



INTEGRATION OF NEW AND OLD MINORITIES IN EUROPE: DIFFERENT OR SIMILAR POLICIES AND INDICATORS?

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I. Introduction

In many European countries diversity issues are at the forefront of the political debate largely due to the increasing number of peoples with distinctive identities in terms of language, culture or religion who have settled in these countries, with varying degrees of permanence, partly for political and humanitarian reasons, partly as a result of differing economic situations as well as the freedom of movement entailed by the growing economic integration within Europe. In particular, the enlargement of the European Union has made, and is likely to continue to make, these movements even more complex: new Member States and acceding countries have not, in the past, focused on the integration of migrants as these countries have tended to be transit countries or even countries of origin.

Although economic actors and decision-makers generally recognise the useful contribution to the labour force and the positive impact on the demographic structure of a steadily ageing population, the presence of large immigrant communities poses manifold challenges in the sphere of integration, cultural differences, protection of individual and group rights, preservation of social cohesion and unity.

As a result, most European states have been searching for models to accommodate diversity claims and integrate new minority groups stemming from migration. Diversity policies, as those adopted by traditional countries of immigration (Canada, Australia and to a certain extent the United States), have been implemented in contexts that differ from those currently existing in Europe, in terms of economic, political and social conditions. Accordingly, these policies cannot be simply transposed to Europe where current settings are more unstable and volatile as evidenced by increasing xenophobic and discriminatory attitudes, new forms of discrimination, as the so-called Islamophobia (See, EU-FRA, 2009; EUMC, 2006) coupled with severe criticisms against multicultural policies as those expressed few years ago by Angela Merkel and David Cameron (BBC, 2010; BBC, 2011).

Seeking to accommodate minority claims implies searching for a balance between unity and separation, cohesion and respect for diversity. If one opts solely for unity, the risk is assimilation and the disappearance of a minority as a distinct group; if one chooses exclusively diversity, the result can be the cultural 'ghettoization' of a minority group with consequent separation and marginalisation from society.

How to reconcile the demands of cultural diversity and political unity, that is, how to create a political community that is both cohesive and stable and satisfies the legitimate aspirations of minorities, has been a subject of considerable discussion ever since the rise of the modern state, and particularly during the past few decades.

This article addresses these issues by bridging two fields of research: minorities and migration. Studying the interaction between 'old' and 'new' minority groups is a rather new task since so far these topics have been studied in isolation from one other. It is also an important task for future research in Europe where many states have established systems of 'old' minority rights, but have not yet developed sound policies for the integration of new minority groups originating from migration.

The article consists of two major parts: the first focuses on the alleged dichotomy between old and new minorities, their similarities and differences, especially in terms of rights and claims, with the aim of developing a common model of integration; the second part analyzes minority integration policies and indicators to assess such policies for old and new minorities.

In order to devise a model for minority integration based on a common but differentiated set of rights and obligations for old and new minority groups, it is essential to analyse the differences and similarities of both categories of minorities, their claims, needs and priorities; this will allow us to differentiate the catalogue of rights that can be demanded by, and granted to, different minority groups.

Crucial issues in this regard include the type of protection that old and new minorities respectively are entitled to and how it is possible to develop a common but differentiated system of protection for these two typologies of minorities. In other words, what are the elements and factors that determine the rights and legitimate claims that old and new minorities can respectively demand?

If it is certain that fundamental human rights and liberties must be accorded to all human beings, and that these rights are universal and indivisible, it is less certain which are the states specific obligations towards, respectively, persons belonging to historical minorities and new minority groups stemming from migration. Besides, these obligations are less clear when they are connected to claims on the state to adopt special measures to ensure appropriate conditions for the preservation and development of group identity which go beyond what follows from universal human rights.

In international law the debate on old and new minorities, their rights and duties, has a particular significance because it is linked to the discussion on the definition of 'minorities'. In fact, any reliance in an international instrument on the notion of 'minorities' as for instance, in Article 2 TEU (Lisbon consolidated version, 2008), or of 'national minority', as in Article 21 of the EU Charter of Fundamental Rights (2000), should not be subject to diverse interpretations in different Member States. Moreover, insofar as the notion of rights of minorities is relied upon in the future EU accession processes in respect to new Member States as Turkey – as it should, according to the criteria defined by the Copenhagen European Council of June 1993 – the understanding of the concept of minority is essential and should be clarified.

The second part of the study, evaluating whether a minority integration policy index encompassing old and new minorities is conceivable and feasible, is introduced by an analysis of a common framework for the protection of old and new minorities. To lay the grounds for developing such an index, three sets of indicators are compared, namely Mipex, MCPI and Eurac-FCNM. This comparative analysis is introduced by an overview of major concepts and dimensions of integration policies for minorities.

II. Disentangling the Alleged Dichotomy between Old and New Minorities

The terms *historical, traditional, autochthonous minorities* - the so-called '*old minorities*' - refer to communities whose members have a distinct language, culture or religion compared to the rest of the population, and became minorities as a consequence of a re-drawing of international borders and their settlement area changing from the sovereignty of one country to another or did not achieve, for various reasons, statehood of their own and instead form part of a larger country or several countries. It has to be noted that there is a subtle continuum between minority groups and indigenous peoples. Especially in view of the complexity of the concept of ethnic minorities, it must be agreed that indigenous peoples constitute at the least a special type of ethnic minority.

The *new minority groups stemming from migration* - the '*new minorities*' - refer to groups formed by individuals and families, who have left their original homeland and emigrate to another country generally for economic and, sometimes, also for political reasons. Thus, they consist of migrants, refugees and their descendants who are living, on a more than merely transitional basis, in another country than that of their origin. The term 'new

minorities' is thus broader than the term 'migrants', as it encompasses not only the first generation of migrants, but also their descendants, second and third generations, who are individuals with a migration background often born in the country of 'immigration' and who cannot objectively and subjectively be subsumed under the category of 'migrants'.

According to Walzer, immigrants or 'new minorities' are considered to have made a *choice* to leave their own original culture, and they know that the success of their decision will depend on integrating into the mainstream of their new society. In these cases ethnic diversity arises from the *voluntary* decisions of individuals or families to uproot themselves and join another society. On the contrary, Walzer argues, old minorities are settled on their historic homelands. These groups find themselves in a minority position, not because they have uprooted themselves from their homeland, but because their homeland has been incorporated within the boundaries of a larger state. This incorporation is usually *involuntary*, resulting from conquest, or colonization, or the ceding of territory from one imperial power to another. Under these circumstances, it has been argued, minorities are rarely satisfied with non-discrimination-individual rights model and eventual integration. What they desire, Walzer says, is "national liberation" that is, some form of collective self-government, in order to ensure the continued development of their distinct culture (Walzer, 1995, 139-154). This differentiation is questionable however, mainly because it is debatable whether migrants have really made a voluntary 'choice' to migrate. This applies not only to refugees or those fleeing from wars or natural disasters, but also to so-called 'labour migrants' who are escaping from economic distress.

Issues concerning majority-minority-relations are amongst the most salient ones on today's political agenda. The differences between minority and majority groups, old and new alike, may be profound or difficult to discern. However, what distinguishes all minority groups is that they manifest, albeit implicitly, a desire to maintain a collective identity that differs from a dominant culture. Culture in this context is not synonymous with particular practices, customs or manners of dress. It is a sense of communal self-identity that pervades almost every aspect of life, including work and economic activity. It is the 'traditions of everyday life' (Wheatley, 508).

In contemporary societies, it is beyond debate that the cultural diversity, particularly the diversity stemming from migration and diasporas, has increased and will do so in the future. This development has generated urgent need for new forms of accommodating diversity while preserving social cohesion, or in other terms, how recognizing minority rights while maintaining the bonds of ethnically diverse societies.

Against this background, one has to address the question of whether it would be conceptually meaningful and beneficial in terms of the management and accommodation of diversities in today's increasingly diverse societies to extend the policies and rights traditionally conceived for old, historical minorities, such as those found in the CoE Framework Convention on National Minorities, to new minorities originating from migration. Widening the scope of minority rights, though not necessarily of all of them, as to include the so-called 'new minorities' would fill a still existing gap. Especially in terms of rights related to identity and diversity, most international instruments on migrants' rights contain only weak and ambivalent references. Extending established and well-tested policies for 'old' minorities towards 'new minorities' could be a decisive step forward as many European states and the EU have not yet developed sound instruments for the integration of 'new' minorities.

A crucial issue in discussing minority protection is that claims of minorities – old and new minorities alike - are often perceived as a challenge and antagonistic to the traditional model of homogeneous *nation-states* because both groups seek to increase within this model opportunities to express their identities and diversities at individual and group level. Moreover, old minorities and new groups stemming from migration are often perceived as *foreigners* to the community of shared loyalty towards the state and shared rights

guaranteed by that state. Members of historical and new minorities are seen as *loyal* to their kin-state or to the state whose citizens they are and to whose sovereign they belong, as long as they are not absorbed into the national body through assimilation or naturalization.

Historically, new minorities stemming from migration have reacted very differently to majority, dominant societies than historical minorities. Unlike historical minorities whose cultural traditions may pre-date the establishment of the state that their members are now citizens of, in general few migrant groups object to the requirement that they must learn the official language of the host state as a condition of citizenship, or that their children must learn the official language in school. Migrants usually accept that their life-chances and those of their children depend largely on the participation in mainstream institutions operating in the majority language (Kymlicka, 2001,152-172).

With regard to new minorities, though this also applies to a certain extent to traditional minorities, especially in the case of mixed marriages, problems related to integration of second and third generations can be quite acute. The children of second and third generations are in fact subjected to the decisions taken by their parents and their living between two cultures and languages can be perceived either as an enriching experience or, often, as an excessive burden. This is due to the fact that often the second and third generations of migrants' descendants have less cultural distance from the host society than their parents, but they have not reached a satisfactory degree of integration from a socio-economic viewpoint.

As mentioned earlier, in the current discussion on minorities and diversity, there is an ongoing debate about whether the scope of application of international treaties pertaining to minorities that are usually applied to historical, old minorities can be extended to new minority groups stemming from migration (Kymlicka, 2007; Medda-Windischer, 2009; Medda-Windischer, 2010; Ruiz, 2007; Dunbar, 2007). The positions in this regard are extremely diversified: among states, some have adopted rather narrow views firmly opposing the extension of minority provisions to new minorities (Germany- FCNM, Declaration by Germany 1995; Estonia – FCNM, Declaration by Estonia, 1997), others have instead pragmatically applied some provisions to new groups (ACFC, Opinion on the United Kingdom, 2011; ACFC, Report by Finland, 2004) while others have taken a more blurred position.

Most international bodies dealing with minorities have adopted an open approach especially the Advisory Committee on the Framework Convention (ACFC, Opinion on Austria, 2001, paras. 19-20, at 34; ACFC, Opinion on Germany, 2002, paras. 17-18, at 40; ACFC, Opinion on Ukraine, 2002, para. 18), the European Commission for Democracy Through Law (the CoE Venice Commission, 2007), the UN Human Rights Committee (UN, HRC, 1994, paras.5.1-5.2), the UN Working Group on Minorities (Eide, 2000), and the OSCE High Commissioner on National Minorities that has extended its mandate to new minority groups stemming from migration (OSCE Parliamentary Assembly, 2004 Edinburgh Declaration; OSCE, High Commissioner on National Minorities, 2006; Ekéus, 2006).

The state's broad margin of discretion as to the beneficiaries of minority protection, which can include and /or exclude some groups, depends largely on the facts that the drafters of international instruments have, on the whole, so far been unsuccessful in efforts to find a consensus over a legally binding definition of 'minorities'(UN-Sub-Commission on Minorities, 1985, para. 5).

When we refer to the very essence of a minority, namely its existence, it has to be pointed out that the existence of a minority is not 'static', rather dependent upon the will - explicit or implicit - of its members to continue to form a group that is distinct from the majority, and on their capacity to recreate their own identity. This means that the existence of a minority depends to a large extent on the minority itself and on the relations that it has established with the majority or with other groups within the population. There may be groups of people with many objective characteristics who, because they had no desire to preserve their

minority status, have been integrated or even assimilated into the majority without any problem. Conversely, there may be groups with very few distinct objective traits who are indistinguishable from the rest of the population among whom they live, but that are highly conscious of the fact that they form a distinct group.

The disappearance, affirmation, constitution or reorganization of a minority is considered to be a socio-cultural process: a process by which a group of people differentiates itself from the rest, maintains and perpetuates that difference and gives it cultural, organizational and political expression (Bengoa, at 14).

In this respect many consider that the existence of minorities depends largely upon the presence of intellectuals, cultural leaders, artists and other creative, whose people, whose main purpose is to continue redefining the characteristics of the group in accordance with the relations it has and the situations it meets with (Bengoa, at 14). In order to exist, minorities must constantly redefine their relations with the rest of the population. If they do not do so, they may cease to exist and become assimilated. As such, the subjective aspect - the will - should be applied with caution: in many cases, minorities are so intimidated by various forms of repression and forced assimilation that they do not manifest this sense of solidarity in any significant respect.

Along the line of the most quoted definition of minorities - the Capotorti's definition (Capotorti, 1977, para.568) - that is based on a combination of objective and subjective elements - i.e. ethnic, cultural, religious or linguistic characteristics, residence or legal abode, numerical minority, non-dominant position and a sense of solidarity or will to survive - a general definition of minorities encompassing old and new minorities can be formulated as follows : a minority is any group of persons:

- (i) present within a sovereign state on a temporary or permanent basis,
- (ii) smaller in number than the rest of the population of that state or of a region of that state,
- (iii) whose members share common characteristics of an ethnic, cultural, religious or linguistic nature that distinguish them from the rest of the population and
- (iv) manifest, even only implicitly, the desire to be treated as a distinct group.

According to this definition the element of *citizenship*, which is usually required by states in order to limit the personal scope of application of most international instruments on minorities, is replaced by the element of *presence* as suggested by the UN Human Rights Committee (HRC, 1994). Likewise, the EU Fundamental Rights Agency (FRA) and the CoE apply a similar definition of minorities when referring to “persons belonging to linguistic, ethnic or national minorities, third-country nationals who immigrate to the EU, or immigrants who are long-term residents [and who] may all perceive that they belong to a minority group” (EU Fundamental Rights Agency 2011: 17), or, when defining a minority as being composed of “persons, including migrants, belonging to groups smaller in numbers than the rest of the population and characterized by their identity, in particular their ethnicity, culture, religion or their language” (CoE, 2008:12).

These general definitions of minorities could form the basis for advocating the extension of the scope of application of international instruments pertaining to minorities, in particular the CoE Framework Convention for the Protection of National Minorities as to include new minority groups originating from migration. As noted earlier, this extension would reverse the fact that most international instruments on migrants' rights contain only vague and weak references to the protection of migrants' identity and diversity, or even a potential conflicting requirement of 'integration' - usually linked to the knowledge of the official language(s), history, culture and values of the country of residence - whilst the notion of group rights is completely absent (UN 1990 International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families; CoE 1977 Convention on the Legal Status of Migrant Worker; EU Directive on the status of third-country national who are long-term residents). But the protection of the

identity of minorities, and in particular of new minorities, is one of the bases of a veritable process of inclusion (EU, Communication from the Commission, 2005, Annex, CBP 1; EU, *Handbook on Integration*, 2004/2007/2010; EU, Council Meeting, Justice and Home Affairs, 2004, Annex; OSCE High Commissioner on National Minorities, 2006) in which minority groups can develop a genuine sense of loyalty and common belonging with the rest of the population without being threatened of being forcibly assimilated in the mainstream society, which as a result can engender resistance and alienation.

As we will see in more detail later in this article, an inclusive, integrating approach, based on a common and broad definition of minorities, can be defined along the lines of four dimensions : *legal or structural integration* as acquisition of rights, access to positions and statuses in the core institutions of the mainstream society; *cultural integration* as cognitive, cultural, behavioural and attitudinal change, *social integration* as building social relations and *identificational integration* as formation of feelings of belonging and identification by minorities towards the community in which they live. This approach would be the starting point for appropriate qualifications in regard to which specific right should be granted to which specific group and under which conditions they shall apply.

III. Old and New Minority Rights : Setting the Grounds

A general common definition of minorities is based on the conviction that, despite their differences, old and new minorities share certain common characteristics and thus voice similar claims (Eide, 1993, para. 27), namely:

- Right to existence;
- Right to equal treatment and non-discrimination;
- Right to identity and diversity;
- Right to effective participation in cultural, social and economic life and in public affairs.

In addition, to the common claims mentioned above, there is also a common rationale behind the protection for old and new minorities, namely maintaining and promoting peace and security, protecting human rights and cultural diversity as well as democratic participation and democratic pluralism (Spiliopoulou Åkermark, 5-18).

While there are evident differences between old and new minority groups, these relate only to certain rights in the international catalogue. This is not a matter of interpretation. It is clearly expressed in the international instruments. For instance, the most relevant legal instrument on minority protection, the Framework Convention for the Protection of National Minorities (FCNM), contains only three articles that condition their entitlements on 'traditional' ties, which, according to the Explanatory Report of the Framework Convention, are not necessarily only those of historical minorities. In this regard, the Explanatory Report states, rather ambiguously, that the term 'inhabited ... traditionally' - referred to by Art. 10 (2), Art.11 (3), and Art. 14 (2) of the FCNM - "does not refer to historical minorities, but only to those *still* living in the same geographical area." (FCNM, Explanatory Report, para. 66). These provisions pertain to the use of the minority language in public administration (Art. 10 (2)) and on public signs (Art. 11 (3)) and also in relation to education in one's mother tongue (Art. 14 (2)); all other entitlements relate to all individuals who may be in the position of a minority, thus old and new minorities alike, groups officially recognised as national minorities and those not recognised, individuals with or without the citizenship of the country in which they live.

For example, Art. 6 of the FCNM clearly applies to all persons on a State Party's territory: It obliges states to protect everyone from threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity; it also requires states to encourage tolerance and intercultural dialogue. Art. 7 FCNM requires States Parties to guarantee the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion. Art. 8 FCNM refers to the right to manifest a religion or belief and to establish religious institutions, organisations and associations. Art. 9 of the FCNM contains more detailed rules for the protection of the freedom of expression, and refers specifically to the freedom to receive and impart information and ideas in a minority language, but it also implies the freedom to receive and impart information and ideas in the majority language or other languages. Moreover, this provision encourages States Parties to facilitate access to the media in order to promote tolerance and cultural pluralism.

The conviction that minority groups, regardless of being old or new minorities, have some basic common claims, that they can be subsumed under a common definition and that the rationale for protecting them is fundamentally the same, does not mean that all minority groups have all the same rights and legitimate claims: some have only minimum rights, while others have or should be granted more substantial rights; some can legitimately put forward certain claims - not enforceable rights - that have to be negotiated with the majority, while others cannot. For instance, the members of any minority have the right to use their own language, in private and in public, with anyone who is prepared to communicate with them in that language; but not all minorities, or not all their members, have a legitimate claim to receive state-funded education in their own language, or to use their own language in communicating with public officials.

In this context the difference is not (only) based on the fact that a given group belongs to the category of an 'old' or 'new' minority : other factors are relevant and apply without distinction to old and new minorities alike such as socio-economic, political and historical factors, legacy of past colonisation or forms of discrimination, but also the fact that members of a minority live compactly together in a part of the state territory or are dispersed or live in scattered clusters, or the fact that members of a community having distinctive characteristics have long been established on the territory, while others have only recently arrived. Minority groups, both old and new, are not a sort of indistinctive monoliths but are composed of groups very different from one another. The catalogue of minority rights has so far been implemented in relation to historical minorities without differentiating among various minority groups but by taking into account other more-pragmatic factors, such as those mentioned above. The same approach should be applied when extending minority protection to new minority groups stemming from migration.

IV. A Common but Differentiated System of Protection for Old and New Minorities

In order to define a common but differentiated system of protection it is crucial to differentiate between *justiciable rights* and *legitimate claims*. The former - *justiciable* or *enforceable rights* – are rights expressly provided in legal norms or that can be deducted from legally binding judgments, as those of the Strasbourg Court. The Strasbourg system is particularly suitable for developing general principles and guidelines useful to solve the complex dilemmas of contemporary ethnically diverse societies because the judgments of the Strasbourg Court are legally binding and thus their impact is thus more effective in comparison to the views of the UN HRC or the opinions of the CoE ACFC. Moreover, the European Convention on Human Rights has a more limited geographical dimension and a higher degree of homogeneity among its 47 Contracting Parties than, for instance, most UN instruments, in which searching for a consensus on sensitive issues such as morals or religion is evidently far more difficult.

The latter - *legitimate claims* - refers to claims that acquire strength from specific contextual factors. The classification of a claim as 'legitimate' is based on factors that cannot be reduced to the old/new minority dichotomy; instead it is based on contextual factors such as lengthy presence in a territory, the type of settlement (compact, scattered or dispersed), past forms of discrimination, colonial legacy, contribution to the history or economy of the national wider society, and so on.

This legal framework is composed of rights and freedoms but also of a variety of limits and restrictions. These limitations, along with a thorough understanding of the context and other circumstances in which they have been determined, constitute a valuable interpretative tool and, therefore, a valid reference for minority protection. Indeed, they provide, together with pro-active, positive principles, the basis for a process, a permanent dialogue between majority and minority groups, a guarantee for the minority that the majority will not undermine important minority demands and for mainstream society that minority claims will not exceed certain limits of general interests, in particular those referring to state unity and security by making unreasonable or illegitimate claims. Within this legal framework, it is possible to negotiate minority claims in a continuous dialogue with the majority under the supervision of international bodies acting as neutral and objective arbiters.

When no principles or guidelines can be inferred from the jurisprudence of the Strasbourg Court, then reference is made to the so-called principle of 'reasonable accommodation', which was developed in American and Canadian legal experience to come into terms with accommodation or adjustment requests (Bouchard and Taylor, 2008, at 19 and 162-165; Bosset and Foblets, 2009, 37-65, at 50). In this regard, reasonable accommodation is the legal route applied in the field of harmonization practices, whose objective is to find a solution that satisfies both parties and it corresponds to concerted adjustment. In particular, Canadian courts have developed a concept of 'reasonable accommodation' whereby accommodation or adjustment requests may be rejected if they lead to what in legal terms is called 'undue hardship', e.g. an unreasonable cost, a disruption of the organization's or the establishment's operations, the infringement of other people's rights or the undermining of security or public order. Such a request is deemed to be reasonable when it does not lead to undue hardships (Bosset and Foblets). The content of the 'undue constraint' is open-ended and can change depending on the context: it will vary depending on the public or private nature of the institution, the applicant (a client, a user or an employee), whether the clientele is captive and vulnerable, the human and financial resources available, and so on (Bouchard and Taylor, 2008, 162-165). Similarly, the Strasbourg Court has developed the concept of 'undue burden' that is when an impossible or 'disproportionate' burden is imposed on the authorities (ECtHR, *Marckx v. Belgium*).

Against this background, the table below ("*Old/New Minorities : A Common But Differentiated System of Protection*") identifies and differentiates a set of *justiciable rights* and *legitimate claims* that can be demanded by old minorities, by new minority groups stemming from migration or by both groups.

Table 1 - Old/New Minorities : A Common But Differentiated System of Minority Protection

| | OLD MINORITIES | | NEW MINORITIES | |
|---|--|--|--|--|
| Typology of Claim | Justiciable right | Legitimate claim | Justiciable right | Legitimate claim |
| Education | | | | |
| Publicly funded education in minority language/religion | no (unless provided for other groups) | yes (states may legitimately require respect for certain principles/values in the curricula) | no (unless provided for other groups) | yes (states may legitimately require respect for certain principles/values in the curricula) |
| Use of minority language in public education | no (unless initially provided and then abrogated) (ECtHR, <i>Cyprus v. Turkey</i>) | yes (empirical evidence in different forms/contexts : South Tyrol, Catalonia, Québec, etc) More emphasis on the knowledge of minority language | no (EC Directive 77/486/EEC of 25 July 1977 places an obligation on member states only to <i>encourage</i> the teaching of the mother tongue to children of migrant workers | yes (empirical evidence mainly as extracurricular classes) More emphasis on the knowledge of the official language |
| Language | | | | |
| Use of minority language in elected bodies | no | yes (but knowledge of the official language may be required) | no | no (not reasonable/feasible) |
| Use of minority language with the Public Administration | no | yes | no | no (not reasonable/feasible) |
| Use of minority language in judicial proceedings | yes (but no, if there is evidence of sufficient knowledge of the official language) (ECtHR, <i>Kamasinski v. Austria</i>) | yes (even in case of knowledge of the official language) | no (but yes, if there is evidence of insufficient knowledge of the official language) | no (not reasonable/feasible) |
| Political Participation | | | | |

| | | | | |
|--|--|---|--|--|
| Electoral Rights (passive/active rights) | yes/no (on the basis of citizenship, otherwise no) | yes | yes/no (in case of individuals without citizenship of the country of residence) | yes (at least at local level) |
| Participation in decision-making (e.g. reserved seats/quota /advisory bodies) | no (but no interference from the Strasbourg Court if forms of participation - exemptions from threshold/quota- are recognized) (ECommHR, <i>Lindsay and Others v. the U.K.</i>) | yes (empirical evidence/ precedents at local and national level) | no (but no interference from the Strasbourg Court if forms of participation - exemptions from threshold/quota- are recognized) (ECommHR, <i>Lindsay and Others v. the U.K.</i>) | yes (at least at local level) |
| Autonomy (Local/ territorial/ regional) | no | yes (empirical evidence; South Tyrol, Catalonia, etc) | no | no (no empirical evidence or decisions of the Strasbourg Court in this sense) (ECtHR, <i>Kalifastaat v. Germany</i>) |

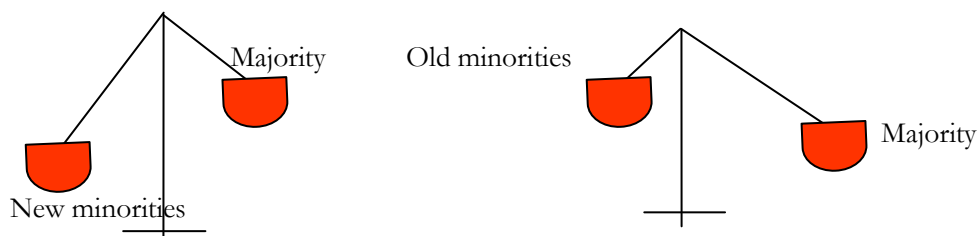
To clarify how a common but differentiated set of rights can be developed, examples can be taken from the so-called ‘symbolic ethnocultural disputes’, which in contrast to ‘claims of assistance rights’, are disputes regarding aspects pertaining to the identity of a minority group that do not directly affect the ability of said group to enjoy or live according to its culture. These aspects range from how the state names groups or places to what historical figures are honoured by public buildings named after them or statues erected to special constitutional recognition of founding peoples or official languages. These disputes are about claims to recognition: recognition as a (or, ‘the’) founding people of the polity, or recognition as a group that has made important contributions to the state in which they live.

The demand that a minority language be made one of a state’s ‘official’ languages (or the demand to eliminate or prevent the category of ‘official languages’ altogether) is a symbolic one, albeit one that might have an important impact on a whole range of assistance language-claims. In such cases, groups with long-lasting, traditional ties to a given territory, groups that settled on a territory before the ‘social contract’ or the constitutive national agreement was reached among the national groups or groups that have made special contributions to the state where they live or with which the state has a legacy of past discrimination, colonisation, slavery (for instance, Afro-Americans in the US, Jews in Germany, etc.), may all formulate claims that, although they cannot be defined as enforceable rights, acquire ‘legitimacy’ and have more weight in negotiations with majority groups as a result of the above considerations.

In case of uncertainty about how to differentiate the set of rights for old and new minorities, a general principle can be formulated : if it is true that the majority - minority relationship is intrinsically *asymmetrical* due to the fact that members of minorities, old and new, are under more pressure than members of the majority to *adapt* to the majority society, for instance, in terms of language knowledge or recognition of qualifications, in the case of old minorities - in comparison to new minorities - this process can be *more*

demanding on the part of the majority or, in other words, more *symmetrical* than *asymmetrical*. The relationship majority-minority as described above, can be illustrated with a balance, in which the 'burden' for the majority is more demanding in the majority/old-minorities relationship than in the majority/new-minorities relationship.

Figure 1: Majority-Minority Relationship: An Asymmetrical Balance



A claim to use a minority language in the context of education can serve to illustrate this principle: despite the fact that both old and new minorities have an obligation to learn the official language of the majority, members of the majority in areas inhabited by old minorities can sometimes be obliged to learn the minority language (for instance, in South Tyrol where the members of the Italian-speaking group living in South Tyrol are under the obligation to learn the minority language, German, at school and must provide evidence of the knowledge of the minority language if they want to obtain a post in the Public Administration of the Province of South Tyrol), whereas the same obligation cannot be found, at least as far as Europe is concerned, in areas inhabited even largely by new minorities.

Therefore, if it is true that managing the diversity of minorities is intrinsically asymmetrical due to the fact that members of minorities, both old and new, are under more pressure than members of the majority to 'adapt' to the majority society, in terms of language knowledge or recognition of qualifications for instance, in the case of old minorities this asymmetry is more acute and demanding on the side of the majority.

On the basis of the common but differentiated system of minority protection outlined in the previous sections, we now develop a model, which accommodates diversity and unity, for the integration of old or new minorities .

V. State Responses to Diversity: The Human Rights Model for Minority Integration

State responses to cultural, linguistic, ethnic and religious diversity that stems from minorities - perceived by some as a problem and by others as an enriching component of the society as a whole - can be analysed from different perspectives. Scholars, mainly from the fields of comparative constitutional law, and social and political sciences, have identified a variety of models for accommodating minority claims and cohesion. By combining the analysis developed by scholars in different fields - from studies on so-called 'old' minorities to migration - the following broad typologies of state responses to diversity and cohesion can be identified: 1) the *exclusionist* model; 2) the *assimilationist* model; and 3) the *pluralist* model.

The *exclusionist, repressive, nationalist* model (1) denies minority groups civic standing and opportunities to participate in the polity by perpetuating primordial and ethno-nationalist ideologies and by placing emphasis on factors such as blood loyalty, common ethnic origins and a homogeneous culture (one people-one

nation) (Marko, at 531 et seq.). In this model, which has historically led to policies of ‘ethnic cleansing’ and even genocide, minorities are subject to systematic forms of hostility and aggression. In a perspective of developing a viable option for minority integration in a democratic society, the repressive, nationalist model can be easily discarded from both a theoretical and historical point of view.

The *assimilationist* model (2) requires minorities to give up their identity in order to be integrated into mainstream society (Alba and Nee, 826-874). This model has two variations: a *radical* version (2a) that requires minority communities to renounce their particular ethnic or cultural identity and embrace the culture of the majority community, and an *intermediate* half-way position - also called *agnostic*, *liberal*, *colour-blind*, or *laissez faire* model (2b) - that tolerates differences in so far as they are confined into the private realm (ethnicity as a private matter following the pattern of institutional separation between Church and State).

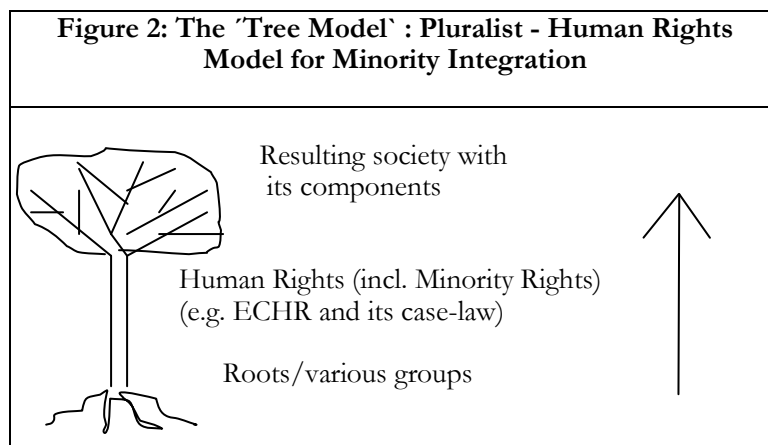
Among the many problems associated with the assimilationist model, one is the fact that it is not clear *what* the minorities are to be assimilated into. In fact, although the cultural structure of a society has some internal coherence, it is never a homogeneous and unified whole: it consists of a core of democratic principles and human rights standards, but it is also made up of diverse and conflicting strands and several different practices, which can in turn be interpreted and related in several different ways. The assimilationist model ignores all this in order to arrive at a homogenised and highly abridged and distorted version of national culture; accordingly, minorities are assimilated not into the collective culture in all its richness and complexity but into an “ideologue's crude and sanitised version of it.” (Parekh, 75).

The *pluralist* model (3) does not condition integration and political belonging on cultural conformity. As in the previous model, two versions can be identified. The first typology is based on a *radical relativism of values* (3a): According to this model, minorities are, first of all, defined in terms of their group membership, which is usually determined by their national origin or their religion (e.g. Muslims, Jews). Individuals are above all cultural beings and are embedded in specific communities, which are considered the ultimate source of what gives meaning in people's lives. All that deeply matters to them - their customs, practices, values, sense of identity, historical continuity, norms of behaviour and patterns of family life – is derived from their cultures. Individuals owe their primary loyalty to their respective communities and derivatively and secondarily to the state. This version of the pluralist model is based upon a perspective of *cultural relativism*: it advocates that all cultures present in a territory, including those of newly arrived immigrants, must be recognised and preserved, and that the state should facilitate minority cultures at any cost. This radical version has two main disadvantages: first, it can lead to the creation of parallel societies with the recognition of, for instance, elements of religion-based legal systems, particularly in relation to family and criminal law that might contradict democracy and human rights principles. Second, it raises the problem of anti-democratic practices carried out by members of minorities against members of minority group. From this point of view, the rights of the most vulnerable members of minority groups, children and women in particular, are sacrificed in the name of cultural relativism.

The second variation of the pluralist model is the *pluralist-human rights* model (3b). This model – the ‘Tree Model’ – is based on the assumption that, on the one hand, the recognition, protection and promotion of minorities are integral components of a state’s constitution and appear among its fundamental values, and on the other hand, that in both the private and public realms, minority and majority communities are expected to share some core universal principles such as human rights, democracy, rule of law, gender equality, minority rights (See, Art. 2 of the Consolidated Version of the Treaty on European Union, 2008). These core values constitute the foundation of a stable and prosperous society and the standards against which minority claims will be assessed, recognised and promoted. This model advocates that no polity can be stable and cohesive unless all its members share at least a core of common values that will make it possible to build the necessary bonds of solidarity and a common sense of belonging.

In comparison with similar models such as the Canadian *salad bowl* and *cultural mosaic* models, the pluralist or ‘Tree’ model is aimed at building a stable and cohesive community not by emphasising the *differences among individuals and groups*, but rather by committing to a *core of commonly accepted values*. The state, under the supervision of supra-national bodies such as, in Europe, the CoE European Court of Human Rights (ECtHR) and the EU European Court of Justice (ECJ), is the custodian of these principles and values as enshrined in main human rights treaties and further specified by their implementing mechanisms.

The following figure sums up the main characteristics of the human rights integration model or the ‘Tree model’ of minority integration.



The tree represents the permanent dialogue minority and majority groups present in a society. In the model, the roots symbolise the various groups in society, and the branches and foliage represent the resulting society in which unity and diversity co-exist in harmony. The crown of the tree – a diverse but integrated society - is sustained by a trunk representing the entire catalogue of human rights, including minority rights, such as those enshrined in the ECHR and its case-law, which all European countries are bound to respect. The human-rights trunk functions as a ‘filter’ through which only those minority claims, practices or traditions that are compatible with human-rights standards will be admitted and recognised in society.

This model has two strong components: (a) the recognition of diversity, namely the recognition of religious, ethnic, linguistic and cultural identity and groups that identify with them, through the extension of the scope of application of certain provisions typical of the protection of historical minorities, such as those from the Framework Convention on National Minorities, to all minority groups, including new minority groups stemming from migration; (b) the preservation of unity and cohesion through the protection of a core of common values based on the universal human rights catalogue contextualised and detailed, as far as Europe is concerned, by the European Court of Human Rights and its case-law. Hence, according to this model, only minority claims that are in line with human- and minority-rights standards will be recognised as worthy and as having value for building a stable and cohesive community (Medda-Windischer, 2009).

Minority rights, along with human rights, represent important tools for the integration of minorities, particularly the integration of new minority groups, as they create a legal framework in which minorities can see their claims recognised within the limits of the legal provisions enshrined in the texts of relevant international instruments as interpreted and implemented by national and supranational bodies. Moreover, this legal framework is composed of rights and freedoms but also of limitations and restrictions thereby providing a guarantee that minority claims will not exceed certain limits. In this way, minority claims for diversity and the more general concern for unity, cohesion, security and public order can be accommodated

in the framework of an ‘institutionalised’ dialogue in which national and supranational bodies, in cooperation with one another, act as objective and neutral third parties.

It should be noted that the models analysed above are ideal, abstract types. The reality is much more complex as no country offers an exact specimen of any of them. It would thus be incorrect to say, for instance that France has adopted a pure assimilationist model or the Netherlands a pure pluralist model. The US *melting pot* model, for instance, contains elements of assimilation and integration. In this model the majority culture is influenced by the minorities living alongside them with the consequence being that the overall society that the minority is assimilating or is integrating within will end up including certain elements of those minority cultures, which in turn also change in response to their encounter with the majority culture. While all immigrant groups were ‘melted down’ in the sense of losing their specific characteristics, the substance from which they had been made then formed part of the pot within which others would be melted (Crouch, at 291).

Furthermore, these abstract models are neither mutually exclusive, for they overlap in several respects, nor collectively exhaustive for, although they represent major ways of coming into terms with diversity and cohesion, others are not inconceivable. Each state has developed its own unique response to diversity by combining elements from each model according to its specific circumstances. A determining factor in the varying approaches to minority participation in society is, for instance, the historical experience of the country concerned during the process of nation-state formation. Such processes have been strongly shaped by territorial expansion, experiences with minorities, recruitment of migrant labour, reception of refugees, processes of cultural homogenisation, and practices of discrimination and exclusion. European practices towards colonised peoples were, for instance, major influences in shaping later practices towards minority groups at home. Such historical elements need thus to be kept in mind and linked to current conditions.

VI. Integration as Paradigm of an Inclusive Europe : Policies for Old and New Minorities

As seen at the outset of this paper, accommodating diversity and cohesion in contemporary society is more problematic and uncertain than some decades ago when the implementation of multiculturalism policies was facilitated by an optimistic attitude towards diversity. Europe is facing much more complex dilemmas than traditional immigration countries - Canada, Australia and the United States - faced in the 1970s-1980s when they initially adopted multiculturalism policies. In those countries most immigrant groups had European origins and even those stemming from rural and economically backward parts of Europe could eventually integrate because their European origins made them culturally similar to the existing core groups, mainly from some northern and western European countries. In contemporary Europe the new minority groups stemming from migration have mostly non-European origins and display a strong distinctiveness in terms of culture, language and especially religious faith. The chain of events, beginning with 11th September 2001, have amplified this divide, adversely impacting on the image of some minority groups, Muslims in particular, and increasing the danger of racism, xenophobia and intolerance.

In any event, in Europe, a deteriorated economic, political and social situation is generally unfavourable towards policies that encourage the promotion of diversity through, for instance, affirmative actions or exemptions from general rules. And indeed, in some countries that have celebrated multiculturalism, such as the Netherlands, this model is experiencing a reverse process even if there are evidences that multiculturalism is still a current valid policy option (Banting and Kymlicka, 2012).

As migration flows continue to increase to an unprecedented high level, the question of social cohesion reveals unequivocal urgency for many countries that consider themselves to be reasonably homogenous and cohesive. As a result, the process of integration of minorities is seen as an important and urgent strategy to be adopted by most countries in order to retain an adequate level of social cohesion and prosperity.

As mentioned earlier, this paper defends a pluralist model for minority integration based on human and minority rights, but in this regard a number of questions arise. What is integration and how can it be defined? What are the dimensions and main elements of this process? Which policies can be considered integrative and which apply to old and new minorities?

The very broadness of the integration process makes it hard to define it in any precise way. Integration of minorities in a society takes place at every level and in every sector of society. It involves a wide range of social actors: public officials, political decision-makers, employers, trade union officials, fellow-workers, service providers, neighbours and so on. Members of minorities themselves play a crucial role in this process.

Because integration is such a complex process, it cannot be studied from the perspective of any single social science. Law, economics, political science, history, sociology, anthropology, geography, urban studies, demography and psychology all have a part to play. Moreover, there is no single, generally accepted definition of integration. The concept continues to be controversial and hotly debated. Generally, integration is often assumed to be a singular, universal, stage-sequential and regularly paced process to which all members of minorities are exposed. It is with reference to such presumed universal stages and pace that minorities are often judged, in public discourse, to have been either ‘successfully’ or ‘unsuccessfully’ integrated.

The term ‘integration’ is largely used in most relevant European instruments and public discourse of European institutions. For instance, the CoE Framework Convention for the Protection of National Minorities (FCNM) and its Explanatory Report refer to the ‘general *integration* policy’ that states can implement without any purpose or effect of assimilating the minorities into the dominant culture (Art.5 FCNM and para. 46 of the Explanatory Report. Emphasis added) and to “the *integration* into society of persons belonging to ethnic, cultural, linguistic and religious groups whilst preserving their identity” (Explanatory Report, para.49 on Art. 6 FCNM. Emphasis added). More specifically, Art. 5 (2) FCNM protects persons belonging to national minorities from assimilation against their will, but it does not prohibit voluntary assimilation and it does not preclude member states from taking measures in pursuance of their general integration policy.

According to the CoE Parliamentary Assembly (PACE), integration policies are intended to have “the dual aim of providing immigrants with the means to function in the society where they live and develop their potential while preserving their cultural and ethnic identity, and familiarising the non-immigrant population with the rights of immigrants, their culture, traditions and needs” (CoE-PACE, 2003, para.7). In addition, PACE sets an important limit on the notion of respect for cultural diversity: “Council of Europe member states should highlight the value of cultural, social and religious differences, but under no circumstances should it be possible to justify violations of human rights on the grounds of cultural tradition or religion. The respect for cultural and religious differences must rest on the respect for human rights by all those who live in a country, immigrants and non-immigrants” (CoE-PACE, 2003, para.7). Similarly, the OSCE *Guidelines on Integration of Diverse Societies* emphasise two aspects of the integration process: accepting common public institutions and sharing a sense of belonging to a common state and an inclusive society (OSCE, 8, 2012).

This approach is in line with the EU 2005 *Common Agenda for Integration*, in which the European Commission put forward a framework for the integration of third-country nationals in the EU based on the so-called *Common Basic Principles on Integration* (CBPs), which include the basic values of the European Union and fundamental human rights, frequent interaction and intercultural dialogue between members of society, intercultural dialogue, education about immigrants and immigrant cultures, protection of diverse cultures and religions, promotion of inter- and intra-faith dialogue platforms between religious communities and/or between communities and policy-making authorities, and the participation of immigrants in the democratic process especially at the local level (EU-*A Common Agenda*, 2005; EU-CBPs, 2004; EU - *The Hague Programme*, 2004; EU, *Handbook on Integration*, 2004/2007/2010).

As mentioned above, it is important to perceive minorities as active participants in the individual and collective process of integration. The process of integration operates by first consolidating relationships with family and extended kin groups, then sub-groups and wider ethnic groups, then neighbourhoods and cities, and finally into what we might call national society as a whole. This so-called 'nested process' should be recognised in policy terms, since different domains of policy impact on each level or arena of integration in this sense.

When we examine integration and factors conditioning integration, such as demographic characteristics of a group, legal status of its members, labour market and social status, does it make a difference whether the individuals and groups to integrate are members of historical minorities, immigrants, refugees or also asylum-seekers? Certain social processes influencing integration are in fact similar in character for all people coming into terms with another society. There are however significant differences in processes or trajectories of integration that are largely conditioned by structural factors. First, and perhaps foremost, is the issue of official status. The state assigns members of minorities to specific categories according to whether a specific group obtains official recognition as a minority or, as regards new minorities, their mode of entry as individuals. These categories shape rights and opportunities, and thus have important effects on patterns of integration. Hence, any discussion on integration needs to examine both the general process, and the variants resulting from official classifications and policies. In fact all countries have a range of policies for different groups: citizens, non-citizens, officially recognised minorities, skilled immigrants, refugees, dependants of legal entrants, asylum-seekers, undocumented workers, and so on. Consequently, their experiences and the long-term outcomes of integration processes may differ radically (Portes and Rumbaut).

As seen earlier, broadly speaking, four dimensions of the process of integration could be differentiated: *legal or structural integration*, which is the acquisition of rights and the access to membership, positions and statuses in the core institutions of the society (education system, training system, labour market, citizenship, housing, trade unions). *Cultural integration* is a precondition of participation and refers to processes of cognitive, cultural, behavioural and attitudinal change in people. This change concerns primarily the members of minority groups, but it is an interactive, mutual process that changes the dominant/majority society as well. Cultural integration is a rather heterogeneous area, relating to values and beliefs, cultural competences, popular culture and everyday practices (European Forum for Migration Studies).

Integration of minority in the private sphere is reflected in peoples' private relationships and group memberships (social intercourse, friendships, marriages, voluntary associations): that is, in their *social integration*. Membership of a new society on the subjective level is manifested in the sense of belonging and identification, particularly in the form of ethnic and/or national identification: that is, *identificational integration* (European Forum for Migration Studies).

As a result, integration means an acquisition of rights, access to positions and statuses, a change in individual behaviour, a building of social relations and a formation of feelings of belonging and identification by minorities towards the community in which they live (European Forum for Migration Studies).

In general terms, integration policies can be of two types: *general policies* aiming to improve the position of all people who are marginalised or are at risk of becoming so, and *targeted policies* only aimed at specific types of disadvantaged persons, e.g. minorities. In Hammar's terms such a distinction could also be labelled as one between *indirect and direct* integration policies. Examples of indirect or general policies could be those whereby long-term unemployed have access to retraining programmes or job schemes, or, on a different front, urban renewal schemes, improving housing quality, infrastructure and the like, in principle equally benefiting minority and majority groups or immigrants and natives (EU, *A Common Agenda for Integration*, 2005, CBP 1). A good example of direct integration policies are those assisting minorities who lack the basic attributes needed to participate on the labour market, e.g. language courses and training to bring an immigrant's skills up to the necessary level.

Some governments have launched integration measures in the form of 'introduction programmes' for the early phase of a migrant's stay (EU, *Handbook on Integration Policies*, 19). Introduction programmes generally consist of three main components: language tuition, civic orientation and professional labour market training. Particularly in those countries in which newly arriving immigrants and refugees do not yet have knowledge of the local language through colonial or other ties, language teaching constitutes the centrepiece of introduction efforts by governments.

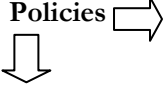
Besides language, introduction courses often also stress the importance of 'social orientation' and of giving immigrants knowledge of the functioning and the values of the host society. Courses can cover the fundamental elements of the constitution, such as respect for human rights and democracy, and the functioning of the political system including opportunities for participation in political and civil society. Orientation on gender equality and children's rights are also important components of many programmes. Joppke and others have interpreted integration programmes as those encouraging minorities to learn the official language or promoting citizenship education, citizenship ceremonies and oaths, or those labelled 'society orientation classes', as a 'retreat from multiculturalism' (Joppke, 2003). However, from the comparative analysis on the results of the set of indicators in this paper, there is no major evidence to support this thesis.

Other integration policies are those that extend the right to vote to non-citizens to increase their political participation and sense of belonging to society, or, to the same end, those establishing institutions in which minorities can voice their specific needs and claims. In addition, policies are also conceivable whereby minorities are offered facilities for retaining some core aspects of their own culture (e.g. religion) or even are encouraged to do so.

The most problematic type of direct integration policies are those which can be brought under the general heading of positive action. Quota may be laid down in law or be institutionalised practice by which people belonging to disadvantaged ethnic categories are receiving some kind of preference when applying for jobs or for places in the educational system. These policies can be *active*, for example when employers are under an obligation to give preference to members of such specified population categories in hiring practices, or *passive*, when they are, for instance, under an obligation to report on the relative numbers of such persons in their work force. Somewhere between active and passive policies are those whereby government institutions prefer to grant projects to employers with a certain minimum number of disadvantaged workers among their employees.

The following scheme provides some examples of policies that can be introduced to support minority integration:

Table 2: Integration Policies

| Integration Policies  | Targeted/Direct | General/Indirect |
|--|---|---|
| Legal/Structural | <ul style="list-style-type: none"> • Right to vote • Courses on political structures/ legislation host country • Multilingual ballots • Quota in education/employment | <ul style="list-style-type: none"> • Vocational training for unemployed persons |
| Cultural | <ul style="list-style-type: none"> • Language courses for immigrants • Orientation/ • Introduction courses | <ul style="list-style-type: none"> • Funding for cultural associations |
| Social | <ul style="list-style-type: none"> • Funding for minority associations • Initiatives of mutual assistance on voluntary basis | <ul style="list-style-type: none"> • Urban renewal scheme i.e. street/housing rehabilitation |
| Identificational | <ul style="list-style-type: none"> • Citizenship ceremonies/oaths • Official recognition names in minority language | <ul style="list-style-type: none"> • Campaign to improve knowledge national symbols (anthems, national holidays, etc.) |

As seen, integration policies touch upon different aspects of the majority-minority relationship, not only the legal, cultural, and social dimension, but also the identificational aspect of it that, with loyalty, complementary identities, sense of belonging and of fellow-citizen, represent a crucial aspect of the integration process.

The Tree Model for Minority Integration defended in this study represents the general framework within which this range of integration policies should be introduced to complement the model and support its functioning. In other words, the Tree Model constitutes the basis for a process, a permanent dialogue between majority and minority groups: limits and thresholds are established so that the majority does not undermine important minority demands and minority groups do not claim unreasonable or illegitimate claims. At the same time, this framework is nurtured and supported by a series of measures and policies aiming at facilitate the integration of minorities in the mainstream society while allowing them to maintain their identities. In other words, along the line of the ‘botanic’ metaphor applied in this present work, we can say that the integration measures in the Tree Model act as a ‘fertiliser’ allowing the tree – symbolising the broader community - to grow and flourish.

VII. Indicators on Policies for Old and New Minorities : A Comparative Analysis

With the aim of laying the grounds for development of an enhanced index of minority integration, three sets of indicators – Mipex, MCPI and Eurac-FCNM – were selected as emblematic of a trend in minority and migration studies that focus on measuring and assessing public policies, generally described as integration policies, multicultural measures or minority protection. Analysis of the differences, commonalities, advantages and shortcomings of the three indexes was to assist in setting the framework to conceptualize an efficient set of indicators for old and new minorities (for a detailed overview of the three sets of indicators see the Annex in this paper).

The Migrant Integration Policy Index (MIPEX) was launched in 2005 by the British Council and Migration Policy Centre under the scientific supervision of *inter alia* Andrew Geddes (University of Sheffield) and Dirk Jacobs (Université Libre de Bruxelles) (Mipex, 2004/2007/2011). The main purpose of Mipex was to redress the lack of data on migration and integration policies for comparative analysis. The authors considered the main reason for this lack was that such data is too sensitive politically and too varied for systematic and comprehensive analysis (Mipex I, 2004). The Multiculturalism Policy Index (MCPI) was developed at Queen's University by Keith Banting and Will Kymlicka to respond to the alleged crisis and supposed retreat of multicultural policies in many Western countries (Banting, Kymlicka, 2012). The Eurac-FCNM Indicators on the Framework Convention on National Minorities (Eurac-FCNM) were commissioned in 2008 by the Council of Europe to the Institute for Minority Rights at the European Academy of Bolzano/Bozen. Developed by Roberta Medda-Windischer, Tove Malloy and Emma Lantschner, the main purpose of this set of indicators was to explore the impact of the FCNM on its Member States (Eurac, 2009; Medda-Windischer, Malloy, Lantschner, 2009).

The three sets of indicators have a number of significant differences, some of which are based on the different rationale and scope of each, while others depend on different methodology and approaches. An important difference is the target group(s) selected. The Mipex includes only 'economic' and 'labour' migrants and their family members who are third-country nationals (TCNs), i.e. individuals from countries that do not belong to the European Union. Asylum seekers and refugees, ethnic minorities with EU citizenship, the 2nd generation who are granted EU citizenship at birth or in a relatively straightforward manner and irregular migrants are therefore excluded from the Mipex study. By contrast, the MCPI is divided into three sub-sets of indicators according to target group, namely immigrant groups, historical national minorities, and indigenous peoples. The Eurac-FCNM index includes 'old' and 'new' minorities – according to the definition provided earlier in this paper – in a single, unified set of indicators.

The countries involved in the three studies are less dissimilar: the last version of Mipex (2011) covers 27 EU MSs, including Romania and Bulgaria, and four non-EU countries (Switzerland, Canada, Norway and USA); the MCP index has different geographical coverage depending on the target group, namely for immigrant groups there are 21 countries (14 EU MSs, Australia, Canada, Japan, New Zealand, Norway, Switzerland, USA), for historical national minorities, eleven countries (Belgium, Finland, France, Greece, Italy, Spain, UK, and Canada, Japan, Switzerland, USA), and for indigenous peoples, nine countries (Denmark, Finland, Sweden, Norway, Canada, Australia, New Zealand, USA, Japan). The Eurac-FCNM index covers all MSs of the Council of Europe (47 countries).

In general, the three indexes have common recipients and users for whom the results of the indicators are conceived. They are public officials, researchers, journalists, advocacy groups, activists and others interested in the topic. However, while Mipex, and partly MCPI, are designed to be accessible to a wide range of stakeholders, the Eurac-FCNM index more specifically addresses officers and authorities at national and local level and members of relevant expert committees within the Council of Europe, in particular the Advisory Committee of the FCNM.

The most remarkable difference between the three sets of indicators is the type and number of indicators. The Mipex indicators are aimed at assessing to what extent the conditions for immigrant inclusion are favourable or otherwise by looking at the inclusion process from entry into the labour market to full citizenship; the areas covered are labour market, family reunion, education, political participation, long-term residence, naturalization and anti-discrimination. The indicators consist of 148 questions ranging from the eligibility requirements to obtain a given status to the scope of a given legislation, remedies available in cases of status denial, rights associated with a given status, the extent to which status is secured and how strong equality agencies are.

The MCP index is composed of three different sets of indicators for each target group on the basis of what are perceived by the authors to be their claims or what can legitimately be asked of national and local authorities. For *immigrant minorities*, the eight indicators include constitutional, legislative or parliamentary affirmation of multiculturalism, adoption of multiculturalism in school curricula, inclusion of ethnic representation/sensitivity in the mandate of public media or media licensing, exemptions from dress-codes, Sunday-closing legislation and the like, allowing dual citizenship, funding ethnic group organizations to support cultural activities, funding bilingual education or mother-tongue instruction, and affirmative action for disadvantaged immigrant groups. For *national minorities* there are six indicators including federal or quasi-federal territorial autonomy, official language status either in the region or nationally, guarantees of representation in the central government or in constitutional courts, public funding of minority language universities/schools/media, and constitutional or parliamentary affirmation of ‘multinationalism’ according international personality (e.g. allowing the substate region to sit on international bodies). Finally, multicultural policies for *indigenous people* are measured on the basis of nine indicators focusing on the recognition of land rights, recognition of self-government rights, upholding historic treaties and/or signing new treaties, recognition of cultural rights (language; hunting/fishing), recognition of customary law, guarantees of representation/consultation in the central government, constitutional or legislative affirmation of the distinct status of indigenous peoples, support/ratification for international instruments on indigenous rights, and affirmative action.

As mentioned above, the Eurac index includes in a single unified set of indicators for both old and new minorities. The indicators are divided among three major typologies (Political Discourse, Legislation, Judiciary), in turn sub-divided into eight thematic domains and 20 sub-indicators, making a total of 287 questions (for the detailed list, see Annex). *Political discourse and government action/practices* is an area encompassing various domains that include: institutionalized inter-cultural dialogue, dissemination efforts, funding behaviour, mainstreaming efforts, parliamentary politics, local politics, racism and xenophobia, non-institutionalized inter-cultural dialogue and public spaces. The indicators on *legislative developments and public policies* are constructed around four major areas: Right to existence and the recognition of minority groups (status of FCNM in the domestic legal system; scope of FCNM application and definition of minorities; data collection); Right to equality and non-discrimination (anti-discrimination legislation); Right to diversity and identity (linguistic rights, educational rights, freedom of religion, media rights); Effective participation in public life (effective participation in cultural, social and economic life, effective participation in public affairs). Finally, the indicators on the *judiciary* are developed around two main strands: Court structures and organization (awareness raising about minority issues and FCNM training, minority representation in legal professions, accessibility of the judiciary, coordinated efforts in dealing with discrimination or ethnically, religiously or racially motivated incidents) and Judgments (direct applicability of the FCNM within national systems, number of cases and fields covered, ‘constructive’ use of the FCNM, ‘disruptive’ use of the FCNM, implementation of court rulings).

Despite the differences analyzed above, there are also a number of commonalities that link the indexes selected in this paper. First, the major aim of considering comparative analysis across countries and over time and against a given average (at European level or among Western countries) is common to the three sets of indicators. Moreover, linked to the above are the objectives of identifying good practices, monitoring the evolution of national policies and practices, collecting standardized data for more articulated and thorough judgments on integration and multicultural policies, and more generally improving understanding of state-minority relations.

A second factor common to the three sets of indicators is their nature. The three sets mainly explore normative provisions and public policies, though the Eurac-FCNM indicators also analyze the judiciary and political discourse.

The third common element is the evaluation system based on a collection of data from independent experts. That data is then assessed against what is *discretionally* considered to be the highest standards of best practice. The best practices are taken from international and national legal standards, public policies, proposals put forward by Western/Europe-wide stakeholders, but also policy recommendations from comparable comprehensive research projects. In the evaluation systems developed in the three sets of indicators there is thus a broad margin of discretion, self-evaluation and individual judgments.

The three indexes present a number of limits and disadvantages, some of which are unique and specific to each index, while others are common to the three sets. Some of the problems are intrinsic to the scope and rationale of the index itself, while others are based on the methodology applied that is mainly derived from financial constraints.

The main problematic aspect common to the three sets of indicators is a major shortcoming, namely the fact that the three sets only analyze the existence of public policies and legal standards rather than the outcome and the impact of these policies on the target groups and, more generally, on society. The indexes analyzed in this study therefore do not envisage assessing the performance of national standards in terms of policy-to-outcome, i.e. direct impact in improving the lives of persons belonging to minorities.

As regards the specific shortcomings of each index, the main limits of Mipex are the rather limited target group (only TCNs) and the fact that Mipex does not focus on diversity or cultural integration, although it includes some indicators that indirectly cover these aspects, such as those on intercultural approach in education (curricula, textbooks, schedules, hiring processes). Mipex has the advantage of being very accessible to a broad range of stakeholders because it is designed in a compact and simplified format. Clearly, as already mentioned, this positive aspect can also be considered a disadvantage since Mipex tends to oversimplify complex situations and policies. Like the other indexes analysed, Mipex does not provide a comprehensive assessment of a country's immigration policies and law but only indications of how a country's inclusion policies look on the basis of (discretionary) expert assessments.

A specific limit of the MCP index is that it only focuses on very limited concrete, real case studies in the three categories of target groups in assessing multicultural policies in a given country. Hence, for instance, in the category of national minorities, MCPI focuses only on groups that are regionally concentrated (not geographically dispersed, as are, for instance, the Roma), sizeable (a minimum of 100,000 people is the threshold set, 'somewhat arbitrarily', as the authors themselves admit) and show 'significant' forms of national consciousness and mobilization. Moreover, where more than one national minority is examined, scoring for the entire country is based on the minority with the highest level of accommodation (e.g. only South Tyrol is considered in Italy and only Catalonia and Basque Country in Spain). Accordingly, the MPI evaluation and scoring related to a given country is obtained by assessing, with less than ten indicators, the

specific policies adopted by this country in one or at most two case-studies, and this assessment then becomes emblematic and representative of the entire country.

The advantage of Mipex is that implementation of the indicators was repeated three times – respectively with data referring to 1980, 2000 and 2010 – comparing countries over time. Unlike Mipex, MCPI also includes additional, albeit limited (as seen earlier), data on national minorities and indigenous people.

A specific shortcoming of the Eurac-FCNM index is the counterpart of an advantage, namely its complexity. Indeed, the Eurac-FCNM set is not easy or immediately accessible. Since the number of indicators encompasses a broad range of domains and topics, it requires a corresponding broad range of experts to answer the questions associated with each indicator. Nevertheless, this set of indicators has many positive aspects: a single index for old and new minorities, a particular emphasis on cultural diversity and a focus on domains beyond public policies and legislation, namely judiciary and political discourse.

In the perspective of developing an index for old and new minorities, analysis of the three sets of indicators clearly showed that this is a feasible objective. As said in the first part of this paper, minorities are not monoliths and claims change across groups and countries and also within the same group over time: groups for which a certain claim is a priority can change their interests, needs and/or strategy and consider other claims more relevant, for instance a shift from economic claims to claims oriented more towards culture and identity protection.

As seen above, the Mipex index has the shortcoming, which can also be seen as an advantage, of simplifying very complex constellations of public policies and legislation: by reducing this complexity, Mipex nevertheless has the positive effect of increasing accessibility to a wide range of actors, especially public authorities. In general, Mipex provides overviews and accessible information on various integration domains, despite its being limited to non-EU labour migrants.

Likewise, the MCP index has shortcomings, in particular the fact that the domains and typologies of indicators are extremely discretionary and rather narrow. The index is based on a rather old-fashioned dichotomy between old and new minorities coupled with an arguable understanding of major claims and legitimate expectations of the target-groups in selected countries. For instance, for national minorities, only forms of territorial autonomy are considered relevant and not personal and/or cultural forms of autonomy; another example can be taken from the indicator set for indigenous people, where support for or ratification of international instruments is considered relevant, although the same indicator (support for international instruments) is not mentioned under the categories of immigrant minorities and national minorities for whom international treaties are arguably also extremely important.

The Eurac-FCNM index has the ambition of being comprehensive, encompassing as it does old and new minorities and including additional domains beyond public policies - judiciary and political discourse. The set is not, however, easily accessible as is mainly conceived and designed as a sort of checklist for members of expert bodies within international organizations, in particular the CoE Advisory Committee of the FCNM. The Eurac-FCNM index has not yet been applied, though implementation is planned through an enlarged consortium of research institutes.

In conclusion, some remarks on future research in the field of integration and minority indicators can be formulated along the following lines: first, research should focus on actual implementation of indexes, simultaneously encompassing old and new minorities. In this regard, a combination of the pragmatic and accessible approaches of the Mipex and MCP indexes coupled with the complex and articulated set of Eurac-FCNM indicators could be a sustainable and feasible method. Some indicators of the Mipex index are

also relevant for members of old minorities, especially indicators concerning education, labour market and anti-discrimination whereas other indicators are linked to acquisition of citizenship, permission to stay in the country of residence, family reunion or voting rights and are therefore generally not relevant to old minorities, whose members already have citizenship of the country in which they reside and do not usually face problems of family reunification or voting rights. Clearly there are exceptions, as in case of old minorities who are stateless, for instance many Roma from former Yugoslavia or Russian-speaking communities in Baltic countries. A second suggestion for further research is to develop policy-to-outcome indicators, i.e. focused on measuring direct improvement in the lives of persons belonging to minorities. A final indication is to work on a combination of quantitative and qualitative research tools, adding surveys and questionnaires to quantitative analysis.

VIII. Conclusions: Beyond the Old/New Minority Dichotomy

The right to identity and diversity represents, in many ways, the essence of the case for minorities, old and new alike, within the corpus of human rights: the claim to distinctiveness and the contribution of a culture on its own terms to the cultural heritage of mankind. The identity to be protected and promoted may be national, ethnic, cultural, religious or linguistic or all of them altogether. The concept of identity is a broad and important one for individuals and communities since it concerns their belonging, their way of thinking, feeling and acting. Consequently, respect for, and protection of, identity can be considered as constitutive elements of respect for human dignity, which is clearly a common attribute to both old and new minorities alike (See Art. 5, FCNM; Art. 1, UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities; Art. 1(2), 1978 UNESCO Declaration on Race and Racial Prejudice; 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions).

Obviously, when reference is made to universal human rights or some basic norms of minority protection, there is no need to distinguish between persons belonging to ethnic, religious or linguistic groups made up of recent immigrants, or those living in a given territory from 'immemorial' time. Other claims, such as the claim to use a minority language in relations with the authorities or the claim to street names in the minority language are more specific and need to be differentiated.

The difference, however, is not solely based on the fact that a given group belongs to the category of an 'old' or 'new' minority : other factors are relevant and apply without difference to both old and new minorities, such as socio-economic, political and historical factors. Furthermore, the fact that members of a minority live compactly together in a part of the state territory or are dispersed or live in scattered clusters, or the fact that members of a community with distinctive characteristics have long been established on the territory, while others have only recently arrived, are important factors.

Minority groups, both old and new alike, are not monoliths but are composed of groups very different from one another, with diversified claims, duties and rights. The catalogue of minority rights has so far been implemented in relation to historical minorities without differentiating among various minority groups but by taking into account other more pragmatic factors, such as those mentioned above. The same approach should be applied when extending minority protection to new minority groups stemming from migration.

This is also the 'article-by-article' approach favoured by the Advisory Committee of the Framework Convention and by Asbjørn Eide (former Chairperson-Rapporteur of the UN Working Group on Minorities), who summarised this point by saying: "The scope of rights is contextual." (Eide, 1993, para. 27;

Eide, 2000, paras. 36-44). As seen above, an inclusive approach based on a common and broad definition of minorities would be the starting point for appropriate qualifications in regard to which specific right should be granted to which specific group and under which conditions they shall apply.

Many, especially among government representatives, worry that by extending the definition and protection of minority rights to migrants, the latter will claim rights and powers similar to those granted to traditional minorities, thereby threatening unity and diluting the protection intended for old minority groups. However, if it is true that in Western countries some immigrant groups demand certain group rights, it would be incorrect to interpret immigrant demands for recognition of their identities as the expression of a desire, for instance, for self-government (Kymlicka and Opalski, 2001, 31-6). Migrants are generally aware that if they want to access the opportunities made available by the host countries, then, they must do so within the economic and political institutions of these countries. For example, it is still the case that immigrants must learn the official language to gain citizenship, or to get government employment, or to gain professional accreditation. Active civic participation and effective integration amongst immigrants are essential to the economic prospects of most migrants, and indeed to their more general ability to participate in social and political life of the host country (EU 2005).

Obviously, this leaves open the possibility that some leaders of ethnic groups hope that integration policies will provide a channel for obtaining a separatist policy. But, as Kymlicka observes, this is a vain hope that massively underestimates the sort of support needed to create and sustain a separate societal culture: “[S]ustaining a certain culture is not a matter of having yearly ethnic festivals, or having a few classes taught in one’s mother-tongue as a child. It is a matter of creating and sustaining a set of public institutions through the use of instruments that are similar to those used by the majority in their programme of nation-building, i.e. standardized public education, official languages, including language requirements government employment, etc.” (Kymlicka, 1997, 52-6). So far, there is no evidence from any of the major Western immigration countries that immigrants are seeking to adopt, and succeeding in doing so, a pro-sovereignty political agenda (Kymlicka, 1997, 52-6). Indeed, when attempts have been made, these have been rejected by national and international courts (see, ECtHR, *Kalifatstaat v. Germany* concerning the ban of an association whose aim was the restoration in Germany of the caliphate and the creation of an Islamic State founded on sharia law).

Clearly, it has to be recognised that any decision to bring minorities of immigrant origin within the scope of application of international and/or national instruments pertaining to minorities is bound to be political. But, if a country is serious about integrating immigrants, then it should not oppose the extension of the scope of application of minority provisions to new minorities. As discussed earlier, this would not entail the extension of the full range of minority protection to all minority groups without distinction and, moreover, it might be seen as an appropriate political gesture, a way of underlining the importance of the country’s integration policy and of sending out a powerful message that populations of immigrant origin are now clearly seen to be an integral, though distinctive, part of the nation.

ANNEX

MIPEX Migrant Integration Policy Index

Grounds :

Lack of data/comparison on migration ; why ? too politically sensitive + data are too different for systematic and comprehensible data to be collected

Target Groups :

- Included :

‘Economic’ and ‘labour’ migrants and their family members => third-country nationals (TCNs)

- Excluded :

Asylum seekers + refugees

Ethnic minorities with EU citizenship

2nd generation who are given EU citizenship at birth or relatively straightforward

Irregular migrants

Countries involved :

Mipex I 15 EU/MSs ; Mipex II (2007) : 25 EU MSs + 3 non-EU countries (Switzerland, Canada, Norway);

Mipex III (2011) : 27 EU MSs (Romania + Bulgaria) + 4 non-EU countries (USA)

Aim :

Comparison on immigrant inclusion policies between MSs and against EU average

To identify good practice

To allow comparison over time

To assess how favourable MSs’ policies are to immigrant inclusion

Mipex does not establish whether or not inclusion has been successful, but whether or not favourable conditions in policy and law have been created

Mipex measures policies and not effectiveness

To whom it is addressed ?

MSs (officers, authorities, etc); EU Commission + other intern. bodies + organisations; individuals and advocacy groups; researches;

Mipex is designed to be accessible to a wide range of stakeholders

Nature Indicators :

Normative Framework

Mipex measures policies/legislation NOT outcome/actual implementation

Mipex does not describe immigrants’ actual position in society or policy effectiveness

Esp. adoption legislation + transposition directives that leave MSs a considerable margin of action to MSs with derogations + flexible wording

“Mipex is not a ‘naming-and-shaming’ exercise but ‘positive competition’”

Typology of Indicators :

Immigrant inclusion => (2004- Mipex I - initially linked to the concept of civic citizenship; Progression from entry in the labour market towards full citizenship, then political participation + education have been added)

- **Labour market inclusion** (esp. access) Best case : recognition skills/titles, development language skills *vs* Worst case : restrictions specific sectors, language/professional barriers, insecure status. Changes/Trends : more targeted supports that are generally weak.
- **Family reunion** (as contribution to stability + cohesion) Best case : short time requirement (less than 1 year), transparent, fair, short and free procedure, no extra conditions *vs* Worst Case: long time requirement (2 or more years), costly and long procedure, restrictive conditions (employment, housing and income), mandatory integration/language course. Changes/Trends : most favorable countries tend to set equal requirements for all residents; other countries include increasingly stricter requirements (marriage age, high income, high fees and less support).
- **Education** (new area/strand since Mipex III) Best case : additional support, extra courses and teaching to catch up and master language; active role parents, intercultural approach *vs* Worst case : no special treatment, language support poor or absent; usually end up in under-performing schools, teachers/staff cannot handle diversity. Change/Trends : no comparison as new policy area.
- **Political participation** (new in Mipex II); in Mipex I it was excluded for lack of data + limited resources ('civic' and active citizen) Best case : right to form associations also political one, right to vote and stand for local elections (as EU citizens), creation consultative bodies; *vs* Worst case: no right to vote or stand for election, no consultative bodies. Changes/Trends: consultative bodies are not substitutes for voting rights (countries extending voting rights tend to create also consultative bodies).
- **Long-term residence** (equal treatment as possible with EU citizens) Best case : acquirement long-term status after 5 or less years, time as student or asylum seeker counts, fair, transparent, short procedure *vs* Worst case : 8 or more years, mandatory integration course, expensive written test to prove knowledge of country's language and culture, costly and lengthy procedure and restrictive employment, income and housing conditions. Changes/Trends: largely same opportunities /requirements; most countries focuses on new demanding conditions.
- **Naturalization** : Best case : eligible after 3 years legal residence, descendants are dual citizens by birth, only condition no serious crimes, free to keep original nationality *vs* Worst case : eligible after more than 5 years, descendants face many conditions to become citizens of the country in which they are born, many conditions as mandatory course and high-cost written test on country's language, culture and history, no dual citizenship. Changes/Trends: No major changes; debate on citizenship withdrawal.
- **Anti-discrimination** (grounds: race, ethnicity, religion/belief, national origin/nationality) Best Case : enforcement mechanisms, equality bodies with strong legal standing *vs* Worst case : freedom to deny employment, housing, education on the basis of race/ethnicity, religion/belief or nationality, weak law enforcement, no access legal aid or assistance from NGOs. Changes/Trends: greatest progress among European countries, esp. new countries of immigration and Central Europe.

What the set does not do :

Mipex does not measure diversity and no cultural integration

Mipex measures policies/legislation NOT outcome/actual implementation

Mipex does not describe immigrants' actual position in society or policy effectiveness

Mipex focuses only on TCNs – migrants from non-EU countries (no national minorities, no irregular migrants, no 2nd generation, no asylum seekers/refugees, no minorities also with migration background with EU citizenship)

Dimensions/Number/Amount of Indicators :

148 indicators (questions)

1st level : Six (Mipex I – five) strands/areas (see above)

2nd level : four dimensions

- Eligibility requirements x status/scope legislation/ how easy is access to labour market
- Conditions + remedies available
- How secure is the status ? / how strong equality agencies?
- Rights associated with the status / pro-active policies to combat discrimination ?

Evaluation/Scoring system :

Common framework to score policies => normative framework implies certain value judgments

Collection of data from independent experts

Standards on the most relevant policies/Mipex's Normative framework => highest standards of best practice from : EC directives; International treaties; EC Presidency Conclusions; proposal for EC Directives put forward by European-wide stakeholders; policy recommendations of comprehensive comparable European research projects.

Scoring system : favourable (point 3, sum up NGOs proposals, more liberal provisions in international instruments), less favourable, least favourable (both more restricting, point 2 halfway or 1 unfavourable) ; no policy : by default, point 1 classified as unfavourable condition

Scores are standardized to a base of 100-EU Average 2004; a score of more than 100 means that a country is exceeding the EU average.

CONs/Limitations :

No indicators on cultural diversity (exception intercultural approach in education – curriculum, textbook, schedule, hiring)

Risk to oversimplifying complex situations/policies

Legal framework implies legal options (assessed by experts)

It does not provide a comprehensive assessment of MSs' immigration policies and law but indications of how a country 's inclusion policies look

Limited target group (only TCNs)

PROs/Advantages :

Easy access to broad range of stakeholders

Compact and simplified format

Results :

Strong statistical correlations between different strands : MSs tend to score consistently high or consistently low across the five areas ; they reflect thus deliberate policy choices

No major differences in policy between countries with long and short migration histories (what counts is not only tradition and experience but also political will)

Naturalization, political participation and education are among the most problematic areas for MSs

2004 (15 MSs) : First 5 – Belgium; Sweden ; Netherlands; Portugal; Spain – Last 5 : Denmark; Greece; Luxembourg; Austria; Germany.

2007 (incl. political participation) (25 MSs + 3 non-EU (Canada, Switzerland, Norway)) – First 5 : Sweden; Portugal; Belgium; Netherlands; Finland/Canada; Last 5 : Latvia, Cyprus/Austria, Greece/Slovakia (last 15-MSs : Austria, Greece, Denmark, Germany, Luxembourg)

2011 (incl. education) (27 MSs (Bulgaria/Romania) + 4 non-EU(USA)) – First 5 : Sweden, Portugal, Canada, Finland, Netherlands; Last 5 : Latvia, Cyprus, Slovakia, Malta, Lithuania

Note : In Mipex II best cases refer to female subject (she/her); worst cases use male subject (he/his)

MCPI

Multiculturalism Policy Index

Grounds :

Alleged crisis/backlash/retreat of Multiculturalism policies

Target Groups :

Different set of indicators for :

- Immigrant groups
- Historical national minorities
- Indigenous peoples

Countries involved :

- Immigrant groups (21 Countries : 14-EU MSs, Australia, Canada, Japan, New Zealand, Norway, Switzerland, USA)
- Historical national minorities (11 Countries : Belgium, Finland, France, Greece, Italy, Spain, UK+ Canada, Japan, Switzerland, USA)
- Indigenous peoples (9 Countries : Denmark, Finland, Sweden, Norway, Canada, Australia, New Zealand, USA; Japan)

Aim :

Monitoring evolution MLTC policies

Standardized information on MLTC policies to compare across time/countries

Better understand state-minority relations

More fine-grained judgments about evolution/effects of MLTC policies

To whom it is addressed ?

Researchers, public officials, journalists, students, activists, other interested in the topic

Nature Indicators :

Public policies

Typology of Indicators :

3 different set of indicators x target groups

• **Immigrants minorities (8 indicators)**

- constitutional, legislative or parliamentary affirmation of multiculturalism;
- the adoption of multiculturalism in school curriculum;
- the inclusion of ethnic representation/sensitivity in the mandate of public media or media licensing;
- exemptions from dress-codes, Sunday-closing legislation etc;
- allowing dual citizenship;
- the funding of ethnic group organizations to support cultural activities;
- the funding of bilingual education or mother-tongue instruction;
- affirmative action for disadvantaged immigrant groups.

• **National Minorities (6 indicators)**

- federal or quasi-federal territorial autonomy;
- official language status, either in the region or nationally;
- guarantees of representation in the central government or on constitutional courts;
- public funding of minority language universities/schools/media;
- constitutional or parliamentary affirmation of 'multinationalism';

- according international personality (eg., allowing the substate region to sit on international bodies).

- **Indigenous People (9 indicators)**

- recognition of land rights/title
- recognition of self-government rights
- upholding historic treaties and/or signing new treaties
- recognition of cultural rights (language; hunting/fishing)
- recognition of customary law
- guarantees of representation/consultation in the central government
- constitutional or legislative affirmation of the distinct status of indigenous peoples
- support/ratification for international instruments on indigenous rights
- affirmative action.

What the set does not do :

MPI does not assess simultaneously minority-state relations but it has three separate set of indicators
 MPI does not measure implementation but only existence public policies

Dimensions/Number/Amount of Indicators :

3 different set of indicators x each target groups

- Immigrants minorities (8 indicators)
- National Minorities (6 indicators)
- Indigenous People (9 indicators)

Evaluation/Scoring system :

Evaluation based on policy documents, program guidelines, legislation, and government news releases, secondary sources and other academic research

Score : YES (the country has met or exceeded the standard), Partially (the country has made some progress in this area), No (the country has not met this indicator)

Evaluation and comparison based on three different periods of time : 1980, 2000, 2010

CONs/Limitations :

MCPI on National Minorities focuses only on :

- regionally concentrated groups (not territorially dispersed ex. Roma)
- sizeable groups (‘somewhat arbitrarily’ - 100,000 people);
- exhibit ‘significant’ forms of nationalist consciousness and mobilization;

Where more than one national minority is examined, scoring is based on the minority with the highest level of accommodation (ex. for Italy only German-speaking group in South Tyrol, for Spain only Catalonia and Basque Countries, etc.)

Limited number of indicators

Acknowledged controversial definition of MLTC policies.

PROs/Advantages :

Comparison among countries and across time

Compact and easy access

Additional data on national minorities (es. EU citizens) and indigenous people

Results :

The findings of the Multiculturalism Policy Index reveal a number of interesting developments. For example, despite the perception of a backlash and retreat from immigrant multiculturalism, the evidence suggests that multiculturalism policies have persisted, and in many cases, continue to expand, as illustrated below.

– Immigrant Minorities

Whereas the multicultural turn in relation to national minorities and indigenous peoples is now widely accepted, multiculturalism in relation to immigrants remains highly contested, and some commentators argue that is now subject to full-scale backlash and retreat. The country scores in our Index, however, suggest that the multicultural turn has been surprisingly resilient. There is considerable variation across times and across countries in the strength of these policies, but as with indigenous peoples and national minorities, the basic trend line is one of consistent increase in the average score of Western democracies from 1980 to 2000 to 2010. There are important exceptions, including some high-profile retreats. But these are more than offset by increases in MCPs in other countries.

Three countries display a (limited) retreat across time : Netherlands (Media, Dual citizenship, Bilingual education, affirmative action), Denmark (bilingual education), Italy (School Curriculum)

– National Minorities

The country scores in the Index reveals considerable variation across times and across countries in the strength of these policies. However, the basic trend line is clear: there has been a consistent increase in the average score of Western democracies from 1980 to 2000 to 2010, with virtually no reverses or retreats.

No impact between (limited) retreat of MLTC policies for Immigrant Minorities and policies related to National Minorities

– Indigenous People

The country scores in the Index reveals considerable variation across times and across countries in the strength of these policies. However, the basic trend line is clear: there has been a consistent increase in the average score of Western democracies from 1980 to 2000 to 2010, with virtually no reverses or retreats.

FCNM – EURAC Index
EURAC Indicators on the Framework Convention on National Minorities

Grounds :

Debate on the impact of the FCNM

Target Groups :

'Old' and 'New' Minorities

Countries involved :

CoE MSs (47 countries)

Aim :

Indicators contributing to assess the impact of the FCNM on domestic legislation and policies adopted and implemented by governments as well as its ability to inform the domestic political discourses.

Impact is understood mainly in the *positive* sense of improvements in the legislative and political environment that furthers the implementation by governments of protection of persons belonging to national minorities. *Negative* impact visible in countries parties to the FCNM will also be included in so far that it is possible to assess.

To whom it is addressed ?

Researchers, members of the ACFC

Nature Indicators :

The FCNM/EURAC set attends primarily to the performance of the FCNM as a *process*.

A *process evaluation* of a legal instrument can assess how effectively the instrument is being implemented by focusing on aspects, such as who is participating, what activities are being offered, what actions have been taken, and what practices are put in place.

Three areas are included :

- Political discourse and government actions/practices
- Legislative developments and public policies
- Judiciary

Typology of Indicators :

- 1) Political Discourse Indicators
- 2) Legislative Indicators
- 3) Judiciary Indicators

1) Political discourse and government actions/practices

- Government actions and practices:
 - A. Institutionalized inter-cultural dialogue
 - B. Dissemination efforts
 - C. Funding behaviour
 - D. Mainstreaming efforts

- Public debates:

- E. Parliamentary politics
- F. Local politics
- G. Racism and xenophobia
- H. Non-institutionalized inter-cultural dialogue
- I. Public spaces

2) Legislative developments and public policies

- Right to existence and the recognition of minority groups:

- A. Status of FCNM in the domestic legal system
- B. Scope of application FCNM and definition of minorities
- C. Data collection

- Right to equality and non-discrimination:

- D. Anti-discrimination legislation

- Right to diversity and identity:

- E. Linguistic Rights
- F. Educational Rights
- G. Freedom of Religion
- H. Media Rights

- Effective participation in public life:

- I. Effective participation in cultural, social and economic life
- J. Effective participation in public affairs

3) Judiciary Indicators

- Courts' structures and organization:

- A. Awareness raising about minority issues and training on the FCNM
- B. Minority representation in legal professions
- C. Accessibility of the judiciary
- D. Coordinated efforts in dealing with discriminations or ethnically, religiously or racially motivated incidents

- Judgments:

- E. Direct applicability of the FCNM within the national systems
- F. Number of cases and fields covered
- G. "Constructive" use of the FCNM
- H. "Disruptive" use of the FCNM
- I. Implementation of court rulings

What the set does not do :

The material available on FCNM implementation does not allow for assessing the performance of the FCNM in terms of policy-to-outcome, i.e. the *direct impact* on the improvement of the lives of persons belonging to national minorities.

Cultural, social and economic spheres will be addressed only in relation to the two domains in focus -legal and political - and will not be the objective of indicator piloting.

Dimensions/Number/Amount of Indicators :

3 Set of Indicators; 8 Thematic Domains; 28 Sub-Indicators; 287 Index-Checklist (for detailed list see Annex)

Evaluation/Scoring system :

The FCNM-EURAC set of indicators should not be considered separately but need to be seen as a continuum or process and be linked with each other.

Process evaluation relies on less formal evaluation designs and modes of inquiry, such as self-evaluation and expert judgments.

CONs/Limitations :

Not yet implemented (but in the process of being expanded scope-wise by a larger consortium)

The Index does not allow for assessing policy-to-outcome, i.e. the direct impact on the improvement of the lives of persons belonging to national minorities

Not easy/immediate access

PROs/Advantages :

Combine old and new minorities

Focus on cultural diversity

Provide indicators beyond public policies and legislation

It provides complex and articulated data

The Index has been supplemented with an open online consultation with national minorities and other relevant stakeholders.

Results :

Not yet implemented (but in the process of being expanded in scope and applied by a larger consortium)

FCNM-EURAC Index

| Indicator | Political Discourse |
|--|---|
| Improved support for institutionalized inter-cultural dialogue | <ul style="list-style-type: none"> • Number of follow-up meetings to monitoring cycles • Creation of new permanent consultation mechanisms • Creation of new departments within government agencies to deal with national minorities • Establishment of new government agencies to deal specifically with minorities, including national minorities • Establishment of Ombudsperson function • Appointment of National Minority Commissioner • Decrees and executive orders/letters pertaining to any provision in the FCNM • Adopting development plans • Adopting new or improved monitoring practices, including efficiency control |
| Increased and improved dissemination efforts | <ul style="list-style-type: none"> • Establishing entities/appointing officer(s) dealing specifically with dissemination of issues related to the FCNM and/or national minorities • Introducing new procedures/reforming information sections to include dissemination of issues related to the FCNM and/or national minorities • Retaining or designating public servants with language skills to translate information material to and from national minority languages • Appointing translation agencies as official purveyors of translation services with regard to national minority information materials • Number of conferences pertaining directly to dissemination of the FCNM and national minority issues • Number of conferences pertaining to related issues, such as human rights, inter-cultural dialogue, etc. • Number of roundtables addressing specific provisions as well as general issues • Number of seminars and workshops dealing with improving dissemination • Establishing of sub-committees specifically addressing dissemination • Establishing of ad hoc committees to address particular issues • Establishing of newsletter functions • Number of awareness campaigns • Number of press releases addressing the FCNM as well as national minority or related issues • Number of new government publications, pamphlets, posters and other info material issued • Number of direct references to the FCNM in official documents • Number of new government web-sites about national minority rights or related issues established • Number of new web links or information boxes on existing government web-sites about the FCNM |

| | |
|--|--|
| <p style="text-align: center;">Increased funding for implementation programmes</p> | <ul style="list-style-type: none"> • Number of new/additional budget lines pertaining to FCNM provisions or national minority claims, including direct funding to national minority institutions and organizations • Number of special allocations of time limited funds • Number of new programmes with budget lines adopted • Number of new projects with budget descriptions approved • Number of new project applications with budget proposals received compared to approved • Number of new personnel allocated to dealing with issues of implementation of the FCNM • Number of new initiatives not enshrined in policies or programmes but nonetheless requiring funding • Adoption of guidelines for financial distribution, including information regarding inflation adjustment |
| <p style="text-align: center;">Improved mainstreaming efforts</p> | <ul style="list-style-type: none"> • Improved data collection by proxy or pilot project and funding for same • Innovative positive action measures even if unofficial in character • Improved membership numbers through removed barriers or excessive legislation • Establishment of periodic review of membership • Decreeing permanent membership in relevant commissions and boards, especially media and school boards • Increased incentives to private companies and organizations • Number of outreach campaigns to public service providers • Number of directives related to mainstreaming, including directive to prohibit gerrymandering in connection with redrawing of districting legislation • Number of letters from cabinet ministers to public service providers • Adoption of monitoring practices |
| <p style="text-align: center;">Increased attention to FCNM provision in parliamentary politics</p> | <ul style="list-style-type: none"> • Number of ratification hearings/debates, including debates on the purpose of the FCNM and its application in domestic law • Number of debates with regard to possible constitutional amendments/changes to achieve recognition of national minorities • Votes taken in parliaments with regard to recognition of certain groups • Number of debates on the floor about the unity of the nation versus cultural diversity and multiculturalism • Number of debates in committees with regard to recognition of specific minority groups • Lack of debates or non-debates on recognition of specific minorities known to exist within territory of the state • Number of debates with regard to the concept of ‘national minority’ • Number of debates on adopting Declarations to the FCNM, including Declarations excluding specific minorities living within the territory of the state • Votes taken on Declarations to the FCNM • Number of parliamentary expert and other hearings pertaining to the Framework Convention and/or national minority issues • Number of speeches given by majority MPs on national minority issues in parliament • Number of speeches given by national minorities MPs in parliament • Creation of sub-committees to standing parliamentary commissions to address and investigate minority rights issues • Creation of public commissioners to address minority rights and issues • Number of questions to cabinet ministers pertaining to the Framework Convention or national minority issues asked by majority MPs, in both writing and speech |

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| | <ul style="list-style-type: none"> • Number of special inquiries with regard to the Framework Convention or national minority issues • Number of projects and studies initiated and funded by parliamentary budgets • Number of study visits to national minority regions by majority MPs • Number of speeches on national minority issues given by majority MPs outside parliament • Number of official apologies by MPs • Number of official apologies delivered by cabinet officials • Establishing of minority Ombudsperson institution • Number of new minority MPs |
| Increased attention to FCNM provisions in local politics | <ul style="list-style-type: none"> • Number of activities of permanent consultation mechanisms at the local level • Number of activities of ad hoc consultation mechanisms • Number of representatives of national minorities involved in local government (sub-national, district, municipal) • Number of representatives of national minorities in local commissions/committees (trade and economic development, environment, INTERREG) • Number of representatives of national minorities on local boards (schools, media, church affairs, etc.) • Number of public events addressing the FCNM and national minority rights |
| Increased attention to combating racism and xenophobia | <ul style="list-style-type: none"> • New initiatives on data collection on racist incidents, including ethnic prison population • Expanded monitoring of 'stop and search' incidents • New ethnicity sensitive initiatives on criminal data collection, including initiatives to protect all types of ethnicity and nationality • Discourse analysis of racial slur in media reports • New initiatives to monitor Internet racism |
| Improved non-institutionalized inter-cultural dialogue efforts | <ul style="list-style-type: none"> • Number of events and activities pertaining specifically to inter-cultural dialogue • Establishment of new inter-cultural commissions • Joint minority-majority participation in local and national festivals • Joint minority-majority celebrations of historic (reconciliatory) commemorations • Number of honorary titles awarded to members of national minorities • Number of medals awarded to members of national minorities for special voluntary contributions • Increased minority participation in planning of visits by kin-state dignitaries • Number of official visits by dignitaries to national minority regions • Increased inclusion of members of national minorities in delegations and high-level meetings • Invitations to representatives of national minorities to join public programming on national elections • Inclusion of subjects on cultural diversity in school curriculum |
| Increased attention to FCNM provisions in public space | <ul style="list-style-type: none"> • The number of new national minority cultural centres • The number of new national minority libraries • The number of new national minority museums • The number of TV and radio stations owned/run by national minorities, • The number of minority newspapers in national minority languages, • Restrictions on distribution of national minority newspapers |

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| | <ul style="list-style-type: none"> • The number of hours in public TV and radio dedicated to national minority programmes, • The number of hours within public programming dedicated to national minorities' own programmes, • The time of the day that programmes about national minorities are broadcast, • The number of national minority articles in prominent spaces in mainstream press, • The number of editorials pertaining to the FCNM or national minority issues • The number of bilingual TV and radio stations, • The number of bilingual newspapers • The number of new entrants of national minority media, • Reference to national minorities in public narratives (books, pamphlets, etc.) • Reference to national minority history in educational material • Reference to national minorities in public campaigns (branding, regional development, etc.) • Number of public signs in national minority languages • Number of bilingual and multilingual signs • Number of public signs indicating in several languages location of national minority heritage sights • Number of public airings of national minority kin-state flags |
| <p style="text-align: center;">Indicator</p> | <p style="text-align: center;">Legislation</p> |
| <p style="text-align: center;">Status of FCNM in the domestic legal system</p> | <ul style="list-style-type: none"> • Assessing the rank – superior or equal in respect of constitutional and statutory laws - of the FCNM within the domestic legal order • Verifying whether in case of non-conformity between the FCNM and domestic law, the FC overrides national legislation, be it antecedent or posterior • Checking whether the State provides for the <i>automatic standing incorporation</i> or the <i>legislative ad hoc incorporation</i> (see <i>Rationale</i> for more details) for incorporating the provisions of the FCNM in the domestic legal system • Verifying whether minority protection in the domestic legal system is included in a comprehensive act or is scattered across various legal instruments |
| <p style="text-align: center;">Scope of application FCNM and definition of minorities</p> | <ul style="list-style-type: none"> • Verifying whether a declaration and/or reservation has been introduced upon the ratification of the FCNM • Checking whether a declaration made with respect to the FCNM has a territorial, personal or other basis • Verifying the basis - language, religion, ethnicity, culture, citizenship, residence, 'long lasting ties' with the territory or other factors – upon which a declaration limiting the personal scope of application of the FCNM has been introduced • Verifying whether there is a difference between the definition of 'national minorities' provided by the state concerned for the application of the FCNM and the definition of minorities existing in the national legislation for other purposes • Establishing which legal source – Constitution, statutory law, other - the state concerned uses as a reference to define a 'national minority' and whether this implies the exclusion of certain groups and, if so, on which grounds • Assessing whether a registration procedure is necessary in order to be officially recognised as a 'national minority' in the country concerned • Checking whether some level of 'substantiation' as to the membership to a 'national minority' is required in order to be officially recognised • Verifying whether a system of redress is foreseen in the national legislation to challenge the non-recognition of a group as a 'national minority' |

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| | <ul style="list-style-type: none"> • Checking whether small groups have to be affiliated with larger groups in order to be recognised as ‘national minorities’ |
| Data collection | <ul style="list-style-type: none"> • Verifying the existence and methodology used for data collection - general nationwide census, specific data collection, ad hoc studies • Checking whether data on minorities are disaggregated on the basis of gender, age, rural/urban environment and/or other criteria • Assessing whether confidentiality and voluntary nature of the statements is ensured • Verifying whether representatives of minorities are involved in the process of data collection, including the training for officials on data collection, and in the design of methods of collection of such data • Checking whether forms and questions pertaining to data collection are also available in the minority language(s) |
| Anti-discrimination legislation | <ul style="list-style-type: none"> • Checking whether a comprehensive anti-discrimination legislation on grounds of belonging to a minority exist within the domestic legal system or is provided in scattered legislative instruments • Checking which grounds other than belonging to a minority, such as ethnicity, race, colour, language, religion or belief, national origin, are included in the anti-discrimination legislation • Checking whether positive actions or special measures for minorities are foreseen in the national legislation • Verifying whether the prohibition of indirect forms of discrimination are foreseen in domestic legislation • Checking whether specific crimes and sanctions are foreseen against acts of discrimination • Verifying whether domestic legislation foresees penalties for racial, ethnic or religious motivated crimes and/or incitement to racial, ethnic or religious hatred • Verifying whether a specific monitoring system on discrimination and on the implementation of the relevant legal provisions is foreseen in addition to the traditional judicial systems • Checking whether a specific mechanism of redress and compensation for cases of discrimination, in addition to the traditional judicial system, is provided for in the domestic legal system • Checking whether the systems of redress provided by law for case of discrimination are not unattainable by ordinary citizens for exceedingly high costs, short deadlines or complex procedures • Verifying whether national legislation defines and prohibits racial/ethnic profiling, i.e. the use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities |
| Linguistic Rights | <ul style="list-style-type: none"> • Checking whether the use of minority language(s) in contacts with administrative authorities is provided in a comprehensive and clear legal framework • Verifying whether the availability of information, advice and language translation in minority language(s) is foreseen to facilitate the access to public service • Determining whether a quota or other numerical limitations (i.e. contingents) are in place for the use of minority language(s) with administrative authorities • Assessing whether attestations, civil documents and certificates can be acquired in the language(s) of minorities • Checking whether a legal provision on the use of the language(s) of minorities (in accordance with the language system) for personal names and/or topographical indications is foreseen, and, if so, whether it is based on a quota or other numerical |

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| | <p>limitations (i.e. contingents)</p> <ul style="list-style-type: none"> • Verifying whether domestic legislation provides for those arrested or detained the right to be informed in the minority language(s) of the reasons of his/her arrest/detention and of the nature and cause of the charges against him/her • Checking whether the national legal system provides for the right to defence in minority language(s), and if so, under which conditions • Assessing whether, and under which conditions, domestic legislation provides for the possibility to conduct judicial proceedings in the minority language(s) |
| Educational Rights | <ul style="list-style-type: none"> • Verifying whether a comprehensive legal framework establishing, <i>inter alia</i>, clear responsibilities among the authorities concerned, is foreseen within the domestic legal system • Determining the number of hours and types of schools - pre-school and kindergarten, primary and secondary schools, Sunday schools/Summer camps, tertiary education – where it is possible to learn the minority language(s) • Determining the number of hours, typology of school disciplines and types of schools where instruction is provided through the medium of the minority language(s) • Checking the geographical extension - country-wide or minority territories - of the provision regarding the learning of the minority language(s) and receiving instruction through the medium of minority languages(s) • Assessing on which basis - expressed desire for it by minorities, evidence need for it, numerical strength that justifies it – the provision of teaching ‘in` and ‘of` minority language(s) is foreseen in the domestic legal system • Checking whether specific measures are foreseen to counteract the absenteeism among children of minorities, in particularly among girls and Roma, Sinti and Travellers • Verifying whether the conditions for individuals belonging to minority groups to establish private minority educational institutions are the same as for the majority • Checking whether private educational institutions with different cultural, religious or linguistic background can obtain equal status as public schools • Assessing whether there is a provision facilitating the establishment of centres for minority language and educational curriculum development and assessment • Checking whether representatives of minorities are involved in the development and implementation of programming related to minority education/policy formulation of curriculum development as it relates to minorities • Assessing whether ‘positive actions’ such as specific financial support for minority schools, are foreseen to encourage private minority educational institutions • Verifying whether public subsidies or tax exemptions for private minority educational institutions are foreseen on equal basis with private educational institutions of members of the majority • Checking whether private minority educational institutions are entitled to seek their own sources of funding or other support such as textbooks and training for teachers - from various domestic and international sources, in particular from kin-states • Assessing whether legal rules provide for the promotion of awareness raising of cultural and/or religious diversity in the national (general compulsory) curriculum for all children belonging to the majority and minority, and if so, whether it is extended to the national territory or limited to the minority territories • Checking whether the use of cultural or religious minority symbols is allowed for teachers and/or pupils, and in which type of schools - pre-school and kindergarten, primary and secondary schools, Sunday schools/Summer camps, tertiary education - Verifying whether specific measures such as reserved places or quota systems are provided to promote vocational education for members of minorities |

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| Freedom of Religion | <ul style="list-style-type: none"> • Checking whether a comprehensive legal framework addressing concerns expressed by religious minorities is provided for in the domestic legal system • Assessing whether the conclusion of agreements between the government and churches and/or religious communities is foreseen in the domestic legislation • Checking whether the appointment/election of the clergy within religious communities is decided by the minority group itself or by the public authorities • Checking what are the competences – types and scope (territorial and/or personal) - of the clergy belonging to religious communities • Verifying whether religious communities can be recognised as national minorities • Checking whether public subsidies or tax exemptions are provided on equal basis among all religious bodies and churches • Verifying whether the use of minority language(s) is allowed in public worship and liturgical ceremonies • Checking whether the national legislation provides for legal protection in case of destruction and/or confiscation of the institutions, sites and properties belonging to religious communities or possessing a religious character |
| Media Rights | <ul style="list-style-type: none"> • Checking whether domestic legislation provides for the allocation of frequencies for TV/Radio programmes - including those available through digital modes of distribution - run by/for minorities • Verifying whether the allocation of frequencies and time slots allotted to minority language programming concern public and/or private media, and is extended country-wide or only to minority territories • Assessing on which basis - expressed desire for it by minorities, evidence need for it, numerical strength that justifies it - frequencies and time slots as well as funding are allocated to minority language programming • Checking whether domestic legislation include provisions encouraging the media either to employ members belonging to national of minorities or to specialise in reporting on minority issues • Determining whether participation of persons belonging to minorities in supervisory boards of public service broadcasts is prescribed by law • Verifying whether access to transfrontier media i.e. originating from abroad is subject to legal restrictions • Checking whether codes of conduct for media professionals regarding the reporting on minority issues, for instance on the use of derogatory or pejorative names and terms and negative stereotypes is provided for in the domestic legal system |
| Effective participation in cultural, social and economic life | <ul style="list-style-type: none"> • Checking whether a specific complaints body providing assistance to members of minorities who have been discriminated against in the labour market is foreseen in the domestic legislation in addition to the traditional judicial system and the trade unions • Verifying whether a specific monitoring-system checking possible discrimination against members of minorities in the labour market is provided for in domestic legislation • Assessing whether national labour law provides for cultural and religious diversity among workers, including members of minorities (e.g. flexible holidays, times for prayer, respect for dietary and clothing requirements) • Determining whether national law imposes residency and/or citizenship requirements to be recruited for a job in the public and/or private sector |

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| | <ul style="list-style-type: none"> • Checking whether domestic law allows for positive action to promote the employment of minorities in the public administration, and whether this is extended to the national territory or is limited to minority territories • Verifying whether state language proficiency requirements are placed on public administration personnel • Checking whether national legislation allows for the use of cultural and/or religious minority symbols in the public administration • Verifying whether domestic law provides for any specific incentives for employers to invest in training and language skills for workers belonging to minorities • Assessing whether, and under which conditions, the national legal system provides for vocational training in the minority language • Checking whether and which conditions, domestic law allows for the use of the minority language for business enterprises in addition to the use of official language • Verifying whether residency requirements are necessary to register and/or run a private business • Checking whether national legislation provides that minority interests are taken into account in the context of privatisation and property restitution processes • Verifying whether the requirements to obtain public housing and/or housing benefits for persons belonging to a national minority are the same as the members of the majority • If a limited number of persons belonging to a national minority is allowed to public housing and/or housing benefits, assessing the conditions for determining this number - fixed by law or defined either by percentage or by absolute figure • Verifying whether domestic legislation takes into account cultural, religious and/or linguistic diversity of patients in the medical sector • Verifying whether citizenship and/or residency requirements are necessary to obtain health services and/or social assistance • Checking whether social members of minorities have access to all social assistance payments on equal footing as members of the majority • Assessing whether the conditions for individuals belonging to minority groups to form cultural associations are the same as for the rest of the population • If public subsidies or tax exemptions are foreseen, checking whether they are provided on equal basis with the cultural associations of members of the majority • Verifying whether domestic legislation encourages cultural associations of minorities by introducing a 'positive action' approach, such as specific financial support for associations • Checking whether national law provides for a right to adopt the name of a cultural association in the minority language(s), and whether such corporate name is recognised and used by public authorities in accordance with given community's language system |
| <p style="text-align: center;">Effective participation in public affairs</p> | <ul style="list-style-type: none"> • Checking whether national legislation provides for active and/or passive voting rights – namely, the right to vote and the right to be elected - independently on the national citizenship and/or residency requirements and at which level (national, regional/provincial, municipal, referenda/petitions) • Verifying whether language proficiency requirements are imposed by law on candidates for parliamentary and/or local elections • Checking whether national law provides for bodies, within appropriate institutions at the national and/or local level, for dialogue between governmental authorities and minority groups • Verifying the authority of these bodies (consultative/advisory power or decision making power), the status (standing body, ad hoc, part of or attached to legislative or |

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| | <p>executive branch, independent), the composition (in particular, whether the body is composed of members of minorities and not only for them), mechanism to choose the members of the body (election by members of minorities, delegation from associations of minorities, appointment by public authorities)</p> <ul style="list-style-type: none"> • Checking whether the use of minority language(s) by elected members of regional/local governmental bodies during the activities related to these bodies is guaranteed by law • Verifying whether the legal requirements to form a political party formed on/by minorities are the same as for any other political party • Checking whether domestic legislation provides for the use of minority language(s) in public service television and radio programmes during election campaigns • Checking whether special representation of minority groups is guaranteed in the legislative process, at which level, on which subjects and how is it arranged (reserved number of seats, quota, qualified majority, dual voting, veto right, exemption from threshold requirements, guarantees against redrawing of administrative boundaries, 'gerrymandering') • Checking whether the participation in public affairs of small groups is conditioned by law to the affiliation into larger groups • Checking whether domestic legislation or customary practice/informal understanding allocates to minorities cabinet positions, seats in the supreme or constitutional court or other high-level organs at the national, regional/provincial or local • Checking whether participation of minorities in public affairs is prescribed as participation in the governance of the State or self-governance over certain local or internal affairs • Verifying whether legal provisions on forms of self-governance arrangements are foreseen on a non-territorial basis (e.g. local and autonomous administration) or territorial basis (e.g. autonomy on a territorial basis including existence of consultative, legislative and executive bodies chosen through free and periodic elections), a combination thereof, the provision of financial, technical or other forms of assistance or self-administration of certain subjects • If self-administration of certain subjects is prescribed, verifying which subjects and functions are exercised by central authorities and which by forms of self-governance • If territorial self-governance arrangements are foreseen, checking which subjects and functions are devolved to the central authorities and which to the local authorities • Checking how self-governance arrangements can be modified (constitutional law or ordinary law; by qualified minority, qualified majority or simple majority) • Verifying whether domestic law provides for a special mechanism, committee or body such as judicial review, courts, national or local commissions, ombudsperson, inter-ethnic boards, for the resolution of grievance about governance issues • Checking whether national law provides for the consultation or other forms of involvement of minorities when considering legislative and administrative reforms that may have an impact on them • Verifying whether domestic legislation guarantees the participation of persons belonging to minorities in the monitoring process of the FCNM, for instance, in drafting State Reports and/or other written communications required by the FCNM |
| Indicator | Judiciary |

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| <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Awareness raising about minority issues and training on the FCNM</p> | <ul style="list-style-type: none"> • Number of trainings/seminars and publications dedicated to inform and sensitize legal practitioners, judges and prosecutors, judicial police and civil servants in judicial administration about minorities and their situation in the respective country • Number of trainings on the FCNM (and other international instruments) organized for legal practitioners, judges and prosecutors, judicial police and civil servants in judicial administration • Number of trainings on national legislation targeting minorities organized for legal practitioners, judges and prosecutors, judicial police and civil servants in judicial administration • Organization of such trainings throughout the country • Quality of the above training activities (duration and language of trainings, who delivered the training) • Production of leaflets, short guides to the FCNM • Translation and circulation amongst the above professional groups of the FCNM, the explanatory report, the state reports, the opinions of the Advisory Committee and the resolutions of the Committee of Ministers • Meetings of the above professional groups with the working group of the Advisory Committee on its country visit • Number of follow-up seminars for this target group to inform about the results of the monitoring process • Newsletters informing about minority issues • Establishment of offices specialized on the dissemination and awareness raising efforts |
| <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Minority representation in legal profession</p> | <ul style="list-style-type: none"> • Legal provisions that provide for a certain representation of persons belonging to national minorities within the judiciary • Collection of data on numbers of persons belonging to national minorities within the judiciary • Action plans to increase the recruitment of persons belonging to national minorities in the judiciary • Training programmes with the aim to increase the recruitment of persons belonging to national minorities in the judiciary • Other incentives to encourage persons belonging to national minorities to apply for a position within the judiciary • Collection of data on the hierarchical level at which persons belonging to national minorities are employed within the judiciary • Disaggregation of data by sex, age and geographical distribution |
| <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Accessibility to the judiciary</p> | <ul style="list-style-type: none"> • Legal provisions concerning the use of a minority language in contacts with judicial authorities • Legal provisions concerning the use of a minority language as language of the process or language in the process • If there are such provisions, number of cases disputed in a minority language or bilingually • Number of translators and interpreters employed at a court • Provision of translation/interpretation free of charge • Number of minority language courses offered to persons working within the judiciary • Number of persons participating in minority language courses • Use of signs in offices and court buildings in minority language • Information on the website of the courts available in minority language • Legal aid provided free of charge |

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| | <ul style="list-style-type: none"> • Number of mobile teams in order to ensure the outreach of legal aid • Measures to alleviate the negative consequences with regard to the access to the judiciary for persons affected by a limited freedom of movement or living in peripheral areas (e.g. establishment court liaison offices where court hearings can be organized, number of such offices, frequency of court hearings) |
| Coordinated efforts in dealing with discriminations or ethnically, religiously or racially motivated incidents | <ul style="list-style-type: none"> • Definition of the concepts of inter-ethnic violence, ethnically motivated incident and the like • Collection of comprehensive data on the status of investigation and prosecution of ethnically based incidents • Drafting of monthly reports about ethnically, religiously or racially motivated incidents by law-enforcement bodies, prosecutors offices, courts • Exchange of such reports among these offices • Establishment of an ombudsperson • Monitoring of implementation of judicial decision related to ethnically, religiously or racially motivated incidents • Training and sensitization of police to react to ethnically, religiously or racially motivated incidents • Recruitment of persons belonging to national minorities into law-enforcement bodies and judicial structures • Campaigns against inter-ethnic violence • Information provided to citizens, in particular persons belonging to national minorities on which remedies exist in case they are confronted with discrimination or inter-ethnic violence or everyday manifestations of intolerance • Media coverage on ethnically, religiously or racially motivated incidents • Acknowledgment of ethnically motivated violence at the top of the state authorities and political forces |
| Direct applicability of the FCNM within the national systems | <ul style="list-style-type: none"> • Theory followed by the Constitution: monism - dualism • Primacy of the FCNM (and other international treaties) over the Constitution • Primacy of international treaties over national laws • Same hierarchical position as national laws • Check by constitutional court |
| Number of cases and fields covered | <ul style="list-style-type: none"> • Number of cases with direct reference to the FCNM • Number of cases with a minority subject • Number of cases with a minority subject resolved to the advantage of a minority claimant • Which fields were covered by cases that made reference to the FCNM • FCNM used by national or European courts in the context of human rights related litigation |
| “Constructive” use of the FCNM | <ul style="list-style-type: none"> • FCNM as source of interpretative inspiration, influence on the definition and interpretation of certain concepts • FCNM as parameter for adjudication • FCNM interpreted as European standard • FCNM used in human rights related litigation |

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| <p>“Disruptive” use of the FCNM</p> | <ul style="list-style-type: none"> • Used as justification for reducing minority rights • Used as argument for restrictive interpretations • Used to show that no common European standard exists in a certain field of minority rights • Used in human rights related litigation |
| <p>Implementation of court rulings</p> | <ul style="list-style-type: none"> • Has the judgment influenced the political discourse? • Has there been any public debate about the ruling? • Has it been reported on the media? • Has it been discussed in the government? • Has it been discussed in the parliament? • Has any concrete governmental action or programme resulted from these discussions? • Have more funds been allocated to address the problem? • Has there been any legislative change? |

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