. The Public Prosecutor’s Office

Article 106

The Public Prosecutor’s Office is a single and autonomous state body carrying out legal measures against persons who have committed criminal and other offences determined by law, it also performs other duties determined by law. The Public Prosecutor’s Office carries out its duties on the basis of and within the framework of the Constitution and law. The Public Prosecutor is appointed by the Assembly for a term of six years and is discharged by the Assembly.

Article 107

The Public Prosecutor is granted immunity. The Assembly decides on his/her immunity. The office of the Public Prosecutor is incompatible with the performance of any other public office, profession or membership in a political party.

IV. THE CONSTITUTIONAL COURT OF THE REPUBLIC OF MACEDONIA

Article 108

The Constitutional Court of the Republic of Macedonia is a body of the Republic protecting constitutionality and legality.

Article 109

The Constitutional Court of the Republic of Macedonia is composed of nine judges. The Assembly elects the judges to the Constitutional Court by a majority vote of the total number of Representatives. The term of office of the judges is nine years without the right to reelection. The Constitutional Court elects a President from its own ranks for a term of three years without the right to reelection. Judges of the Constitutional Court are elected from the ranks of outstanding members of the legal profession.

Article 110

The Constitutional Court of the Republic of Macedonia
- decides on the conformity of laws with the Constitution;
- decides on the conformity of collective agreements and other regulations with the Constitution and laws;
- protects the freedoms and rights of the individual and citizen relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation;
- decides on conflicts of competency among holders of legislative, executive and judicial offices;
- decides on conflicts of competency among Republic bodies and units of local self-government;
- decides on the answerability of the President of the Republic;
- decides on the constitutionality of the programmes and statutes of political parties and associations of citizens; and
- decides on other issues determined by the Constitution.
Appendices II

Article 111

The office of judge of the Constitutional Court is incompatible with the performance of other public office, profession or membership in a political party. Judges of the Constitutional Court are granted immunity. The Constitutional Court decides on their immunity. Judges of the Constitutional Court cannot be called up for duties in the Armed Forces. The office of a judge of the Constitutional Court ceases when the incumbent resigns. A judge of the Constitutional Court shall be discharged from office if sentenced for a criminal offence to unconditional imprisonment of a minimum of six months, or if he/she permanently loses the capability of performing his/her office, as determined by the Constitutional Court.

Article 112

The Constitutional Court shall repeal or invalidate a law if it determines that the law does not conform to the Constitution. The Constitutional Court shall repeal or invalidate a collective agreement, other regulation or enactment, statute or programme of a political party or association, if it determines that the same does not conform to the Constitution or law. The decisions of the Constitutional Court are final and executive.

Article 113

The mode of work and the procedure of the Constitutional Court are regulated by an enactment of the Court.

V. LOCAL SELF-GOVERNMENT

Article 114

The right of citizens to local self-government is guaranteed. Municipalities are units of local self-government. Within municipalities forms of neighbourhood self-government may be established. Municipalities are financed from their own sources of income determined by law as well as by funds from the Republic. Local self-government is regulated by a law adopted by a two-thirds majority vote of the total number of Representatives.

Article 115

In units of local self-government, citizens directly and through representatives participate in decision-making on issues of local relevance particularly in the fields of urban planning, communal activities, culture, sport, social security and child care, preschool education, primary education, basic health care and other fields determined by law. The municipality is autonomous in the execution of its constitutionally and legally determined spheres of competence; supervision of the legality of its work is carried out by the Republic. The carrying out of specified matters can by law be entrusted to the municipality by the Republic.

Article 116

The territorial division of the Republic and the area administered by each municipality are defined by law.

Article 117

The City of Skopje is a particular unit of local self-government the organization of which is regulated by law. In the City of Skopje, citizens directly and through representatives participate in decision-making on issues of relevance for the City of Skopje particularly in the filed of urban planning, communal activities, culture, sport, social security and child care, preschool education, primary education, basic health care and other fields determined by law. The City of Skopje is financed from its own sources of income determined by law, as well as by funds from the Republic. The City is autonomous in the execution of its constitutionally and legally determined spheres of competence; supervision of the legality of its work is carried out by the Republic. By law, the Republic can entrust the carrying out of specified matters to the City.

VI. INTERNATIONAL RELATIONS

Article 118

The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law.

Article 119

International agreements are concluded in the name of the Republic of Macedonia by the President of the Republic of Macedonia. International agreements may also be concluded by the Government of the Republic of Macedonia, when it is so determined by law.

Article 120
A proposal for association in a union or community with other states or for dissociation from a union or community with other states may be submitted by the President of the Republic, the Government or by at least 40 Representatives.
The proposal for association in or dissociation from a union or community with other states is accepted by the Assembly by a two-thirds majority vote of the total number of Representatives. The decision of association in or dissociation from a union or community is adopted if it is upheld in a referendum by the majority of the total number of voters in the Republic.

Article 121

A decision of association or dissociation concerning membership in international organizations is adopted by the Assembly by a majority vote of the total number of Representatives of the Assembly and proposed by the President of the Republic, the Government or at least 40 Representatives of the Assembly.

VII. THE DEFENCE OF THE REPUBLIC AND STATES OF WAR AND EMERGENCY

Article 122

The Armed Forces of the Republic of Macedonia protect the territorial integrity and independence of the Republic. The defence of the Republic is regulated by a law adopted by a two-thirds majority vote of the total number of Representatives.

Article 123

No person is authorized to recognize occupation of the Republic of Macedonia or of part thereof.

Article 124

A state of war exists when direct danger of military attack on the Republic is impending, or when the Republic is attacked, or war is declared on it. A state of war is declared by the Assembly by a two-thirds majority vote of the total number of Representatives of the Assembly, on the proposal of the President of the Republic, the Government or at least 30 Representatives. If the Assembly cannot meet, the decision on the declaration of a state of war is made by the President of the Republic who submits it to the Assembly for confirmation as soon as it can meet.

Article 125

A state of emergency exists when major natural disasters or epidemics take place. A state of emergency on the territory of the Republic of Macedonia or on part thereof is determined by the Assembly on a proposal by the President of the Republic, the Government or by at least 30 Representatives. The decision to establish the existence of a state of emergency is made by a two-thirds majority vote of the total number of Representatives and can remain in force for a maximum of 30 days. If the Assembly cannot meet, the decision to establish the existence of a state of emergency is made by the President of the Republic, who submits it to the Assembly for confirmation as soon as it can meet.

Article 126

During a state of war or emergency, the Government, in accordance with the Constitution and law, issues decrees with the force of law. The authorization of the Government to issue decrees with the force of law lasts until the termination of the state of war or emergency, on which the Assembly decides.

Article 127

During the state of war, if the Assembly cannot meet, the President of the Republic may appoint and discharge the Government, as well as appoint or dismiss officials whose election is within the sphere of competence of the Assembly.

Article 128

The mandate of the judges of the Constitutional Court of Macedonia, as well as members of the Republican Judicial Council is extended for the duration of the state of war or emergency.

VIII. CHANGES IN THE CONSTITUTION

Article 129

The Constitution of the Republic of Macedonia can be changed or supplemented by constitutional amendments.
Article 130

A proposal to initiate a change in the Constitution in the Republic of Macedonia may be made by the President of the Republic, by the Government, by at least 30 Representatives, or by 150,000 citizens.

Article 131

The decision to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives. The draft amendment to the Constitution is confirmed by the Assembly by a majority vote of the total number of Representatives and then submitted to public debate. The decision to change the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives. The change in the Constitution is declared by the Assembly.

IX. TRANSITIONAL AND FINAL CLAUSES

Article 132

Time of residence in other republics in the Socialist Federative Republic of Yugoslavia is also included in the time span specified in Article 80, Paragraph 5.

Article 133

A Constitution Act shall be adopted for the implementation of the Constitution. The Constitution Act is adopted by a two-thirds majority vote of the total number of Representatives. The Constitution Act is declared by the Assembly and comes into force simultaneously with the declaration of the Constitution.

Article 134

This Constitution comes into force on the day it is declared in the Assembly of the Republic of Macedonia.

X. AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA

AMENDMENT I

1. The Republic of Macedonia has no territorial pretensions towards any neighboring state.

2. The borders of the Republic of Macedonia can only be changed in accordance with the Constitution and on the principle of free will, as well as in accordance with generally accepted international norms.

3. Clause 1. of this Amendment is an Addendum to Article 3 of the Constitution of the Republic of Macedonia. Clause 2. replaces Paragraph 3 of the same Article.

AMENDMENT II

1. In the exercise of this concern the Republic will not interfere in the sovereign rights of other states or in their internal affairs.

2. This Amendment is an Addendum to Paragraph 1 of Article 49 of the Constitution of the Republic of Macedonia.

These Amendments are an integral part of the Constitution of the Republic of Macedonia and came into force on the day they were promulgated, on January 6th, 1992.

AMENDMENT III

1. Detention until the indictment may last, by a court decision, for a maximum period of 180 days from the day of detention.

2. This amendment replaces Paragraph 5 of Article 12 of the Constitution.

AMENDMENT IV

1. The citizens of the Republic of Macedonia, the Macedonian people, as well as citizens living within its borders who are part of the Albanian people, the Turkish people, the Vlach people, the Serbian people, the Romany people, the Bosniak people and others taking responsibility for the present and future of their fatherland, aware of and grateful to their predecessors for their sacrifice and dedication in their endeavours and struggle to create an independent and sovereign
state of Macedonia, and responsible to future generations to preserve and develop everything that is valuable from the rich cultural inheritance and coexistence within Macedonia, equal in rights and obligations towards the common good - the Republic of Macedonia - in accordance with the tradition of the Krushevo Republic and the decisions of the Antifascist People's Liberation Assembly of Macedonia, and the Referendum of September 8, 1991, have decided to establish the Republic of Macedonia as an independent, sovereign state, with the intention of establishing and consolidating the rule of law, guaranteeing human rights and civil liberties, providing peace and coexistence, social justice, economic well-being and prosperity in the life of the individual and the community, and, in this regard, through their representatives in the Assembly of the Republic of Macedonia, elected in free and democratic elections, adopt . . .

2. Item 1 of this amendment replaces the Preamble of the Constitution of the Republic of Macedonia.

AMENDMENT V

1. The Macedonian language, written using its Cyrillic alphabet, is the official language throughout the Republic of Macedonia and in the international relations of 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, as specified below. Any official personal documents of citizens speaking an official language other than Macedonian shall also be issued in that language, in addition to the Macedonian language, in accordance with the law. Any person living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use that official language to communicate with the regional office of the central government with responsibility for that municipality; such an office shall reply in that language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government, which shall reply in that language in addition to Macedonian.

In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law. In the units of local self-government where at least 20 percent of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20 percent of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.

2. This amendment replaces Article 7 of the Constitution of the Republic of Macedonia.

AMENDMENT VI

1. Equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life;

2. Item 1 of this amendment is an addition to line 2 of Article 8 of the Constitution of the Republic of Macedonia.

AMENDMENT VII

1. The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, Evangelical Methodist Church, the Jewish Community and other Religious communities and groups are separate from the state and equal before the law.

2. The Macedonian Orthodox Church, as well as the Islamic Religious Community in Macedonia, the Catholic Church, Evangelical Methodist Church, the Jewish Community and other Religious communities and groups are free to establish schools and other social and charitable institutions, by way of a procedure regulated by law.

3. Item 1 of this amendment replaces paragraph 3 of Article 19 and Item 2 replaces paragraph 4 of Article 19 of the Constitution of the Republic of Macedonia.

AMENDMENT VIII

1. Members of communities have a right freely to express, foster and develop their identity and community attributes, and to use their community symbols. The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of all communities. Members of communities have the 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. Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.

2. This amendment replaces Article 48 of the Constitution of the Republic of Macedonia.

AMENDMENT IX

1. The Republic guarantees the protection, promotion and enhancement of the historical and artistic heritage of Macedonia and all communities in Macedonia and the treasures of which it is composed, regardless of their legal status.

2. Item 1 of this amendment replaces paragraph 2 Article 56 of the Constitution of the Republic of Macedonia.
AMENDMENT X

1. The Assembly can take a decision if its meeting is attended by a majority of the total number of Representatives. The assembly makes decisions by a majority vote of the Representatives attending, but no less than one-third of the total number of Representatives, in so far as the Constitution does not provide for a qualified majority.

2. For laws that directly affect culture, use of language, education, personal documentation, and use of symbols, the Assembly makes decisions by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who belong to communities not in the majority in the population of Macedonia. In the event of a dispute within the Assembly regarding the application of this provision, the Committee on Inter-Community Relations shall resolve the dispute.

3. This amendment replaces Article 69 of the Constitution of the Republic of Macedonia.

AMENDMENT XI

1. The Assembly elects the Public Attorney by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives who belong to communities not in the majority in the population of Macedonia.

2. The Public Attorney protects the constitutional rights and legal rights of citizens when these are violated by bodies of state administration and by other bodies and organizations with public mandates. The Public Attorney shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life.

3. Item 1 of this amendment replaces paragraph 1 of Article 77, and Item 2 is added to paragraph 2 of Article 77 of the Constitution of the Republic of Macedonia.

AMENDMENT XII

1. The Assembly shall establish a Committee for Inter-Community Relations.

The Committee consists of 19 members of whom 7 members each are from the ranks of the Macedonians and Albanians within the Assembly, and a member each from among the Turks, Vlachs, Romans, Serbs and Bosniaks. If one of the communities does not have representatives, the Public Attorney, after consultation with relevant representatives of those communities, shall propose the remaining members of the Committee. The Assembly elects the members of the Committee. The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution. The Assembly is obliged to take into consideration the appraisals and proposals of the Committee and to make decisions regarding them. In the event of a dispute among members of the Assembly regarding the application of the voting procedure specified in Article 69(2), the Committee shall decide by a majority vote whether the procedure applies.

2. Item 1 of this amendment replaces Article 78 of the Constitution of the Republic of Macedonia and line 7 of Article 84 is deleted.

AMENDMENT XIII

1. In appointing the three members, the President shall ensure that the Security Council as a whole equitably reflects the composition of the population of Macedonia.

2. Item 1 of this amendment is added to paragraph 2 of Article 86 of the Constitution of the Republic of Macedonia.

AMENDMENT XIV

1. Three of the members shall be elected by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives who belong to the communities not in the majority in the population of Macedonia.

2. This amendment is added to paragraph 2 of Article 104 of the Constitution of the Republic of Macedonia.

AMENDMENT XV

1. The Assembly elects the judges of the Constitutional Court. The Assembly elects six of the judges to the Constitutional Court by a majority vote of the total number of Representatives. The Assembly elects three of the judges by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives who belong to the communities not in the majority in the population of Macedonia. The term of office of the judges is nine years without the right to re-election.
2. This amendment replaces paragraph 2 of Article 109 of the Constitution of the Republic of Macedonia.

AMENDMENT XVI

1. Local self-government is regulated by a law adopted by a two-thirds majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives who belong to the communities not in the majority in the population of Macedonia. The laws on local finances, local elections, boundaries of municipalities, and the city of Skopje shall be adopted by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who belong to the communities not in the majority in the population of Macedonia.

2. This amendment replaces paragraph 5 of Article 114 of the Constitution of the Republic of Macedonia.

AMENDMENT XVII

1. In units of local self-government, citizens directly and through representatives participate in decision-making on issues of local relevance particularly in the fields of public services, urban and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sport, social security and child care, education, health care and other fields determined by law.

2. In the city of Skopje the citizens directly and through representatives participate in decision-making on issues of relevance to the city of Skopje, particularly in the fields of public services, urban and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sport, social security and child care, education, health care and other fields determined by law.

3. Item 1 of this amendment replaces paragraph 1 of Article 115 of the Constitution of the Republic of Macedonia, and Item 2 replaces paragraph 2 of Article 117 of the Constitution of the Republic of Macedonia.

AMENDMENT XVIII

1. A decision to amend the Preamble, the articles on local self-government, Article 131, any provision relating to the rights of members of communities, including in particular Articles 7, 8, 9, 19, 48, 56, 69, 77, 78, 86, 104 and 109, as well as a decision to add any new provision relating to the subject-matter of such provisions and articles, shall require a two-thirds majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives who belong to the communities not in the majority in the population of Macedonia.

2. With this amendment a new paragraph is added to paragraph 4 of Article 131 of the Constitution of the Republic of Macedonia.

AMENDMENT XIX

1. The freedom and inviolability of correspondence and other forms of communication is guaranteed. Only a court decision may, under conditions and in procedure prescribed by law, authorise non-application of the principle of inviolability of correspondence and other forms of communication, in cases where it is indispensable to preventing or revealing criminal acts, to a criminal investigation or where required in the interests of security and defence of the Republic.

2. This amendment replaces Article 17 of the Constitution of the Republic of Macedonia. Pursuant to Article 131, paragraph 5 of the Constitution of the Republic of Macedonia, the Assembly of the Republic of Macedonia, at its session held on 7 December 2005 adopted the following

DECISION FOR PROCLAMATION OF THE AMENDMENTS XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX AND XXX TO THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA

The amendments XX, XXI, XXII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX and XXX to the Constitution of the Republic of Macedonia are hereby proclaimed,

Which the Assembly of the Republic of Macedonia adopted at its session held on 7 December 2005.

THE ASSEMBLY OF THE REPUBLIC OF MACEDONIA

No. 07-4542/1
7 December 2005
Skopje

designed by Ljupco Jordanovski, PhD,

That the copy is true to the original is certified by:

DEPUTY-SECRETARY GENERAL OF THE ASSEMBLY OF THE REPUBLIC OF MACEDONIA Felek Kasami
AMENDMENTS XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX AND XXX TO THE CONSTITUTION OF THE REPUBLIC OF MACEDONIA

These Amendments are an integral part of the Constitution of the Republic of Macedonia and shall enter into force on the day of their promulgation.

AMENDMENT XX

1. For offences determined by law, sanction may be imposed, by a state administration body, organization and any other institution carrying public mandates.

Court protection is guaranteed against final verdict for an offence, under conditions and procedure determined by law.

2. This amendment is an addendum to Article 13 of the Constitution of the Republic of Macedonia.

AMENDMENT XXI

1. The right to appeal against verdicts in first instance proceedings by a court is guaranteed.

The right to appeal or any other legal protection against individual legal acts adopted in first instance proceedings by an administration body, organization and any other institution carrying public mandates shall be determined by law.

2. This amendment replaces Article 15 of the Constitution of the Republic of Macedonia.

AMENDMENT XXII

1. Proposes two members of the Judicial Council of the Republic of Macedonia.

2. This amendment replaces line 5, Article 84 of the Constitution of the Republic of Macedonia.

AMENDMENT XXIII

1. The Prime Minister is granted immunity. The Assembly decides on his or her immunity.

2. This amendment replaces paragraph 3 of Article 89 of the Constitution of the Republic of Macedonia.

AMENDMENT XXIV

1. Proposes the Public Prosecutor of the Republic of Macedonia having previously obtained opinion by the Council of Public Prosecutors.

2. This amendment replaces line 12 of Article 91 of the Constitution of the Republic of Macedonia.

AMENDMENT XXV

1. Judiciary power is exercised by courts. Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution. Emergency courts are prohibited.

The types of courts, their spheres of competence, their establishment, abrogation, organization and composition, as well as the procedure they follow are regulated by a law adopted by a of two-thirds majority vote of the total number of MP’s.

2. Clause 1 of this amendment replaces Article 98 of the Constitution of the Republic of Macedonia.

AMENDMENT XXVI

1. The term of office of a judge ceases
   - if he/she so requests;
   - if he/she permanently loses the capability of carrying out a judge’s office, which is determined by the Judicial Council of the Republic of Macedonia;
   - if he/she fulfills the conditions for retirement;
   - if he/she is sentenced for a criminal offence to a prison term of a minimum of six months;
   - if he/she is elected or appointed to another public office, except when his/her judicial function rests under conditions determined by law;

A judge is discharged
   - when he/she commits a serious disciplinary offense which makes him/her unsuitable to perform a judge’s office prescribed by law; and
   - he/she performs her judicial duty unprofessionally and unethically under conditions stipulated by law.
2. Clause 1 of this amendment replaces paragraph 3 of Article 99 of the Constitution of the Republic of Macedonia.

AMENDMENT XXVI

1. A judge shall not be held responsible for an opinion given in the process of rendering a court decision. A judge shall not be detained without the consent of the Judicial Council, except when caught in committing a criminal act for which a prison sentence of at least five years is prescribed.

2. The judicial function is incompatible with membership in a political party or with another public function or profession determined by law.

3. Clause 1 of this amendment replaces paragraph 2 of Article 100 of the Constitution of the Republic of Macedonia, and clause 2 of this amendment replaces paragraph 3 of Article 100 of the Constitution of the Republic of Macedonia.

AMENDMENT XXVII

1. The Judicial Council of the Republic of Macedonia is an independent and autonomous institution of the judiciary. The Council shall ensure and guarantee the independence and the autonomy of the judiciary. The Judicial Council is composed of fifteen members. The President of the Supreme Court of the Republic of Macedonia and the Minister of Justice are ex officio members of the Judicial Council. Eight members of the Council are elected by the judges from their own ranks. Three of them shall belong to the communities that are not majority in the Republic of Macedonia, insuring that equitable representation of citizens belonging to all communities shall be observed. Three members of the Council are elected by the Assembly of the Republic of Macedonia with majority votes of the total number of MPs, and with majority votes from the total number of MPs who belong to the communities that are not majority in the Republic of Macedonia. Two members of the Council are proposed by the President of the Republic of Macedonia and are elected by the Assembly of the Republic of Macedonia, and one of them shall belong to the communities that are not majority in the Republic of Macedonia.

The members of the Council elected by the Assembly of the Republic of Macedonia, on a proposal of the President of the Republic of Macedonia shall be from among University law professors, lawyers and other prominent jurists. The members of the Council are elected for a term of six years, with the right to one re-election. The criteria and manner of election, as well as the basis and the procedure for termination of the mandate and dismissal of a member of the Council shall be determined by law. The office of a member of the Council is incompatible with membership in political parties and with performance of other public offices and professions determined by law.

2. This amendment replaces Article 104 of the Constitution of the Republic of Macedonia.

AMENDMENT XXVIII

1. The Judicial Council of the Republic of Macedonia shall perform its duties on the basis of the Constitution and law, the international agreements ratified in accordance with the Constitution. The function of the Public Prosecutor’s Office is performed by the Public Prosecutor of the Republic of Macedonia and by the public prosecutors. The competences, establishment, termination, organization and functioning of the Public Prosecutor’s Office is stipulated by law adopted by a two-thirds majority vote of the total number of MPs. The Public Prosecutor of the Republic of Macedonia is appointed and dismissed by the Assembly of the Republic of Macedonia for a term of six years with the right to re-election. The public prosecutors are elected by the Council of Public Prosecutors and their term of office shall have no restrictions. In the election of public prosecutors, equitable representation of citizens belonging to all communities shall be observed. The Council decides on dismissal of public prosecutors. The competences, composition and structure of the Council, the term of office of its members, as well as the basis and the procedure for termination of the mandate and for the dismissal of a member of the Council is stipulated by law. The basis and the procedure for termination of the mandate and dismissal of the Public Prosecutor of the Republic of Macedonia and OF the public prosecutors are determined by law. The function of the Public Prosecutor of the Republic of Macedonia and of a public prosecutor is incompatible with membership in a political party or with performance of any other public functions and professions stipulated by law. Political organization and activity in the public prosecution is prohibited.
2. This amendment replaces paragraphs 2 and 3 of Article 106 of the Constitution of the Republic of Macedonia and deletes Article 107 of the Constitution of the Republic of Macedonia.

**AMENDMENT XXXI**

1. A candidate is elected President if he/she wins a majority of the votes of those who voted, provided more than 40% of the registered voters voted.

2. This Amendment replaces paragraph 5 of Article 81 of the Constitution of the Republic of Macedonia.

**AMENDMENT XXXII**

1. A citizen of the Republic of Macedonia can not be deprived of citizenship, nor can he/she be expelled from the Republic of Macedonia. A citizen of the Republic of Macedonia can not be extradited to another country, except based on a ratified international agreement upon a decision of the Court.

2. This Amendment replaces paragraph 2 of Article 4 of the Constitution of the Republic of Macedonia.

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*Source: Assembly of the Republic of Macedonia (official translation in English), at http://www.sobranie.mk/en/default.asp?ItemID=9F7452BF44EE814B8DB897C1858B71FF*
II.1.2 THE OHRID FRAMEWORK AGREEMENT

The following points comprise an agreed framework for securing the future of Macedonia's democracy and permitting the development of closer and more integrated relations between the Republic of Macedonia and the Euro-Atlantic community. This Framework will promote the peaceful and harmonious development of civil society while respecting the ethnic identity and the interests of all Macedonian citizens.

1. Basic Principles
1.1. The use of violence in pursuit of political aims is rejected completely and unconditionally. Only peaceful political solutions can assure a stable and democratic future for Macedonia.
1.2. Macedonia's sovereignty and territorial integrity, and the unitary character of the State are inviolable and must be preserved. There are no territorial solutions to ethnic issues.
1.3. The multi-ethnic character of Macedonia's society must be preserved and reflected in public life.
1.4. A modern democratic state in its natural course of development and maturation must continually ensure that its Constitution fully meets the needs of all its citizens and comports with the highest international standards, which themselves continue to evolve.
1.5. The development of local self-government is essential for encouraging the participation of citizens in democratic life, and for promoting respect for the identity of communities.

2. Cessation of Hostilities
2.1. The parties underline the importance of the commitments of July 5, 2001. There shall be a complete cessation of hostilities, complete voluntary disarmament of the ethnic Albanian armed groups and their complete voluntary disbandment. They acknowledge that a decision by NATO to assist in this context will require the establishment of a general, unconditional and open-ended cease-fire, agreement on a political solution to the problems of this country, a clear commitment by the armed groups to voluntarily disarm, and acceptance by all the parties of the conditions and limitations under which the NATO forces will operate.

3. Development of Decentralized Government
3.1. A revised Law on Local Self-Government will be adopted that reinforces the powers of elected local officials and enlarges substantially their competencies in conformity with the Constitution (as amended in accordance with Annex A) and the European Charter on Local Self-Government, and reflecting the principle of subsidiarity in effect in the European Union. Enhanced competencies will relate principally to the areas of public services, urban and rural planning, environmental protection, local economic development, culture, local finances, education, social welfare, and health care. A law on financing of local self-government will be adopted to ensure an adequate system of financing to enable local governments to fulfill all of their responsibilities.
3.2. Boundaries of municipalities will be revised within one year of the completion of a new census, which will be conducted under international supervision by the end of 2001. The revision of the municipal boundaries will be effectuated by the local and national authorities with international participation.
3.3. In order to ensure that police are aware of and responsive to the needs and interests of the local population, local heads of police will be selected by municipal councils from lists of candidates proposed by the Ministry of Interior, and will communicate regularly with the councils. The Ministry of Interior will retain the authority to remove local heads of police in accordance with the law.

4. Non-Discrimination and Equitable Representation
4.1. The principle of non-discrimination and equal treatment of all under the law will be respected completely. This principle will be applied in particular with respect to employment in public administration and public enterprises, and access to public financing for business development.
4.2. Laws regulating employment in public administration will include measures to assure equitable representation of communities in all central and local public bodies and at all levels of employment within such bodies, while respecting the rules concerning competence and integrity that govern public administration. The authorities will take action to correct present imbalances in the composition of the public administration, in particular through the recruitment of members of under-represented communities. Particular attention will be given to ensuring as rapidly as possible that the police services will generally reflect the composition and distribution of the population of Macedonia, as specified in Annex C.
4.3. For the Constitutional Court, one-third of the judges will be chosen by the Assembly by a majority of the total number of Representatives that includes a majority of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia. This procedure also will apply to the election of the Ombudsman (Public Attorney) and the election of three of the members of the Judicial Council.
5. Special Parliamentary Procedures
5.1. On the central level, certain Constitutional amendments in accordance with Annex A and the Law on Local Self-Government cannot be approved without a qualified majority of two-thirds of votes, within which there must be a majority of the votes of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.
5.2. Laws that directly affect culture, use of language, education, personal documentation, and use of symbols, as well as laws on local finances, local elections, the city of Skopje, and boundaries of municipalities must receive a majority of votes, within which there must be a majority of the votes of the Representatives claiming to belong to the communities not in the majority in the population of Macedonia.
6. Education and Use of Languages
6.1. With respect to primary and secondary education, instruction will be provided in the students’ native languages, while at the same time uniform standards for academic programs will be applied throughout Macedonia.
6.2. State funding will be provided for university level education in languages spoken by at least 20 percent of the population of Macedonia, on the basis of specific agreements.
6.3. The principle of positive discrimination will be applied in the enrolment in State universities of candidates belonging to communities not in the majority in the population of Macedonia until the enrolment reflects equitably the composition of the population of Macedonia.
6.4. The official language throughout Macedonia and in the international relations of Macedonia is the Macedonian language.
6.5. Any other language spoken by at least 20 percent of the population is also an official language, as set forth herein. In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law, as further elaborated in Annex B. Any person living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of the central government with responsibility for that municipality; such an office will reply in that language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government, which will reply in that language in addition to Macedonian.
6.6. With respect to local self-government, in municipalities where a community comprises at least 20 percent of the population of the municipality, the language of that community will be used as an official language in addition to Macedonian. With respect to languages spoken by less than 20 percent of the population of the municipality, the local authorities will decide democratically on their use in public bodies.
6.7. In criminal and civil judicial proceedings at any level, an accused person or any party will have the right to translation at State expense of all proceedings as well as documents in accordance with relevant Council of Europe documents.
6.8. Any official personal documents of citizens speaking an official language other than Macedonian will also be issued in that language, in addition to the Macedonian language, in accordance with the law.
7. Expression of Identity
7.1. With respect to emblems, next to the emblem of the Republic of Macedonia, local authorities will be free to place on front of local public buildings emblems marking the identity of the community in the majority in the municipality, respecting international rules and usages.
8. Implementation
8.1. The Constitutional amendments attached at Annex A will be presented to the Assembly immediately. The parties will take all measures to assure adoption of these amendments within 45 days of signature of this Framework Agreement.
8.2. The legislative modifications identified in Annex B will be adopted in accordance with the timetables specified therein.
8.3. The parties invite the international community to convene at the earliest possible time a meeting of international donors that would address in particular macro-financial assistance; support for the financing of measures to be undertaken for the purpose of implementing this Framework Agreement, including measures to strengthen local self-government; and rehabilitation and reconstruction in areas affected by the fighting.
9. Annexes
The following Annexes constitute integral parts of this Framework Agreement:
A. Constitutional Amendments
B. Legislative Modifications
C. Implementation and Confidence-Building Measures
10.1. This Agreement takes effect upon signature.
10.2. The English language version of this Agreement is the only authentic version.
10.3. This Agreement was concluded under the auspices of President Boris Trajkovski.
Done at Skopje, Macedonia on 13 August 2001, in the English language.
Preamble

The citizens of the Republic of Macedonia, taking over responsibility for the present and future of their fatherland, aware and grateful to their predecessors for their sacrifice and dedication in their endeavors and struggle to create an independent and sovereign state of Macedonia, and responsible to future generations to preserve and develop everything that is valuable from the rich cultural inheritance and coexistence within Macedonia, equal in rights and obligations towards the common good -- the Republic of Macedonia, in accordance with the tradition of the Krusevo Republic and the decisions of the Antifascist People's Liberation Assembly of Macedonia, and the Referendum of September 8, 1991, they have decided to establish the Republic of Macedonia as an independent, sovereign state, with the intention of establishing and consolidating rule of law, guaranteeing human rights and civil liberties, providing peace and coexistence, social justice, economic well-being and prosperity in the life of the individual and the community, and in this regard through their representatives in the Assembly of the Republic of Macedonia, elected in free and democratic elections, they adopt . . . .

Article 7
(1) The Macedonian language, written using its Cyrillic alphabet, is the official language throughout the Republic of Macedonia and in the international relations of the Republic of Macedonia.
(2) Any other language spoken by at least 20 percent of the population is also an official language, written using its alphabet, as specified below.
(3) Any official personal documents of citizens speaking an official language other than Macedonian shall also be issued in that language, in addition to the Macedonian language, in accordance with the law.
(4) Any person living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of the central government with responsibility for that municipality; such an office shall reply in that language in addition to Macedonian. Any person may use any official language to communicate with a main office of the central government, which shall reply in that language in addition to Macedonian.
(5) In the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law.
(6) In the units of local self-government where at least 20 percent of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet. With respect to languages spoken by less than 20 percent of the population of a unit of local self-government, the local authorities shall decide on their use in public bodies.

Article 8
(1) The fundamental values of the constitutional order of the Republic of Macedonia are:
- the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution;
- equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life;

Article 19
(1) The freedom of religious confession is guaranteed.
(2) The right to express one's faith freely and publicly, individually or with others is guaranteed.
(3) The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, and other Religious communities and groups are separate from the state and equal before the law.
(4) The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, and other Religious communities and groups are free to establish schools and other social and charitable institutions, by means of a procedure regulated by law.

Article 48
(1) Members of communities have a right freely to express, foster and develop their identity and community attributes, and to use their community symbols.
(2) The Republic guarantees the protection of the ethnic, cultural, linguistic and religious identity of all communities.
(3) Members of communities have the 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.
(4) Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in another language, the Macedonian language is also studied.

Article 56
(2) The Republic guarantees the protection, promotion and enhancement of the historical and artistic heritage of Macedonia and all communities in Macedonia and the treasures of which it is composed, regardless of their legal status. The law regulates the mode and conditions under which specific items of general interest for the Republic can be ceded for use.

Article 69

(2) For laws that directly affect culture, use of language, education, personal documentation, and use of symbols, the Assembly makes decisions by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who claim to belong to the communities not in the majority in the population of Macedonia. In the event of a dispute within the Assembly regarding the application of this provision, the Committee on Inter-Community Relations shall resolve the dispute.

Article 77

(1) The Assembly elects the Public Attorney by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

(2) The Public Attorney protects the constitutional rights and legal rights of citizens when violated by bodies of state administration and by other bodies and organizations with public mandates. The Public Attorney shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life.

Article 78

(1) The Assembly shall establish a Committee for Inter-Community Relations.

(2) The Committee consists of seven members each from the ranks of the Macedonians and Albanians within the Assembly, and five members from among the Turks, Vlachs, Romanies and two other communities. The five members each shall be from a different community; if fewer than five other communities are represented in the Assembly, the Public Attorney, after consultation with relevant community leaders, shall propose the remaining members from outside the Assembly.

(3) The Assembly elects the members of the Committee.

(4) The Committee considers issues of inter-community relations in the Republic and makes appraisals and proposals for their solution.

(5) The Assembly is obliged to take into consideration the appraisals and proposals of the Committee and to make decisions regarding them.

(6) In the event of a dispute among members of the Assembly regarding the application of the voting procedure specified in Article 69(2), the Committee shall decide by majority vote whether the procedure applies.

Article 84

The President of the Republic of Macedonia

- proposes the members of the Council for Inter-Ethnic Relations;(to be deleted) . . . .

Article 86

(1) The President of the Republic is President of the Security Council of the Republic of Macedonia.

(2) The Security Council of the Republic is composed of the President of the Republic, the President of the Assembly, the Prime Minister, the Ministers heading the bodies of state administration in the fields of security, defence and foreign affairs and three members appointed by the President of the Republic. In appointing the three members, the President shall ensure that the Security Council as a whole equitably reflects the composition of the population of Macedonia.

(3) The Council considers issues relating to the security and defence of the Republic and makes policy proposals to the Assembly and the Government.

Article 104

(1) The Republican Judicial Council is composed of seven members.

(2) The Assembly elects the members of the Council. Three of the members shall be elected by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

Article 109

(1) The Constitutional Court of Macedonia is composed of nine judges.
The Assembly elects six of the judges to the Constitutional Court by a majority vote of the total number of Representatives. The Assembly elects three of the judges by a majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

Article 114

(5) Local self-government is regulated by a law adopted by a two-thirds majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

The laws on local finances, local elections, boundaries of municipalities, and the city of Skopje shall be adopted by a majority vote of the Representatives attending, within which there must be a majority of the votes of the Representatives attending who claim to belong to the communities not in the majority in the population of Macedonia.

Article 115

(1) In units of local self-government, citizens directly and through representatives participate in decision making on issues of local relevance particularly in the fields of public services, urban and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sport, social security and child care, education, health care and other fields determined by law.

Article 131

(1) The decision to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives.

(2) The draft amendment to the Constitution is confirmed by the Assembly by a majority vote of the total number of Representatives and then submitted to public debate.

(3) The decision to change the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives.

(4) A decision to amend the Preamble, the articles on local self-government, Article 131, any provision relating to the rights of members of communities, including in particular Articles 7, 8, 9, 19, 48, 56, 69, 77, 78, 86, 104 and 109, as well as a decision to add any new provision relating to the subject matter of such provisions and articles, shall require a two-thirds majority vote of the total number of Representatives, within which there must be a majority of the votes of the total number of Representatives claiming to belong to the communities not in the majority in the population of Macedonia.

(5) The change in the Constitution is declared by the Assembly.

ANNEX B

LEGISLATIVE MODIFICATIONS

The parties will take all necessary measures to ensure the adoption of the legislative changes set forth hereafter within the time limits specified.

1. Law on Local Self-Government

The Assembly shall adopt within 45 days from the signing of the Framework Agreement a revised Law on Local Self-Government. This revised Law shall in no respect be less favorable to the units of local self-government and their autonomy than the draft Law proposed by the Government of the Republic of Macedonia in March 2001. The Law shall include competencies relating to the subject matters set forth in Section 3.1 of the Framework Agreement as additional independent competencies of the units of local self-government, and shall conform to Section 6.6 of the Framework Agreement. In addition, the Law shall provide that any State standards or procedures established in any laws concerning areas in which municipalities have independent competencies shall be limited to those which cannot be established as effectively at the local level; such laws shall further promote the municipalities independent exercise of their competencies.

2. Law on Local Finance

The Assembly shall adopt by the end of the term of the present Assembly a law on local self-government finance to ensure that the units of local self-government have sufficient resources to carry out their tasks under the revised Law on Local Self-Government. In particular, the law shall:
- Enable and make responsible units of local self-government for raising a substantial amount of tax revenue;
- Provide for the transfer to the units of local self-government of a part of centrally raised taxes that corresponds to the functions of the units of local self-government and that takes account of the collection of taxes on their territories; and
- Ensure the budgetary autonomy and responsibility of the units of local self-government within their areas of competence.
3. Law on Municipal Boundaries
The Assembly shall adopt by the end of 2002 a revised law on municipal boundaries, taking into account the results of the census and the relevant guidelines set forth in the Law on Local Self-Government.

4. Laws Pertaining to Police Located in the Municipalities
The Assembly shall adopt before the end of the term of the present Assembly provisions ensuring:
- That each local head of the police is selected by the council of the municipality concerned from a list of not fewer than three candidates proposed by the Ministry of the Interior, among whom at least one candidate shall belong to the community in the majority in the municipality. In the event the municipal council fails to select any of the candidates proposed within 15 days, the Ministry of the Interior shall propose a second list of not fewer than three new candidates, among whom at least one candidate shall belong to the community in the majority in the municipality. If the municipal council again fails to select any of the candidates proposed within 15 days, the Minister of the Interior, after consultation with the Government, shall select the local head of police from among the two lists of candidates proposed by the Ministry of the Interior as well as three additional candidates proposed by the municipal council;
- That each local head of the police informs regularly and upon request the council of the municipality concerned;
- That a municipal council may make recommendations to the local head of police in areas including public security and traffic safety; and
- That a municipal council may adopt annually a report regarding matters of public safety, which shall be addressed to the Minister of the Interior and the Public Attorney (Ombudsman).

5. Laws on the Civil Service and Public Administration
The Assembly shall adopt by the end of the term of the present Assembly amendments to the laws on the civil service and public administration to ensure equitable representation of communities in accordance with Section 4.2 of the Framework Agreement.

6. Law on Electoral Districts
The Assembly shall adopt by the end of 2002 a revised Law on Electoral Districts, taking into account the results of the census and the principles set forth in the Law on the Election of Members for the Parliament of the Republic of Macedonia.

8. Laws Pertinent to the Use of Languages
The Assembly shall adopt by the end of the term of the present Assembly new legislation regulating the use of languages in the organs of the Republic of Macedonia. This legislation shall provide that:
- Representatives may address plenary sessions and working bodies of the Assembly in languages referred to in Article 7, paragraphs 1 and 2 of the Constitution (as amended in accordance with Annex A);
- Laws shall be published in the languages referred to in Article 7, paragraphs 1 and 2 of the Constitution (as amended in accordance with Annex A); and
- All public officials may write their names in the alphabet of any language referred to in Article 7, paragraphs 1 and 2 of the Constitution (as amended in accordance with Annex A) on any official documents.

The Assembly also shall adopt by the end of the term of the present Assembly new legislation on the issuance of personal documents.

The Assembly shall amend by the end of the term of the present Assembly all relevant laws to make their provisions on the use of languages fully compatible with Section 6 of the Framework Agreement.

9. Law on the Public Attorney
The Assembly shall amend by the end of 2002 the Law on the Public Attorney as well as the other relevant laws to ensure:
- That the Public Attorney shall undertake actions to safeguard the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life, and that there are adequate resources and personnel within his office to enable him to carry out this function;
- That the Public Attorney establishes decentralized offices;
- That the budget of the Public Attorney is voted separately by the Assembly;
- That the Public Attorney shall present an annual report to the Assembly and, where appropriate, may upon request present reports to the councils of municipalities in which decentralized offices are established; and
- That the powers of the Public Attorney are enlarged:
- To grant to him access to and the opportunity to examine all official documents, it being understood that the Public Attorney and his staff will not disclose confidential information;
- To enable the Public Attorney to suspend, pending a decision of the competent court, the execution of an administrative act, if he determines that the act may result in an irreparable prejudice to the rights of the interested person; and
- To give to the Public Attorney the right to contest the conformity of laws with the Constitution before the Constitutional Court.

10. Other Laws
The Assembly shall enact all legislative provisions that may be necessary to give full effect to the Framework Agreement and amend or abrogate all provisions incompatible with the Framework Agreement.

ANNEX C
IMPLEMENTATION AND CONFIDENCE-BUILDING MEASURES
1. International Support
1.1. The parties invite the international community to facilitate, monitor and assist in the implementation of the provisions of the Framework Agreement and its Annexes, and request such efforts to be coordinated by the EU in cooperation with the Stabilization and Association Council.

2. Census and Elections
2.1. The parties confirm the request for international supervision by the Council of Europe and the European Commission of a census to be conducted in October 2001.
2.2. Parliamentary elections will be held by 27 January 2002. International organizations, including the OSCE, will be invited to observe these elections.

3. Refugee Return, Rehabilitation and Reconstruction
3.1. All parties will work to ensure the return of refugees who are citizens or legal residents of Macedonia and displaced persons to their homes within the shortest possible timeframe, and invite the international community and in particular UNHCR to assist in these efforts.
3.2. The Government with the participation of the parties will complete an action plan within 30 days after the signature of the Framework Agreement for rehabilitation of and reconstruction in areas affected by the hostilities. The parties invite the international community to assist in the formulation and implementation of this plan.
3.3. The parties invite the European Commission and the World Bank to rapidly convene a meeting of international donors after adoption in the Assembly of the Constitutional amendments in Annex A and the revised Law on Local Self-Government to support the financing of measures to be undertaken for the purpose of implementing the Framework Agreement and its Annexes, including measures to strengthen local self-government and reform the police services, to address macro-financial assistance to the Republic of Macedonia, and to support the rehabilitation and reconstruction measures identified in the action plan identified in paragraph 3.2.

4. Development of Decentralized Government
4.1. The parties invite the international community to assist in the process of strengthening local self government. The international community should in particular assist in preparing the necessary legal amendments related to financing mechanisms for strengthening the financial basis of municipalities and building their financial management capabilities, and in amending the law on the boundaries of municipalities.

5. Non-Discrimination and Equitable Representation
5.1. Taking into account i.a. the recommendations of the already established governmental commission, the parties will take concrete action to increase the representation of members of communities not in the majority in Macedonia in public administration, the military, and public enterprises, as well as to improve their access to public financing for business development.
5.2. The parties commit themselves to ensuring that the police services will by 2004 generally reflect the composition and distribution of the population of Macedonia. As initial steps toward this end, the parties commit to ensuring that 500 new police officers from communities not in the majority in the population of Macedonia will be hired and trained by July 2002, and that these officers will be deployed to the areas where such communities live. The parties further commit that 500 additional such officers will be hired and trained by July 2003, and that these officers will be deployed on a priority basis to the areas throughout Macedonia where such communities live. The parties invite the international community to support and assist with the implementation of these commitments, in particular through screening and selection of candidates and their training. The parties invite the OSCE, the European Union, and the United States to send an expert team as quickly as possible in order to assess how best to achieve these objectives.
5.3. The parties also invite the OSCE, the European Union, and the United States to increase training and assistance programs for police, including:
- professional, human rights, and other training;
- technical assistance for police reform, including assistance in screening, selection and promotion processes;
- development of a code of police conduct;
- cooperation with respect to transition planning for hiring and deployment of police officers from communities not in the majority in Macedonia; and
- deployment as soon as possible of international monitors and police advisors in sensitive areas, under appropriate arrangements with relevant authorities.

5.4. The parties invite the international community to assist in the training of lawyers, judges and prosecutors from members of communities not in the majority in Macedonia in order to be able to increase their representation in the judicial system.

6. Culture, Education and Use of Languages

6.1. The parties invite the international community, including the OSCE, to increase its assistance for projects in the area of media in order to further strengthen radio, TV and print media, including Albanian language and multiethnic media. The parties also invite the international community to increase professional media training programs for members of communities not in the majority in Macedonia. The parties also invite the OSCE to continue its efforts on projects designed to improve inter-ethnic relations.

6.2. The parties invite the international community to provide assistance for the implementation of the Framework Agreement in the area of higher education.

Unofficial translation

II.2 MAPS AND STATISTICAL DATA

II.2.1 MAP OF THE REPUBLIC OF MACEDONIA

II.2.2 POPULATION DENSITY, 2002

II.2.3 Total population of the Republic of Macedonia according the ethnic affiliation (Census 2002)

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## II.2.4  Statistical region and municipalities in the Republic of Macedonia

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II.2.5 TOTAL POPULATION BY ETHNIC AFFILIATION, 2002 (MAP 1)

II.2.6 TOTAL POPULATION BY ETHNIC AFFILIATION, 2002 (MAP 2)

II.2.7 POPULATION ACCORDING TO DECLARED ETHNIC AFFILIATION, BY CENSUSES (2002)

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II.2.8 PRIMARY AND LOWER SECONDARY SCHOOLS ACCORDING TO LANGUAGE OF INSTRUCTION

<table>
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<th>Regular schools</th>
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<td>класи (^2)</td>
<td>ученици (^2)</td>
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<tr>
<td></td>
<td>школи(^1)</td>
<td>паралелки</td>
<td></td>
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<td>235 195</td>
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<td>1 000</td>
<td>10 775</td>
<td>229 267</td>
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<td>149 321</td>
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<td>6 968</td>
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<td>137 467</td>
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<td>2009/10</td>
<td>729</td>
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<td>132 469</td>
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<td>79 429</td>
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<tr>
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<td>289</td>
<td>3 453</td>
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<td>2008/09</td>
<td>287</td>
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<td>3 426</td>
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<tr>
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<td>61</td>
<td>319</td>
<td>6 107</td>
</tr>
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<td>2007/08</td>
<td>60</td>
<td>321</td>
<td>5 999</td>
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<td>2009/10</td>
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<td>8</td>
<td>36</td>
<td>459</td>
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<td>2007/08</td>
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<td>7</td>
<td>31</td>
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</tr>
<tr>
<td>2009/10</td>
<td>7</td>
<td>36</td>
<td>416</td>
</tr>
</tbody>
</table>

\(^a\) При сумирањето на училиштата според наставниот јазик, не се добива вкупниот број поради двојезичноста на извесен број училишта

\(^b\) Total number of schools according to language of instruction does not add up due to bilingual instruction in some of the schools.

### II.2.9 UPPER SECONDARY SCHOOLS ACCORDING TO LANGUAGE OF INSTRUCTION

<table>
<thead>
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<th>Year</th>
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<td>Специјални средни училишта</td>
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<td></td>
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<td>класи</td>
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<tr>
<td>2005/06</td>
<td>101</td>
<td>3 184</td>
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<tr>
<td>2006/07</td>
<td>104</td>
<td>3 210</td>
</tr>
<tr>
<td>2007/08</td>
<td>107</td>
<td>3 237</td>
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<td>110</td>
<td>3 295</td>
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<tr>
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<td>110</td>
<td>3 298</td>
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**Macedonian**

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<th>класи</th>
<th>ученици</th>
<th>наставници</th>
</tr>
</thead>
<tbody>
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<td>2005/06</td>
<td>91</td>
<td>2 422</td>
<td>71 424</td>
<td>4 626</td>
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<tr>
<td>2006/07</td>
<td>99</td>
<td>2 418</td>
<td>69 648</td>
<td>4 673</td>
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<tr>
<td>2007/08</td>
<td>96</td>
<td>2 401</td>
<td>68 029</td>
<td>4 757</td>
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<td>99</td>
<td>2 394</td>
<td>66 706</td>
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<td>2009/10</td>
<td>99</td>
<td>2 417</td>
<td>65 599</td>
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**Albanian**

<table>
<thead>
<tr>
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<th>ученици</th>
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<tbody>
<tr>
<td>2005/06</td>
<td>29</td>
<td>659</td>
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<td>696</td>
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<td>1 296</td>
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<td>859</td>
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<td>1 795</td>
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</table>

**Turkish**

<table>
<thead>
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<th>класи</th>
<th>ученици</th>
<th>наставници</th>
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</thead>
<tbody>
<tr>
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<td>9</td>
<td>40</td>
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<tr>
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<tr>
<td>2007/08</td>
<td>9</td>
<td>48</td>
<td>1 226</td>
<td>141</td>
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<td>10</td>
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<td>1 485</td>
<td>173</td>
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<tr>
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<td>10</td>
<td>59</td>
<td>1 476</td>
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**English**

<table>
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<th>ученици</th>
<th>наставници</th>
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<td>1 079</td>
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</tr>
<tr>
<td>2009/10</td>
<td>7</td>
<td>69</td>
<td>1 181</td>
<td>199</td>
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</tbody>
</table>

---

II.3 GRAPHS, TABLES AND CHARTS

II.3.1 SURVEY RESULTS ON THE OPINION OF THE ARMED CONFLICT IN MACEDONIA IN 2001

Legend: Правата можеше да се постигнат по мирен пат – The rights could have been achieved peacefully
Оправдана борба за човекови права – Justified struggle for human rights
Меѓународен заговор против Македонија – International conspiracy against Macedonia
Етно-сепаратистичка борба – Ethno-separatist struggle
Агресија од Косово – Aggression from Kosovo
Друго – Other


The survey was conducted by in-field in households in May 2011 national representative sample of 2,087 respondents and "online" survey not-representative sample 24 informed public figures in Macedonia. MCIC entrust poll of a national representative sample, on which is based the report (the publication), the Institute for Democracy Societas Civilis - Skopje (IDSCS), had the responsibility for the methodological correctness of the survey.

The collected data is processed by frequency and proportion of responses. The data are probability of accuracy of 95% and error + / - 3%. Results are shown in the graphs at the entire sample. Besides the graphs, data are shown in figures.

The survey was made with a representative sample for the small ethnic communities, so in this report are presented and commented on the findings on that basis. In the figures, with terms "Macedonian", "Albanian", etc. is marked the ethnic belonging of the respondents. When processing the data, the results "do not know" and "no response" are taken into account. But in certain Tables and graphs are not shown these results, because the sum of all responses is not 100%.

This is done for purposes of simpler presentation of results.
II.3.2 Survey results on the need to learn the languages of the other ethnic communities in Macedonia

Legend: Секогаш – Always  
Најчесто – Often  
Во некои случаи – In some cases  
Не – No


The survey was conducted by in-field in households in May 2011 national representative sample of 2,087 respondents and "online" survey not-representative sample 24 informed public figures in Macedonia. MCIC entrust poll of a national representative sample, on which is based the report (the publication), the Institute for Democracy Societas Civilis - Skopje (IDSCS), had the responsibility for the methodological correctness of the survey.

The collected data is processed by frequency and proportion of responses. The data are probability of accuracy of 95% and error + / - 3%. Results are shown in the graphs at the entire sample. Besides the graphs, data are shown in figures. The survey was made with a representative sample for the small ethnic communities, so in this report are presented and commented on the findings on that basis. In the figures, with terms "Macedonian", "Albanian", etc. is marked the ethnic belonging of the respondents. When processing the data, the results "do not know” and "no response” are taken into account. But in certain Tables and graphs are not shown these results, because the sum of all responses is not 100%. This is done for purposes of simpler presentation of results.

*Election results 1998 – 2002:*


*Election Results 2002 – 2006:*


Election Results 2011-2015:

II.3.4 STUDIES’ RESULTS ON INTERETHNIC RELATIONS IN SCHOOLS

Students’ view of the reasons for hostilities in schools:

![Bar chart showing the reasons for hostilities in schools.]

Promotion of interethnic relations by schools:

![Pie chart showing the promotion of interethnic relations by schools.]

- It does not take measures as there is only one ethnic group in the school: 11.1%
- It does not take measures, but it should: 21.1%
- It actively promotes positive relations among students of different ethnic groups: 30.2%
- It takes certain measures to promote positive relations: 37.6%
Students’ view of the impact of mixed ethnic schools on interethnic relations

II.4 FACSIMILES AND IMAGES

II.4.1 FACSIMILE OF A REQUEST TO ISSUE AN IDENTITY CARD IN ALBANIAN LANGUAGE IN ADDITION TO THE MACEDONIAN LANGUAGE

II.4.2 Identity card in Macedonian, Albanian and English language

Books and Books’ Chapters


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