TREATISES AND DOCUMENTS JOURNAL OF ETHNIC STUDIES
RAZPRAVE IN GRADIVO REVIJA ZA NARODNOSTNA VPRAŠANJA
79 / 2017, p. 71–96

Lucius Caflisch

Minority Issues: How The European Court of Human Rights Has Dealt with Roma and Travellers' Claims

This paper retraces the origins and the development of international minority protection by the League of Nations and the United Nations. It describes local and regional mechanisms of protection, such as that established by the European Human Rights Convention. It also shows how the European Court of Human Rights has protected Roma and Travellers in different areas, such as the prohibition of torture, the treatment of asylum seekers and beggars, the protection of property, the right to education and the exercise of political rights. Minority-specific treaties and mechanisms may improve the situation of minority groups, while human rights mechanisms will protect the rights of their individual members.

Keywords: freedom of association, right to education, European Convention on Human Rights, Helsinki Conference, Final Act, League of Nations, right to life, protection of minorities, political rights.

Manjšinska vprašanja: kako je Evropsko sodišče za človekove pravice obravnavalo nekatere zahteve Romov in Popotnikov

Članek obravnava nastanek in razvoj mednarodne zaščite manjšin v povezavi z Društvom narodov in Združenimi narodi. Opisuje lokalne in regionalne mehanizme zaščite, kakršen je npr. mehanizem v okviru Evropske konvencije za človekove pravice. Dodaja tudi, da je Evropsko sodišče za človekove pravice Rome in Popotnike zaščitilo v številnih pogledih, tako glede prepovedi mučenja, obravnave prosilcev za azil in beračev, kot glede zaščite lastnine, pravice do izobraževanja in uresničevanja političnih pravic. Specifične manjšinske pogodbe in mehanizmi bodo morda izboljšali položaj manjšinskih skupnosti, mehanizmi človekovih pravic pa bodo zaščitili pravice njihovih individualnih pripadnikov.

Ključne besede: *pravica do združevanja, pravica do izobraževanja, Evropska konvencija za človekove pravice, Helsinška konferenca, Društvo narodov, pravica do življenja, zaščita manjšin, politične pravice.*

Correspondence address: Lucius Caflisch, l. route de la Dôle, C.P. 23, CH-1276 Gingins, Switzerland, e-mail: caflisch.lda@bluewin.ch.

ISSN 0354-0286 Print/ISSN 1854-5181 Online

1. Introduction

The present contribution[1] is divided into three parts. The first deals with the way in which minority issues have been approached: by concluding minority treaties, on the one hand, and by eliminating discrimination between the individuals belonging to the majority of the population and those forming part of a minority (Chapter two). The next part shows, by using a series of examples, how the European Court of Human Rights (ECtHR or Strasbourg Court) has dealt with applications by Roma and Travellers (Chapter three). In the last part some conclusions are drawn (Chapter four).

2. The Evolution of International Minority Protection

2.1 Definitional Problems

What is a minority? This is a difficult question. The answer given by Francesco Capotorti (1977, 96, 1991, 98)[2] in the framework of Article 27 of the Second UN Covenant on Civil and Political Rights (ICCPR) is helpful:

> A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their cultures, traditions, religion or language (Council of Europe 2007, 33).

This definition, though lengthy, may appear incomplete. Are there minorities other than ethnic, cultural, religious or linguistic ones? Should their members enjoy the same kind and degree of protection as the majority of the population? What precisely is meant by national minorities? Do groups such as the Roma and the Travellers belong to a single or several of these categories, or do they exhibit special features such as a non-sedentary character? A further issue is whether, to achieve minority status, members of a group must be nationals of the State concerned and whether a group of persons can aspire to minority status if their presence in that State is of recent origin (Capotorti 1997, 411, Henrard 2013, 10). A further – and unanswered – question is that of the number of individuals needed to qualify a group as a minority. Finally, what if a State hosts several minorities: can and should they all claim the same status? And what if the sum of a State's minorities forms a majority of that State's population?

2.2 Minority Status and Regimes

2.2.1 League of Nations

While treaty rules endeavoured, from the 17th century onward, to protect religious minorities, conventional protection systems burgeoned in the wake of the First World War and on account of the territorial changes that resulted from it. This was the case in relation to Poland, Czechoslovakia, Yugoslavia, Romania and Greece (Capotorti 1997, 411), all of which concluded minority treaties with the Principal Allied and Associated Powers. In their peace treaties, Austria, Bulgaria, Hungary and Turkey assumed similar obligations, while the Polish minority in the City of Danzig was protected by a treaty between Poland and that City,[3] the Swedish-speaking population of the Aland Island by an agreement between Sweden and Finland;[4] and the status of the Memel Territory was governed by a 1924 convention between the Allied and Associated Powers and Lithuania.[5] Several declarations on minority protection were made by States when joining the League of Nations and acknowledged by the Council of the League (Capotorti 1997, 412).

These instruments made the following points: (i) all inhabitants of the State were entitled to see their life and liberty protected, without discrimination, and to espouse, in private or in public, any creed, religion or belief; (ii) all of the State's nationals were to be equal before the law and to enjoy equal access to public employment, professions and industries; (iii) there was to be freedom to use any language in private relations, commerce, religious matters, the press or public relations or meetings. Moreover, (iv) the right to use minority languages in court was guaranteed, as it was in religious, charitable, social and educational minority institutions; and (v) so was the right to receive basic instruction in such a language (Capotorti 1997, 412). This summary description suggests that, to preserve minorities, they and their members were granted some privileges under international law. Accordingly they enjoyed rights the majority did not have.

The regimes thus established were guaranteed on the domestic and international levels: on the former by making sure that they could not be cancelled by ordinary laws, on the latter by making changes dependent on majority decisions taken by the League of Nations Council. Violations could be brought to the Council's attention by a member State for appropriate action to be taken. If a dispute was to arise between a member State and another member State bound by a minority regime, it could be taken by either State to the Permanent Court of International Justice.

Individuals or associations could also petition the League Council on behalf of minority groups. Petitions were to be examined by committees of three Council members. By 1923, the conditions for the admissibility of such petitions were determined. If a petition was considered admissible, this could trigger negotiations between the competent committee and the State concerned or

submission of the matter to the Council, which could make recommendations of settlement. Another important actor in this field was the League's Minority Section whose role it was to monitor the respect of rules on minorities by collecting information and despatching missions to minority areas (Capotorti 1997, 412–413).

2.2.2 United Nations

At the end of the Second World War, many conventional minority regimes disappeared[6] and were replaced by the then modern idea of emphasising the protection of the human rights of individuals set forth in Article 1.3 of the UN Charter and in Article 2.1 of the 1948 Universal Declaration of Human Rights (UDHR), more specifically the idea that equality of treatment should be extended to all, including the members of ethnic, religious and linguistic minorities. This idea was echoed, in 1966, by the previously cited Article 27 of the UN Covenant on Civil and Political Rights, the main features of which are: (i) that, although it has cultural and historical connotations, the term ethnic ought to be considered as covering national and racial origins; (ii) that the rights in question belong and may be claimed, not by the groups as such, but by the individuals composing them; and (iii) that the States concerned will not get away with simply not curtailing minorities' freedoms in cultural, linguistic and religious matters, but are duty-bound to take concrete measures to promote these freedoms by actively intervening at least in situations where the groups' identity cannot survive without them. There are no rules, however, on the grant of political or administrative autonomy; hence States are free to deal with these matters as they wish but within the bounds of the principle of self-determination (Capotorti 1997, 414–416).[7]

Article 27 of the ICCPR lacks precision, however, as the rights of individual members of minorities are not sufficiently specified. This matter could or should be addressed by a declaration to be made by the UN General Assembly and indicating the measures needed to ensure full respect of the rule. To fill the gap, there are now General Assembly Resolution 47/135 of 3 February 1993 and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities annexed to it. The latter elaborates on some of the rights in question but fails to describe the conditions in which individuals can be considered as belonging to this or that minority. There is also the UN Human Rights Committee's General Comment No. 23 on Article 27 of the ICCPR. That text focusses, however, on the conditions to be met by minority members who complain that their human rights have been infringed: they need not be nationals of their State of residence, nor do they have to be members of traditional minority groups.

2.2.3 Regional and Local Regimes

The World's main regional mechanisms[8] know of no provisions similar to Article 27 of the ICCPR, although an attempt was made, in a European context, to devise such rules (Capotorti 1997, 417). Other texts and instruments, elaborated by the Council of Europe, must be mentioned, however: the European Charter for Regional or Minority Languages of 5 November 1992 and the Framework Convention for the Protection of National Minorities of 1 February 1995. The latter establishes a catalogue of principles and rights on national minorities and their members, as well as an implementation mechanism providing for States' reports to be studied by a body of experts – the Advisory Committee – and, subsequently, by the Committee of Ministers. According to its Article 23, that Convention is to be applied in conformity with the provisions of the European Convention on Human Rights (ECHR).

A further text deserving mention is Additional Protocol No. 12 to the ECHR, which flatly prohibits discrimination in general – and not only discrimination practiced in respect of the rights protected by that Convention. This relatively recent Protocol allows the Strasbourg Court to consider the substance of complaints of discrimination because of membership in a minority group.

There is, finally, the Helsinki Final Act of the CSCE (Conference for Security and Cooperation in Europe) of 1 August 1975.[9] Though it was mainly devoted to political and security issues, human rights and humanitarian problems were on the Conference's agenda as well. The CSCE consisted, in 1975, of 35 participating States, including the United States and Canada.[10] This number grew to 56 in 2008, comprising the five Central Asian States. Its attributions were divided into four areas or baskets; the third basket included democratic governance, election monitoring, democratic policing, the rule of law, human rights and humanitarian issues. The last-mentioned issues were to be approached from three angles: politico-security questions; substantive commitments on human and minority rights; and monitoring of the human dimension issues.

Regarding the first angle, the 1975 Helsinki Final Act was completed by the Decalogue – ten principles to ensure the respect of everyone's human rights, including those of persons belonging to minorities. The inclusion of human rights among these principles was a major achievement (Drzewicki 2009, 112), as most references to human rights had hitherto been considered interventions into domestic affairs. The second item of the third basket consisted of a series of human dimension commitments, including provisions on national minorities and regional cultures. There were further meetings of the Conference between 1983 and 1991, the Madrid Follow-up Meeting (1983) and the Copenhagen Conference (1990), followed by the Geneva Meeting of Experts (1991), which produced more than 70 operative paragraphs forming, according to K. Drzewicki, the most complete set of existing rules on national minorities –

although they consisted of political undertakings rather than legal obligations (Drzewicki 2009, 114–115).

Many meetings followed to confirm these commitments or elements of implementation and, sometimes, to elaborate new or more detailed guidelines for action, witness the rules regarding Roma and Sinti.[11] There also emerged the idea of setting up a new body, the Office of the High Commissioner on National Minorities (HCNM). This idea became a reality in 1992. The new body produced a series of standards, recommendations and guidelines on the treatment of national minorities. It thus contributed to filling the post-war "normative deficit" (Drzewicki 2009, 115) regarding the rights of members of national minorities and also spurred developments in other international fora, such as the conclusion of the 1995 Framework Convention on National Minorities, which turns the OSCE political commitments in this area into legal ones (Drzewicki 2009, 116).

The crowning achievements, however, seem to be the monitoring mechanisms for, on the one hand, verifying compliance with human dimension commitments, and, on the other hand, for specifically monitoring national minority issues, such as the Office of the HCNM.

Regarding compliance with the human dimension provisions, the Hu-man Dimension Mechanism set up in 1989 and perfected in 1991 must be mentioned. As far as the Office of the HCNM is concerned, it was established in 1992 (Drzewicki 2009, 119–121). The High Commissioner is required to provide "early warning" and to take "early action" if, in his/her view, tensions could "develop into a conflict within the OSCE area, affecting peace, stability or relations between participating States, requiring the attention of and action by the Ministerial Council or the Permanent Council" (Drzewicki 2009, 121). Thus, the HCNM's mission is to identify and, if possible, defuse tensions and to alert the OSCE wherever these tensions cannot be de-escalated with the means at the HCNM's disposal. The High Commissioner is independent from both the States involved and the OSCE's Permanent Council, and uses tools of "quiet diplomacy": negotiations, confidentiality, recommendations and reports to the Chairman-in-Office (Drzewicki 2009, 122). He/she may be requested, however, to provide information on his/her activities at implementation meetings on Human Dimension issues. The High Commissioner is entitled to deal with individual violations of OSCE commitments; his/her actions will often take the form of recommendations addressed to a participating State to amend its minority policy and legislation.

This is a sign of gradual change, in the HCNM's mandate, from the charge of a firefighter to something more of a medium-term device. Yet another sign is the "permeation effect" (Drzewicki 2009, 128), *i.e.* increased consultation of the practice of the Advisory Committee of the 1995 Framework Convention, and the reverse as well. This enhances the synergy between the HCNM and the Committee, which generates increased preventive effects.

There are, finally, a number of bilateral treaties containing provisions relevant for minority protection. Labelled agreements on cooperation, friendship and good neighbourliness, they have been concluded by States such as Germany, Romania and Poland, in particular. The Treaty on Good Neighbourly Relations and Friendly Cooperation between Germany and Poland of 17 June 1991 may be cited as an example. These agreements, though useful for the international protection of minorities, present potential drawbacks and dangers in that their provisions on minority rights tend to concern sensitive issues and, hence, may have a de-stabilising effect on the relations between the States Parties. For that reason, the multilateral approach should remain dominant (Henrard 2013, 63–66).

2.3 Conclusion

The preceding considerations have identified two methods to improve the fate of minorities and their members. The first consists in elaborating conventional regimes of protection, the second in securing for minority individuals the full scale of human rights granted to the rest of the population, without any discrimination.[12]

At first glance, the two methods seem incompatible. This is not, however, the case. The first method mainly aims at protecting the minority group as such by establishing a regime of positive discrimination in certain areas. The other seeks to secure, for the individual members of the group, the full range of human rights and freedoms extended to others; there shall be no discrimination between individuals of the majority and of the minority. These two approaches are compatible, as they can be used in a complementary way: by eliminating discrimination between members of a given human community, on the one hand, and by extending special protection to minority groups, on the other.[13] Chapter three of this contribution will now explore the first approach, using as an illustration the protection of Roma and Travellers' human rights in Europe.

3. Roma and Travellers: An Anthology of Cases

3.1 Human Rights Standards: The Prohibition of Discrimination

As has just been pointed out, a basic way for improving the situation of minorities and their members is to make sure that their human rights are protected, on the national and international levels, in the same way and to the same extent as those of the majority of the population. The main strategy, in this context, is to seek to eliminate any difference of treatment between the two categories of individuals, except where such a difference can be justified objectively, *i.e.* by the

presence of certain circumstances, for example the difference, made in public, private and criminal law, between children and adults: children may be treated unlike adults and vice-versa. It is thus essential that the authorities, legislators and courts of law, in particular, vest minority members with the entire range of recognised human rights and freedoms, avoiding any unjustified distinction, and give them full access to the remedies available. And, as the attainment of this postulate cannot be totally guaranteed in any country, there should be control mechanisms available on the universal and/or regional levels.

This postulate is met on the European continent. On the **normative** level, Articles 2 to 18 of the ECHR are relevant, in particular Article 14 which prohibits discrimination on grounds of sex, race, colour, language, religion, opinion, national or social origin, **association with a national minority**, property, birth or other status, when one of the rights secured by the Convention has been allegedly breached.[14] There is now Article 12 of Additional Protocol No. 12 of 4 November 2000 as well,[15] which prohibits discrimination **on any grounds** and not only in situations where rights guaranteed by the Convention or its Protocols are at stake.

On the **procedural** level, Article 34 of the ECHR offers the tool of individual applications, which allows any individual alleging unlawful treatment by the authorities of a State Party to submit his/her grievance to the ECtHR, whose judgments are final and binding.[16]

The system outlined above basically improves the situation of individual members of minority groups wherever their equality with the majority population is an issue. This seems to be the case for the members of gypsy communities and, in particular, for Roma and Travellers, as will become evident when perusing the case-law of the Strasbourg Court.

3.2 Case-law Relating to Roma and Travellers[17]

3.2.1 Right to Life and Prohibition of Torture and Inhuman or Degrading Treatment

This is one of the main themes in the Court's case-law on Roma and Travellers, and Sečić v. Croatia is one of the important cases in that area. The applicant, who was of Roma origin, had been beaten up by two unknown individuals. Soon afterwards, the police arrived on the scene but could not find the attackers. Nothing further was done by the Croatian authorities to identify, arrest and punish the aggressors – as still seems to be the sad reality in many situations involving Roma or Travellers. The ECtHR found a violation of the procedural aspect of Article 3 of the Convention (Prohibition of torture), *i.e.* in the fact that the national authorities had failed to identify, arrest and punish the perpetrators, and a breach of the prohibition of discrimination of Article 14 considered in conjunction with Article 3. The police did suspect that the aggressors belonged

to a group of skinheads moved by an extremist and racist ideology; they were thus aware that the aggression had a racist background and should not have allowed the investigation to drag on for more than seven years without any serious steps taken to identify and prosecute the individuals concerned.

Angelova and Iliev v. Bulgaria falls into the same category. The applicants, mother and son, had complained about the racially-motivated killing of their son, respectively brother, by a gang of teenagers and the failure of the Bulgarian authorities to investigate the crime and to punish its authors, thereby violating their duty to react to racially-motivated crimes. In so doing, the Court noted the widespread prejudice and violence against Roma during the period in question and stressed the necessity to combat racial violence and protect Roma from attacks. It found that the Bulgarian authorities had neglected to draw the necessary distinction between the present case and other, not racially motivated offences. This led it to conclude that there had been a violation of Article 2 and a breach of that provision read in conjunction with Article 14.

Another case to be mentioned under this sub-heading is that of Škorjanec v. Croatia. The applicant complained that two men had heaped racial abuse on her partner because of his Roma origin. The men then had attacked him and her. The assailants were later prosecuted and convicted on charges including a hate crime against her partner but not against herself, as she was not of Roma origin. The applicant also complained of the lack of an effective procedural response to a racially motivated act of violence directed against her.

The ECtHR found that there had been a breach of Article 3 of the Convention in its procedural aspect, combined with Article 14, on account of the Croatian authorities' refusal to investigate the applicant's criminal complaint. In so doing – and this is the special feature of the case –, it pointed out that a person may be the victim of a hate crime not only because she herself exhibits a certain characteristic, but also when she is being attacked because of her actual or presumed association with a person who has that characteristic. This extension of the Convention's area of protection appears justified.

The recent case of Randelović and Others v. Montenegro related to a complaint by one of the applicants that the Montenegrin authorities had failed to undertake a prompt and effective inquiry into the disappearance of the applicant's family members, a group of Roma who had, on the Montenegrin coasts, boarded a boat headed for Italy. The boat sank in August 1999. According to the Court, the authorities of Montenegro had breached Article 2 (Right to life) of the Convention in its procedural aspect: the criminal proceedings had lasted for more than 17 years after the impugned event and ten years after the issuance of a new indictment in 2006. The Court stressed that the passage of time inevitably affected the amount and quality of the evidence available and that the appearance of a lack of diligence on the part of the authorities cast doubt on the latters' good faith. Accordingly the delays in question were incompatible with the State's obligations under the procedural angle of Article 2.

Other, similar cases – reluctance on the part of the national authorities to investigate and prosecute the authors of crimes of violence or abuse against members of minorities – may be mentioned.[18] Their characteristics were: (i) that the authors of the crimes were individuals; (ii) that their crimes were racially motivated; and (iii) that the domestic authorities, closing their eyes, did little to sanction them. This seems to suggest that while crimes must in general be punished, this is not so for hate crimes. In other words, there was a sort of passive complicity between the domestic authorities and the authors of the crimes.

3.2.2 Attacks on Roma Dwellings

The case of Moldovan and Others v. Romania (No. 2) involved three Roma men who had been aggressed by a crowd of non-Roma villagers, with the apparent collusion of the local police; one of them was burnt alive while the two others were beaten to death. Homes were destroyed, some of them completely, and the applicants were then forced to move to crowded and unsuitable quarters (cellars, stables, hen-houses).

The main obstacle to the examination of these complaints by the Strasbourg Court was the fact that the events in question had occurred before Romania had ratified the ECHR and, thereby, accepted the Court's jurisdiction. The Court, however, found that there were complaints about applicants' subsequent living conditions. It also noted that the ethnic origin of the victims had been a decisive factor for the excessive length of the domestic proceedings. This enabled the ECtHR to find violations of Articles 3 (Prohibition of torture), 8 (Respect for private and family life and home), 6.1 (Fair trial) and 14 (Prohibition of discrimination) read together with Articles 6.1 and 8.[19]

Gergely v. Romania and Kalanyos and Others v. Romania seem to be routine instances of the burning of Roma houses by villagers and of the failure of domestic authorities to prevent the attacks and to conduct a proper investigation, thus depriving the applicants of the possibility of bringing civil actions to establish responsibility and collect damages. Their common characteristic was that the Romanian Government recognised the infringement of Articles 3, 6, 8, 13 (Right to an effective remedy) and 14, undertook to compensate each applicant and agreed to take a series of general measures better to integrate the Roma into the population-at-large.

The case of Bagdonavicius and Others v. Russia arose out of the demolition of Roma houses and the eviction of their occupants. The latter argued, before the ECtHR, that these measures were in breach of Article 8 of the Convention and of Article 1 of Additional Protocol No. 1 (Protection of property); they further complained that the interviews some of them had with the police prevented them from exercising their right of individual application (Article 34 of the ECHR).

The Court found that there had indeed been a breach of Article 8 in that the applicants did not, in the proceedings related to the demolition of their houses, benefit from an examination of the proportionality of the interference; nor did the authorities offer them genuine consultations on re-housing. It rejected the grievance based on Article 1 of Additional Protocol No. 1, however, as it found that the applicants' property interests were not sufficiently weighty to constitute a substantive interest within the meaning of that term. It also rejected the grievance relating to Article 34 of the Convention. These conclusions are neither particularly surprising nor preoccupying. What appears strange is that it took the Court a full ten years to dispose of the case.

3.2.3 Police Brutality and Death in Police Custody

Nachova and Others v. Bulgaria, decided by the Court's Grand Chamber, is a leading case in the field examined by the present study.[20] It arose out of the killing by military police, without there being any pressing need, of two of the applicants' relatives. The two victims were of Roma origin. They had deserted from the Army and were killed on their flight by a policeman. The applicants claimed that prejudice against Roma people was at the root of events. The Grand Chamber ruled that there had indeed been a violation of the right to life (Article 2) both because of the deaths caused by a policeman as a result of over-permissive legislation and because of the lack of an effective investigation. But the Chamber added, prudently, that there was insufficient evidence for a racially motivated killing; it did, however, conclude that there had been a violation under Article 14 (Prohibition of discrimination) combined with a breach of Article 2 in its procedural aspect (lack of a proper investigation).

Stoica v. Romania relates to yet another occurrence of police brutality. In a clash between the police and a group of Roma at the entrance to a bar, the applicant, a fourteen-year old Roma boy of Romanian nationality, was beat up by a policeman despite a warning that he had recently undergone head surgery. The applicant complained that he had been mistreated by the police and that the decision not to prosecute the policeman was due to racial prejudice.

The Court concluded that there had been both a substantive and a procedural violation of Article 3 (Prohibition of torture) of the ECHR. It also held that there had been a breach of Article 14 of the Convention, read together with Article 3, as neither the prosecutor in charge nor the Romanian Government could show that the incident or its consequences were not racially motivated, the evidence pointing in the opposite direction. That may well be; but the case is special in that the Court seems to have asked the Government to prove the absence of racial bias (Paragraph 124). This is curious since it would seem that, as a matter of principle, it was up to the applicantto prove such bias.

The same issue arose in Anguelova v. Bulgaria. The applicant alleged that her son, aged seventeen, had been arrested and placed in custody for attempted theft. She complained that he died after ill-treatment by the police, arguing that the authorities had failed to provide adequate medical treatment, that no effective investigation had been undertaken, that her son's detention was unlawful, that there had been no effective remedy, and that there had been discrimination on account of her son's Roma origin.

According to the ECtHR, Article 2 had been breached as a result of the death of the applicant's son, of the authorities' failure to provide adequate medical care and of their duty to carry out an effective investigation. The Court also found violations of Articles 5 (Right to liberty and security) and 13 (Right to an effective remedy). It did not, however, see any breach of Article 14: while the arguments regarding bias on the part of the authorities were serious, the Court felt unable to conclude that there was proof of racial bias beyond reasonable doubt (Judgment, Paragraph 168). This seems to be the correct approach to the issue of the burden of proof in matters of discrimination, despite what the ECtHR asserted later on in the Stoica case. But it is clear that the correct way of establishing bias is also the harder one, for the applicant may find it difficult to collect the necessary evidence.

Ognyanova and Choban v. Bulgaria concerned a young man of Roma origin who was suspected of having participated in numerous thefts and burglaries and had been taken into custody. While being interviewed, he fell from a third-floor window of the police station. He was taken to hospital and died the next day. The applicants, his *de facto* wife and his mother, contended that the young man had died because of ill-treatment while in custody – did he jump out of the window or was he pushed? – and that there had been no effective investigation into the circumstances of his death. They also argued that the events in question were the result of a discriminatory attitude towards Roma.

The Strasbourg Court saw a violation of Article 2 in the fact that the Government had not fully accounted for the young man's injuries and death, and also in the absence of an effective investigation. It further held that there had been breaches of Articles 3 and 5, and of Article 13. There had been no discrimination, according to the Court, as there were no concrete indications thereof in the case-file. The Court may well have been right on this point but one does wonder how and why the individual fell from the third-floor window of the police station.

Adam v. Slovakia concerned a complaint by a young Roma who had been slapped in the face when being interrogated by the police about a mugging. A further complaint was that the investigation into that incident was insufficient. For the Court, there was no violation of Article 3. It was plausible, as argued by the respondent State, that the applicant's injury – a swollen cheek – could have resulted from the applicant's resistance to arrest. The ECtHR did, however, find

a breach of the procedural limb of that Article: the authorities seemed to have shifted the burden of proof in the matter to the applicant and to have neglected various measures (questioning of witnesses, confrontation of the applicant with his interrogators, interrogation of the doctor who had treated him). Thus, the respondent State's authorities had not done what could have been reasonably expected from them, bearing in mind the sensitive situation of the Roma in Slovakia.

3.2.4 Death Resulting from Inadequate Care

A recent case dealt with by the Court's Grand Chamber is that of Center of Legal Resources on Behalf of Valentin Câmpeanu v. Romania. Câmpeanu, a young HIV-infected man of Roma origin suffering from a severe mental handicap, had been placed in a psychiatric hospital which, however, did not take proper care of him and was not equipped to do so. The patient died and his case was taken to the Strasbourg Court by a non-governmental organisation. To be admissible, applications must normally be made by the victims of alleged violations or their families rather than by entities acting on their behalf, except where it is the entity itself which is the victim of the violations complained of.[21] In the exceptional circumstances of the present case, the application was, however, found admissible by the Court because Câmpeanu was incapable of acting for himself (Judgment, Paragraph 108), because the respondent State had not questioned the Centre's activity on Câmpeanu's behalf on the domestic level (Paragraphs 109 to 110) and because Câmpeanu had no next of kin who could have acted (Paragraph 111).

Having thus recognised the admissibility of the application, the Grand Chamber found breaches of Article 2 (Right to life) in both its substantive and procedural (no effective investigation) aspects, and of Article 13 (Right to an effective remedy) because there were no opportunities for complaining under Romanian law. It did not, however, see any violation of Article 14 (Prohibition of discrimination): the young man's demise was death by neglect rather than by hate-inspired inaction.

3.2.5 Forced Sterilisation

The forced sterilisation cases, shrouded in lies and deceit, form a particularly dark chapter among the cases examined in this contribution.

V.C. v. Slovakia is one of them. After the birth of her second child, the applicant, a Slovak woman of Roma origin, was sterilised without her full and informed consent, and after having been told that if she were to have a third child, she or the child would die. Upon her sterilisation, she was ostracised by the Roma community, and her induced infertility allegedly was a reason for the separation from her husband. The Court found the sterilisation to be in violation

of Article 8 (Right to respect for private and family life). One will note that in this case, the behaviour of the Roma community was a factor contributing to the applicant's sufferings. Moreover, there always is, in cases such as the present one, a pressing suspicion that the sterilisations carried out are racially motivated.

N.B. v. Slovakia is another one of these unfortunate cases. The applicant, a Roma woman, contended that she had been sterilised in a public hospital without her full and informed consent. The Court concluded that her sterilisation violated both Articles 3 (Prohibition of torture) and 8, but also found that the investigation into the sterilisation had not been inadequate.

3.2.6 Treatment of Asylum Seekers and Expulsion

The case of V. M. v. Belgium related to the admission to Belgium of a Serb family of Roma origin. Its object was a Belgian expulsion order by which the family was deprived of all means of subsistence and forced to return to where it had come from. Subsequently the family's handicapped daughter passed away.

The ECtHR found a breach of Article 3 (Prohibition of torture), mainly due to the fact that the Belgian authorities had neglected to consider the vulnerability of the applicants and their two small children, who were deprived of the most basic means of existence. It also concluded that there was a violation of Article 13 (Right to an effective remedy), but was unable to find a breach of Article 2 (Right to life) because it could not be established that the handicapped child died as a consequence of the family's situation in Belgium.

Čonka v. Belgium was about the collective expulsion of a Slovak Roma family. The applicants contended that they had fled their country on account of racist aggressions. They were arrested at a meeting with the Belgian authorities which had incited them to come and fill out a form explaining their request for asylum.

The Court held that Belgium had violated Articles 5 (Right to liberty and security) and 13 of the Convention, but the main point made by it was that there had been a breach of Article 4 of Additional Protocol No. 4 of 16 September 1963, which prohibits the collective expulsion of aliens.

3.2.7 Way of Life, Forced Evictions, Alternative Accommodation

This matter is one in which the Strasbourg Court had, for some time, been hesitant to find breaches of the ECHR. In Buckley v. United Kingdom, the applicant had complained about being prevented from living, with her family, in a caravan on her own land and also from leading a travellers' life. The Court detected no violation of Article 8 (Right to respect for private and family life) in conjunction with Article 14 (Prohibition of discrimination); the British authorities had given

sufficient reasons for justifying their decisions, namely, that the latter had been taken as measures to promote highway safety, to preserve the environment, and to protect public health.

Chapman and Others v. United Kingdom related to another complaint about steps taken to enforce measures against the applicants' occupation of their own land by caravans. For similar reasons, the Court refused to find violations of Article 8 and of that provision in combination with Article 14.

The case of Connors v. United Kingdom concerned the eviction of the applicant and his family from a camping site on which they had been living for thirteen years. The eviction was justified by alleging that the applicants had misbehaved and caused considerable nuisance at the site. According to the Strasbourg Court, the applicant's eviction amounted to a violation of Article 8 of the ECHR, as no sufficient explanation for the measure taken was being offered. In so holding, it commented that gypsy communities were particularly vulnerable and that special attention had to be paid to their needs and lifestyle.

The case of Winterstein v. France pertained to the eviction of a number of traveller families who had been living in the same site for many years. The French courts issued evacuation orders contained a menace of penalties for non-compliance. These orders were not enforced, but under the threat of sanctions many families moved out all the same. Some of them but not all were offered social housing. The applicants complained, *inter alia*, that the evacuation orders were in breach of Article 8 of the Convention. According to the ECtHR, there was indeed a violation of that Article: the national authorities – despite the lack of urgency and the absence of nuisances, and regardless of the lengthy period for which the applicants had remained on the site, the municipal authorities' toleration of that situation, the right to housing, and Articles 3 (Prohibition of torture) and 8 of the ECH – had decided to act. They had disregarded the fact that the applicants belonged to a vulnerable minority and that respect had to be paid to their needs and their way of life when it became necessary to end unlawful occupations of land and to devise alternative solutions.

The case of Achim v. Romania concerned the temporary placement of the applicants' seven children due to the fact that the parents, Romanian Roma, had neglected their parental duties. Invoking Article 8 of the Convention, the applicants argued that the measure was unjustified and that the domestic Court of Appeal should not have dismissed their request for the return of the children. The parents' application was rejected by the ECHR which found that the children's placement was decided in their interest and that the authorities had endeavoured to balance that interest with the rights of applicants. The decisions of the domestic courts had been based not only on the parents' difficult material situation but also on their neglect of the children's state of health and of their educational and social development. The authorities had adopted a constructive attitude, advising the parents on how they could improve their financial situation

and parental skills; and they had taken the action necessary to facilitate the children's return to their parents as soon as the later would adopt a cooperative attitude and improve their situation.

In Barnea and Caldararu v. Italy the issue was the removal of a 28-month old baby girl from her Romanian family who had moved to Italy in 2007 and settled in a Rome camp. This measure was to last for seven years; its long-term objective was the placement of the child in a foster family with a view to adoption. In 2009 the family complained about the girl's removal and her placement, the failure of the social services to establish a programme for the gradual return of the child to her family, her placement in a foster family and the reduction of meetings with her. The Court ruled that there had been a violation of Article 8 of the Convention because the reasons invoked by Italian authorities for refusing to return the child to her parents had nothing very exceptional; in addition, the said authorities had not complied with a court decision providing for the girl's return to family, and her return had been prevented by the authorities' inertia in setting up a programme for reuniting the family.

3.2.8 Begging Activities

The begging activities of members of Roma communities – foreign or domestic – are a preoccupation of some segments of European society. In the Swiss Canton of Geneva this preoccupation led to the adoption of a blanket prohibition on begging,[22] an activity exercised chiefly by foreign families and groups – Roma and Travellers – spending the more clement time of the year in Geneva. Their presence explains why the new legislation, while applicable to all beggars, essentially affects Roma and Travellers. The case of Lăcătuş v. Switzerland,[23] which bears on the issue, is still pending before the Strasbourg Court, and the applicant, who was fined for begging, bases her complaint on alleged breaches of Articles 8 (Right to respect for private and family life), 10 (Freedom of expression)[24] and 14 (Prohibition of discrimination) of the ECHR.

3.2.9 Protection of Property

An interesting case – Muñas Días v. Spain – arose in connexion with Article 1 of Additional Protocol No. 1 to the Convention,[25] which protects private property. The case concerned two Spanish nationals of the Roma community who had married in 1971 according to the rites of that community. After the death of the husband in 2002, his widow asked for a survivor's pension. Her request was denied by the Spanish authorities because in their view the applicant's marriage had no civil effect in their country. The Court rejected the respondent State's argument by pointing out that that State had supplied the applicant and her family with health care coverage and had collected social security contributions from her husband for more than nineteen years. To refuse to recognise her

marriage now, when she claimed a survivor's pension, amounted to a violation of Article 1 of Additional Protocol No. 1 and of that provision read together with Article 14 (Prohibition of discrimination). One may have doubts about the Court's verdict, however. While it is undoubtedly true that the respondent State's conduct had been contradictory – recognising the applicant's marriage when claiming social security payments but refusing to do so when it came to serving a survivor's pension –, it is less evident why a State whose laws prescribe civil marriage should have to recognise particular marriage rites even after a long period of time. What remains, of course, is that to demand the payment of contributions and to refuse subsequently to pay a pension is an act of bad faith.

3.2.10 Right to Education

Article 2 of Additional Protocol No. 1 prescribes that no one shall be denied the right to education and teaching, and that "the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions" (Protocol No. 1, Art. 2).

The case of D. H. and Others v. Czech Republic examined by the Court's Grand Chamber involved 18 Czech Roma children who were placed in schools for children with special needs, including those with a mental or social handicap – a thoroughly racist measure as it suggests that all Roma children are mentally retarded or social misfits. The Grand Chamber found that the impugned measure had a discriminatory effect on Roma children and breached Article 2 of Additional Protocol No. 1 combined with Article 14 (Prohibition of discrimination) of the ECHR.

The second case – Oršuš v. Croatia – was brought before the Court's Grand Chamber as well. It concerned 15 Croatian Roma who had allegedly been discriminated against during their school years by being segregated into classes for Roma only and had, thereby, suffered educational, psychological and emotional damage.

The respondent State contended that this measure had been necessary given the children's lack of command of the Croatian language. The Grand Chamber observed, however, that the tests leading to the placement in such classes were not focussed on language skills, nor was the educational programme centred on linguistic proficiency; furthermore the children's progress in this area was not specifically verified (Paragraph 159). The placement of the applicants in Roma-only classes was unjustified, therefore, and the Grand Chamber found a violation of Article 14 of the Convention viewed in conjunction with Article 2 of Additional Protocol No. 1.

The case of Sampani and Others v. Greece related to Roma parents' complaints that the Greek authorities had failed to provide schooling for their children and had subsequently placed them in special classes, allegedly on account of their origin. In a first judgment, the ECtHR determined that the children

in question had not been appropriately tested either before their placement in special classes or at later stages. This, according to the Court, resulted in a violation of Article 14 of the Convention combined with Article 2 of Additional Protocol No. 1 to the Convention.

In Sampanis and Others v. Greece, another case relating to primary education, 140 Greek nationals from 38 families of Roma origin – children and parents, some of whom had been applicants in the preceding case – complained about the the education given to the children. The Court, again, found a breach of Article 14 in conjunction with Article 2 of Additional Protocol No. 1. It also recommended, in the framework of Article 46 of the ECHR, that the applicants who were still of school age be enrolled in another public school and that those who had reached the age of majority be admitted to second-chance schools or institutions of adult education established by the Ministry of Education.

These cases are special for two reasons: on the one hand for the authorities' apparent refusal to do anything to remedy the situation complained of in the first case and, on the other, for the Court's recommendation, made under Article 46 (Binding force and execution of judgment), on how the situation created by the Government could be remedied.

3.2.11 Freedom of Association

In Vona v. Hungary, the issue was one of freedom of association (Article 11 of the Convention). The authorities of the respondent State had dissolved an association which had organised anti-Roma rallies and demonstrations.

The Strasbourg Court found that the State had not infringed Article 11 of the Convention (Freedom of assembly and association), as it was entitled to take preventive measures to protect democratic values against associations menacing them. In the present case, a movement created by the applicant association had organised marches carrying a racist message which had had the effect of intimidating the Roma minority. These paramilitary manifestations had gone beyond a mere expression of disturbing or offensive ideas – which is a right protected by the ECHR – on account of the physical presence of organised activists. The only way to cope with the situation, according to the Court, had been to remove the organisational basis furnished by the association.

3.2.12 Political Rights

In Sejdić and Finci v. Bosnia/Herzegovina, one of the two applicants was of Roma origin while the other was Jewish. Before the Court's Grand Chamber they contended that Bosnian law prevented them from running for the Presidency of the State and for its House of the People (Parliament), respectively. The Court agreed and identified violations of Article 14 of the Convention (Prohibition of discrimination), taken together with Article 3 of Additional Protocol No.

1 (Guarantee of free elections at reasonable intervals and by secret ballot). It considered discriminatory the arrangements made in the Dayton Peace Agreement under which only persons declaring affiliation with Bosnians, Croats or Serbs could be candidates. This may well be so, but one shudders to think of the possibility of an enterprising Slovene, or an ambitious Swiss, presenting his or her candidacy and, after a refusal, complaining to the Strasbourg Court.

4. Conclusions

The treaty mechanisms ensuring the survival and preservation of minority groups, which came into being after the First World War, almost vanished in the wake of the Second War, a period characterised by the emergence of international system for the protection of human rights on the universal and regional levels. Traces of the old system have survived, however, and there appear to be signals for a revival of the technique of minority-specific instruments and rules.

It will be recalled that the initial policy – assimilating minority members' human rights to those of the majority of the population – was and is an excellent means for improving the formers' condition. But it may do little to ensure the preservation of minority groups as such. Conversely, minority-specific international treaties and control mechanisms may do much to improve the situation of the groups as such. They establish differences between members of the minority and individuals belonging to the majority but do not necessarily improve the status of the individuals belonging to minority groups.

Thus, at first glance, the two approaches seem incompatible. One aims at granting every individual the full range of human rights and fundamental freedoms; there is to be no discrimination, in principle, between those belonging to the majority and those forming part of minorities. The other, without necessarily improving the situation of the individuals forming part of a minority, serves to enhance the well-being of the minority group as such. These two objectives can, however, be judiciously combined by generally eradicating discrimination between different types of individuals and protecting the identity and the interests of the minority groups to which some of them belong wherever this is possible without gravely prejudicing individuals' human rights.

As for the anthology of case-law presented in Chapter three of this contribution, it may be said that the ECtHR has generally proved sensitive, not only to violations of the rights and freedoms protected by the ECHR and its Protocols but, above and beyond that, to the need for pushing national authorities to investigate, prosecute and punish hate crimes committed against minority members – a need that still exists in some present-day situations. This sensitivity is particularly acute where the Court, as it did in the Winterstein and Adam cases, emphasises the special attention to be paid to members of vulnerable minorities,

their requirements and their lifestyle. This attention is extended by the Court to persons who are not members of a minority but associate with them (Škorjanec v. Croatia).

Now and then the claims of minority members are overstated, raising doubts as to their seriousness, and sometimes it even appears – as was the case in V.C. v. Slovakia – that the minority communities themselves have contributed to the discrimination against some of its members.

It must also be remembered that the respondent State is not always wrong. The ECtHR is a court of law and not a propagandist for human rights. It has to act with circumspection and cannot assume the existence of facts that are insufficiently established. In several of the cases examined in Chapter three, it had to reject allegations of infringements of provisions of the Convention or of a protocol, read in conjunction with Article 14 on discrimination (Anguelova, Ognyanova, Câmpeanu, Buckley, Chapman).

Article 14 is, of course, a key provision for the issues examined in the present contribution. A question that arose is who has to prove discrimination. The problem is a difficult one since bias is largely a state of mind and, thus, difficult to establish. It would nevertheless seem appropriate that if an applicant claims discrimination, he or she should bear the burden of proof. Generally the ECtHR seems to heed this rule, but not always (see the Stoica case).

Another point to be made is that minority problems can arise anywhere; they are not confined to the countries of Central and Eastern Europe. Issues pertaining to the human rights of Roma and Travellers have appeared in Western European States (Great Britain, France, Belgium, Italy, Greece and Switzerland), as is shown by the cases described above. They arise in connexion with many of the rights and freedoms secured by the ECHR and its Additional Protocols. The central provision, however, is Article 14 of the Convention on discrimination, as pointed out above.

Finally, it follows from the Sampani and Sampanis judgments that the Strasbourg Court does not always abstain from dealing with enforcement but occasionally ventures into that field, which is covered by Article 46 of the Convention and is in principle reserved to the Committee of Ministers of the Council of Europe, by recommending measures which might alleviate an existing situation.

Have the activities of the European system of protection of human rights improved the situation of Roma and Travellers? It is obvious that cases continue to be brought, violations established and judgments delivered. It is also evident that the number of cases submitted does not diminish.[26] This means that there remain a substantial number of human rights violations requiring remedial action, but this may actually be a positive sign: it shows that potential applicants disposing of no domestic remedies or having unsuccessfully exhausted them are no longer afraid to claim their human rights and fundamental freedoms on the international level.

References

Achim v. Romania, European Court of Human Rights, Application No. 45959/11, Judgment of 24 October 2017(not final). [Section IV].

Adam v. *Slovakia,* European Court of Human Rights, Application No. 68066/12, Judgment of 26 July 2016. [Section III].

Agreement between Great Britain, France, Italy and Japan, on the one hand, and Lithuania, on the other, of 8 May 1924. *League of Nations – Treaty Series* 29, 86–115.

Agreement between the representatives of Finland and Sweden, of 27 June 1921. *League of Nations, Official Journal* 2 (7).

American Convention on Human Rights, „Pact of San Jose", Costa Rica, 22 November 1969, Organization of American States, http://www.refworld.org/docid/3ae6b36510.html (accessed 1 March 2017).

Angelova and Iliev v. *Bulgaria,* European Court of Human Rights, Application No. 55523/00, Judgment of 26 July 2007. [Section V].

Anguelova v. *Bulgaria,* European Court of Human Rights, Application No. 38361/97, Judgment of 13 June 2002. [Section II].

Bagdonavicius and Others v. *Russia,* European Court of Human Rights, Application No. 19481/06, Judgment of 11 October 2016. [Section III].

Balázs v. *Hungary*, European Court of Human Rights, Application No. 15529/12, Judgment of 20 October 2015.[Section II].

Barnea and Caldararu v. Italy, European Court of Human Rights, Application No. 37931/15, Judgment of 22 June 2017. [Section I].

Beganović v. *Croatia*, European Court of Human Rights, Application No. 46423/06, Judgment of 25 June 2009. [Section I].

Bloed, A. (ed.), 1993. *The Conference on Security and Cooperation in Europe. Analysis and Basic Documents, 1972 – 1993*. Kluwer, Dordrecht, 45–115.

Buckley v. *United Kingdom,* European Court of Human Rights, Application No. 20348/92, Judgment of 25 September 1996. [Chamber].

Burden v. *United Kingdom*, European Court of Human Rights, Application No. 13378/05, Judgment of 29 April 2008, Para. 44 [GC].

Capotorti, F., 1977. *The International Protection of Persons Belonging to Ethnic, Religious and Linguistic Minorities since 1919*. United Nations Economic and Social Council.

Capotorti, F., 1991. *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, Geneva UN Center for Human Rights, UN Doc. E/CN.4/Sub.2/384/Add.1–7., Para. 568.

Capotorti, F., 1997. Minorities. In R. Bernhardt (ed.) *Encyclopedia of Public International Law,* Vol. III (J–P). Elsevier, Amsterdam, 410–424.

Center of Legal Resources on Behalf of Valentin Câmpeanu v. *Romania,* European Court of Human Rights, Application No. 47848/08, Judgment of 17 July 2014. [GC].

Chapman and Others v. *United Kingdom,* European Court of Human Rights, Application No. 27238/95, Judgment of 18 January 2001. [GC].

Connors v. *United Kingdom,* European Court of Human Rights, Application No. 66746/01, Judgment of 27 May 2004. [Section I].

Convention of 9 October 1920, signed between the Polish Government and the Danzig Authorities. *League of Nations – Treaty Series* 6, 190–207.

Costică Moldovan and Others v. *Romania*, European Court of Human Rights, Application Nos. 8229/04, 8234/04 and 12713/94, Decision of 15 February 2011. [Section III].

Council of Europe, 2007. *Human Rights in International Law – Collected Texts*. Council of Europe Publishing, Strasbourg.

Čonka v. *Belgium,* European Court of Human Rights, Application No. 51564/88, Judgment of 5 February 2002. [Section III].

D. H. and Others v. *Czech Republic,* European Court of Human Rights, Application No. 57325/00, Judgment of 13 November 2007. [GC].

Dayton Peace Agreement – General Framework Agreement for Peace in Bosnia and Herzegovina, of 21 November 1995. *International Legal Materials* 35 (1), 75–169, https://www.cambridge.org/core/journals/international-legal-materials/issue/0E44AA3480DDA15901E13730E873F0A2 (accessed 1 March 2017).

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1993. UN General Assembly A/RES/47/135 47/135, 3 February 1993.

Dimitrova and Others v. *Bulgaria*, European Court of Human Rights, Application No. 44862/04, Judgment of 27 January 2011. [Section V].

Drzewicki, K., 2009. Minority Protection within the OSCE. In D. Thürer & Z. Kędzia (eds.) *Managing Diversity. Protection of Minorities in International Law*. Schulthess, Zurich, 108–131.

ECHR – European Convention of Human Rights, http://www.echr.coe.int/pages/home.aspx?p=basictexts (accessed 1 March 2017).

European Charter for Regional or Minority Languages of 5 November 1992. Council of Europe. *European Treaty Series 148.*

European Court of Human Rights, 2017. *Roma and Travellers. Factsheet*, http://www.echr.coe.int/Documents/FS_Roma_ENG.pdf (accessed 1 March 2017).

Framework Convention for the Protection of National Minorities of 1 February 1995. Council of Europe. *European Treaty Series 157*.

Geneva Penal Law, 2006. Loi penale genevoise, 24 March 2006, Législation genevoise E4 05, https://www.ge.ch/legislation/rsg/f/s/rsg_E4_05.html (accessed 7 December 2017).

Gergely v. *Romania,* European Court of Human Rights, Application No. 57885/00, Judgment of 26 April 2007. [Section III].

Helsinki Final Act, 1975. OSCE, http://www.osce.org/helsinki-final-act?download=true (accessed 1 March 2017).

Henrard, K., 2013. Minorities, International Protection. *Max Planck Encyclopedia of Public International Law*, http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e847?rskey=ydAyDD&result=1&prd=EPIL (accessed 1 March 2017).

Hofmann, R., 1995. *Minderheitenschutz in Europa: Völker- und staatsrechtliche Lage im Überblick*. Mann Verlag, Berlin.

ICCPR – International Covenant on Civil and Political Rights, 1966, UN General Assembly Resolution 2200A (XXI), 16 December 1966, http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf (accessed 1 March 2017).

Ilhan v. *Turkey*, European Court of Human Rights, Application No. 22277/93, Judgment of 27 June 2000, Para. 52.

Kalanyos and Others v. *Romania,* European Court of Human Rights, Application No. 57884/00, Judgment of 26 April 2007. [Section II].

Kotry and Others v. *Romania*, European Court of Human Rights, Application No. 13624/03, Judgment of 12 June 2012. [Section IV].

Kymlicka, W., 1995. *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Clarendon, Oxford Press.

Lăcătuş v. *Switzerland,* European Court of Human Rights, Application No. 14065/15, filed on 17 March 2015 and communicated on 11 February 2016.

Malinverni, G., 2016. La minorité rom devant la Cour européenne des droits de l'homme, in A. Ziegler & J. Kuffer (eds.) *Mélanges en l'honneur du Professeur Barbara Wilson*. Schulthess, Zurich, 145–164.

Meijknecht, A., 2001. *Towards International Personality: The Position of Minorities and Indigenous Peoples in International Law.* Intersentia, Antwerpen, Groningen, Oxford.

Micallef v. *Malta,* European Court of Human Rights, Application No. 17056/06, Judgment of 15 October 2009, Para. 44 to 51 [GC].

Moldovan and Others v. *Romania,* European Court of Human Rights, Application Nos. 41138/96 and 64320/96, Judgment of 12 July 2007. [Section II].

Muñas Días v. *Spain,* European Court of Human Rights, Application No. 49151/07, Judgment of 8 December 2009. [Section III].

N. B. v. *Slovakia,* European Court of Human Rights, Application No. 29518/10, Judgment of 12 June 2012. [Section IV].

Nachova and Others v. *Bulgaria,* European Court of Human Rights, Application No. 43577/98, Judgment of 6 July 2005. [GC].

Nachova and Others v. *Bulgaria*, European Court of Human Rights, Application Nos. 43577/98 and 43578/98, Judgment of 6 July 2005, Para. 145 [GC].

Ognyanova and Choban v. *Bulgaria,* European Court of Human Rights, Application No. 46317/99, Judgment of 23 February 2006. [Section I].

Oršuš v. *Croatia,* European Court of Human Rights, Application No. 15766/03, Judgment of 16 March 2010. [GC].

Pentassuglia, G., 2001. *Minorities in International Law: An Introductory Study. Minority Issues Handbook,* Council of Europe Publishing, Strasbourg.

Permanent Court of International Justice, 1935. *Minority Schools in Albania*, *Advisory Opinion*, PCIJ, Series A/B, No. 64.

Polzer, M., Kalčina, L. & Žagar, M. (eds.), 2002. *Slovenija in evropski standardi varstva narodnih manjšin [Slovenia and European Standards for the Protection of National Minorities]*. Informacijsko dokumentacijski Center Sveta Evrope pri NUK, Inštitut za narodnostna vprašanja, Avstrijski inštitut za vzhodno in jugovzhodno Evropo, Ljubljana.

Protocol No. 1 – Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, 20 March 1952. Council of Europe. *European Treaty Series* 9.

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 4 Novembre 2000. Council of Europe. *European Treaty Series* 177.

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms Other than Those Already Included in the Convention and in the First Protocol thereto, 16 September 1963. Council of Europe. *European Treaty Series* 46.

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, 10 June 1998. Organization of African Unity, http://www.refworld.org/docid/3f4b19c14.html (accessed 1 March 2017).

Randelović and Others v. Montenegro, European Court of Human Rights, Application No. 66641/10, Judgment of 19 September 2017(not final). [Section II].

Sampani and Others v. *Greece,* European Court of Human Rights, Application No. 59608/09, Judgment of 11 December 2012. [Section I].

Sampanis and Others v. *Greece.* European Court of Human Rights, Application No. 32526/05, Judgment of 5 June 2008. [Section I].

Schücking, W. & Wehberg, H., 1924. *Die Satzung des Völkerbundes*. Fr. Vahlen, Berlin.

Sečić v. *Croatia*. European Court of Human Rights, Application No. 40116/02, Judgment of 31 May 2007. [Section II].

Seićova and Others v. *Bulgaria*, European Court of Human Rights, Application No. 310/04, Judgment of 18 November 2010. [Section IV].

Sejdić and Finci v. *Bosnia/Herzegovina,* European Court of Human Rights, Application No. 27996/06 and 34836/06, Judgment of 22 December 2009. [GC].

Stec and Others v. *United Kingdom*, European Court of Human Rights, Application Nos. 65731/01and 65900/01, Judgment of 12 April 2006, Paras. 50 to 52 [GC].

Stoica v. *Romania,* European Court of Human Rights, Application No. 42722/02, Judgment of 4 April 2008. [Section III].

Škorjanec v. Croatia, European Court of Human Rights, Application No. 25536/14, Judgment of 28 March 2017. [Section II].

Thornberry, P. & Estébanez, M. A. M., 2004. *Minority Rights in Europe: A Review of the Work and Standards of the Council of Europe.* Council of Europe Publishing, Strasbourg.

Thornberry, P., 2001. *International Law and the Rights of Minorities.* Clarendon Press, Oxford, New York.

Thürer, D. & Kędzia, Z. (eds.), 2009. *Managing Diversity: Protection of Minorities in International Law*. Schulthess, Zurich.

Treaty on Good Neighbourly Relations and Friendly Cooperation between Germany and Poland, 17 June 1991. *United Nations Treaty Series* 1708, 502–517.

UDHR – Universal Declaration of Human Rights, 1948. UN General Assembly Resolution A/RES/217 A (III), 10 December 1948.

UN Human Rights Committee, 1994. *CCPR General Comment No. 23, Article 27 (Rights of Minorities)*, 8 April 1994, CCPR/C/21/Rev.1/Add.5, http://www.refworld.org/docid/453883fc0.html (accessed 1 March 2017).

V. C. v. *Slovakia,* European Court of Human Rights, Application No. 18968/07, Judgment of 8 November 2011. [Section IV].

V. M. v. *Belgium,* European Court of Human Rights, Application No. 60125/11, Judgment of 7 July 2016. [GC].

Vona v. *Hungary*, European Court of Human Rights, Application No. 35943/10, Judgment of 9 July 2013. [Section II].

Weller, M. (ed.), 2007. *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*. Oxford University Press, Oxford.

Winterstein v. *France,* European Court of Human Rights, Application No. 27013/07, Judgment of 17 October 2003.[Section V].

Notes

[1] The present study is an enlarged version of a presentation made in Ljubljana on 16 December 2016 at a ceremony to celebrate the 80th anniversary of Professor Ernest Petrič.

[2] See Capotorti (1977, 1991, 1997) and Henrard (2013, 1–16).

[3] Convention of 9 October 1920.

[4] Resolution of the League of Nations Council of 24 June 1921, see Schücking and Wehberg (1924), and Agreement between the representatives of Finland and Sweden of 27 June 1921.

[5] Agreement between Great Britain, France, Italy and Japan, on the one hand, and Lithuania, on the other, of 8 May 1924.

[6] But not that relating to the Aland archipelago, which remains based on a 1921 decision of the League of Nations Council and on Finnish legislation (1951).

[7] For the text of these provisions, see Council of Europe (2007, 33, 59).

[8] Namely, the African Charter on Human and Peoples' Rights of 27 June 1986 (Council of Europe 2007, 595), the American Convention on Human Rights of 22 November 1969 (Council of Europe 2007, 643) and the European Convention on Human Rights of 4 November 1950 (Council of Europe 2007, 309).

[9] See Helsinki Final Act and also Drzewicki (2009) and Henrard (2013, 49–50). For the evolution of the CSCE in general, see Bloed (1993, 45–115).

[10] On 6 December 1994, the CSCE became the Organisation for Security and Cooperation in Europe (OSCE) without, however, achieving the status of a full-fledged intergovernmental organisation.

[11] Documents of Budapest (1994), Lisbon (1996), Istanbul (1999), Maastricht (2003), see Drzewicki (2009, 115).

[12] On this distinction, see also Henrard (2013, 21–29), and Permanent Court of International Justice, Advisory Opinion of 6 April 1935.

[13] There are a number of publications presenting historical developments and the practice of minority rights, especially in the European context, as well as the discussion, in recent years, on the rights of minority communities and those belonging to individual members of such communities: Kymlicka (1995), Meijknecht (2001), Pentassuglia (2001), Polzer et al. (2002), Thornberry and Estébanez (2004).

[14] "A difference of treatment is / … / discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised" (Stec and Others v. United Kingdom and the cases cited; Nachova and Others v. Bulgaria).

[15] See above, p. 75.

[16] There is also, of course, the possibility for any Contracting Party to "refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by any other / … / Contracting Party" (ECHR, Article 33). So far this opportunity, offered by Article 33 of the Convention, has only been used ten times.

[17] See also Malinverni (2016); European Court of Human Rights, Roma and Travellers. Factsheet (2017).

[18] Beganović v. Croatia, Kotry and Others v. Romania, Seićova and Others v. Bulgaria, Dimitrova and Others v. Bulgaria, Balázs v. Hungary.

[19] A further case was brought concerning difficulties with the execution of the general measures promised by the Government. The application was declared inadmissible by a decision of 15 February 2011, the Court noting, in particular, that it did not have jurisdiction to verify whether a Contracting State had complied with the obligations imposed on it by one of its judgments. Costică Moldovan and Others v. Romania.

[20] Article 30 of the ECHR provides: "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the

resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects."

[21] The applicant must show, in principle, that he/she is "directly affected" by the measure complained of, see Burden v. United Kingdom, Para. 44 [GC]; Ilhan v. Turkey, Para. 52. As a rule, the presumed victim must be alive; if he/she is not, the victim status of relatives may be recognised where the complaints made are of a general interest pertaining to the respect of human rights, if they as heirs have a legitimate interest, or on the basis of the direct effect on the applicants' own rights. Micallef v. Malta, Para. 44 to 51 [GC]. The Court does not, however, recognise *locus standi* to anyone simply because the Convention allegedly has been breached. The situation is different under other human rights instruments which allow non-governmental organisations to act on behalf of individuals. See Articles 5.3 and 34.6 of the Protocol to the African Charter on Human and People's Rights of 10 June 1998 and Article 44 of the American Convention on Human Rights of 22 November 1969.

[22] See Article 11A of the Geneva Penal Law (2006).

[23] No. 14065/15, application filed on 17 March 2015 and communicated on 11 February 2016.

[24] At first glance, the reference to Article 10 of the ECHR appears surprising. The application invokes, however, a decision (G 15510-9) taken on 30 June 2012 by the Austrian Constitutional Court and pertaining to a Salzburg law on territorial security which prohibits begging in public areas. In that decision the Court held that asking for donations in public places, in a discreet and non-aggressive way, was protected by Article 10.1 of the ECHR which guarantees the freedom of expression.

[25] European Treaty Series, No. 9.

[26] The factsheet cited in note 17 mentions a series of cases decided between 2014 and 2017.