



Minority Rights in Education

Lessons for the European Union from
Estonia, Latvia, Romania and the former
Yugoslav Republic of Macedonia

Duncan Wilson

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www.right-to-education.org

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Introduction

In an epoch of inter-ethnic violence and the resurgence of nationalism, the importance of fostering multicultural, tolerant societies is increasingly clear. The existence of minorities can either be considered societal richness and diversity, or a pretext for division and distrust. Education plays a key role in determining which of these outcomes will prevail. The social good of education is not intrinsic but dependent on its content and form; compulsory education can have either a “socially destructive or constructive impact”.¹

Human rights requires education to adapt to minorities in a more fundamental way than simply the removal of highly offensive stereotypes from textbooks. Issues such as the language of instruction, inclusion, and the equalisation of opportunities require human rights responses. In Europe today, this need is profoundly felt by minorities, notably the Roma.

The economist Amartya Sen famously stated that there has never been famine in a well functioning democracy. It is likewise difficult to think of ethnic, national, cultural or religious conflict within states which accord genuine equality to all. Education is central to the realisation of substantive equality (equality in fact), which has been legally recognised as the necessary counterpart of formal equality (equality in law).² “It is not difficult to establish that violations of the rights of free exercise and non-discrimination intensify conflict...nor to project with reasonable confidence that the observance and implementation of those norms will serve to reduce conflict.”³ This is particularly apparent in those (many) situations where the State is closely identified with a “dominant or majority ethnic”.⁴ Human rights acts as a necessary balance to this tendency, limiting the possibilities for the perpetuation of ethnic dominance by placing the individual at the heart of decision making.

The human rights approach has one very strong advantage: minority rights cannot by definition be guaranteed by majoritarian politics, and instead require legal protection of individual (and some would argue group) rights. The principles which underpin these rights promote substantive equality of all which, more than formally equal treatment, is equality in fact, which may require differential treatment. This is particularly true in situations of historical inequality, and in order to combat intergenerationally transmitted stereotypes. Two well-documented examples of this are gender and race. Women are now the subject of the Convention for the Elimination of Discrimination Against Women, which obliges states to go further than simply proscribe discriminatory practices against women in the future, by requiring that they take steps to eliminate the effects of historical discrimination. This approach is also adopted by the Convention on the Elimination of all Forms of Racial Discrimination, which has been interpreted to extend to members of minorities.⁵

While there is only one binding international convention specifically relating to minority rights (the controversial Framework Convention of the Council of Europe for the Protection of National Minorities, discussed below), existing human rights standards contain much that would help realise the ideal of pluralistic, equitable societies.

¹ BUSH & SALTARELLI, *THE TWO FACES OF EDUCATION IN ETHNIC CONFLICT*, UNICEF Innocenti Insights, Florence, 2000, p ix.

² The Permanent Court of International Justice noted the necessity of “equality in fact” for the realisation of minority rights as early as *German Settlers in Poland*, (Advisory Opinion) 10 September 1923, PCIJ Series B, No. 6

³ LITTLE, D, *BELIEF, ETHNICITY AND NATIONALISM*, United States Institute for Peace (1996) <http://www.usip.org/research/rehr/belethnat.html>

⁴ Stavenhagen, R (now United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples), in Kumar, Rupesinghe, “Ethnic Conflict and Human Rights”, United Nations University, Tokyo, 1988.

⁵ See the textbox on the Committee on the Elimination of all forms of Racial Discrimination.

Minority Rights in Europe.

The emergence of the modern nation-state in Europe was associated with the breakdown of the large European empires and rising nationalism in the first decades of the Twentieth Century. The result was ethnically, nationally, religiously and culturally diverse societies bound together by force and often perpetuated by a nascent system of compulsory education. "Towards the end of the First World War, what differentiated a minority from a nation was the political capacity to set up an independent State",⁶ or, one might say, a lack of force. Minority rights were occasionally safeguarded in bilateral agreements where the minority was dominant in another state, or were ignored where the minority was not in a position of political power in any state. With the Second World War and the coming of the Cold War, the delicate ethnic balance in European States remained a "pending matter".⁷ The end of Cold War has led ethnic, national, religious, and cultural tensions in Central and Eastern Europe to emerge from their "hibernation"⁸ and resurface.

Such a crude overview of European history helps contextualise the current phenomenon of minority tensions. Similar issues confronted the world in the decolonisation process, and the United Nations (and the international law which has developed from it) favoured the continuance of existing borders.⁹ This principle for the maintenance of peace and security goes hand-in-hand with effective guarantees of equality of opportunity and the full realisation of human rights for all (including importantly the rights of those belonging to minorities). In Europe, the European Union accession process is today a significant opportunity to ensure that this occurs. The EU has placed the respect for and protection of human and minority rights at the heart of enlargement discussions, and it reviews the progress applicant states make towards this goal.

The Right to Education.

States' obligation to progressively realise the right to education has been shown in other publications¹⁰ and reports¹¹ of the United Nations Special Rapporteur on the right to education to contain four elements: availability, accessibility, acceptability and adaptability (the 4-A scheme). There are obligations of immediate effect, notably to make primary education compulsory and freely available to all, and non-discrimination (which is not restricted to access, but extends through each of the four A's).

There is no model of education provision envisaged by the requirements of international human rights law as such. Certainly states are not required to shoulder the entire burden of educating all within their borders. The state's role may be that of facilitator and overseer, to ensure that the educational opportunities available are adequate and appropriate.

From the 4-A scheme it is clear that education must adapt to the individual, and the individual is not required to adapt to whatever education happens to be available. In this respect it is essential that there be freedom to establish private schools in order that everyone has the ability to benefit from an education that is appropriate to his or her culture, religion and language. This right of the

⁶ Bengoa, J, "Existence and Recognition of Minorities", Working paper, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Minorities, Sixth Session 22-26 May 2000, E/CN.4/Sub.2/AC.5/2000/WP.2, 30 April 2000, para 11.

⁷ HOBBSAWM, E, *NATIONS AND NATIONALISM SINCE 1980*, Cambridge University Press, 1990.

⁸ *Ibid.*

⁹ See for example the Conference on Security and Cooperation in Europe, Summit, Helsinki, 1 August 1975, Final Act, <http://www.osce.org/docs/english/1990-1999/summits/helfa75e.htm> (accessed 12 July 2002); United Nations Declaration on Friendly Relations Between States (General Assembly resolution 2625 (XXV) Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of 24 October 1970), and the concept of *uti possidetis* in public international law.

¹⁰ See the four Primers which preceded this publication, authored by Professor Katarina Toma_ evski during 2001, and available via www.right-to-education.org, or in print form by request. See for example TOMA_EVSKI, K, *Right to education Primers no.3: making education available, accessible, acceptable and adaptable*, Stockholm, 2001. This model was adopted by the Committee on Economic, Social and Cultural Rights in General Comment No. 13 on Article 13 of the International Covenant on Economic, Social and Cultural Rights.

¹¹ Preliminary, Mission and Annual Reports of Ms Katarina Toma_ evski, United Nations Commission on Human Rights Special Rapporteur on the right to education, all available from www.right-to-education.org.

individual is not unfettered, as the state has an unquestionable right in international law to set the official language, and may legitimately require a certain degree of education in that language. Indeed, this is essential as the alternative may lead to ghetto style communities unable to integrate, being unable to communicate.¹²

Education can help avoid this fracturing of society along cultural, ethnic, linguistic or religious lines by being inclusive to the greatest extent possible. The religious division of education in Northern Ireland allows children to grow up barely knowing members of the other “communities”. It is for this reason that groups of individuals have developed the integrated school movement, which has gradually been supported by the government.

The purpose of education, in the human rights model, is the composition and maintenance of multi- as opposed to mono-cultural societies. It is not the homogenisation of diverse societies but the open recognition of difference and the promotion of diversity. From this perspective it is essential that education be all inclusive and not separate (or segregated) according to language, race, ability, sex or other criteria. Promoting tolerance and respect in homogeneous classrooms has a rather hollow ring. “Curriculum packages that promote tolerance will have little impact if they are delivered within educational structures that are fundamentally intolerant.”¹³

The focus

This paper considers the law, practice and effect of education policy on members of minorities (the generic term encompassing ethnic, national, religious, linguistic and cultural communities) in Estonia, Latvia, the former Yugoslav Republic of Macedonia (FYR Macedonia), and Romania. More recent migrants also face many problems of integration but their concerns are beyond the scope of this study.

Estonia and Latvia are fairly similar demographically, while in many respects the regulation of minority education is different. Romania has been independent and peaceful since 1991, whereas FYR Macedonia is emerging from a period of ethnic insurgence and is beginning to balance the interests of its various communities.

In the Baltic states today, members of the dominant population during the Cold War and before (the Russians) now find themselves in the minority. In the former Yugoslav Republic of Macedonia and Romania tensions between different “nationalities” (in Slavic languages this may refer to ethnicity) which have long been suppressed, are now resurfacing, as liberal democracy and age old ethnic divisions begin to be reconciled.

In mapping out the law and reality of minority rights in education in these four states, and highlighting issues where European Union practice is not clear and consistent, the hope is to assist the development of policy by the European Union.

Methodology

The report focuses on the inter-relation of minority rights and the right to education in four states of Central and Eastern Europe. Recommendations are made to the European Union as it seeks to promote minority rights in the accession process.

There has been little rights-based work focussing specifically on obstacles which minorities face in realising their right to education. Research began with a visit to the High Commissioner on National Minorities of the Organisation for Security and Co-operation in Europe (HCNM, OSCE), in 2001, where the staff were kind and knowledgeable enough to take time to explain the issues from their perspective. The need for closer analysis was clear.

¹² See for example the UNESCO Convention Against Discrimination in Education, Article 5 (1) (c) (i), educational institutions in minority languages must not prevent, “members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities...”

¹³ BUSH & SALTARELLI, *supra*, p v.

Subsequent research has comprised active correspondence with many international, regional and non-governmental organisations, academics working with minority rights in the countries considered; a review of intergovernmental, United Nations and European regulation and documentation; discussion of minority rights in education and a comparative analysis of existing research, legislation, jurisprudence and media reports from the focus group of countries. The author is extremely grateful to all who provided their comments and suggestions, which greatly improved the paper.

Sources include official documents of international organisations such as the United Nations, the European Union, Council of Europe, and the Organisation for Economic Cooperation and Development; academic literature; reports and analysis of non-governmental organisations, both regional and local; government publications, including policy papers and statistics; legislation and jurisprudence where available.

Indicators of educational opportunity, achievement and quality are presented, where they are available, alongside socio-economic indices, as it is increasingly accepted that education can be an exit from poverty. The premise is that the full realisation of the right to education for members of minorities facilitates realisation of other human rights. As human rights are interdependent in practice, the denial of other civil, political, economic, social and cultural rights has a negative impact on the realisation of minority rights in education.

Four countries were chosen, as a small study allows in-depth analysis in a limited time frame. All of the states are newly re-independent. The European heritage of education as a medium of nationalism means that now is an important time to consider the educational policies in European societies keen to re-assert their distinct identities, which have long been suppressed. The four States have had varying success in addressing minority concerns, but the debate remains very much alive in all.

All are in one way or another engaged with the European Union, three are pre-accession countries and the other (FYR Macedonia) is a member of the Stability Pact for South East Europe. Centring discussion around the European Union reflects the fact that the accession process represents an important opportunity for the resurgence of interest in and improvement of minority rights.

Substantive and Procedural Standards.

1. Minority Rights in the European Union Accession Process

Although Romano Prodi, President of the European Commission, claims that, “equal treatment of minorities is a cornerstone of the new united Europe”,¹⁴ ensuring respect for minority rights among the pre-accession countries (such as those considered here) has had questionable results.

European states have the right to apply for membership of the European Union (EU) according to Article 49 of the Treaty of European Union. Of the states considered in this report, Romania applied for membership of the EU on 22 June 1995, Latvia on 27 October 1995, and Estonia on 24 November 1995. FYR Macedonia has been involved in the Stabilisation and Association Process (Stability Pact) since 6 April 2001, which is seen by the President of the Republic as the first step towards EU membership,¹⁵ and has been identified as a potential candidate.¹⁶

In order to be successful in their desire to accede to the EU, applicants must satisfy three criteria:

- political:* stable institutions guaranteeing democracy, the rule of law, human rights and “respect for and protection of minorities”;
- economic:* a functioning market economy;
- acquis:* adherence to the various political, economic and monetary aims of the European Union by incorporating EC law into national jurisprudence.

These are the Copenhagen criteria, agreed upon by the European Commission in 1993. All of these criteria were adopted as primary EU law in the Amsterdam Treaty with the exception of the clause on minority protection, which means that this does not represent a part of the *aquis communautaire* (the body of EU law that must be accepted by aspirant members), remaining purely of a political nature.¹⁷

In December 1997, the European Council decided to open negotiations in 1998 with six countries including Estonia. Negotiations with Latvia and Romania opened in February 2000.

Although the European Council (the Council) declares that these criteria have already been met at the outset of accession negotiations,¹⁸ the European Commission (the Commission) nevertheless considers progress towards accession based on these criteria. The monitoring by the Commission leads to suggestions which, although not always clearly related to international minority rights standards and best practice, often have an effect, as candidate states clamour for acceptance by the Union. As one element of this monitoring, the Commission pays close attention to the meaning and extent of the phrase “respect for and protection of minorities”, which it has considered to embody both non-discrimination and minority rights elements. The Commission is “guided”¹⁹ in this by the Charter of Fundamental Rights of the European Union. Article 22 of the Charter states that:

The Union shall respect cultural, religious and linguistic diversity.

¹⁴ Prodi in *Warning for Budapest*, FT, 6 April 2001.

¹⁵ www.president.gov.mk/eng/makedonija.htm (a cached version accessed 9 April 2002)

¹⁶ <http://europa.eu.int/comm/enlargement/faq/index.htm#Future> (accessed 9 April 2002).

¹⁷ See for example Von Toggenburg, G, *The EU's Endeavours for its Minorities*, in *MINORITY RIGHTS IN EUROPE: EUROPEAN MINORITIES AND LANGUAGES*, TRIFUNOVSKA (ed), The Hague, 2000, 205, at 226.

¹⁸ Compliance with the Copenhagen political criteria is a prerequisite for the opening of any accession negotiations, Conclusions of the European Council, 12/13 December 1997, PE 167.145, para 25.

¹⁹ “The Commission’s action in the field of external relations will be guided by compliance with the rights and principles contained in the EU Charter of Fundamental Rights”, in *The EU's Human Rights & Democratization Policy*, http://europa.eu.int/comm/external_relations/human_rights/intro/index.htm (accessed 27 May 2002).

The view of the European Parliament (the Parliament) is that “the commitment [in Article 22] is liable to strengthen the guarantee of non-discrimination [and] the right to education”.²⁰ In interpreting this short article, the European institutions look to internationally agreed standards on minority rights. Whilst the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966 and in force since 1976, contains an important provision on minority rights in Article 27, there is, for example, no accepted definition of a minority in international law (this is discussed further in the following section). Further complicating the work of the Commission is the inconsistency of practice among European Union member states. Certain EU members have developed their own definitions of minorities for the purpose of the Framework Convention for the Protection of National Minorities (the only binding multilateral treaty on minority rights, which makes no attempt to define to whom it applies). Denmark, Germany and Sweden, for example, provided a list of national minorities on ratifying the FCNM. Whereas Austria, Germany and Luxembourg explicitly restricted the protection to citizens. Luxembourg denies the existence of national minorities on its territory, and France, Greece, Luxembourg and the Netherlands, have yet to ratify the Convention.

The European Court of Human Rights may, but does not, give guidance on the content of minority rights to the States Parties to the European Convention on Human Rights and Fundamental Freedoms (all members of the Council of Europe, which includes all members of the European Union and all applicant states). Although certain developments in ECHR jurisprudence suggest a move towards clarifying minority rights standards in Europe (see the section which follows).

Despite the fact that the European Union is requiring its applicant states to comply with standards which its current members do not recognise, the result may be greater consistency in European practice in this area. The European Court of Human Rights has recently recognised an “emerging consensus” on minority rights in Europe.²¹ Should this question be revisited, the place of minority rights in the accession process may lead to a more “concrete consensus”. This will impact on all members of the Union (all of whom are bound to comply with judgements of the ECHR, and not only those to which they are a party) and will have significant implications for states such as France, which maintains in Article 2 of its constitution that, “France is an indivisible, secular, democratic and social Republic. It ensures the equality of all citizens before the law, without distinction as to origin, race, or religion. It respects all beliefs.”

Formal equality in a unitary nation state does not recognise the need for substantive equality of all, which means accepting difference. France relies on this provision to declare that article 27 of the ICCPR, “is not applicable so far as the Republic is concerned.”²² One question for the European Union is how far can it go in promoting the rights of minorities, whose very existence is denied in certain of its members?

2. Minority Rights and Education in International Law.

In considering minority rights in education, it is important to remember that minority rights are human rights, and human rights are interdependent, indivisible and inviolable. Consequently, minority rights must complement, not superimpose other human rights protection. Otherwise the result will be to accord to one group of individuals a lower standard of protection than that accorded to the majority.

²⁰ EUROPEAN PARLIAMENT, COMMITTEE ON CITIZENS’ FREEDOMS AND RIGHTS, JUSTICE AND HOME AFFAIRS, *Overview of Article 22 of Charter of Fundamental Rights of the European Union*.

http://www.europarl.eu.int/comparl/libe/elsj/charter/art22/default_en.htm (accessed 27 May 2002). Non-discrimination for the EU extends to ethnic grounds and to “membership of a national minority” Charter of Fundamental Rights of the European Union, Article 21.

²¹ See the discussion on *Chapman v UK* in the section which follows.

²² United Nations Treaty Collection, [As of 5 February 2002], Declarations and Reservations, France. http://www.unhchr.ch/html/menu3/b/treaty5_asp.htm (accessed 27 May 2002). The Human Rights Committee in interpreting this “declaration of inadmissibility due to the special circumstances of the [French] Republic” has constantly declared that it “operated as a reservation”, thus denying France special status regarding its treatment of minorities.

The right to education provided for in the Convention on the Rights of the Child 1989 (Article 28), the International Covenant on Economic, Social and Cultural Rights 1966 (Article 13) and elsewhere, is equally relevant to members of minorities. When taken in combination with non-discrimination; the elimination of discrimination and (substantive) equality provisions; with the principles of child rights (such as the best interests of the child) and finally with cultural rights, human rights law accords more effective protection to minorities in international law.

Looking through international provisions guaranteeing the right to education²³ one notices several recurring components. The right to free, compulsory primary education is upheld, and the right to education alters as the educational process continues following one rule of thumb: the more basic the level of education, the more comprehensive the right.

A. INTERNATIONAL

General International Law

The lack of conventional expression of minority rights in education does not necessarily mean that such rights do not exist in international law. Already at the time of the League of Nations (predecessor to the United Nations) the Permanent Court of International Justice declared that, “there would be no true equality between a majority and a minority if the latter were deprived of its own institutions and were consequently compelled to renounce that which constitutes the very essence of its being a minority”.²⁴ The case involved minority schools in Albania. The court endorsed a previous statement (in a case involving the German minority in Poland) to the effect that equal rights of members of minorities implies special measures: “there must be equality in fact as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law.”²⁵ The explanation of the need for such special measures would be as apt today as it was then, “far from creating a privilege in favour of the minority...[special measures]...ensure...that the majority shall not be given a privileged situation as compares with the minority.”²⁶ On the question of recognition of minorities, the same court declared this to be a matter of *fact*, not (national) law.²⁷

UNESCO Convention Against Discrimination in Education

A few standards specifically relating to minority rights in education exist. The UNESCO Convention Against Discrimination in Education of 1960 is particularly relevant. states that: *Article 5(c)*

It is essential to recognise the right of members of national minorities to carry out their own educational activities, including the maintenance of schools and, depending on the educational policy of each state, the use or the teaching of their own language, provided however:

- (i) *That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;*
- (iv) *That attendance at such schools is optional.*

Thus, as long ago as 1960 there were attempts to balance the interests of members of minorities and the state in education. The result is only a partial guarantee of minority rights in education, however. It is not a guarantee of multi-lingual, multi-cultural public education. Rather this is a negative guarantee of freedom from state interference in establishing parallel minority schools privately. The danger in this partial rights-based approach is that, in simply permitting the establishment of separate schools rather than increasing bilingual, multicultural education,

²³ The right to education is guaranteed in *inter alia*, article 13 of the International Covenant on Economic, Social and Cultural Rights, Article 28 of the Convention on the Rights of the Child, Article 2 of Protocol I to the European Convention on Human Rights and Fundamental Freedoms, Article 13 of Additional Protocol on Economic, Social and Cultural Rights to the American Convention on Human Rights, article 17 of the African Charter of Human and Peoples Rights and article 11 of the African Charter on the Rights and Welfare of the Child. It is also recognised in many non legally-binding documents, particularly important is the Universal Declaration of Human Rights (article 26).

²⁴ Permanent Court of International Justice, *Minority Schools in Albania (Advisory Opinion)*, 1935, PCIJ Series A/B No. 64.

²⁵ PCIJ in the Advisory Opinion of 10th September 1923, concerning the case of German settlers in Poland (Opinion no.6).

²⁶ PCIJ in the Advisory Opinion of 1935 concerning Minority Schools in Albania, PCIJ Series A/B No. 64. The appropriateness of special measures to equalise opportunity is now internationally codified, notably in the International Convention on the Elimination of all forms of Racial Discrimination, in Articles 1(4) and 2(2).

²⁷ Greco-Bulgarian Communities case (1930) PCIJ, Series B, No.17, 31/7/1930, s. 2 3.

education may actually contribute to the entrenchment of separation of communities as each group (that can afford to) establishes its own schools, teaching its own curriculum in its own language. This is to recognise minority rights in education as a “freedom” (the civil rights aspect) and to ignore the place of education in promoting substantive equality (the realisation of rights *through* education).

International Covenant on Civil and Political Rights

Article 27 of the International Covenant on Civil and Political Rights (CCPR) of 1966 is the mostly widely cited provision on minority rights. It provides:

Article 27

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

From the General Comments and views of the Human Rights Committee, a more precise meaning has emerged. The Human Rights Committee interprets Article 27 to extend to affirmative action and special measures for a limited period, in order to bring the minority into the same position within the society as the majority. The Committee has also indicated that Article 27 extend to non-citizens, however it goes much further than State practice, and further than its own jurisprudence, in extending the provision even to “visitors”.²⁸

There can be no doubt from the wording of this section that this is an individual right, albeit with a group element (“to be enjoyed in community with others”). Individuals are able to claim breach of this provision before the Human Rights Committee if their state has ratified the first Optional Protocol. Even where a state has not ratified this Optional Protocol, it is obliged to report to the Human Rights Committee on the legislative, administrative and other measures it has taken in order to implement this provision. In reviewing these state reports the Human Rights Committee frequently makes reference to education, and thus in fact promotes minority rights in education. This it does since it has interpreted Article 26 (on equal protection of the laws) to be of general character and not limited to the rights protected in the CCPR.²⁹

On Article 26, the *jurisprudence constante* (consistent view) of the Committee has been that, “Article 26 does not prohibit all differences in treatment, if such difference in treatment is based on reasonable and objective criteria”.³⁰

As an example, in a case involving religious schooling in Canada, where public funding was provided to Roman Catholic schools and not to *inter alia* Jewish schools, the Human Rights Committee stated that, “the Covenant does not oblige States parties to fund schools which are established on a religious basis. However, if a State party chooses to provide public funding to religious schools, it should make this funding available without discrimination”.³¹ Since the Roman Catholic community in Canada was not considered to be recovering from historical discrimination, there was no reasonable and objective criterion for providing funding to Roman Catholic schools and not to schools of other religions. The view of the Human Rights Committee here is somewhat limited as the positive aspect of state support, which was noted in the cases before the Permanent Court of International Justice, is no longer there. The term “if a state party chooses”, leaves open the possibility of *de facto* differential opportunities between minority groups based on their economic status. Richer minority groups will be in a privileged position where a state party does not “choose”.

Convention on the Rights of the Child

Article 30 of the Convention on the Rights of the Child is modelled very closely on the provision in the ICCPR, although directed specifically towards children. The most notable extension during the twenty three years between adopting the ICCPR and the CRC is the inclusion of “persons of

²⁸ The Rights of Minorities (Art. 27):.08/04/94, CCPR General Comment 23. Indeed this would potentially extend to many groups outwith the scope of this paper, including migrants.

²⁹ For a review of the practice of the Human Rights Committee up to 1989 see THORNBERRY, P, INTERNATIONAL LAW AND THE RIGHTS OF MINORITIES, chs 16-23.

³⁰ Hopu & Bessert v France Communication number 549/93, CCPR/C/60/D/549/1993; General Comment number 18, Communications numbers 180/1984 (L.G. Denning v the Netherlands), 196/1985 (Gueye v France), 666/1995 (Frédéric Foin v France), 689/1996 (Richard Maille v France), 690 and 691/1996 (Marc Venier & Paul Nicolas v France).

³¹ Human Rights Committee, Arieh Hollis Waldman v Canada, Communication No 694/1996, View adopted on 3 November 1999.

indigenous origin”, an important step forward in the recognition of indigenous rights, most comprehensively regulated by ILO Convention 169 (which very few countries have ratified).

One of the aims in the CRC is,

Article 29(1)(c)

The development of respect for the child's parents, his or her own cultural identity, language and values, for the values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own.

The Committee on the Rights of the Child has interpreted this provision:

“[Article 29(1) CRC] overcomes the boundaries of religion, nation and culture built across many parts of the world...efforts to promote understanding, tolerance and friendship among all peoples, to which paragraph (1)(d) refers, might not always be automatically compatible with policies designed, in accordance with paragraph (1)(c), to develop respect for the child's own cultural identity, language and values, for national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own. But in fact, part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference.”³²

This proposes a measured and pragmatic model for the development of education policy in multicultural societies.

B. EUROPE

The Framework Convention for the Protection of National Minorities

The only legally binding document exclusively focussed on minority rights is the Council of Europe framework Convention for the Protection of National Minorities (FCNM).³³ Article 14 of the FCNM recognises the right to education of and in the mother language.

Article 14

1. *The Parties undertake to recognise that every person belonging to a national minority has the right to learn his or her minority language.*
2. *In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those minorities have adequate opportunities for being taught the minority language or for receiving instruction in this language.*
3. *Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.*

The article is full of “claw-back clauses” which weaken the State obligation. phrases such as “if there is sufficient demand”; “as far as possible”; “within the framework of their education systems”; “adequate opportunities for being taught the minority language *or* for receiving instruction in this language” give huge scope for restrictive interpretation and reduce the substance of the obligation.

The accompanying explanatory note recognises that, “the obligation to recognise the right of every person belonging to a national minority to learn his or her minority language concerns one of the principal means by which such individuals can assert and preserve their identity.”

The language used in Article 14, however, belies the declaration that, “there can be no exception to this”.³⁴ At least two options exist where states can claim exceptions: there is not (considered to be) sufficient demand; OR this is not (considered) possible.

³² “The aims of education:17/04/2001. CRC/GC/2001/1, CRC General Comment 1 (General Comments)” para 4.

³³ For a full and up-to-date list of states parties see <http://conventions.coe.int/Treaty/EN/searchsing.asp?NT=157&CM=7&DF=22/11/01>.

³⁴ *Explanatory Report on the framework Convention for the Protection of National Minorities*, para 74, <http://conventions.coe.int/Treaty/en/Reports/Html/157.htm> (accessed 9 April 2002).

Such exceptions are in the nature of a *framework* convention, which gives broad discretion to individual states in application. Furthermore, the explanatory report affirms that, “this paragraph [on teaching of minority languages] does not imply positive action, notably of a financial nature, on the part of the state.” Which is to say that it guarantees the freedom to establish schools teaching in minority languages. The limitations of this view were considered in connection with the UNESCO Convention and the approach of the Human Rights Committee. Certainly it can entrench unequal patterns of socio-economic opportunity, and may conflict with state obligations to provide appropriate free education.

Both Articles 12 and 13 of the FCNM must also be mentioned here. Article 13 upholds the right of members of national minorities to establish private schools, as did the UNESCO Convention. The role of the State is to ensure adequate levels of quality are adhered to, and if this is the case, the explanatory report highlights the importance of recognition of qualifications.³⁵

Article 12, on intercultural education, teaching of the culture and history of national minorities, and also the training of teachers from national minorities prescribes, “equal opportunities for access to education at all levels for persons belonging to national minorities”.

The FCNM is a compromise document. Whilst international law recognises the need for objectivity in defining minorities the FCNM leaves this to the individual states, thus placing it in the realm of political discourse without human rights safeguards. As the explanatory report indicates, “it was decided to adopt a pragmatic approach, based on the recognition that at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States”.³⁶ An international expert on minority rights has stated, in critiquing the FCNM that,

“European governments would be quick to criticise...if a regional organisation elsewhere in the world were to adopt programmatic standards for flexible implementation, with the subjects for protection to be selected by the governments concerned, and the monitoring limited to States reports for examination by experts working under the thumb of government ministers and diplomats.”³⁷

The European Convention for the Protection of Human Rights and Fundamental Freedoms

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) does not contain any minority specific provision, and the non-discrimination provision in Article 14 relates only to the Articles within the convention. Nevertheless Article 14 does include “association with a national minority” as a prohibited ground of discrimination. The *jurisprudence constante* has been to consider this to extend to all minority groups covered by the United Nations Minorities Declaration (the groups considered in this paper). There is case law from the European Commission on Human Rights recognising the Roma as a national minority, for example.³⁸ The implications of this theoretically extend to the enforcement of the Framework Convention on the Protection of National Minorities since, according to article 19 of the Framework Convention, all action taken under that Convention shall be subject to the limitations required by the ECHR.³⁹ Consequently, for example, bilateral treaties, which states are exhorted to undertake, by article 18 of the Framework Convention, would have to comply with the requirements of Article 14 of the ECHR, and not discriminate in the realisation of the right to education of minorities. The effect of this has yet to be fully tested, but it does provide an avenue for circumventing the weakness of the Framework Convention and its monitoring mechanisms.

³⁵ Explanatory Report on the framework Convention for the Protection of National Minorities, para 72.

³⁶ *ibid.*, at para 12.

³⁷ Alfredsson, G., *A Frame An Incomplete Painting: Comparison of the Framework Convention for the Protection of National Minorities with International Standards and Monitoring Procedures* INTERNATIONAL JOURNAL ON MINORITY AND GROUP RIGHTS 7:291 – 304 (2000) at 296. Professor Alfredsson is here referring to the Advisory Committee which itself reports directly to the Council of Ministers (a political body).

³⁸ *Cyprus v Turkey*, 25781/94, European Commission on Human Rights, adopted 4 June 1999, issue not considered by the European Court of Human Rights (Grand Chamber), 10 May 2001.

³⁹ Gilbert, G., *Jurisprudence of the European Court and Commission of Human Rights in 2001 and Minority Groups*, Sub-Commission on the Promotion and Protection of Human Rights, 54th Session, Working Group on Minorities, 8th Session 27-31 May 2002. E/CN.4/Sub.2/AC.5/2002/WP.2, 24 May 2002, p 6.

The European Court of Human Rights determined the limits of the right to education in Additional Protocol 1 to the ECHR, in the landmark Belgian Linguistics case of 1968.⁴⁰ The Court found that the state has a right to determine the official languages of instruction in public schools and denied that there was a right to instruction in the language of one's choice. The Court averred that otherwise anyone would be free to claim any language of instruction in the territory of any of the states parties (the countries bound by the convention). This display of the lawyer's fear of the 'slippery slope' has been called "an unnecessary *reductio ad absurdum* argument".⁴¹ The case turned on the wording of this now fifty-year-old provision which states:

Article 2 No person shall be denied the right to education. In the exercise of any function which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

The distinction between this wording and the (far more recent) rights of the child is obvious. In the Belgian Linguistics case the ECHR did not concern itself with the children at all, stating simply that, "this provision does not require of States that they should, in the sphere of education or teaching, respect parents' linguistic preferences, but only their religious and philosophical convictions."⁴²

This case was decided before the Convention on the Rights of the Child, and the ECHR has more recently indicated that its Member States should uphold, "international standards in the field of human and minority rights",⁴³ without expanding on what this means in practice.

In the case of Kjeldsen, Busk Madsen and Pedersen v Denmark⁴⁴ the European Commission on Human Rights determined that article 2 of Protocol 1 (the right to education) extends a right to "the establishment of and access to private schools or other means of education outside the public school system".⁴⁵ The European Court of Human Rights, in the same case, suggested that the right to education in the First Protocol to the Convention, "aims... at safeguarding the possibility of pluralism in education... essential for the preservation of the 'democratic society' as conceived by the Convention...".⁴⁶ As interpreted by a prominent international expert in minority rights, "the state is forbidden to pursue the aim of indoctrination that might be considered as respecting parents' religious and philosophical convictions."⁴⁷ Following the UNESCO Convention and the Human Rights Committee, the European Court of Human Rights has currently limited minority rights in education essentially to the freedom to establish one's own schools, without recognising concomitant obligations of the state to promote substantive equality with the majority.

This can be contrasted with the more recent case of Thlimennos v Greece.⁴⁸ In this case the Court mentioned in passing a principle which could have significant implications for the development of its jurisprudence in minority rights. It was stated that, "the right not to be discriminated against in the enjoyment of the rights guaranteed by the Convention is also violated when states, without objective and reasonable justification, fail to treat differently persons whose situations are significantly different."

⁴⁰ European Court of Human Rights, Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium (Merits), Judgement of 23 July 1968, Series A, vol. 6, p31.

⁴¹ Thornberry, P, *Treatment of Minority and Indigenous Issues in the European Convention of Human Rights*, ALFREDSSON & STAVROPOULOU (eds), JUSTICE PENDING: INDIGENOUS PEOPLE AND OTHER GOOD CAUSES (Hague) 2002, p 144.

⁴² Ibid.

⁴³ Denzici v Cyprus 25316-25321/94 and 27207/95, European Court of Human Rights (Fourth Section), 23 May 2001 (final, 23 August 2001).

⁴⁴ HUDOC REF00000094, (1976) 1 EHRR 711

⁴⁵ Report of 21 March 1975, B.21 (1979), p 44

⁴⁶ Series A, No. 23, 1976.

⁴⁷ THORNBERRY, P, *International Standards*, EDUCATION RIGHTS AND MINORITIES, Minority Rights Group International, Brixton, 1994.

⁴⁸ Application no 34369/97 Judgement of 6/4/00.

In the decision of *Chapman v United Kingdom* on 18 January 2001, the court recognised an, “emerging international consensus ... recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle.” But was not, “persuaded that the consensus is sufficiently concrete for it to derive any guidance as to the conduct or standards which Contracting States consider desirable in any particular situation.”⁴⁹

As mentioned above, this leaves open the possibility to revisit the emerging consensus in the future. Minority rights in Europe is a developing legal concept.

There has been much discussion over the last ten years or so in the Council of Europe, about the possibility for an Additional Protocol to the ECHR on the rights of national minorities to be based on a Recommendation of the Parliamentary Assembly of the Council of Europe from 1993⁵⁰, but so far such a document does not exist. The twelfth Protocol, a general non-discrimination provision, not limited to the rights in the ECHR, may go some way to rectifying this gap.⁵¹

The European Charter on Regional and Minority Languages

The European Charter for Regional or Minority Languages of the Council of Europe contains a provision on education in Article 8. This article, which stretches to 89 lines of text in length, contains very little substance. It offers a kind of multiple choice for state obligation. For each of six concrete commitments, the state has either three or four options to “pick ‘n mix” the strength of its commitments. It is very difficult to foresee this provision working in practice either in state reporting or in any communications procedure that might be adopted in future. Nevertheless, the Charter recognises the existence of “non-territorial” languages (such as Romani), extending the general principles for all minority languages *mutatis mutandis* (with necessary alterations only) to non-territorial languages.⁵²

European Community Law

One element of the *acquis* with which all applicants must comply is the Race Equality Directive.⁵³ This new piece of European Union legislation, which will enter into force in 2003, admits that, “discrimination based on racial or ethnic grounds may undermine the achievement of the objectives of the EC Treaty, in particular ... the raising of the standard of living and quality of life, economic and social cohesion and solidarity.”⁵⁴ The Directive therefore performs a vital function in ensuring the aims of integration benefit all sectors of society. The Directive requires states to *act* to combat discrimination (there is a positive obligation) on the grounds of racial or ethnic origin including in education;⁵⁵ statistics are to be gathered to determine groups facing *indirect* discrimination as a necessary first step towards elimination of inhibitors to the social development of all groups. Importantly, the Directive also shifts the burden of proof in discrimination cases onto the respondent where a *prima facie* (a rebuttable presumption, at first glance) case exists.⁵⁶ This means that where there appears after preliminary analysis to be a case of discrimination, whether direct or indirect, the body accused of discrimination will have the duty to prove that the measure or regulation at issue does not have the alleged discriminatory impact.

In order to comply with the Directive, Member States must ensure that all legislation which is contrary to the principle of equal treatment is repealed (abolished); they must ensure effective, proportionate and prohibitive sanctions are implemented in case of breach, and they must also adopt relevant laws specifically to implement the Directive.⁵⁷

⁴⁹ *Chapman v United Kingdom*, ECHR Judgement of 18 January 2001 (No. 27238/95), paras 93-94.

⁵⁰ Parliamentary Assembly of the Council of Europe, Recommendation 1201 (1993)

⁵¹ The Parliamentary Assembly of the Council of Europe considers that this Protocol may allow the pleading of minority rights in the European Court of Human Rights, which would certainly be a huge step forward in recognition of the importance of the rights of minority groups. (Parliamentary Assembly of the Council of Europe, Recommendation 1492, para vii)

⁵² Article 7(5).

⁵³ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19/07/2000, 0022 – 0026

⁵⁴ para 9.

⁵⁵ para 12, Article 3 (1)(g), also Article 5.

⁵⁶ para 21 and Article 8.

⁵⁷ Articles 14-16.

The Directive does not extend to discrimination on the basis of nationality, or statelessness.⁵⁸ Thus, those who are nationals of another state, or those who have no nationality, are not protected. It also does not extend to discrimination on the basis of language, so linguistic minorities will not be protected, unless, as is often the case, linguistic discrimination is allied with ethnic discrimination. Despite this, the Directive is a step forward in the promotion of equality in the European Union. Of the countries considered in this paper, only Romania has so far adopted analogous legislation, whilst Estonia is debating a draft bill.

⁵⁸ Article 3 (2).

Estonia

Estonia has recently emerged from a sustained period where its distinctiveness was suppressed. The newly re-independent nation is struggling to cope with a population which is essentially mixed between those who were on its territory prior to 1945, and those that came during the Soviet period. At once desperate to re-establish its national identity, and to appease European Union calls for minority rights protection, successive governments have developed "integration plans".

Demography.

Ethnicity	Population
Estonian	68.6%
Russian	29.5%
Ukrainian	2.7%
Belorussian	1.5%
Finn	0.9%

Figures are estimates from the 2000 Population and Housing Census, cited in the Fifth Periodic Report of Estonia under the International Convention on the Elimination of Racial Discrimination CERD/C/373/Add.2, 30 May 2002.

These figures from the Population and Housing Census are estimates. A close perusal of the figures will confirm this, as the total is over 100% of the population. They are also not comprehensive, there are no official figures on the size of the Roma population in Estonia, for example. Unofficial numbers vary between 1,000 to 1,500.⁵⁹

Estonia conducted a census in 2001, the results of which were not available for inclusion in this report. However, preliminary results cited by the European Commission in its 2001 Regular Report on Estonia's Progress Towards Accession⁶⁰ indicate that the percentage of those asked to participate who identified themselves as ethnic Russian was 26.5. Which represents a fall of some 3% over the eighteen months or so which had passed between the collection of the figures here cited and those collected in 2001.

International obligations

As the "International Obligations" table shows, Estonia is a party to both International Covenants (ICCPR and ICESCR) and the Optional Protocol under the ICCPR allowing individual complaints to the Human Rights Committee against Estonia; the CERD, CRC, European Convention on Human Rights and Fundamental Freedoms, its First Protocol which includes the right to education; the Revised European Social Charter which allows collective complaints (for example by teachers trade unions) and also includes the right to education, and the FCNM. Estonia is, however, not a party to the UNESCO Convention Against Discrimination in Education; the 1954 Convention Relating to the Status of Stateless Persons; the European Charter on regional and Minority Languages; or the European Convention on Nationality.

According to *Article 123 of the Constitution of 1992*,

If laws or other legislation of Estonia are in conflict with international treaties ratified by the Riigikogu [the Estonian Parliament], the provisions of the international treaty shall apply.

⁵⁹ OSCE HIGH COMMISSIONER ON NATIONAL MINORITIES, OSCE REPORT ON ROMA/SINTI IN THE OSCE AREA, 1999; LIEGEOIS, J, & GHEORGHE, N, ROMA/ GYPSIES: A EUROPEAN MINORITY, Minority Rights Group, Brixton, 1995.

⁶⁰ Brussels, 13.11.2001, SEC (2001) 1747 page 21.

Formally, then, Estonia adopts a monist approach towards its treaty obligations in international law. This means that, upon ratification, international conventions should be directly applicable in Estonian courts. The effect of this in relation to minorities is somewhat reduced, however, since Estonia is not a party to a number of minority related instruments such as the European Charter for Regional or Minority Languages and the UNESCO Convention on Discrimination in Education. It is a party to the Framework Convention of the Council of Europe, but the Riigikogu (Estonian parliament) issued a declaration restricting the effect of the treaty to citizens.⁶¹

“The Republic of Estonia understands the term "national minorities", which is not defined in the Framework Convention for the Protection of National Minorities, as follows: are considered as "national minority" those citizens of Estonia who

- reside on the territory of Estonia;
- maintain longstanding, firm and lasting ties with Estonia;
- are distinct from Estonians on the basis of their ethnic, cultural, religious or linguistic characteristics;
- are motivated by a concern to preserve together their cultural traditions, their religion or their language, which constitute the basis of their common identity.”

This restriction runs counter to international law, where minority rights are human rights, and not simply the rights of citizens.⁶² According to this declaration, there is a distinction between the rights of those groups, or members of those groups, who have been in Estonia for a long time (how long is not specified), and who are in some way “distinct”. Such a declaration goes to the heart of the convention – its subject – and could be challenged under the law of treaties, which prohibits reservations or declarations to treaties which go against their “object and purpose”, were it not for the unusual nature of the FCNM. The object and purpose of the FCNM is left open for discussion as its subject is not defined. It is envisaged that states will develop their own definitions of the subject of the Convention, although the discretion a State has in doing this is apparently not unfettered. In this case the Advisory Committee (the group of independent experts which advises the Committee of Ministers of the Council of Europe on the application of the FCNM) has indicated that, “the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions”.⁶³ In the case of this declaration by Estonia the Committee has gone further to state that,

“the above declaration is restrictive in nature. In particular, the citizenship requirement does not appear suited for (sic) the existing situation in Estonia, where a substantial proportion of persons belonging to minorities are persons who arrived in Estonia prior to the re-establishment of independence in 1991 and who do not at present have the citizenship of Estonia.”⁶⁴

One effect of the declaration is that the group of “ethnic minorities”, are those who, “are not Estonian citizens and cannot be classified as a ‘national minority’”.⁶⁵

Minority education: law and practice

The State Programme “Integration in Estonian Society 2000-2007”⁶⁶ highlights the importance of the “survival” of the Estonian nation, culture and language no fewer than five times. It also expressly states the role of education in this process to be, “the development of the young generation of non-Estonians into one actively speaking Estonian and loyal to Estonia yet as a part of society preserving its national culture”. In the view of the previous Estonian government, “[an integrated society] can only arise on the basis of Estonian language proficiency and knowledge of Estonian culture.”⁶⁷

⁶¹ Source: <http://conventions.coe.int/treaty/EN/DeclareList.asp?NT=157&CM=2&DF=08/08/00>

⁶² see textbox “minority rights are human rights”.

⁶³ Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Estonia, adopted on 14 September 2001, para 15.

⁶⁴ Ibid, para 17.

⁶⁵ Framework Convention for the Protection of National Minorities, *Comments of the Government of Estonia on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Estonia*, undated, para 29.

⁶⁶ adopted by the Government of Estonia on 14 March 2000, <http://www.riik.ee/saks/ikomisjon/programme.htm> (accessed 27 May 2002).

⁶⁷ Ibid.

The views on integration and education expressed by the UN Committee on the Rights of the Child highlight the need for a balance between the language and culture of the state and minorities.⁶⁸ The position of the previous Estonian government is in danger of assimilationism, if it does not adequately reflect this need for balance. The delicate equilibrium between integration and assimilation has been described thus,

“while a degree of integration is required in every national society in order to make it possible for the state to respect and ensure human rights to every person within its territory without discrimination, the protection of minorities is intended to ensure that integration does not become unwanted assimilation or undermine the group identity of persons living on the territory of the state.”⁶⁹

The state integration programme contains five sub-programmes, one of which focuses on education, and another on the “education and culture of ethnic minorities”. For 2002 and 2003 the percentage of funding allocated to these two sub-programmes was as follows:

Sub-programme	Percentage of total funding allocated to Programme		
	Source	2002	2003
Education	State Budget	66.7%	67.1%
	Foreign Aid	49.2%	44.1%
	Total	57.6%	59.3%
Education and culture of ethnic minorities	State Budget	10.7%	10.1%
	Foreign Aid	2%	4.2%
	Total	6.2%	8.1%

Source: table 1 “Consolidated budget for sub programmes for the years 2000-2003”, Fifth Periodic Report of Estonia under the International Convention on the Elimination of Racial Discrimination, CERD/C/373/Add.2, 30 May 2002, p 13.

The state integration plan, adopted in 2000, is supported by foreign assistance, including a € 3,14 million EU PHARE programme grant.

Despite this programme, regulation on the use of language in education, employment, and naturalisation (all discussed below) has led the European Commission against Racism and Intolerance (ECRI, a group of independent experts in the Council of Europe) to caution that, “such a situation is likely to lead to the effective marginalisation and disaffection of members of [Russian speaking minorities] , who may form a sort of ‘underclass’, creating a climate in which ethnic tensions, even if they are not acute at the present time, may resurface.”⁷⁰

The Constitution (general provisions affecting minority rights)

Article 12 of the Constitution of Estonia⁷¹ is a general prohibition of discrimination on the basis of nationality, race, colour, sex, language, origin, religion, political or other opinion, property or social status, or on other grounds. Article 9 goes further, stating,

1. *The rights, freedoms and duties of each and every person, as set out in the Constitution, shall be equal for Estonian citizens and for citizens of foreign states and stateless persons in Estonia.*

⁶⁸ As noted in the introduction.

⁶⁹ Eide, A, *United Nations Guide for Minorities*, Chairman of the Working Group on Minorities, Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/AC.5/2001/2.

⁷⁰ European Commission against Racism and Intolerance, *Second Report on Estonia*, Adopted on 22 June 2001, CRI (2002)1, para 59.

⁷¹ Constitution of the Republic of Estonia (RT 1992, 26, 349).

Given the reservation of Estonia to the FCNM noted above, and the provisions of the *Language Act 1995/2000*⁷², and the employment provisions in the constitution, below, it is questionable whether this provision is followed in practice with regard to non-citizens. Whilst it is not counter to international law to differentiate between citizens and non-citizens in certain respects,⁷³ in Estonia the category of stateless represents in vast proportion members of one particular minority who have resided in Estonia for most or all of their lives. Whilst this is a sensitive issue in Estonia, it brings into question the relationship between citizen/ non-citizen and members of majority and minority groups.⁷⁴

Article 49 of the Constitution also contains a minority rights clause stating that,

Everyone has the right to preserve his or her national identity.

The supremacy of the Constitution and hence the rights guaranteed therein, over domestic legislation is guaranteed in Article 152 of the Constitution, which states,

1. *In a court proceeding, the court shall not apply any law or other legislation that is in conflict with the Constitution.*
2. *The Supreme Court shall declare invalid any law or other legislation that is in conflict with the provisions and spirit of the Constitution.*

⁷² Language Act (RT I 1995 23, 334; 2000, 51, 326).

⁷³ See Committee on the Elimination of Racial Discrimination, General Recommendations numbers 1 and 20.

⁷⁴ Comments of Rapporteur Morten Kjærum to the Committee on the Elimination of Racial Discrimination consideration of the periodic report of Estonia, Palais des Nations, Room XI, 16 August 2002, unreported as of 20 August 2002. A Draft Equality Act, which would reverse the burden of proof in case of *prima facie* discrimination, is stated by the Estonian government as expected for enactment in 2003: see Framework Convention for the Protection of National Minorities, Comments of the Government of Estonia on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Estonia, para 21.

1. Minority Rights are Human Rights

International Covenant on Civil and Political Rights

Art 2.1

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Human Rights Committee:

The terms used in article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2.1 are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under article 25. A State party may not, therefore, restrict the rights under article 27 to its citizens alone.¹

Convention on the Rights of the Child

Art 2.1

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Art 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

¹ The Right of Minorities (Art. 27):. 08/04/94, CCPR General Comment 23 (General Comments) para 5.1

Language of Instruction

1. Law

The constitution of Estonia guarantees the right to education in Article 37, which contains the following sub-section on minority language education,

1. *Everyone has the right to receive instruction in Estonian. The language of instruction in national minority educational institutions shall be chosen by the educational institution.*

It is to be noted that this mentions “national” minorities. The distinction between ethnic and national minorities in Estonia, is said to be extremely important (as discussed below) although it is not clear. There is also an apparent distinction between the right to instruction in Estonian and the privilege of instruction in languages other than the official language. The question of whether there are restrictions placed on the opening and running of independent schools is left open. The issue is covered in statute by the *Private Schools Act 1998*⁷⁵, which will be discussed below.

Article 4(3) of the *Education Act 1992*⁷⁶ provides that the state and local government shall guarantee teaching of Estonian in all other-language public educational institutions.

A recent amendment to Article 52 of the *Basic Schools and Upper Secondary Schools Act 1993*⁷⁷ has altered the position of minority language education in Estonia significantly. Previously, Article 52 prescribed the initiation of a transition from Russian to Estonian language tuition in secondary education from 2007/2008.⁷⁸ This position itself was softened by an amendment of April 2000 where it had been considered that the *Basic Schools And Upper Secondary Schools Act* prescribed “universal Estonian language instruction in the 2007/8 academic year ‘at the latest’.”⁷⁹ That was altered in April 2000, so that schools where 60% of the subjects are taught in Estonian would be considered schools with Estonian language of instruction within the meaning of article 52.⁸⁰ The remaining 40% of classes could still be taught in another language at the upper secondary level (grades 10-12), and any language may be used at the basic education level⁸¹ although Estonian language instruction must also be given.⁸²

The latest amendment, following pressure from the European Union, and various United Nations treaty monitoring committees, has completely altered this situation, although there is still some confusion surrounding what will happen in 2007/2008. Article 9 of the act now states, somewhat confusingly, that,

*In the upper secondary school stage, the language of instruction shall be Estonian. In the upper secondary school stage of municipal schools and in specific classes of municipal schools, any language may be the language of instruction. Permission for instruction in another language shall be granted by the Government of the Republic on the basis of an application by a local government council. A corresponding proposal shall be made to the local government council by the board of trustees of an upper secondary school based on the development plan of the school.*⁸³

This was presented orally to the United Nations Committee on the Elimination of Racial Discrimination as a guarantee of minority language bilingual education,⁸⁴ and is apparently being interpreted in Estonia, and by the OSCE as signifying that those schools which will not be ready to teach 60% of the curriculum in the Estonian language by the 2007/8 deadline, will have the right to apply to the municipality for an exemption or delay in the implementation of the law. The municipality may then in turn request this of the government, and it is the government then

⁷⁵ Private Schools Act (RT I 1998, 57, 859).

⁷⁶ Education Act (RT 1992, 12, 192).

⁷⁷ Basic Schools and Upper Secondary Schools Act 1993 (consolidated 2002) (RT I 1993, 63, 892).

⁷⁸ Basic Schools and Upper Secondary Schools Act §52(2) “ Transition to instruction in Estonian shall be started in state and municipal upper secondary schools not later than the academic year 2007/8.”

⁷⁹ Packer, J, *The Protection of Minority Language Rights Through the Work of OSCE Institutions*, in TRIFUNOVSKA (ed.) MINORITY RIGHTS IN EUROPE: EUROPEAN MINORITIES AND LANGUAGES, The Hague, 2001

⁸⁰ New §9(1)(i) of Basic Schools and Upper Secondary Schools Act.

⁸¹ Dependent on decision of the governing council in terms of municipal schools and of the Ministry of Education, in terms of state schools: from Basic and Upper Secondary Schools Act, §9(1).

⁸² *ibid*, §9(1).

⁸³ 26.03.2002 entered into force 05.04.2002 – RT I 2002, 34, 205

⁸⁴ Committee on the Elimination of Racial Discrimination consideration of the state Report of the Republic of Estonia, Palais des Nations, Room XI, 16 August 2002 (unpublished).

that retains the power to grant such exemptions. It will be interesting to see how effective this complex process is in dealing with those cases where schools are simply not ready to transfer to Estonian based bilingual education. It is to be hoped that greater clarity appears in practice than exists in the statute book.

Article 52 is still in force, and states that,

*Transition to instruction in Estonian shall be started in state and municipal upper secondary schools not later than in the academic year 2007/2008.*⁸⁵

The *Basic Schools and Upper Secondary Schools Act* safeguards the cultural identity of minorities after 2007/8 in section 52(3):

*In order to preserve their national identity, students whose mother tongue is not Estonian and who attend schools where Estonian is the language of instruction shall be afforded the opportunity to learn their mother tongue and to learn about their national culture, taking into account regional peculiarities and the curriculum of the school*⁸⁶.

Comparing the wording here, “shall be afforded” with the Constitution, which talks of the *right* to education in Estonian, it seems that statutory provision of minority language education is considered a privilege, not a right. This is highlighted by the *National Minorities Cultural Act 1993*,⁸⁷ which envisages self-government of named *national* minorities: German, Swedish, Jewish and Russian, whereas other *ethnic* groups may also apply (with no guarantee of success).⁸⁸ Terminology is confused; whilst discussing *national* minorities, the provision highlights a religious minority (the Jewish minority); on the other hand the possibility is left open of expanding the list of groups empowered to establish cultural self-governments to other *ethnic* minorities. It seems then that there is no possibility for the recognition of other *national* minorities, while permitting recognition of *ethnic* minorities. Cultural and linguistic minorities are excluded or subsumed in one or other category.

Whilst this law has been described as having, “no substantial impact on the practical situation in Estonia”,⁸⁹ the importance of the distinction between ethnic and national minorities in Estonian law and practice has been underlined elsewhere, in the State Programme “Integration in Estonian Society 2000-2007”, “it is essential to distinguish the concepts of national minority and ethnic minority”. National minorities in Estonia are defined as those who have, “inhabited the territory in question [i.e. Estonia] consistently and for a long period”, and are named as Russians, Germans, Swedes, Latvians and Jews, each group being statistically accounted for. This excludes those who would be considered “ethnic” minorities, that is those who have settled in Estonia, “after the Second World War as a result of migration”.⁹⁰ The distinction clearly disfavours former Soviet citizens who are now stateless.

Language, education, self-identification (as a member of a minority) and access to employment are inextricably linked in Estonian legislation. The *Education Act* outlines the level of Estonian language proficiency a Russian pupil will have when leaving education at certain stages, and the *Law on Language of 1995* the level of proficiency required for various professions. After compulsory basic education (nine years) those who have studied in Russian medium schools will be deemed to have a basic knowledge of Estonian only and will thus be automatically excluded from those professions considered to require an intermediate or advanced level of Estonian.⁹¹

⁸⁵ 10.09.97 entered into force 04.10.97 – RT I 1997, 69, 1111; 04.04.2000 entered into force 04.05.2000 – RT I 2000, 33, 195.

⁸⁶ 04.04.2000 entered into force 04.05.2000 – RT I 2000, 33, 195.

⁸⁷ National Minorities Cultural Act (RT I 1993, 71, 1001).

⁸⁸ National Minorities Cultural Act, Arts 5, 1 and 2(2).

⁸⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Estonia, adopted 14 September 2001, para 29.

⁹⁰ Quotations from State Programme, *Integration in Estonian Society 2000-2007*, adopted by the Government of Estonia on 14 March 2000, section “6.2 Sub-Programme “The education and culture of ethnic minorities””.

⁹¹ See the section, which follows on “Employment”.

The *Law on Language 1995/ 2000*⁹² also categorises minority languages as “foreign”.⁹³ Whereas there is a Constitutional right to education in Estonian,⁹⁴ minority languages are defined as, “foreign language[s] which Estonian citizens who belong to a national minority have historically used as their mother tongue in Estonia.”⁹⁵ The legal status of such “foreign” languages of national minorities is less secure than the state language, and those languages not used by *national* minorities, and languages which have not *historically* been used in Estonia face an even more speculative future.

2. Practice

“In its educational structure, the Estonian State takes into consideration that the number of Estonian-speakers in the world is small and that the Republic of Estonia is the only state in which this is the official language.” (State Programme “Integration in Estonian Society 2000-2007” adopted by the Government of Estonia on 14 March 2000)

What this means in the Estonian context is that successive governments have felt a responsibility to ensure the preservation of the Estonian language.

According to the Statistical Yearbook on Education 1999/2000, in 1999 there were 706 institutions of general education in Estonia: 172 primary, 294 “basic”, 240 gymnasias (that is secondary schools) and 4 special needs schools. In 104 schools the language of instruction was Russian in 9 primary, 30 “basic” and 65 gymnasias – i.e. 14.7% of all general education schools were Russian medium. This is a slight decrease from the 15% of schools which used the Russian medium during the 1998/1999 school year.⁹⁶ This figure represents a significantly lower figure than the 29.5% of the population who identified themselves as ethnic Russians in the Population and Household Census at the end of 2000,⁹⁷ which is also likely only to be a fraction of those who speak Russian.

Private schools

The *National Minorities Cultural Act* permits recognised national minority groups to set up educational establishments for the maintenance of their culture in section 4(1). The act contains no such provision regarding ethnic minorities.

In its state report under the Framework Convention on the Protection of National Minorities in 1999, the government of Estonia cited the *Private Schools Act 1998* as the relevant positive law.⁹⁸ The Estonian government expressed the view that

“the Private Schools Act does not restrict founding of private schools on the basis of national origin. Thus, on the basis of the Act persons belonging to national minorities have the right to found and operate private schools. The language of instruction in a private school is to be determined by the by-laws of the school (subsection 1 of section 15).”⁹⁹

Since May 2001 the Language Act has required teaching staff and management in private schools to display at least “intermediate level” Estonian language proficiency.¹⁰⁰ This requirement should help to ensure that pupils in such schools which teach in a language other than Estonian, have an improved opportunity to receive a genuine bilingual education.

⁹² Language Act (RT I 1995 23, 334; 2000, 51, 326).

⁹³ Language Act, Section 2(1) “Every language other than Estonian is a foreign language.”

⁹⁴ Constitution of 1992, Article 37.

⁹⁵ Language Act, Section 2(2), RT I 1995, 23, 334, as amended by RT I 2001, 65, 375. Available at <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022>

⁹⁶ From the Statistical Office, *Haridus 1998/99*, table 2.4, p34.

⁹⁷ These figures are presented in the demography section above.

⁹⁸ RT I 1998, 57, 859.

⁹⁹ Report under the Framework Convention on the Protection of National Minorities 1995. Initial report of Estonia 1999, accessed at www.humanrights.coe.int/minorities/eng/frameworkconvention/statereports/1999/estonia/art13.htm.

¹⁰⁰ RT I 2001, 48, 269.

2. Views of the Committee on Economic, Social and Cultural Rights

The adoption of temporary special measures intended to bring about de facto equality for men and women and for disadvantaged groups is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved.

... a State must respect the availability of education by not closing private schools; ... fulfil (provide) the availability of education by ... providing teaching materials, training teachers and paying them domestically competitive salaries.

....

... Violations of article 13 may occur through the direct action of States parties (acts of commission) or through their failure to take steps required by the Covenant (acts of omission)....

... violations of article 13 include: the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational discrimination; the use of curricula inconsistent with the educational objectives set out in article 13 (1); ... the failure to take "deliberate, concrete and targeted" measures towards the progressive realization of secondary, higher and fundamental education in accordance with article 13 (2) (b)-(d); the prohibition of private educational institutions;¹

¹ Twenty-first session, (1999)* General Comment No. 13, The right to education (art. 13), E/C.12/1999/10

Content

Improving the quality of Russian language education was one of a number of commitments agreed by a Coalition of the three ruling parties in Estonia on 17 March 1999 on the formation of the previous government. Their stated aim was to improve teaching standards through intensive supplementary education, in a move to transform Russian language education: "Russian language schools will be supplied with Estonia – centred instruction material".¹⁰¹

This was a move which reportedly did not improve the quality of education in Russian medium schools, as the textbooks were poorly translated and slow to materialise, especially in the Russian language.¹⁰² The policy also seems to lack the necessary respect for cultural diversity as promoted by the Committee on the Rights of the Child and, at the national level, as prescribed in the Law on Cultural Autonomy of National Minorities. In connection with the proposed progressive phasing out of Russian language education this apparently contributed to the feelings of alienation in Russian language schools facing the prospect of closure.¹⁰³

Participation

There has been a decrease in enrolment in Russian medium schools in Estonia. The government of Estonia attributes this to a, "decrease in the number of Russian speaking children (initially due to emigration, but in more recent years to a low birth-rate)". It may also be connected to a choice among Russian parents to have their children educated in Estonian schools to improve their employability given the decisive importance of the language of tuition for employment according to the restrictive regulations of the Language Act.¹⁰⁴ According to a study by the Open Society Institute Estonia in 1999, 7% of Russian families' children were educated in Estonian schools. The then Minister of Ethnic and Population Affairs, Ms Katrin Saks, noting this general trend, considered it to be detrimental to the child's progress in school and saw the better solution as

¹⁰¹ Coalition Agreement, 1999. Cited in OPEN SOCIETY INSTITUTE, MONITORING THE EU ACCESSION PROCESS: MINORITY PROTECTION, Budapest, 2001, at p 195.

¹⁰² OPEN SOCIETY INSTITUTE, 2001, p 195.

¹⁰³ See for example OECD REVIEW OF NATIONAL POLICIES FOR EDUCATION: ESTONIA, 2001, at p 113.

¹⁰⁴ See section on "Employment".

improving Estonian language training in Russian language schools.¹⁰⁵ This conclusion is the advocacy of good quality bilingual education. Ms Saks clearly viewed the previous formulation of the Basic Schools and Upper Secondary Schools Act as a guarantor of bilingual education, despite the fact that it regulated that no more than 40% of classes at the post compulsory level may be taught in Russian. As noted above the situation since the amendment to the relevant law in March 2002, is unclear.

High quality bilingual education requires teachers who are fluent in both languages. The Language Act, since 1999 requires teaching staff and management in public schools to display at least “intermediate level” Estonian language proficiency. This requirement is irrespective of the type of school: minority or otherwise¹⁰⁶.

It has been stated that, “there is a severe lack of trained and competent teachers of the Estonian language in the Russian-language schools”.¹⁰⁷ One would expect a concerted effort to train Russian speakers as teachers of Estonian as a second language in any emergent policy of bilingual education. The statement of the previous Estonian government related to the increase of bilingual teachers, however, sees the “teachers of the official language”, as Estonians, who are “prepared to expand their activities to schools in which the language of instruction is Russian”. To emphasise the exclusion of Russian teachers from this new role, the policy continues, “[Russian] teachers possess insufficient knowledge of Estonian subject material and school traditions...there is...not much point in their participating in Estonian-language training in their subject, and the support and example they provide their students is minimal.”¹⁰⁸

Intercultural schools require intercultural teachers, as both role-models for the students and as transmitters of minority cultures. A policy which trains Russians into becoming Estonians does not embody the necessary “balance” which is in the best interests of all (society, the individual – minority or otherwise – and the child) in fostering tolerant societies. Forced suppression and assimilation are the antithesis of minority rights, and the homogenisation of the teaching profession can too easily lead (even if inadvertently) to homogenisation of the pupils and a sense of exclusion felt by non-dominant groups.

Whilst enrolment rates among Russian schools are said to be falling more rapidly than among the Estonian institutions, those that do enter Russian medium schools tend to stay in school longer than their colleagues studying in Estonian. Figures compiled by the UNDP in 1999 suggest relatively high rates of dropout in Estonia from 14 to 17 (i.e. towards the end of compulsory education), but somewhat less dramatic (although still high) figures for those studying in Russian. The peak dropout period for boys is at age 14 and 15 and is 15% in Estonian schools and 9% in Russian schools. For girls the highest rate of dropout is at 16 where it is 7% in Estonian and 5% in Russian schools.¹⁰⁹

It is interesting to consider why Russian schools should fare better in retaining their pupils. Looking to the reasons why pupils choose to dropout, one finds that 40% of dropouts mentioned employment as a reason in surveys cited by UNDP.¹¹⁰ There are higher numbers of Russian speakers among the unemployed than Estonian speakers, and this may act as a disincentive to enter the job seeking population. Given that perceived Estonian language level affects employability, and that this depends on the completion of different levels of education, it is in the interests of Russian pupils to complete compulsory education in order to be classified at a higher level of Estonian language capacity.

Higher Education.

The *Law on Universities* 1995 (amended and consolidated in 2000) now represents the principal national law on higher education. It makes no mention of language of instruction.

¹⁰⁵ Reported in the Baltic News Service, 19 April 2000.

¹⁰⁶ RT I 1999, 66, 656 and RT I 2001, 48, 269.

¹⁰⁷ European Commission against Racism and Intolerance, *Second Report on Estonia*, Adopted on 22 June 2001, CRI (2002)1, para 46.

¹⁰⁸ State Programme, *Integration in Estonian Society 2000-2007*, adopted by the Government of Estonia on 14 March 2000, Objective A: Elementary school graduates will be socially competent and possess medium-level knowledge of the Estonian language.

¹⁰⁹ Figures from Titt, E & Eglon, A, *Children and Education*, UNDP Report on Children in Estonia, Tallinn, 1999. <http://www.undp.ee/child/en/1.3.html>

¹¹⁰ *ibid*

For the 1998/99 academic year the OECD estimated that 13.7% of instruction in higher education was given in Russian.¹¹¹

There is a relatively high level of Russian language education at the diploma level,¹¹² yet it is not clear what value a diploma level qualification has in Estonia. The recognition of diplomas is not a matter of national regulation. As stated by the OECD, “a growing array of institutions both public and private are offering – or seeking authorisation to offer – “diploma” level higher education study programmes, but the capacity to offer such programmes and the quality vary dramatically.”¹¹³

The idiosyncratic accreditation process in Estonia adds to the confusion as to the status of diplomas. There are three levels of accreditation: accredited, conditionally accredited and not accredited. Unaccredited institutions are thus allowed to continue running diplomas on a “conditional” basis pending the completion of the accreditation process. The regulatory system which allows diploma level institutions to continue teaching and offering diplomas without official state accreditation encourages individuals to enter a speculative market, where they may be investing their time and energy in an education which may not later be officially recognised. The variation in quality noted by the OECD is not surprising in institutions which legally continue before they are fully accredited. The European Court of Human Rights has recognised an obligation on the States Parties to that convention (including Estonia) to recognise education completed, so that the individual may “profit” from it.¹¹⁴

In most universities in Estonia Russian speakers are provided the possibility of sitting entrance examinations in the Russian language and, depending on language proficiency of the teaching staff, may also take subsequent examinations in that language.

Socio-economic status of minorities

Citizenship

The first stumbling block to minority rights is recognition as a member of a minority (who is a minority?). In Estonia, members of minorities who are also non-citizens are accorded a disfavoured place in Estonian legislation.¹¹⁵ Preliminary results from the 2001 census indicate that 80% of the population are citizens of Estonia, 7% are citizens of other countries, and 13% (178,000 people) are stateless.¹¹⁶

Citizenship requirements have altered significantly in recent years in response to pressure from the European Union, as noted in the Progress Reports of the Commission. Estonia has not however signed or ratified the European Convention on Nationality.¹¹⁷

¹¹¹ OECD REVIEW OF NATIONAL POLICIES FOR EDUCATION: ESTONIA, 2001, p 170.

¹¹² Ibid.

¹¹³ OECD REVIEW OF NATIONAL POLICIES FOR EDUCATION – ESTONIA, 2001, p 178.

¹¹⁴ European Court of Human Rights, Case Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium (Merits), Judgement of 23 July 1968, Series A, vol. 6, p 31.

¹¹⁵ See the reservation to the framework Convention for the Protection of National Minorities, and the Language Act, discussed above. Cf Article 9 of the Constitution, which bears to guarantee equality, irrespective of citizenship.

¹¹⁶ Commission of the European Communities, *Regular Report on Estonia's Progress Towards Accession*, Brussels, 13.11.2001, SEC (2001) 1747, at p 21.

¹¹⁷ European Treaty Series 166, <http://conventions.coe.int/Treaty/EN/cadreprincipal.htm>

According to the 1995 *Citizenship Act*, children now have a right to citizenship where their parents are already naturalised citizens.¹¹⁸ Naturalisation of their parents is not so easy, particularly in respect of the requirement that they pass an examination on the Constitution and the Citizenship Act.

The situation of children of stateless persons has been improving since 1999 as now children born of stateless parents have the *possibility* to be recognised as citizens, but as stated by the United Nations Development Programme in 1999, “This amendment to the law affects only a small number of the current stateless children, and is directed mainly towards those who are yet to be born.”¹¹⁹

In fact there has been a slow-down in registrations among stateless persons in recent years.¹²⁰ Whereas in 1995-1996 22,773 persons were naturalised, the figure dropped to 8,124 for 1996-1997. It seems likely that the cumbersome and complicated procedure has contributed in the down-turn in applications for naturalisation, as research suggests that, in 1997, 93% of stateless persons and 70% of Russian citizens did express interest in applying for Estonian citizenship.¹²¹

One element of the complex process is an examination on the provisions of the Constitution. Education does however ease this process, as graduates of Upper Secondary schools who have taken a “civics” examination will not need to take this further examination. Another is the necessity to pledge an oath of loyalty: “in applying for Estonian citizenship, I swear to be loyal to the constitutional order of Estonia”¹²² The scope of this and other such pledges of loyalty is unclear. The language requirement, although described by the Estonian government as basic, may nevertheless exclude many from the possibility of application, as stated by ECRI, “language training is in general costly and likely to be almost inaccessible for this reason to many persons living in Estonia.”¹²³

The government of Estonia recently passed legislation further complicating the position of stateless persons in Estonia. From June 2001, these “illegal aliens”¹²⁴ have ninety days to “regularise their status” (become citizens) or they will face heavy fines.¹²⁵ The effect of this is potentially huge, as the Open Society Institute claims that “regularisation” of status normally takes one year.¹²⁶

According to the Treaty on the Basic Principles of the Inter-State Relations between the Russian Soviet Federative Socialist Republic and the Estonian Republic of 1991, Estonia is obliged to allow its permanent residents, who once held Soviet citizenship, to claim Estonian or Russian citizenship according to choice. This treaty implements the principle of *jus soli* as between Russia and Estonia (i.e. where the conferment of nationality depends on residence). The reality, however is that the extremely strict criteria of residence applied by Estonia has meant that it rather employs the principle of *jus sanguinis* (where the conferment of nationality depends on “blood”), with the result that this group of residents is not preferred in citizenship, and is rather, in the majority, stateless.

¹¹⁸ Citizenship Law 1995, articles 13 and 14.

¹¹⁹ UNDP, NATIONAL HUMAN DEVELOPMENT REPORT 1999, Riga, pp 40-41.

¹²⁰ See *ibid*, section 2.3, figure 2.5, *supra*, reported in Open Society Institute, Report on Estonia, at p 182.

¹²¹ *Ibid*.

¹²² Convention on the Elimination of Racial Discrimination, *Fifth Periodic Report of States Parties due in 2000, Estonia*, CERD/C/373/Add.2, 30 May 2002, para 199.

¹²³ European Commission against Racism and Intolerance, *Second Report on Estonia*, Adopted 22 June 2001, CRI (2002)1, para 9.

¹²⁴ This terminology was used in the Government Integration Report, at page 109, as cited in the OSI report on page 184.

¹²⁵ Open Society Institute, 2001, p 184, legal amendment published RT I 2001, 58, at 352.

¹²⁶ Open Society Institute, 2001, at p 184.

Residence Permits

The *Aliens Act 1993*¹²⁷ section 6(1) sets an annual immigration quota for temporary and permanent resident holders at 0.05% of the “permanent population”. Ethnic Estonians are exempt from the quota system, as are EU citizens, but Russian citizens are *not* exempt.¹²⁸ This has been criticised on the basis of racial and ethnic discrimination by the Committee on the Elimination of Racial Discrimination in its Concluding Observations on the Report of Estonia under the CERD for 2000.¹²⁹

By decision of the Estonian Supreme Court in May and June 2000 it is unconstitutional to refuse residence permits to children and spouses of Estonian citizens as a result of the quota. Consequently 865 permits have been issued, rather than the figure of 610 which corresponds to the quota.¹³⁰

Of those who held a valid residence permit at the beginning of 2001, 64% were stateless.¹³¹ The government of Estonia is under an obligation to ensure the right of every child to a nationality even if not a party to several United Nations conventions on statelessness, and the European Convention on Nationality. As stated in the Convention on the Rights of the Child Article 7,

1. *The child shall be registered immediately after birth and shall have the right to a name, the right to acquire a nationality ...*
2. *States shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant instruments in this field, in particular where the child would otherwise be stateless.*

Whilst the force of this duty is weak (“in accordance with their national legislation”), according to the International Convention on the Elimination of all Forms of Racial Discrimination the state must at least *eliminate* discrimination in the realisation of the right to a nationality.

Article 5 In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights...

(d) (iii) *The right to a nationality;*

Employment.

Persons belonging to minorities in Estonia appear to have been particularly affected by unemployment,¹³² yet the Constitution of 1992 provides that,

§ 31.

Estonian citizens have the right to engage in enterprise and to form commercial undertakings and unions. Conditions and procedure for the exercise of this right may be provided by law. Citizens of foreign states and stateless persons who are in Estonia have this right equally with Estonian citizens, unless otherwise provided by law.

Despite the phrase, “citizens of foreign states and stateless persons...have this right equally with Estonian citizens”, a distinction is drawn between Estonian citizens on the one hand and others, and the equality is not automatic (“unless otherwise provided by law”). Unfortunately, data on the employment of stateless persons in Estonia is not easily available.

¹²⁷ Aliens Act consolidated 2001 (RT I 1999, 44, 637; RT I 1997, 50, 548).

¹²⁸ This is despite the bilateral treaty agreed between the two nations in 1991 (mentioned in the introduction).

¹²⁹ Concluding Observations by the Committee on the Elimination of Racial Discrimination: Estonia. 19/04/2000. CERD/C/304/Add.98, at paragraph 11.

¹³⁰ EC Progress Report 2001, at p 22.

¹³¹ Citizenship and Migration Board, cited in Fifth Periodic Report of Estonia under the International Convention on the Elimination of Racial Discrimination, CERD/C/373/Add.2, 30 May 2002, at p 3.

¹³² Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Estonia on 14 September 2001, at para 24.

According to the Organisation for Economic Cooperation and Development, the Russian minority in Estonia has an unemployment rate more than twice that of the Estonian population. As stated in the OECD study, “to some extent, this is because of the concentration of Russian speakers in the heavy industries that suffered most in the industrial changes since the restoration of independence, but other factors are at work.”¹³³

The Language Act specifies Estonian language requirements for various professions in the public sphere¹³⁴ and, from July 2000, the private sphere also.¹³⁵ Regulation of Estonian language knowledge in the private sphere is limited to those professions where it is in the public interest, interpreted as public safety, public order, general governance, public health, health protection, consumer protection and occupational safety.¹³⁶ As stated by the rapporteur during consideration of Estonia’s periodic report under the Convention on the Elimination of Racial Discrimination, “I find it difficult to understand why the state is regulating language requirements in the private sector.”¹³⁷

The act explains classification as an Estonian speaker at the basic, intermediate and advanced levels.¹³⁸ Chapter 2 also outlines limited situations where *national* minority languages (i.e. Swedish, German, Hebrew and Russian) may be used in public administration. Taking these provisions together with those outlining the command of Estonian to be presumed of a graduate of minority language education programmes – set out in the Education Act – one will see that taking “foreign” mother tongue classes can seriously affect a child’s future employability. This may in part account for current discrepancies in unemployment statistics. The numbers of unemployed among non-ethnic Estonians in Estonia – already several percentage points higher than among ethnic Estonians – has increased 1.75 times faster than the rate of increase among Estonians from the first quarter in 1999 to the first quarter in 2000.¹³⁹ With employers forced to demand a certain competence in the Estonian language of their employees it seems that the benefits of a multilingual workforce are not appreciated. For such a provision to avoid discriminatory impact, Estonian language courses would have to be extremely widely available free of charge, and this appears not to be the case from discussions during Estonia’s reporting to the Committee on the Elimination of Racial Discrimination in August 2002.

The new government in Estonia, led by Siim Kallas’ Reform Party since February 2002 has initiated a policy on the recruitment of “teachers of the official language”. As mentioned above, whilst it is essential that children whose mother language is Russian learn the official language, the creation of this post should not exclude ethnic Russian teachers, as inclusive learning environments, which foster inclusive societies, require diverse teachers.

¹³³ OECD REVIEW OF NATIONAL POLICIES IN EDUCATION – ESTONIA, Paris 2001, at p 43.

¹³⁴ Amendment in force since 27 July 1999

¹³⁵ Language Act §2(2) in force as of 01/07/2000

¹³⁶ Language Act, §2(2)

¹³⁷ Mr Morten Kjærum, CERD committee meeting, Palais des Nations, Room XI, 16 August 2002, unreported as of 20 August 2002.

¹³⁸ Language Act, §5.

¹³⁹ From the Statistical Office of Estonia, and Open Society Institute, 2001, at p 202.

3. Views of the Committee on the Elimination of Racial Discrimination

... number of States parties recognize the presence on their territory of some national or ethnic groups or indigenous peoples, while disregarding others. Certain criteria should be uniformly applied to all groups, in particular the number of persons concerned, and their being of a race, colour, descent or national or ethnic origin different from the majority or from other groups within the population.

....

... Some States parties fail to collect data on the ethnic or national origin of their citizens or of other persons living on their territory, but decide at their own discretion which groups constitute ethnic groups or indigenous peoples that are to be recognized and treated as such. The Committee believes that there is an international standard concerning the specific rights of people belonging to such groups, together with generally recognized norms concerning equal rights for all and non-discrimination, including those incorporated in the International Convention on the Elimination of All Forms of Racial Discrimination. At the same time, the Committee draws to the attention of States parties that the application of different criteria in order to determine ethnic groups or indigenous peoples, leading to the recognition of some and refusal to recognize others, may give rise to differing treatment for various groups within a country's population.¹

Having considered reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic groups or groups, Is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.²

¹ Reporting of persons belonging to different races, national/ ethnic groups, or indigenous peoples (Art. 1):. 27/08/1999. CERD General Recommendation 24 (General Comments)

² Identification with a particular racial or ethnic group (Art.1, par.1 & 4):. 22/08/1990. CERD General Recommendation 8. (General Comments)

Development co-operation – new approaches

Immersion education in Estonia Percentage of Instructional Time

Grade	In Estonian	In Russian	In third language
One	100	–	–
Two	90	10	–
Three	72	16	12
Four	64	24	12
Five	49	39	12
Six	44	44	12

Source: Language Immersion Centre, Tallinn

Immersion.

Language immersion programmes invert a child rights based logic which promotes gradual introduction of the child to bilingual education from a beginning in mother language. Children are taken from their home environment where they have begun to learn their mother language and into a school environment in the official language, only gradually having the mother language reintroduced.

The Canadian International Development Agency has given \$1,400,000 to an immersion project in Estonia, "to assist Estonia to integrate its sizeable non-Estonian population".¹⁴⁰ This approach has been used in Canada, where it is considered controversial by some in the light of psychological evidence that children are several times more likely to develop learning difficulties (often associated with more profound psychological disturbances).¹⁴¹ This programme, which is in an initial phase, is co-managed by the Estonian Ministry of Education, and the Canadian and Finnish development agencies.

The programme is voluntary and is over-subscribed. Children begin learning with 100% immersion in Estonian in the first year and a half, followed by an increasing percentage of classes in mother tongue over the following five years as above.

The monitoring body commenting on States compliance with the provisions of the FCNM has stated of this programme that, "the Advisory Committee considers it essential that the voluntary nature of participation in such initiatives is fully maintained and that the decision to allocate substantial resources to these programmes does not hamper the availability or quality of minority language education".¹⁴²

Statistics

There is a general lack of minority-disaggregated statistics in Estonia. In relation to education the following problem has been noted by the United Nations Resident Coordinator in Tallinn, "There is currently no trustworthy data in Estonia on those who are not complying for various reasons with the compulsory education requirement. There are various estimates ... ranging from 3000 to 20 000. Such a discrepancy is due to the fact that local governments are not able to determine the number of children in their area ..., since there is no law in Estonia requiring registration of permanent residency."¹⁴³

This discrepancy will inevitably affect the reliability of statistics disaggregated for minorities since the major part of those with permanent residence permits are non-Estonian. Nationalisation regulations, which include quotas and favour Estonians and their families as well as EU nationals before stateless and Russian nationals are likely to exacerbate the problem. Statistics which are available mostly relate to the Russian minority, and it is very difficult to determine the situation of other minorities.

¹⁴⁰ CIDA website www.acdi-cida.gc.ca, Finnish Aid is also a partner in this project.

¹⁴¹ Genesee, F, *Beyond bilingualism: social psychological studies of French immersion programs in Canada*, CANADIAN JOURNAL OF BEHAVIOURAL SCIENCE, VOLUME 16, ISSUE 4, 1984.

¹⁴² Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Estonia*, adopted on 14 September 2001, at para54.

¹⁴³ Valdmaa, S, *Children's Rights as Human Rights*, HUMAN RIGHTS IN ESTONIA, UN Resident Co-ordinator, <http://www.undp.ee/hre/>

Latvia

Like Estonia, Latvia has emerged from a period of suppression of its national culture, language and identity. Latvia is apparently faced by the same conflicting desires: to appease the European Union, and to rebuild that national identity. Over history both the Estonian and Latvian people have shown great resilience. Today, a lack of a multicultural vision of society threatens the durability of the current peaceful existence.

Demography¹⁴⁴

Ethnicity	% of total Citizens	% of total Non-citizens	% of total Aliens	% of total residents
Latvian	76.3	0.6	2.5	58.1
Russian	17.4	66.8	61.6	29.3
Polish	2.2	3.5	1.3	2.5
Belorussian	1.4	12.8	5.1	4.0
Lithuanian	0.9	2.9	3.8	1.4
Ukrainian	0.5	9.4	11.1	2.6
Jewish	0.3	0.7	1.0	0.4
Estonian	0.1	0.2	1.0	0.1
Other	0.9	3.2	12.6	1.6

Whilst “aliens” are citizens of another state, the term “non-citizen” was coined by the 1995 *Law on the Status of citizens of the former USSR who are not citizens of Latvia or any other country*. This is an unusual distinction in international practice, perhaps known only in Estonia and Latvia,¹⁴⁵ with uncertain legal status.¹⁴⁶ These persons are differentiated from “stateless persons” covered by the *1999 Law on the Status of Stateless Persons*. The figures presented show that 66.8% of those who were citizens of the USSR and are not citizens of any state (which represents 357,198 persons, or 15.2% of the entire resident population) are stateless ethnic Russians. Over ten times as many ethnic Russians are non-citizens as ethnic Latvians.

These official statistics do not offer any estimate of the Roma population. Unofficial estimates from the OSCE suggest 2,000 to 3,000 or around 0.1% of the population whereas Minority Rights Group International indicates 2,000 to 3,500.¹⁴⁷ The government of Latvia itself admitted the existence of a significant Roma minority in its report to the Committee on the Rights of the Child in 2001, although it made no effort to quantify the group.¹⁴⁸

¹⁴⁴ Latvia Naturalization Board, *The Breakdown of the Residents of Latvia by Nationality* <http://www.np.gov.lv/en/fakti/index.htm>, data from the Board for Citizenship and Migration Affairs, dated 1 July 2001.

¹⁴⁵ Ziemele, I, *The regulation of minority rights in Latvia: a few lessons for Europe*, at page 77-78.

¹⁴⁶ Ibid.

¹⁴⁷ From OSCE High Commissioner on National Minorities, OSCE REPORT ON ROMA/SINTI IN THE OSCE AREA, 1999; LIEGEOIS, J, & GHEORGHE, N, ROMA/ GYPSIES: A EUROPEAN MINORITY, Minority Rights Group, Brixton, 1995.

¹⁴⁸ From UN Press Release on First Session of discussion on Latvian report to CRC 9 Jan 2001. <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/942AFA94C9F93091C12569D000310A18?opendocument>

4. Views of The Human Rights Committee

The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.

Positive measures of protection are ... required ...

measures ... aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, ... may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria.¹

...

... each State party must ensure the rights in the Covenant to "all individuals within its territory and subject to its jurisdiction" (art. 2, para. 1). In general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness..... ... In those cases where aliens constitute a minority within the meaning of article 27, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights.²

...when legislation is adopted by a State party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.³

¹ Human Rights Committee, General Comment 23, Article 27 (Fiftieth Session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 38 (1994).

² Human Rights Committee, General Comment 15, The position of aliens under the Covenant (Twenty-seventh session, 1986), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 18 (1994).

³ Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 26 (1994).

International Obligations

Among relevant international agreements to which Latvia is a party are the two International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR). Latvia has also ratified Optional Protocol number one to the ICCPR, which allows individual communications concerning Latvia to be made to the UN Human Rights Committee regarding the rights in the ICCPR (with the exception of the right to self determination). It is also a party to the International Convention on the Elimination of Racial Discrimination; the Convention on the Rights of the Child; the UNESCO Convention Against Discrimination in Education; the 1954 Convention Relating to the Status of Stateless Persons; the European Convention on Human Rights and Fundamental Freedoms, and its Protocol I which includes a provision on the right to education.

Latvia has not ratified the Framework Convention, which it signed on 25 May 1995. The Monitoring Committee of the Council of Europe notes that as a signatory Latvia is bound by the Vienna Convention on the Law of Treaties 1969, to refrain from acts which would defeat the object and purpose of the Convention.¹⁴⁹

¹⁴⁹ Honouring of Obligations and Commitments by Latvia, Council of Europe Doc. 8924, 10 January 2001, para 21.

According to Articles 61 and 89 of the Constitution (the Satversme) international treaties are accorded a legal status just after the Constitution in the hierarchy of legal norms in Latvia, meaning that they can be, and occasionally are cited directly in national courts.¹⁵⁰

In addition to the direct applicability of international standards, their realisation is facilitated by the implementation of constitutional provisions which support, or seek to implement them. One positive development here has been that, as of July 2001, individuals are able to turn to the Constitutional Court to promote and protect their constitutional rights, including, "violations of their rights; until now only state bodies and officials could turn to the Constitutional Court."¹⁵¹

Minority education: law and practice

The constitution (Satversme)

According to Article 114 of the Constitution of 1922, as amended in 1998:

Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.

"Ethnic minorities" is not defined in the constitution. There are apparently no provisions in statutory law to implement this provision.¹⁵² Nevertheless, it has been argued somewhat convincingly, by at least one Latvian academic¹⁵³, that the provisions of the Constitution extend to all minority groups recognised under the International Covenant on Civil and Political Rights 1966 (ICCPR), on the basis that the ICCPR is directly applicable in Latvia. It is true to say that the Constitution, in article 91, contains a general right to equality before the laws clause which states,

All human beings in Latvia shall be equal before the law and the courts.

Human rights shall be realised without discrimination of any kind.

Bearing this in mind, and the interpretation of the equality clause in the ICCPR to all human rights, not only those within the Covenant, it is suggested that this distinction is more theoretical than legally enforceable, however the choice of terminology certainly leaves room for ambiguity.

The Committee on the Elimination of Racial Discrimination has expressed concern at the lack of an explicit legal definition of racial discrimination in Latvia,¹⁵⁴ although there are non-discrimination provisions in the Law on Education and the new Labour Law, discussed below. Latvia did, however, sign Additional Protocol number 12 to the European Convention on Human Rights in November 2000; this is the general provision on non-discrimination. Latvia has not yet ratified this Protocol, and as such is bound only to respect the "object and purpose" as with the Framework Convention. Other than this signature, in 2001, the European Commission noted, "no other important new developments regarding the transposition of anti-discrimination *acquis*".¹⁵⁵

¹⁵⁰ Ziemele, I, *Die Ausgestaltung des Minderheitenschutzes in Lettland: ein Lehrstück für Europa*, [The Regulation of Minority Rights in Latvia: a few lessons for Europe], MINDERHEITENSCHUTZ IN MITTEL-UND OSTEUROPA, Sonderdruck, 2001, 65-94, at 70; Ziemele, I, *The Application of International Law in the Baltic States* (1997) 40 GERMAN YEARBOOK OF INTERNATIONAL LAW, 254-266 at 243; Concluding observations of the Committee on the Elimination of Racial Discrimination: Latvia. 12/04/2001. CERD/C/304/Add.79, at para 4. See for example the case of *Kazarovecs v Lecava High School*, case no. 2-860-3, 18 May 1995, Latvian Human Rights Quarterly 3/4(1998) 137, The case involved corporal punishment in school, The court relied on Articles 19 and 28 of the Convention on the Rights of the Child to find the punishment to which the children had been subjected amounted to degrading treatment.

¹⁵¹ Government of Latvia, *Latvia's contribution to the Regular Report from the Commission on Latvia's progress towards accession* (Latvia's National Progress Report), Riga 2001, www.am.gov.lv/e/?id=1304, at page 15.

¹⁵² Minority Electronic Resources (MINELES) Report on Minority Protection in Latvia, 11 October 2001 www.eumap.org (EU accession monitoring programme at the Open Society Institute), and Ziemele, I, *Die Ausgestaltung des Minderheitenschutzes in Lettland: ein Lehrstück für Europa*, [The Regulation of Minority Rights in Latvia: a few lessons for Europe], MINDERHEITENSCHUTZ IN MITTEL-UND OSTEUROPA, Sonderdruck, 2001, 65-94, at 88, "the government has failed to create the legislative framework necessary for the establishment of 'cultural autonomy'".

¹⁵³ *Ibid*, Ziemele, at 78-80.

¹⁵⁴ CERD/C/304/ADD.79, 2001, para 10.

¹⁵⁵ Brussels 13.11.2001, SEC (2001) 1749, at p 20.

Right to education

The right to free primary and secondary education is guaranteed in Article 112 of the Constitution. Primary education shall also be compulsory.

Article 10 of the Law on the Unrestricted Development and Right to Cultural Autonomy of Latvia's National and Ethnic Minorities states that:

The Republic of Latvia government institutions should promote the creation of material conditions for the development of the education, language and culture of the nationalities and ethnic groups residing within Latvia's territory, foreseeing defined sums from the government's budget for such purposes. Issues regarding the education of nationalities and ethnic groups are governed by the Republic of Latvia Education Law.¹⁵⁶

This statute, enacted in 1991 and amended in 1994, preceded the constitutional amendment of 1998 which included Article 114, and also the *Law on Education* also of 1998. The terms "nationalities" and "ethnic groups" are not defined in the statute. Nor, as discussed, is the distinction between these terms and "ethnic minorities" in the Constitution clear.

The aim of the *Law on Education* 1998¹⁵⁷ was defined by the former Minister of Education and Science as to "unite society on the basis of language". An alternative analysis would be that the act seeks to "Latvianise" the education system.

Article 3 states that,

Every citizen of Latvia, any person having the right to hold a non-citizen passport, any person having permanent resident status, any citizen of a European Community nation having temporary resident status and their children have the right to an education regardless of their financial and social status, race, ethnic origin, sex, religious or political affiliation, health, profession or place of residence.

The right to education in Latvia is hence not guaranteed to stateless persons or to those with a nationality other than Latvian or a European Community nationality where such persons lack a permanent residence permit. This provision is complicated, and in this it contrasts with Latvia's obligations under the Convention on the Rights of the Child to respect and ensure the rights set forth in the Convention (including the right to education in Article 28) *to all children within their jurisdiction* without discrimination.¹⁵⁸

Language of instruction

1. Law

Article 9, para 1 of the *Law on Education* of 1998 provides that:

- 1. At state and municipal institutions, education shall be provided in the state language.*
- 2. Education may be acquired in another language at a private institution or a state or municipal institution that implements educational programmes for national minorities or at other designated institutions.*
- 3. Every person must master the state language and take examinations on mastery of the state language;*
- 4. Examinations for professional qualifications must be taken in the state language;*
- 5. Papers necessary for qualifying for an academic degree (Bachelor's or Master's degree) and a scientific degree (Ph.D.) shall be written and presented in the state language, except for cases provided for by other laws;*

¹⁵⁶ The authenticity of the translation is confirmed by Secretary of the Supreme Council of the Republic of Latvia, Imants Daudi_s.

¹⁵⁷ In force since 1 June 1999

¹⁵⁸ Article 2(1) of the CRC states that "States parties shall respect and ensure the rights set forth in the present Convention to *each child within their jurisdiction* without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." (emphasis added).

6. *Raising of professional qualification and changing of a profession which is financed from the state or a municipal budget, shall be in the state language.*¹⁵⁹

Thus statutory law *permits* education in languages other than Latvian in two instances: in private schools, and in state and municipal schools where minority education programmes exist. The negative formulation highlights the differing levels of commitment to education according to language of instruction. This provision is to be implemented gradually, according to *The Language Law*.

Human rights law requires states to ensure that education appropriate to the individual is sufficiently available. To comply with this standard, education must be acceptable, which includes that it be in a language the child understands, and culturally appropriate. It must also adapt to children in special circumstances, most often unreached. The human rights approach to education encompasses “the whole child”. This is a particularly relevant observation for those who often face double discrimination. In Latvia, all orphaned children are required to attend Latvian medium schools, and those whose education began in another language must be transferred to Latvian medium schools regardless of their age.¹⁶⁰ Those without parents are to be educated in Latvian regardless of their cultural or ethnic background. One might question whether this accords with the *best interests of the child* and with the aims of education one of which, stated in Article 29(1) is:

...
(c) *The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which her or she is living, the country from which he or she may originate, and for civilizations different from his or her own.*
...

This requires a balanced approach¹⁶¹. The rights of the child are not contingent on his or her relations with adults, that is what is revolutionary about the Convention on the Rights of the Child. Consequently a policy which denies or restricts the cultural (or any other) rights of the child, simply as a result that he or she has no living parent is not in the spirit of the rights of the child; assimilation into national culture, education and language does not respect the child's “own cultural identity”.

The *Law on General Education 1999* allows general secondary education programs to be combined with, “minority education programs, including teaching minority languages and subjects related to the identity of the minority and the integration of the society of Latvia”.¹⁶² Clearly not a *guarantee* of education in minority languages, this leaves the matter to the discretion of officials of the Ministry of Education, which some members of Latvian civil society claim, “totally disregards the interests and opinion of minorities”.¹⁶³

Subordinate legislation to the *Law on Education* provides that, from 2004 non-Latvian instruction shall be phased out in public secondary and vocational schools:

*From 1 September 2004 training shall be started **only** in the state language in the 10th year at the state and municipal general secondary education establishments and in the 1st year at the state and municipal vocational education establishments.*¹⁶⁴

This does not imply a 100% transition to Latvian language instruction. Although the actual impact is still not quite clear, it seems that in 2004 all subjects (except for Russian language and literature and similar narrowly defined subjects) will be taught in the Latvian medium only, in grade 10. In 2005 this will extend to grades 10 and 11, in 2006 to 10, 11 and 12 and so on.

This provision was voted in by the outgoing administration in 1998 and continues to cause much protest. The current administration does apply this policy.

¹⁵⁹ This is an unofficial translation.

¹⁶⁰ By Article 56, para 2, Law on Education 1998.

¹⁶¹ “The aims of education: 17/04/2001. CRC/GC/2001/1, CRC General Comment 1 (General Comments)”.

¹⁶² Law on General Education, Article 42, Paragraph 2. Unofficial translation.

¹⁶³ Leonid Raihman, Co-Chairman of Latvian Human Rights Committee (Federation International de Droits de l'Homme (FIDH))

¹⁶⁴ Paragraph 9, sub-paragraph 3 of *Transitional Regulations of the Law on Education* (Adopted on 29 October 1998) unofficial translation, emphasis added.

There are similarities and differences between this provision and the previously planned linguistic transition in Estonia. Whereas in Estonia, up to 40% of the curriculum in secondary schools could be taught in minority languages, according to legislation teaching in Latvia will be conducted nearly 100% in the Latvian language in secondary schools after the transition. In Estonia the transition to Estonian teaching will start in 2007/8. In Latvia the transition to bilingual education has begun in primary schools in 1999. Another difference is that the provisions of the FCNM bind Estonia (subject to the declaration issued by the government that they extend only to Estonian citizens); this is not the case in Latvia.

The precise nature of the transition to mostly monolingual secondary schooling in Latvia was explained by Ms Evija Papule, then Head of the Integration Division of the Ministry of Education and Science,¹⁶⁵

“according to the Law on Education (1998), secondary schools are to operate in Latvian. However, a transitional period was set up. Since 1999, 3 subjects in grades 1-3 should be instructed in Latvian. In basic schools, one of the bilingual models should be applied. In 2004-2008, a full transition to bilingual basic education will be carried out. After the tenth grade (secondary school level) all subjects will be taught in Latvian starting on 1 September 2004.”¹⁶⁶

The two norms (the Law on Education of 1998 and the Law on General Education of 1999) conflict. It seems that senior policy advisers in the Latvian government accept that the word “only” in the subordinate legislation to the Law on Education was mistaken, and that bilingual programmes of secondary education can be contemplated after 2004.¹⁶⁷

This policy has attracted a lot of nervous attention from the international community. The Committee on the Honouring of Obligations and Commitments of the Council of Europe conducted three fact-finding visits to Latvia beginning in 1998 (before either law was adopted). Expressing concern about the lack of minority language education after the 9th grade the Committee urged Latvia to, “implement the Education Law of October 1998 in a spirit compatible with the Framework Convention for the Protection of National Minorities”.¹⁶⁸

The UN Committee on the Rights of the Child

“note[d] with concern that the Education Law 1998 foresees that, as of 2004, all State-funded schools will provide education in Latvian only, while bilingual education will be available only until the 9th grade....[and] encourage[d] the State party to ensure that children belonging to minorities can also use their own language in secondary education, in accordance with articles 29 and 30 of the Convention”¹⁶⁹.

Also, the Committee on the Elimination of Racial Discrimination (CERD) in 2001, requested that Latvia reconsider this policy. The CERD Committee urged, “the State party to maintain the possibility to receive an education in languages of various ethnic groups or to study those languages at different levels of education, without prejudice for learning the official language, as well as of using mother tongue in private and in public.”¹⁷⁰

¹⁶⁵ *European Centre for Minority Issues second seminar on Minority Education in Latvia*, June 2001.

¹⁶⁶ Poleshchuk, V, *Social Dimension of Integration in Estonia and Minority Education in Latvia*, ECMI REPORT # 18, December 2001, p 20

¹⁶⁷ The Baltic Institute of Social Sciences in collaboration with the Canadian International Development Agency, the Organisation for Security and Cooperation in Europe and the Soros Foundation, “Analysis of the Implementation of Bilingual Education”, Riga, 2002, p10, at p 13.

¹⁶⁸ Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, *Honouring of obligations and commitments by Latvia*, Doc.8924, 10 January 2001, para 58(a), NB: Latvia is still not a State Party to the Framework Convention.

¹⁶⁹ *Supra*. CRC Concluding Observations, paras 51-52.

¹⁷⁰ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Latvia (12/04/2001) CERD/C/304/Add.79

The Advisory Committee (for the Framework Convention) balances the state interest with that of the individual:

“It is a sovereign right of the republic of Latvia to restore the language of the majority to its status of (sic) the official language of the country, and it is perfectly legitimate for the Latvian authorities to promote the national language and culture. Nevertheless, they should not overlook the basic principles of the Framework Convention for the Protection of National Minorities”.

Although Latvia is not a party to the convention, it is bound as a signatory to respect its “object and purpose”.¹⁷¹

There have been attempts to find a generally acceptable balance between minority interests and those of the majority in Latvia. A new law “On Minority Rights” was prepared by an expert committee, between early 1999 and February 2000. The draft, based on the principles enshrined in the Framework Convention, attempts to follow the balanced approach subsequently recommended by the Committee on the Rights of the Child. It foresees a process of consultation by the Ministry of Education with representatives of minorities. The bill has yet to be discussed before Parliament.

2. Practice

Compulsory education by language of instruction in Latvia in the school year 2001/2002:

Language of Instruction	Percentage of schools	Percentage of pupils
Latvian	71.3%	62.2%
Russian	17.1%	26.9%
Bilingual Latvian/Russian	10.9%	6.6%
Bilingual Russian/Latvian		3.8%
Polish	0.5%	0.3%
Ukrainian	0.1%	0.1%
Belarussian	0.1%	0.02%

Source: central statistical bureau of Latvia, “Education Institutions in Latvia at the beginning of the school year 2001/2002 statistical bulletin”, Riga, 2002.

In comparing these data with the demographic figures above caution is advised. The OECD notes significant overlap between ethnic identity and first language.¹⁷²

These statistics cover the entire period of compulsory education, which extends beyond primary education and into secondary, where the Latvian language is to be introduced. They indicate that the percentage of children learning in bilingual schools at the compulsory level is still relatively low, and the percentage learning in the Russian medium is still relatively high. In theory primary education is in the process of a transfer to bilingualism one year at a time, meaning that, according to the timetable, this transfer should be complete by 2007/2008, three years after the transfer of secondary education to mono-lingualism. The lack of consistency between these dates puzzled the European Commission against Racism and Intolerance.¹⁷³ There also appears to be confusion as to the extent of the transfer to the Latvian language at the secondary education level. Whilst most reports have considered that the application of the Ordinance will mean very nearly a full transfer to mono-lingual instruction, the Latvian Ministry of Education and Science has stated that secondary schools will be entitled to teach 30-35% of the curriculum in minority languages.¹⁷⁴

¹⁷¹ See Article 14 of the Framework Convention, quoted in the introduction.

¹⁷² OECD REVIEW OF NATIONAL POLICIES IN EDUCATION – LATVIA, 2001, at p 35.

¹⁷³ European Commission against Racism and Intolerance, *Second Report on Latvia*, Adopted 14 December 2001, CRI (2002)21, at paras 40-47.

¹⁷⁴ *Observations provided by the authorities of Latvia concerning ECRI's report on Latvia*, *ibid*, at p34.

Education at the secondary level in Russian is decreasing to some extent ahead of the 2004/2005 academic year. Figures from the Ministry of Education show that overall enrolment in Russian language secondary education has decreased from 132,540 in 1995/1996 to 120,612 in 1999/2000, a reduction of nine percent.¹⁷⁵ Other figures show that the proportion of children whose language of instruction in secondary schools is Latvian has marginally increased from 61.6% in 1995/96 to 66.3% in 1998/99. Enrolment rates are also falling for Russian language schools and bilingual schools (Russian and Latvian), but not for Polish and Ukrainian language schools over the same period.¹⁷⁶

Figures suggest that those pupils who are most determined to continue their education in their own language are being displaced into whatever education they find available in that language. Thus in vocational education, public schools show the same trends in terms of falling percentages in the Russian medium. Of the 46,237 students enrolled in vocational education at the beginning of the 1998/99 school year, the language of instruction was Latvian for 33,332 (72.1%), in the school year 1995/96 the figure was 65% in Latvian and 35% in Russian. Meanwhile enrolments in private institutions of vocational education indicate a willingness to learn in Russian: fully 77% of students enrolled in private vocational education and training schools learn in Russian. This is despite the uncertain standing of the diplomas offered by such institutions in many cases.¹⁷⁷ The displacement of Russian language pupils into private, fee-paying, education should be monitored to ensure that the current education policy does not abandon children of poor Russian speaking families.

Parents wishing their children to receive an education in their mother language face further complications in that the Law on Education specifically denies the possibility of state funding or financial support to private schools where the language of instruction is other than the Latvian language. Where minority education is left to the private sector, the state ought to ensure true equality, by subsidising these schools where necessary. Where it does not do so the state is simply complying with its “negative” obligations (non-interference) and not its positive (genuine equality, and a quality education which is in the best interests of the child).

The new regulations are affecting language of education at all levels, as parents apparently increasingly accept the need for their children to learn Latvian in order to advance in their education. Pre-school enrolments over the period 1995/96 – 1998/99 reflect this. Of five and six year olds in compulsory pre-school education in 1995/96 66% were taught in Latvian, 33.6% in Russian, 0.3% in Polish, 0.1% in both Russian and Latvian, and 0.04% in another language. By 1998/99 these figures had changed rather dramatically to 71.1% learning in Latvian, 25.2% in Russian (a fall of 8.4 percentage points), 0.3% in Polish (unchanged), 3.4% in both Russian and Latvian (a rise of 3.3% or a phenomenal 34 times).¹⁷⁸ Whilst government policy moves in another direction, the population is increasingly turning to bilingual education as parents judge the best interests of their children.

The speed with which the shift is progressing (a nine percent shift in secondary school enrolments between 1995/96 to 1999/2000¹⁷⁹) suggests that the likelihood of compliance with the 2004 deadline for transference of education from minority language education into Latvian in secondary schools is low. A major study by the Baltic Institute of Social Science indicates that 50% of secondary schools will not be ready for the change. More concerningly, half of principals and teachers questioned consider that the change-over will, “create serious problems for pupils”.¹⁸⁰

¹⁷⁵ Ministry of Foreign Affairs, *Minority Education in Latvia*, from figures of the Ministry of Education and Science.; distributed at the 7th meeting of Government Offices for National Minorities, Jurmala, Latvia, 12-13 June 2000, cited in OPEN SOCIETY INSTITUTE, 2001, at p 291.

¹⁷⁶ Figures are from Report of the Latvian Central Statistical Bureau, *Education Institutions in Latvia at the Beginning of the School Year 98/99*, pp 40-43, cited in supra. OECD Report on Education in Latvia 2001, at p 68.

¹⁷⁷ Supra OECD Report on Education in Latvia, 2001, at p 104.

¹⁷⁸ Ministry of Education and Science, *Education in Latvia 1995/96 to 1998/99*, at p9.

¹⁷⁹ See above, figures from Ministry of Education and Science.

¹⁸⁰ The Baltic Institute of Social Sciences in collaboration with the Canadian International Development Agency, the Organisation for Security and Cooperation in Europe and the Soros Foundation, *Analysis of the Implementation of Bilingual Education*, Riga, 2002, at p11.

If minority language speaking children are to move from mother tongue or bilingual primary education into mono-lingual Latvian language secondary education it is essential that Latvia invest in bilingual teachers. Furthermore, to equalise employment prospects in a strictly linguistically regulated employment market, there will be a huge need for teachers of Latvian as a second language. Studies have indicated that 36% of teachers whose mother language is not Latvian, consider their Latvian language skills to be “conforming to the lowest level”.¹⁸¹ If this teacher shortage continues, it could jeopardise the education of children who belong to linguistic minorities all together, as Latvian law¹⁸² specifies that all teachers must possess a high level of Latvian language proficiency.

In Daugavpils, for example, a city on the borders of Belarus and Lithuania, in the 2001/2002 school year 82% of pupils in the city studied in the Russian language. In 2000 there were three Latvian and twenty Russian secondary schools, in the year 2004 there should be twenty-two Latvian and no Russian secondary schools. Daugavpils shows the problems of implementation outside of the capital, where, “these changes are unfortunately not supported by the introduction of developed educational methods and teaching materials.”¹⁸³

Representatives of the international community have also noted problems with the deadline. The head of the now discontinued OSCE Mission to Latvia, Mr Peter Semnby has stated of the 2004 deadline that, “the transfer period is too short as bilingual education at basic schools is not going to be completely implemented by 1 September 2004.”¹⁸⁴

The Latvian government is not unaware of difficulties in implementing the shift to uni-lingual education. As the President of Latvia, Mrs Vaira Vike-Freiberga, is reported to have said, “there are some schools that do not know where to find Latvian-speaking teachers...[however] everyone has to obey the law...[Latvia is] the land of the ethnic Latvians and their ancestors, and the Latvian language governs here. Those who have chosen to live here must recognise it”.¹⁸⁵

In terms of the realisation of, and equality of opportunity under human rights, the introduction of effective and quality bilingual education is certainly preferable. The situation in Latvia seems at best unclear, and advocacy of the overarching social benefits of quality bilingual education at this moment is essential. Whilst the focus on the promotion of the Latvian language is perhaps understandable in a state emerging from such a prolonged period of oppression, there is nonetheless value in depoliticising the issue in order to further the realisation of the right to education of quality, and human rights through education of the entire population of Latvia. The replacement of a historical phase of “Russification” with one of “Latvianisation”, would be to combat one social injustice with another, and risk the further marginalisation of Russians in Latvia. Education in Latvia is indeed “potentially divisive”.¹⁸⁶

Higher Education

Higher education in Latvia is regulated by the *Law on Higher Education Establishments of 1995*.

Until recently, access to higher education in Latvia was not centralised and each institution set its own admission criteria. Despite the new centrally administered examination system after grade 12 (the end of secondary education) institutions continue to insist on their right to set additional requirements and do in fact administer their own examinations.

¹⁸¹ supra, Baltic Institute of Social Sciences, at p 90.

¹⁸² Decree 175.

¹⁸³ presentation of Ms Livija Janovska, First Deputy Chairman of Daugavpils City Council to the 2001 ECMI conference *Minority Education in Latvia*, supra, at p 25.

¹⁸⁴ Dita Araja of “Diena” interviews Peter Semnby, Head of OSCE Mission to Latvia, 10.10.2001, www.policy.lv (accessed 2 August 2002).

¹⁸⁵ Reported in the Russian language daily newspaper, THE TELEGRAPH, *The education reform is not a political football*, 13 May 2002. <http://rus.delfi.lv/news/daily/telegraf/article.php?id=3171022>.

¹⁸⁶ European Commission against Racism and Intolerance, *Second Report on Latvia*, Adopted on 14 December 2001, CRI(2002)21, at para 71.

There are a number of private institutions of higher education in Latvia, and, like Estonia these fall into two categories: those that are accredited (where their diplomas are recognised by the state) and those that are not accredited, but are licensed (where their diplomas are *not* recognised by the state). The practice of licensing higher education establishments, thus allowing them to accept entrants, before the completion of the accreditation procedure, encourages students to complete their studies in a state of limbo, not knowing whether the diplomas they are working towards will be recognised by the state, or will even be transferable to other accredited institutions. Statistics are unfortunately not available as to the ethnic breakdown of students in this situation.¹⁸⁷

The number of universities and other institutions of higher education (public and private) offering courses in languages other than Latvian is also elusive. Certainly higher education establishments do advertise certain courses in Russian.¹⁸⁸

Socio-economic status of minorities

Citizenship

In March 2000 progressive amendments were made to the *Law on the status of the former USSR citizens who are not citizens of Latvia or any other state*. The amendments stated that non-citizens¹⁸⁹ enjoy all human rights enshrined in the constitution and have the right, “to preserve their native language, culture and traditions within the framework of national cultural autonomy.”¹⁹⁰

According to the European Commission, “practically all non-citizens resident in Latvia are now entitled to *apply* for citizenship”, but, “the lack of language proficiency and the application fees remain obstacles to naturalisation.”¹⁹¹ Other barriers include a residence requirement, a fee of 20 Latvian Lats¹⁹² (around €36), a history test, the need for a general understanding of fundamental legislation, and an oath of loyalty.¹⁹³

These factors still appear to be relevant barriers to citizenship in a country with an unusually high percentage of its population stateless (22.76%¹⁹⁴ of residents). A survey conducted in 2001 in the Latvian city of Daugavpils (a city of 130,000, 31% of whom are stateless), found that 80% of respondents who did not have citizenship expressed interest in becoming naturalised. For 56% the main obstacle was financial, 23% mentioned the language tests and the constitution.¹⁹⁵

The Latvian authorities are taking some measures to ameliorate the effect of these onerous requirements: the current fee, for example, is actually a reduction of the previous figure. Also, with the aid of the international community, the Naturalisation Board is carrying out a project of free education for applicants in the Latvian language. 830 people benefited from this in 2000, and 2000 places were allocated for 2001.¹⁹⁶

Education also eases the naturalisation process. Graduates from minority schools at the twelfth grade (at the end of secondary education) no longer need to pass the language test.

¹⁸⁷ The ruling of the European Court of Human Rights on the recognition of education completed, in the *Belgian Linguistics* case is considered on this point in the section on Estonia.

¹⁸⁸ The University of Latvia, for example offers one course in Russian – Slavic philology.

¹⁸⁹ See the demographic figures and explanation at the head of this section.

¹⁹⁰ Monitoring Committee report, *supra*, at para 27.

¹⁹¹ EU Progress Report 2000, at p 20 (emphasis added).

¹⁹² Figure from *Latvia's contribution to the Regular Report 2001*, at page 17. Certain categories pay a reduced fee.

¹⁹³ ECONOMIST INTELLIGENCE UNIT, COUNTRY PROFILE 2000, at p15

¹⁹⁴ Naturalisation Board for the Republic of Latvia, *Facts and Statistics on Residents*, <http://www.np.gov.lv/en/fakti/index.htm> (accessed 16 June 2002).

¹⁹⁵ Janovska, L, First Deputy Chairman of Daugavpils City Council, speaking at the conference, *Prospects Of Minority Education in Latvia*, EUROPEAN CENTRE FOR MINORITY ISSUES REPORT # 18, December 2001, www.ecmi.de.

¹⁹⁶ Commission of the European Communities, *Progress Report – Latvia*, 2001, at p 23.

The number of *applications* for citizenship actually dropped from 15,170 in 1999 to 10,692 in 2000¹⁹⁷ but seems likely to rise again for 2001, as the number of *successful* applications for the first four months was 3,656.¹⁹⁸ However, the number naturalised actually rose over the same period from 12,427 in 1999 to 14,900 in 2000.¹⁹⁹ The Latvian Centre for Human Rights and Ethnic Studies also notes that the numbers of naturalised citizens rose again during the first half of 2002, compared with the first half of 2001.²⁰⁰ The figures, however, remain small in comparison to the number of non-citizens.

It should be remembered that, “most non-citizens have resided in the country for most or all of their lives,”²⁰¹ and still do not enjoy all the rights, and the feeling of belonging that comes with citizenship.

According to the Law on Citizenship 1998, all children born after 1991 are eligible for Latvian citizenship, yet applications remain low (the European Commission cites a figure of 24 for 2001).²⁰² This is not the whole story, as the OECD states, “while the constitution and the laws of Latvia guarantee the basic rights of all permanent residents of Latvia, as well as equal treatment and non-discrimination of all Latvian residents, there are still issues of citizenship and language that affect...children.”²⁰³

Latvia acceded to the 1954 UN Convention Relating to the Status of Stateless Persons in September 1999, but lodged reservations. One reservation stated that, “naturalisation is crucial to create an integrated and harmonious society in Latvia and thus to foster the overall stability of the country.”²⁰⁴ Further to this, Latvia signed the European Convention on Nationality on 30 May 2001 with reservations, and is, at the time of writing debating a bill of ratification which lists six reservations, effectively removing the need for any amendment to existing citizenship legislation.²⁰⁵

Employment.

Anti-discrimination provisions exist in the new Labour Law, which prohibits direct and indirect discrimination and will come into force in 2002. It also reverses the burden of proof to the employer in some cases, in line with European Community law.

The issue of language is inevitably a cause of conflicting interests in Latvia, given that around 43% of the population did not speak Latvian as a first language in 1999/2000.²⁰⁶ It is not surprising then that the *Law on State Language 2000* has been particularly controversial. This law attracted polemic debate during drafting, but is now accepted by the OSCE High Commissioner on National Minorities as, “essentially in conformity with both the law and Latvia’s international obligations.”²⁰⁷

All languages other than Latvian and Liv (an indigenous language) described as “foreign languages” in the act.²⁰⁸ The choice of the term “foreign” for members of minorities is, “unfortunate and creates an atmosphere of antagonism in language policy in regard to the use of all other languages which might qualify as regional or minority languages”²⁰⁹.

¹⁹⁷ Figures from the Latvian Naturalisation Board and Open Society Institute, 2001, at p 274.

¹⁹⁸ *Latvia’s contribution to the Regular Report 2001*, supra, at p 17.

¹⁹⁹ Ibid, at p 23.

²⁰⁰ Latvian Centre for Human Rights and Ethnic Studies, *Public Awareness and Promotion Campaign for Latvian Citizenship: Evaluation*, 2002, at www.policy.lv (accessed 2 August 2002).

²⁰¹ European Commission against Racism and Intolerance, *Second Report on Latvia*, Adopted on the 14 December 2001, CRI (2002) 21, at para 34.

²⁰² Supra Commission of the European Communities, at p 24.

²⁰³ OECD REVIEWS OF NATIONAL POLICIES FOR EDUCATION: LATVIA, 2001, at p 125.

²⁰⁴ Monitoring Committee report, para 28.

²⁰⁵ ETS no166 source: <http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=166&CM=2&DF=20/11/01>, Minority Issues in Latvia, No. 43, Prepared by the Latvian Human Rights Committee (F.I.D.H.), February 2002.

²⁰⁶ EU Progress Report for 2000, but had dropped to 38% by August 2001, according to the Central Statistical Bureau of Latvia, *Provisional Results of the 2000 Population Census*, Riga 2001, data on “Population by ethnic nationality and more widespread language skills”, at p39.

²⁰⁷ Mr Max van der Stoep, Press Statement 31 August 2000, see also supra EU Progress Report 2000, at p 23.

²⁰⁸ Article 5 Of State Language Act

²⁰⁹ European Commission, Monitoring Committee Report, 2001, at para 19.

5. The Aims of Education

The Convention on the Rights of the Child

Article 29

1. States Parties agree that the education of the child shall be directed to:

...

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

Committee on the Rights of the Child¹

...

Article 29 (1) states that the States parties agree that education should be directed to a wide range of values. This agreement overcomes the boundaries of religion, nation and culture built across many parts of the world. At first sight, some of the diverse values expressed in article 29 (1) might be thought to be in conflict with one another in certain situations. Thus, efforts to promote understanding, tolerance and friendship among all peoples, to which paragraph (1) (d) refers, might not always be automatically compatible with policies designed, in accordance with paragraph (1) (c), to develop respect for the child's own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. But in fact, part of the importance of this provision lies precisely in its recognition of **the need for a balanced approach to education** and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.

...

¹ The Aims of Education : . 17/04/2001. CRC/GC/2001/1, CRC General comment 1, para 4. (General Comments)

The relation between Employment and linguistic capacity is regulated by the *Education Law* and the *Law on State Language* amendments of 2000. Article 9 of the Law on Education requires all professional examinations to be in Latvian. Article 6 of the Language Law provides that all public employees should have a command of the Latvian Language. This extends to the private sphere where there is legitimate public interest, and has reportedly led to higher rates of unemployment among ethnic non-Latvians. The public interest criterion is broadly interpreted. Although the Latvian Government claims that they are "mainly medical" they do include taxi drivers.²¹⁰ This regulation contrasts with Article 3 of the *Law on the Unrestricted Development and Right to Cultural Autonomy of Latvia's Nationalities and Ethnic Groups* adopted several governments previously and still in force. Article 3 states:

The Republic of Latvia guarantees to all permanent residents in the Republic, regardless of their nationality, equal rights to work and wages. Any direct or indirect actions to restrict, based on nationality, the opportunities of permanent residents to choose their profession or to choose a trade based on their corresponding skills and qualifications, are prohibited.

²¹⁰ *Latvia's contribution to the Regular Report 2001*, at page 19.

The Law on Language also outlines “administrative violations” which attract criminal sanctions. There are eleven administrative violations in total, but it is the broad “disrespect towards the state language” which seems the most concerning. The European Commission recommends “revision” of this provision.²¹¹

The Minister of Education and Science Decree 175 of 1996 regulates Latvian language proficiency of teachers, suggesting the possibility of large-scale dismissal of minority language teachers (for whom very little funding has been set aside from the Integration Programme to improve further education). According to the Open Society Institute, “teachers in all public schools are required to speak the state language at the highest level of proficiency”.²¹² Those who do not satisfy this may simply find themselves unemployable in the teaching profession. This poses a danger of further reduction of non-Latvian, or bilingual instruction as those qualified to teach in Russian, or other minority language, may well not be so qualified to teach in Latvian and vice versa.

All of this is likely to lead to higher levels of unemployment among the Russian speaking population. The discrimination this group faces does not end there, however, as the State Employment Service, which offers training to the unemployed, can only work with those who know the Latvian language.

As bilingual education is not sufficiently widely available, Russian children are forced to learn in Latvian at advanced levels if they are to survive in Latvian society. The conclusion they may reach is that literacy in their mother language is not valued in Latvia.

This is not to discuss the issue of Roma unemployment in the country about which it is difficult to attain figures. ECRI has intimated that the unemployment figure for this group could be as high as a shocking 98%.²¹³

It is axiomatic that linguistic requirements in the official language for employment indirectly discriminate against those whose mother language is not the official language. Legislated levels of linguistic competence and corresponding employment possibilities presuppose an already well functioning system of bilingual education. Yet teacher shortages for Latvian as a second language, the small number of bilingual secondary schools, and the high number of Russians choosing to study in private vocational schools in the Russian language, all suggest that this is not yet the case. Furthermore, the phasing out of all Russian language education in public secondary schools means that the country is actually moving further away from bilingual education.

Integration.

The government of Vilis Kristopans launched a wide-ranging dialogue with minorities in 1999 as it issued a draft Framework Document for a National Programme on the Integration of Society. Following this process the Cabinet of Ministers of the following government (that of Andris Skele) adopted the document in December 1999. According to the International Helsinki Federation however, no resources were allocated to this programme in the year 2000.²¹⁴ Successive Latvian governments have developed a wide ranging and well-financed programme of integration in cooperation with the United Nations Development Programme (UNDP), and European Union Phare programme, which aims to bolster Latvian language competence and implement the National Programme for “Integration of the Society of Latvia”. The goals include “integration of minorities”, “repatriation, migration and cooperation with Latvians living abroad. The programme also covers social and regional, as well as educational, cultural and language aspects of integration.”²¹⁵ For the development of this programme the Government of Andris Berzins (the third government in just over one year since the dialogue began) budgeted nearly €20 million for the year 2001.

²¹¹ Supra EU Progress Report 2001, at p 26.

²¹² Open Society Institute, 2001, at p 289.

²¹³ European Commission against Racism and Intolerance, *Second Report on Latvia*, Adopted 14 December 2001, CRI (2002) 21, at para 54.

²¹⁴ International Helsinki Federation Report 2000 pp 233-242.

²¹⁵ *Latvia's contribution to the Regular Report 2001*, at p 18

One element of the integration programme is capacity building of minority teachers, which in turn would improve quality of minority language education. This is clearly not a priority though as the Saeima has budgeted a mere €18,000, “for further education of minority teachers”.²¹⁶

In 1996 a programme to improve the Latvian language competence of the minority population was elaborated by the UNDP and Latvian experts. It was apparently this document which also foresaw the transition of secondary education to Latvian. Latvian authorities vociferously deny that the integration programme is in fact a programme of assimilation, yet one of the main reasons presented for the transition to mono-lingualism in secondary education in this document is reported to have been, “a complicated ethno-demographic situation”, which could be eased by an “increase of the number of inhabitants that identify themselves as ethnic Latvians”.²¹⁷

Donor Intervention

The European Union gave Latvia €1million for its “Programme to Accelerate the Integration of Minority Groups” in 1998 and €0.5million to the same programme in 1999. According to the Open Society Institute, however, this funding has been, “rendered less effective by a lack of transparency in distribution”.²¹⁸

In 1999 the World Bank awarded Latvia an educational loan of €28.29m to be repaid in 15 years. Whilst the Bank lists the main components of the project is building competence in teaching of the Latvian language,²¹⁹ figures suggest otherwise as, “the largest amount of funding, 81%, will be spent to replace roofs, to caulk windows and doors, renew heating systems and electrical wiring systems.”²²⁰ Only 16% of the money will be spent on improving the quality of education in Latvia.

International intervention in Latvia is confused and often contradictory. Whilst United Nations committees responsible for monitoring human rights treaties warn against the introduction of sole Latvian language secondary schooling,²²¹ the United Nations Development Programme allegedly worked with Latvian experts in 1996 to develop a document which stimulated the Law on Education. The European Union, meanwhile, prioritises minority rights in its accession negotiations with Latvia, but it also (via the Phare programme) provides financial support to the same integration programme which focuses integration around the predominance of the official language.

In light of the confusion, the OECD has noted a change of approach by the Latvian government. Whilst, “the government initially welcomed all assistance from the European Union as well as foreign bilateral donors without much attention to the possible overlap of outcomes and different approaches of donor countries and organisations,”²²² the government can now pick a donor to suit its policy, seemingly irrespective of the donor’s own stated policy.

²¹⁶ *Latvia’s contribution to the Regular Report 2001*, pp 16 -19, figures are given in Latvian Lati as 11 million LVL overall and 10,000 LVL for education of minority teachers. Currency conversions correct 20 Nov 2001.

²¹⁷ *ECMI Report on Minority Education in Latvia 2001*, at p 21.

²¹⁸ Open Society Institute, 2001, at p 270.

²¹⁹ www.worldbank.org.lv/ed_imp.html

²²⁰ Report of Latvia, *Education for All*, 1999.

²²¹ see for example Concluding observations of the Committee on the Elimination of Racial Discrimination: Latvia. 12/04/2001. CERD/C/304/Add.79, para 26, “The Committee urges the State party to maintain the possibility to receive an education in languages of various ethnic groups or to study those languages at different levels of education, without prejudice for learning the official language, as well as of using mother tongue in private and in public.”

²²² OECD REVUES OF NATIONAL POLICIES FOR EDUCATION – LATVIA, 2001, at pp 117-118.

Statistics

There is very little disaggregate data available for members of minorities in Latvia, and what there is generally restricted to the Russian minority. The first obstacle, as is the case in Estonia, is that, “due to the lack of reliable registers, there is no clear information about the numbers of children of compulsory age who are not attending school.”²²³

The UN Committee on the Rights of the Child also notes the problem of a lack of reliable information: “the Committee recommends that the state party collect disaggregated data to enable monitoring of discrimination against all children, in particular those belonging to the above-mentioned vulnerable groups [minorities, especially Roma]”²²⁴

²²³ Ibid at p 128.

²²⁴ CRC Concluding Observations, Latvia 26/01/2001, CRC/C/15/Add.142, at para 24.

The former Yugoslav Republic of Macedonia.*

* This is the name by which the country was admitted to the United Nations in 1993. The official name in the Constitution is "Republic of Macedonia".

Macedonia was considered an "island of inter-ethnic peace"²²⁵ in the Balkans after the end of the former Socialist Republic of Yugoslavia. That was until the emergence in February 2001 of a group of ethnic Albanian insurgents, the National Liberation Army (NLA). Fighting between the NLA and the government troops lasted until a peace agreement was signed between the two sides on 13 August 2001 at Lake Ohrid. The "Framework Agreement" outlined a number of changes to the constitutional and policy order of the country, some of which are outlined in the textbox which follows. At the time of writing, the process of implementing these changes is ongoing, and the implications of the election in September 2002 are still not clear.

Demography

Ethnicity	Population
Macedonian	66.60%
Albanian	22.67%
Turkish	4.01%
Roma	2.25%
Serbs	2.07%
Muslim	0.79%
Vlachs	0.44%

This data on population according to declared ethnicity comes from the 1994 census.²²⁶ The reliability of these figures has been challenged. The leader of the Democratic Party of Turks, Erdogan Sarac has claimed that the true number of Turks is between 8.74 and 10.28% of the population.²²⁷ The European Centre for Minority Issues notes that the Albanian minority claim to represent 35% of the population,²²⁸ and the OECD cites estimates of the Roma population at around 3% of the total.²²⁹ Estimates commissioned by the Council of Europe put the percentage of Roma in the population as high as 10.9%.²³⁰ The next census scheduled for May 2001 has been delayed until 1-15 April 2002.²³¹

International obligations

According to Article 118 of the Constitution on 1991 Macedonia is a monist legal system, international commitments ratified by the parliament automatically form part of the national law.²³² This rule has been reaffirmed by the Macedonian Constitutional Court in a 1997 case involving university instruction in minority languages.²³³ From the chart of ratifications in the appendix it can be seen that, of the four countries considered here, Macedonia has the best record of ratifying international treaties relevant to minority rights. Of the fifteen treaties covered

²²⁵ HUMAN RIGHTS WATCH, WORLD REPORT 2002, at page 333.

²²⁶ www.stat.gov.mk

²²⁷ Human Rights Watch, *A Threat to Stability*, 1996, at p 68.

²²⁸ http://www.ecmi.de/emap/mk_stat.html (accessed 1 July 2002)

²²⁹ OECD, *Review of National Policies for Education – Macedonia*, 2001, at p5.

²³⁰ Liegeois, J-P, *Roma, Gypsies, Travellers*, Strasbourg, Council of Europe, 1994.

²³¹ www.stat.gov.mk

²³² Constitution of the Republic of Macedonia 1991, article 118.

²³³ U.23/97 *Sluzben Vesnik na Republika Makedonija* (Official Gazette) 31/97 CODICES, Venice Commission MKD-1997-2-004.

in the table, Macedonia has ratified eleven, signed three and taken no action in respect of only one (the Revised European Social Charter). Macedonia has, however lodged reservations, including an interpretive declaration to the FCNM which names the minority groups to which the Convention is to apply (Turks, Albanians, Vlach, Roma and Serbs) but not to 'Bosniaks', Bulgarians, Germans, Greeks, 'Egyptians', 'Muslims', Poles, Romanians, Russians, Rutherians, Slovenes, Serbs, Ukrainians, Hungarians, Croats, Montenegrins, Czechs, all of which are mentioned in the 1994 Census (names as they are recorded officially).²³⁴

Minority Education: law and practice

The Constitution.

The 1974 constitution of the former Yugoslavia guaranteed Albanian and Turkish minorities equal status with the Macedonian population. This was changed by the 1991 post-independence constitution, which stated in the preamble that,

Macedonia is established as a national state of the Macedonian people, in which full equality as citizens and permanent co-existence with the Macedonian people is provided for Albanians, Turks, Vlachs, Romanics and other nationalities living in the Republic of Macedonia.

The changed status is extremely contentious and has caused much resentment in particular among ethnic Turks and Albanians as it creates a constitutional distinction and division between the majority and minority populations; "permanent co-existence" is far from the rhetoric of integration, and sounds rather resigned to division.

Article 40(3) Parents have the right and duty to provide for the nurturing and education of their children.

As in international law,²³⁵ the primary duty to ensure the education of the child rests with the parent in the Macedonian Constitution.

The parental responsibility for the "nurturing and education" of their children would logically include the intergenerational transmission of the cultural and linguistic heritage of minorities. Yet Article 45 of the Constitution restricts the right of parents to establish educational facilities, thus limiting their ability to comply with the duty placed upon them by Article 40.

Article 45 Citizens have a right to establish private schools at all levels of education, with the exception of primary education, under conditions determined by law.

So only citizens may establish private schools, private primary schools are disallowed, and all is subject to, "conditions determined by law" which do not exist.

The restriction upon setting up private institutions of primary education is *prima facie* contrary to the European Convention on Human Rights.²³⁶ In the case of *Kjeldsen, Busk Madsen and Pedersen v Denmark*²³⁷ the European Commission on Human Rights determined that article 2 of Protocol 1 extends a right to, "the establishment of and access to private schools or other means of education outside the public school system [at all levels]".²³⁸ Article 45 is also potentially a breach of article 13 of the Framework Convention, securing the right of national minorities to establish private schools, making no distinction as to levels of education. The restriction to citizens is in conflict with Article 27 of the International Covenant on Civil and Political Rights on minority rights, as interpreted by the UN Human Rights Committee,²³⁹ and with Article 30 of the Convention on the Rights of the Child which extends to every child within the jurisdiction by virtue of Article 2.

²³⁴ www.stat.gov.mk.

²³⁵ see for example article 18 of the Convention on the Rights of the Child.

²³⁶ to which Macedonia has been a party since 10 April 1997, <http://www.echr.coe.int/Eng/EDocs/DatesOfRatifications.html>

²³⁷ Series A, No. 23, HUDOC REF00000094, (1976) 1 EHRR 711.

²³⁸ Report of 21 March 1975, B.21 (1979), at p 44.

²³⁹ Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994).

Finally. The lack of conditions “determined by law” complicates the regulation of the acceptability of private education, “it is difficult for the state to argue that a school does not meet the minimum requirements of the state, if such requirements are non-existent.”²⁴⁰

The right to education, guaranteed in Article 44 of the Constitution, recognises the state as the educational provider of last resort.

Article 44 (1) Everyone has a right to education; (2) Education is accessible to everyone under equal conditions; (3) Primary education is compulsory and free.

Articles 40 and 44 ought to be taken together and seen as counterpoints. The restriction of the parental right to establish schools then places the onus on the state to ensure that quality primary education that is free and compulsory, is available, accessible, acceptable and adaptable. To the extent that the necessary regulation does not exist which would define the conditions for the establishment of private schools at other levels, and at any rate in a subsidiary capacity, this obligation extends directly to the state at all levels. If it is in fact impossible to establish private schools as the requirements are not clear, then a fully comprehensive system of public education which is consistent with the obligations of the state to all members of the population, would be required in order to fulfil international human rights obligations.

In practice, where ethnic Albanians have shown dissatisfaction with the quality and availability of Albanian language secondary education and determined to set up their own institutions, the police have closed them down.²⁴¹ The same is apparently true of Turkish communities.²⁴² Many of the controversies over minority issues in the Constitution have been addressed in Constitutional amendments under the Framework Agreement concluded after the cessation of hostilities between the Macedonian government and Albanian rebels. (see the box below on minority rights and the Framework Agreement).

²⁴⁰ Human Rights Watch, *A Threat to Stability*, 1996, at p71.

²⁴¹ *Ibid*, at p 16.

²⁴² See the textbox on Centar Zupa.

6. Minority Rights in the Macedonian Framework Agreement

Some of the agreed constitutional amendments set out in Appendix A to the Framework Agreement are listed below (references are to the Constitution of the Republic of Macedonia 1991):

Removing references to “other nationalities” where referring to minority groups in particular in regard to the preamble, to be replaced with “communities”;

Increasing the number of official languages to any language spoken by at least twenty percent of the population (amending article 7); (which would mean Macedonian and Albanian according to best estimates)¹;

Equitable representation of all communities is affirmed as a fundamental value of the constitutional order (amending article 8);

Increased protection for the freedom of religion (amending article 19); in terms of education, Article 48 is to be amended to remove mention of “nationalities”;

Improved democratic rights of minorities in terms of voting in the Assembly (amending article 69);

Improved judicial representation of minority groups in the Supreme Court of Macedonia (amending article 109);

Securing minority interests in future constitutional amendments (amending article 131).

Aside from constitutional amendments, the Framework Agreement includes various recommended policy avenues including:

Developing decentralisation, including by increasing local competencies in education²;

Non-discrimination to be applied particularly in relation to employment in the public sector³;

Requiring a majority of representatives of minority groups to assent to legislation that directly affects *inter alia* their culture, use of language, education, personal documentation⁴ (issues which in the past have been the cause of much discrimination between groups);

Providing instruction in students “native languages” in primary and secondary education, “while at the same time uniform standards for academic programs will be applied throughout Macedonia.”⁵

Providing university level education in languages spoken by at least twenty percent of the population.⁶

This would mean Macedonian and Albanian only (according to best estimates)⁷, and

Implementing the principle of positive discrimination in enrolment to state universities “of candidates belonging to communities not in the majority in the population of Macedonia” until enrolment rates reflect demography.⁸

¹ Central Intelligence Agency, “the World Fact Book 2001 – Former Yugoslav Republic of Macedonia”

<http://www.odci.gov/cia/publications/factbook>

² Framework Agreement, 3

³ Framework Agreement, 4, especially 4.1

⁴ Framework Agreement, 5.2

⁵ Framework Agreement, 6.1

⁵ Framework Agreement, 6.2

⁷ CIA “the World Fact Book 2001 – Former Yugoslav Republic of Macedonia”

<http://www.odci.gov/cia/publications/factbook>

⁸ Framework Agreement, 6.3

Language of Instruction.

1. Law.

Article 48 of the 1991 Constitution states that,

- (4) *Members of the nationalities have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in the language of a nationality, the Macedonian language is also studied.*

So, while *private* primary schools are proscribed by Article 45, in *public* schools education in minority languages is a right according to Article 48. The necessary legal steps to realise this constitutional provision are included in both the Law on Primary Education and the Law on Secondary Education. The Law on higher Education, however, does not implement this provision, which leaves minority language higher education institutions in a legal vacuum, as can be seen from the example of the Tetevo University.

The wording of the amendment to this section in the Framework Agreement is, “Members of *communities* have the right to instruction in their language in primary and secondary education, as determined by law. In schools where education is carried out in *another language*, the Macedonian language is also studied.” The softened language reflects a more balanced approach. Rather than explicitly distinguishing between (ethnic) Macedonians and “members of nationalities” (i.e. minorities) the constitution now talks of various communities. It is somewhat premature to comment on this alteration, however, as the interpretation is not yet available, and will become clearer once the fifteen implementing laws are disseminated and litigated.

This is one of fifteen constitutional amendments adopted under the Framework Agreement of 13 August 2001.²⁴³ The Agreement envisages wide-ranging Constitutional and legislative reform, and was finally ratified by the Macedonian parliament in November 2001, just days before the governing coalition broke down when the Social Democratic Alliance and the Liberal Democrats (two moderate parties) pulled out. Despite this set back, the text of fifteen laws to implement these amendments was agreed in May 2002.²⁴⁴

There are several aspects of the Framework Agreement of special relevance to this study. These include the aforementioned removal of the concept of “nationalities” from the constitution, in particular from Article 48; a commitment to “native language” education and a concomitant commitment to uniform standards, which is a move towards equality of opportunity in and through education between the various communities and would preferably be accompanied by a commitment to teach Macedonian as a second language in schools where another language is used as the primary language of instruction; that university education should be available in minority languages, thus clarifying the ambiguous situation today; and that affirmative action programmes should be continued and broadened, again a positive step towards substantively equalising opportunity (in accordance with the obligation to eliminate and not only prohibit discrimination in international law). The framework Agreement also promotes increased decentralisation of decision making in education. It is of fundamental importance to the education of all children within Macedonia that this be equitably funded, to ensure that funding differentials between regions according to local resources do not leave children in certain areas abandoned, or forced to endure an inferior education. As is also the case in Romania, where similar decentralisation policies exist, international law requires that the national government ensure the effective monitoring of the quality of decentralised education.

The *Law on Primary Education* of 1995 remains in force until legislation to implement the Framework Agreement is adopted and passed. Article 8(2) of the law states that,

*For the persons belonging to nationalities the education and instruction are carried out in their language, as determined by law*²⁴⁵

This is the legislative implementation of the right to public primary education in minority languages envisaged by Article 48 of the Constitution.

²⁴³ The Framework Agreement is available publicly from the Ministry of Information, Government of Macedonia. <http://www.sinf.gov.mk/PressRoomEN/2001/07/n0815.htm>

²⁴⁴ OSCE Press Release, *OSCE Welcomes agreement on new laws under Ohrid Agreement*, 13 May 2002. www.osce.org/news/generate.php3?news_id=2452 (accessed 1 July 2002).

²⁴⁵ Law on Secondary Education 1995, article 59. “Official Gazette of the Republic of Macedonia” No 44/95.

According to the Primary Education Act, all teachers must be citizens of Macedonia, and “know” the Macedonian language and the Cyrillic alphabet.²⁴⁶ Article 67(3) of the Law on Primary Education also provides that teachers who do not know the minority language may teach in primary schools to “the subject nationality” (i.e. in minority classes)

exceptionally... temporarily, the instruction may be carried out by a teacher who does not know the language of the subject nationality.

Meaning that, in some circumstances at least, teachers with no level of competence in the relevant minority language may teach classes to primary school children who will be expecting to be taught in their mother language and may know very little of the official language. It seems clear that, in passing this act, the government was concerned that the number of teachers competent to teach in minority languages may not be enough. Whilst this may be a temporary measure, the training of bilingual teachers (of all communities) must be a priority in any system of bilingual education. It is also not clear that the Macedonian model is, or even aims to be, a model of bilingual education. Whilst it is provided in the Constitution (in Article 48) that Macedonian must also be taught in schools where the language of instruction is other than Macedonian, this is not repeated in the Framework Agreement, and certainly the term “bilingual education” is not used. Further, there is no attempt being made, as yet, to address the divisive effect that separate systems of education based on language have. Rather than teaching all communities together, the risk is that each will be separated for the duration of their education. When communities grow up apart, can we later expect that they will reintegrate?

The *Law on Secondary Education* also from 1995 provides that members of nationalities are taught in the language of the nationality, but that they are also compulsorily taught the Macedonian language,²⁴⁷ again implementing Article 48 of the Constitution. Those with different citizenship, and the stateless are dealt with separately,

*foreign citizens, and persons without citizenship may acquire secondary education in a manner and under conditions to be prescribed by law.*²⁴⁸

No such conditions prescribed by law exist, leaving these individuals without legislative guarantee of the right to education, a situation which is unfortunately not uncommon.

So, by law, members of minorities have the right to education in the mother tongue at the primary and the secondary level. In order to comply with this legal requirement, at low cost, many schools are currently operating a shift system of education to accommodate the various groups. The OECD notes that such adaptation of education does not occur to the same extent in Rom. The reasoning they find is, “partly because there is no agreed orthography for the language and there are almost no textbooks or materials, or teachers able to speak the language.”²⁴⁹ The problems which the Roma community face in the Macedonian education system will be considered separately.

In the case of Macedonia, there has been very little move in the direction of bi- or multi-lingual education. Separate systems of education have developed and been supported in various languages. There have also been reports that the quality of education offered in minority languages in the country has been lower than in the Macedonian language.²⁵⁰

There has been resistance from the Macedonian government to the idea of bilingual education in integrated schools. Other than pilot projects in pre-school, “the Government of the Republic of Macedonia considers that bilingual classes...would cause negative reaction by persons belonging to minorities who follow instruction in their mother tongue. [Furthermore] there are no legal, political and socio-cultural conditions for the eventual realization of [bilingual education].”

Given this background, the European Commission against Racism and Intolerance has recommended that children of different ethnic groups have the opportunity to learn together and

²⁴⁶ Article 67 of the Law on Primary Education “Official Gazette of the Republic of Macedonia” No 44/95, which also requires that teachers pass a test in the Macedonian language.

²⁴⁷ Law on Secondary Education 1995, article 4

²⁴⁸ *ibid*, article 5(1).

²⁴⁹ OECD, *Thematic Review of National Policies for Education – FYRoM*, 5 September 2001, at p 7.

²⁵⁰ Observations Provided by the Government of the ‘former Yugoslav Republic of Macedonia’ concerning the European Commission against Racism and Intolerance, “Second Report on ‘the former Yugoslav Republic of Macedonia’”, Adopted on 16 June 2000, CRI (2001)5, pp 23-24.

of one another's language and culture, "to ensure that the educational system is structured in such a way that it does not reproduce patterns of interethnic hostility and mistrust".²⁵¹ In particular it was noted that, "while most members of minority groups speak the Macedonian language, very few ethnic Macedonians speak any minority languages".²⁵²

2. Practice.

In the 1998/99 school year, 67% of pupils attended Macedonian medium classes, 30% Albanian, 2% Turkish and less than 1% Serbian. At the secondary school level, 84% were in Macedonian medium classes, 15% Albanian, and less than 1% Turkish.²⁵³

There has been a gradual decrease in the number of pupils studying in Macedonian (from 70.88% in 1991/92 to 67% in 1998/99), and concomitant increase in the percentage of pupils receiving instruction in Albanian (from 26.79% to 30%).²⁵⁴ In part the explanation for this lies in differences in birth rates between the two groups, but it also reflects an increase in relative terms in the proportion of education offered in the Albanian language.

In 1998 there were only thirty-three Turkish language teachers at the state secondary school level, compared with three hundred and twenty two at the primary level.²⁵⁵ Figures from the Helsinki Committee (a large non-governmental organisation specialised in minority concerns) indicate that, in 1999, instruction in secondary education in Macedonia was conducted 85.29% in the Macedonian medium, 14.04% in Albanian, and 0.67% in Turkish.²⁵⁶

In November 2001 the European Court of Human Rights considered a case of discrimination in the provision of education (article 14 on non-discrimination and article 2 of Protocol 1 on the right to education) regarding this precise issue. In *Skender v FYROM*²⁵⁷, the complainant was a Macedonian national whose mother language was Turkish. In the area he and his family lived, there were no primary schools where Turkish was the language of instruction. In relation to his two daughters, the court was able to side-step the issue of minority language education by declaring the case of one daughter inadmissible for non-exhaustion of domestic remedies (before appealing to an international or regional judicial body cases must pass through the national legal system until they can go no further), and in respect of the other they returned the case to the Macedonian courts as their was insufficient evidence to allow them to pronounce on the facts.

Such gaps may be ameliorated to some extent by the establishment in 1996 of private colleges in Turkish in Skopje and Gostivar.²⁵⁸

Whilst Macedonia encourages private secondary schools, in many cases where insufficient availability of state run minority language primary schools has led minority communities to set up private schools, the Ministry of Education and Science has declared these illegal and shut them down.²⁵⁹

²⁵¹ European Commission against Racism and Intolerance, *Second Report on 'the former Yugoslav Republic of Macedonia'*, Adopted 16 June 2000, CRI (2001)5, at para 48.

²⁵² Ibid, at para 40.

²⁵³ Figures from Ministry of Education, *Information about the current condition in the education of minorities in the Republic of Macedonia*, 1999, at pp 4, 8, 20, cited in SAVE THE CHILDREN DENIED A FUTURE?, 2001, at p 287.

²⁵⁴ Helsinki Committee for Human Rights in the Republic of Macedonia, *Report on Minority Rights in the Republic of Macedonia*, (shadow report under the Framework Convention), September 1999. http://www.riga.lv/minelres/reports/Macedonia/Macedonia_NGO.htm (accessed 30 March 2002).

²⁵⁵ Ministry of Education and Physical Culture, MILS News, August 12 and 14 1998

²⁵⁶ Helsinki Committee for Human Rights in the Republic of Macedonia, Report on Minority Rights in the Republic of Macedonia (shadow report under the Framework Convention), September 1999. http://www.riga.lv/minelres/reports/Macedonia/Macedonia_NGO.htm (accessed 30 March 2002).

²⁵⁷ *Skender v FYROM* 62059/00, European Court of Human Rights (First Section), 22 November 2001.

²⁵⁸ Association for Democratic Initiatives, *shadow report under the Framework Convention for the Protection of National Minorities*.

²⁵⁹ for Turkish schools see the textbox on Centar Zupa, and for Albanian schools see supra, Human Rights Watch, 1996.

Content.

In Macedonia, there are textbooks available in national and minority languages.

“All titles are published in Macedonian and in three minority languages for [primary] schools, and in at least two languages (Albanian and Macedonian) for secondary schools. [Textbook regulations suggest that these should] show respect and tolerance for all cultures. Although alternative textbooks are readily available in Turkish and Serbian, they are in principle not allowed.”²⁶⁰

This was the observation of the OECD mission report on education in Macedonia. There is no mention of textbook provision in Romani.

The Helsinki Committee notes that the content of textbooks is identical in the various languages. State obligations under international human rights law require education to adapt to the culture of members of minority groups. A necessary element of this is that the content of the curriculum reflect minority cultures, although it is doubtful that this is the case in more than a handful of societies.²⁶¹

Examinations.

At the end of compulsory education pupils must pass a series of examinations if they are to progress to Upper Secondary Education. Until now this has meant a formal examination in Macedonian language, literature and mathematics, but this is under review. The Strategy for Education Development aims to replace this with examinations in the student’s mother tongue and mathematics.

²⁶⁰ Supra, OECD, 2001, at p 21.

²⁶¹ For a fuller examination of this issue, see the ongoing project of the UNESCO International Bureau of Education “Capacity Building for Curriculum Development” www.ibe.unesco.org

7. The best interests of the child – Centar Zupa

In 1991, members of the Democratic Party of Turks in Macedonia, and some local parents opened two Turkish language primary schools (primary schools are excluded from the Constitutional provision on freedom to establish private schools in [article 45](#) of the constitution). Although there were state run Turkish language primary schools in the area they were said to be too small and too far away. Previous requests for further official Turkish medium classes had been refused by the regional authority. By 1994, 250 pupils attended the schools and in 1995 the police closed them.

A legal process was initiated by the Board of Parents of students from the municipality of Centar Zupa against the local authority, culminating in a complaint filed to the European Court of Human Rights in November 2000.

Parents in the Centar Zupa region wanted their children to receive primary education in Turkish. This was permitted by the Ministry of Education and upheld by the Supreme Court in 1998¹ and then reversed by the Constitutional Court in 2000. In its decision the Constitutional Court placed decisive emphasis on the fact that the Turkish minority spoke Macedonian in their daily lives. It is said that the government did not believe that the minority children spoke Turkish and conducted a local survey of language spoken in the home.

Item four of [Article 48](#) of the constitution was considered by the Constitutional Court to contain an objective element. The “own language” spoken of in the constitutional provision is to be the language used in daily life. “Therefore, the constitutional regulation notes an objective criterion for the fulfilment of the right of nationalities to have lectures done on (sic) their mother tongue, *the right does not depend on the subjective will of state departments or the subjective relation of citizens and their nationality.*”²

This decision repudiated the previous Supreme Court decision and the Ministry of Education order from 5 July 2000. It is reported³ that the effect of this decision was that over two hundred children being excluded from education all-together by their parents who refused to allow their children to be taught in Macedonian.

The case has been interpreted in a variety of ways. Human Rights Watch considered effectively that the Turkish minority group in the area did not speak sufficient Turkish to claim the right to mother tongue education for their children. The International Save the Children Alliance has stated, “[i]n the Zhupa case, primary school children of Macedonian/ Muslim origin were pushed into a campaign for classes in Turkish, although most of them didn’t speak a word of the language.”⁴

Defence for Children International, Republic of Macedonia, considered the issue in its report for 1999/2000, reaching the conclusion that there should be a test of the desire of children to learn in Turkish. “However, the Council of Parents refused to allow their children to make the test. In that way the unfortunate situation of breaking the children’s right to elementary education, regardless whether it would be performed in Macedonian or Turkish language, continues to exist”⁵.

Use of reasonable and objective criteria in determining minority rights is consistent with international law, although identification with a minority group should be made on a subjective basis where no such reasonable and objective reason exists for a different test. Decisive importance should be given to the best interests of the child and their interests should be taken into account. It is certainly not in the child’s best interest to be denied an education altogether, and it is for this reason that primary education is compulsory, and parents are subject to criminal prosecution in cases where their children are not attending.

¹ Supreme Court of Macedonia 0. no. 1701/98

² U. No. 205/99 5 July 2000-10-06 Skopje, President of the Constitutional Court of Republic of Macedonia, Dr Todor Dzunov, s.r. para 5. (emphasis added)

³ Association for Democratic Initiatives shadow report under the Framework Convention, 2000.

⁴ “Children’s Rights: Equal Rights? Diversity, difference and the issue of discrimination” The International Save the Children Alliance, London, 2000

⁵ Macedonian National Child Rights Coalition, <http://www.unet.com.mk/medzasi/coalition.htm>, endorsed by the First Children’s Embassy in the World, Macedonia: Report on the work of the first children’s embassy in the world in the period of April 1997- April 1998, <http://www.unet.com.mk/medzasi/report.htm>

**Participation of ethnic groups by level and percentage,
1998/99**

	Primary Education	Secondary Education	Tertiary Education
	%	%	%
Macedonian	59.0	79.2	89.2
Albanian	30.2	15.6	5.5
Turkish	4.2	1.6	1.1
Roma	3.0	0.5	0.1
Vlach	0.2	0.3	1.0
Serbian	1.1	1.3	1.9
Other	2.3	1.5	1.2
Ethnicity not known	0.03	0.05	0.05
TOTAL	100	100.0	100.0

Source: CEPS, Ljubljana, OECD Review of National Policies in Education – Macedonia, 2001, page 10

Participation.

In 1996 Human Rights Watch felt declared that there were, “enough Albanian-language primary schools to cover the needs of the Albanian population”.²⁶² This conclusion accords with the sample data presented above. Officially 22.67% of the population is Albanian, yet 30.2% of the primary school population was Albanian in the sample group.

However, It would be incorrect to correlate ethnicity with language spoken. The only estimates available indicate that 70% of the population speak Macedonian, 21% Albanian, 3% Turkish, 3% “Serbo-Croat” and 3% Rom as mother language.²⁶³ The basis for these calculations is not clear however, as they originate from the US intelligence community.

Members of minority groups in Macedonia are not completing education in comparable numbers to their ethnic Macedonian neighbours. In particular, there are notable disparities for secondary and higher education. Whereas Albanians officially account for 22.67% of the population, they are only 15.6% of the secondary school population, and a mere 5.5% of the higher education population. Whilst 4.01% of the population is declared Turkish, only 1.6% of the secondary school population is Turkish. Roma, whose numerical size in the population is the most hotly contested, are at least 2.25% of the population, and account for only 0.5% of the secondary school population.

Despite a shift system for education in languages other than Macedonian, there are still significantly lower numbers of children from ethnic groups other than Macedonian in education at all levels, particularly in post-primary education. This trend has also been noted by the United Nations Committee on the Rights of the Child.²⁶⁴

While the relative percentages of children receiving instruction in minority languages may be increasing, there remain great disparities in the completion of education according to ethnicity. The level of enrolment in secondary education relative to primary is highest for those in Macedonian who declare themselves to be ethnically Macedonian, and lowest for the Roma. In addition the levels of both the Albanian and the Turkish minorities are strikingly low, while the Serbian minority (which accounts for only 1.1% of those in primary education) is retained in around the same proportion as the majority Macedonian population. There can be several explanations for this trend, among them that minority language secondary education is far less widely available than minority language primary education. Other relevant factors are disparities in the quality of education offered in minority language schools, and in schools where the majority of the pupils are from minorities. As was noted by the

²⁶² supra, Human Rights Watch, 1996, at p 15.

²⁶³ CIA, THE WORLD FACT BOOK 2001 – FORMER YUGOSLAV REPUBLIC OF MACEDONIA
<http://www.odci.gov/cia/publications/factbook>

²⁶⁴ in their concluding observations on the initial report of Macedonia under the Convention in January 2000, CRC/C/15/Add.118, 23 February 2000, at para 42.

Committee on the Rights of the Child, “primary and secondary education available in minority languages is of a lower standard than that available in the Macedonian language.”²⁶⁵ The Committee recommends an increase in the number of hours devoted to teaching the Macedonian language in minority schools in order to equalise the opportunities of all groups to graduate to higher education, as entrance examinations are mostly in the Macedonian language only.

Higher Education

The Law on Higher Education 2000, article 6

1. *The citizens of the Republic of Macedonia have, under equal conditions, the right to education in the institutions of higher education in the Republic of Macedonia.*
2. *Foreign citizens can, with the application of the principle of reciprocity, educate themselves in the institutions of higher education in the Republic of Macedonia under the same conditions as the citizens of the Republic of Macedonia.*
- ...
4. *The right to higher education is also given to persons without citizenship under conditions defined by law and by the ratified International acts. ...*

Higher education is permitted in minority languages in state institutions in pedagogical subjects at the college "St. Kliment Ohridski" in Skopje, in “distinct” subjects or subjects on the culture or arts of the minority group. Also, private institutions may provide instruction in minority languages where Macedonian is also taught and a number of subjects are also taught in Macedonian language.²⁶⁶

This was reaffirmed by the Constitutional Court in 1997 in a challenge to instruction on pedagogy in minority languages. The court stated that,

“bearing in mind that primary education is compulsory and is conducted in public institutions, in the Court’s opinion, the State has an obligation to provide for suitable measures in the educational sphere for the implementation of the right to instruction in one’s mother tongue...[permitting instruction in pedagogy in minority language medium classes]...creates the conditions necessary for the implementation of the constitutionally guaranteed right to instruction in [minority languages] at primary and secondary levels.”²⁶⁷

The right of children who are members of minority groups to instruction in their mother language, which is recognised in the Macedonian Constitution, requires the legality of courses which seek to train teachers in those languages. An integral element of the right to education is the competence of teachers. The court avoided an extension of this right to mother language education into higher education by basing its decision solely on rights in primary and secondary education.

From the participation figures, one can see that minority participation in higher education is extremely low. One measure used to encourage minority enrolment in higher education has been the quota system. In 1991/92 the government set a quota of 10% for all minority students. The figure was adjusted in 1996/1997 to correspond to the respective minority’s share of the total population, according to the latest census information. This has resulted in larger proportions of minority students in the country’s two state-funded universities, Skopje and Bitola. According to the OECD, such quotas now amount to around 23% of total enrolment.²⁶⁸

²⁶⁵ Ibid, CRC concluding observations, at para 44.

²⁶⁶ Law on Higher Education 2000, article 95. “Official Gazette of the Republic of Macedonia” No. 64/00.

²⁶⁷ U.23/97 Sluzben Vesnik na Republika Makedonija (Official Gazette) 31/97 CODICES, Venice Commission MKD-1997-2-004.

²⁶⁸ Supra OECD, 2001 at p 9.

8. Tetevo University and the South East European University in Tetevo.

In 1994 the Albanian governors of the provinces of Tetevo, Gostivar and Debar in Macedonia founded a private Albanian-language university in Tetevo. These three were joined in 1997 by the mayors of twenty-two other Albanian led municipalities. Their action was despite the 1995 Law on Local Self-Government which removed jurisdiction over higher education from the local authorities. Although the government labelled the university illegal, by 1999 student figures were reported to have reached 4,500,¹ and this despite the uncertain status of diplomas from the university. Students did not know what they could do with their studies, but were nevertheless keen to receive instruction in Albanian.

There were protests during debates on the bill but in July 2000 the Macedonian Parliament passed the Higher Education Act, which would allow a private institution of higher education in a minority language, based on proposals of the OSCE High Commissioner on National Minorities. One thousand protesters, led by an Albanian political party, rejected the nascent law, seeking instead the legal recognition of the University of Tetevo. The new, internationally funded institution, would allow Albanians to study in their own language, although a proficiency test in Macedonian would be required before their diplomas were officially recognized.

The United Nations Development Programme reported that, “with the beginning of the academic year, universities began applying the provisions of the Higher Education Act. The legislation gives the opportunity to students from the Albanian-language university in Tetevo (Mala Recica) to continue their education in the public (state) universities. The number of students who applied to state universities under this policy was small... No student transfers or diploma conversions have taken place so far.”²

The new “South East European University” in Tetevo was officially opened in November 2001, having been financed by 30 million Euros from the international community and the donation of “the piece of land” by the government of Macedonia.³ It includes faculties of law, business administration, public administration, teacher training, communications and computer science, and will teach in Albanian, Macedonian, English and other European languages. Despite the attempts to present the university as multi-ethnic, it is often considered to be an Albanian university. This was typified by a statement in the United Kingdom Parliament, by then Foreign Secretary Robin Cook where he referred to, “the new Albanian University in Tetevo.”⁴

¹ International Crisis Group, “Macedonia’s Ethnic Albanian’s: Bridging the Gulf”, August 2000, page 19.

² UNDP “Early Warning Report” Report No 2, November 2000, UNDP Skopje, page 14

³ OSCE High Commissioner on National Minorities, Press Release 20 November 2001, “South East European University opens in Tetevo, former Yugoslav Republic of Macedonia”, www.osce.org/news/generate.php3?news_id=2165.

⁴ Statement by the Foreign Secretary, Robin Cook, to the House of Commons, London, Tuesday 27 March 2001, www.fco.gov.uk/news/newstext.asp?4865

Changes which aim to increase minority participation in higher education are often unpopular with the majority. The quota system, for example, met with opposition from the conservative representatives of the ethnic Macedonian teachers at the University of Skopje, and the Minister of Education has been taken to the Constitutional Court for trying to expand Albanian language classes at the pedagogical academy. The latter is of grave importance given the persistently low participation of Albanians in higher education, often blamed on the low quality of Albanian language education at the primary and secondary levels. However, it should be borne in mind that entrance examinations for the two state funded universities have been administered solely in Macedonian. This clearly puts other ethnic groups at a disadvantage as, up until that point many have studied and taken examinations only in another language. The situation has reportedly changed now, so that university entrance examinations may be taken in the Albanian language.²⁶⁹ It is not clear whether the same extends to other minority languages.

Socio-economic status of minorities

Citizenship

The *Citizenship Law 1992* was described by Human Rights Watch as a “threat to stability”.²⁷⁰ According to this law Macedonian citizenship can be acquired by (ethnic) origin, birth on Macedonian territory, naturalisation, or international agreements. Persons born *in* Macedonia can acquire citizenship if at least one parent is Macedonian. Naturalisation requires that a person has been resident for fifteen years. This was criticised by the previous OSCE High Commissioner on National Minorities (HCNM), Mr Max van der Stoel, who felt that the requirement did not adequately reflect the reality that Macedonia was once a part of the Socialist Federal Republic of Yugoslavia.²⁷¹ Many non-governmental groups claim that this criterion disproportionately affects members of the Roma minority, who have been itinerant, are often unemployed, and many speak Macedonian as a second language only, if at all.

Roma

The Roma population in Macedonia is not a homogeneous group, but a complex mixture, although the majority is Muslim (around 92% according to the Association for Democratic Initiatives).²⁷² Most speak Romani as their mother language, but some speak only Albanian and Turkish.

Roma is considered a national minority in Macedonia according to the Constitution. Macedonia extends the provisions of the Framework Convention to Roma via an interpretative declaration, and the constitution refers specifically to “Romanics” in the preamble as a nationality, differentiated from, but accorded equal status with, Macedonians. However, while, according to Article 48 of the Constitution, members of nationalities are entitled to education in their mother tongue, in practice this is restricted to the Albanian, Turkish and Serbian minorities, and not the Roma.

In general, the educational situation of Roma in Macedonia appears to be the poorest of all groups in the country. This is more than apparent from the participation ratios presented above, and also from the completion rates which are over eight times lower for the Roma population than for the Macedonian population.

The Ministry of Education and Science Figures for the school year 1999/2000 suggest that 3.34% of the total primary school population was Roma. This statistic would compare favourably with the percentage of the total population officially declared Roma in the 1994 census (2.2%). It is, however, an unfavourable percentage if compared to unofficial estimates which put the number of primary school age Roma children 12.5% higher, leaving over 1000 primary school age Roma

²⁶⁹ Ibid.

²⁷⁰ supra Human Rights Watch, 1996, at pp 65-73.

²⁷¹ In a letter to Foreign Minister Stevo Crvenkovski, OSCE High Commissioner on National Minorities Max van der Stoel recommended that the permanent residency requirement be lowered to five years. Letter dated November 16, 1994. Reference number 3016/94/L.

²⁷² supra Association for Democratic Initiatives, 1999.

children out of compulsory schooling.²⁷³ Further, the OSCE High Commissioner on National Minorities notes that estimates of Romani leaders themselves in Macedonia indicate that as many as ten percent of school-aged Romani children never enrol in the first grade, half of those drop out by the fifth grade, and only 35-49 percentage complete compulsory education.²⁷⁴ This indicates that enforcement of compulsory education is inadequate and that the education system is inadequately adapted to the needs of the Roma child.

In 1996 there were four elementary schools offering optional classes in Romani,²⁷⁵ yet there was reportedly only one textbook in Romani in 2000, for grades 1-3.²⁷⁶ It is unclear whether this situation has improved as statistics, which are not in any case widely available, often simply leave out the Roma population. Save the Children also claims that only 0.1% of teachers in Macedonia are from the Roma group.²⁷⁷ A statistic which is all the more concerning given the consistent allegations of teacher harassment of and discrimination against Roma pupils. It was for these reasons that ECRI suggested there be an investigation into the effects of stereotypes and prejudices of teachers, which they felt may lead to low expectations of Roma children.²⁷⁸

An increase in the number of Roma teachers would be a necessary precondition to an improvement in Roma education. As the United Nations Special Rapporteur on the right to education has noted in her Preliminary Report to the Commission on Human Rights in 1999, and in subsequent annual reports, under-representation among the teaching profession is related to under representation in the pupil cohort.²⁷⁹

Questions have been raised about the acceptability of schools where the majority of children are Roma. Forcing children to attend schools which are damaging to their physical health, is clearly unacceptable, yet Save the Children has suggested that sanitary conditions in certain (*de facto* segregated) Roma primary schools are dangerously low.²⁸⁰ The safety of children at school is utterly fundamental, not least as they are compelled to attend. This suggests a need to review resource allocation in the school system in the country to ensure that it is not discriminatory, and also that finance is directed where it is most needed.

In addition to risking their health in unsatisfactory schools, there are reports that Roma children have been targeted for physical abuse in schools in Macedonia. The European Roma Rights Centre reported in 2000 that,

“According to reports in the Macedonian media, on 24 May 2000 [name] a non-Romani chemistry teacher...in the predominantly Romani settlement of _uto Orizari in Skopje, reportedly physically abused three seventh-grade students: Romani students [names] and [name] their ethnic Serb classmate...[the teacher] apologised to [the mother of the Serb child] saying that she had thought [the Serb child] was a ‘Gypsy’.”²⁸¹

Such racially motivated violence in schools is immensely concerning, not least for the impression it leaves on all pupils: further reducing the self-image of the Roma children, and further reinforcing the prejudices of the other children. Education for multicultural societies should aim to do precisely the opposite.

There was no state secondary education in Romani in 1998. The new Strategy for Education pledges that the government of Macedonia is to open a state secondary school in a settlement with a high Roma population by 2004, with the goal of increasing secondary school attendance

²⁷³ Open Society Institute, *Research on Selected Roma Education Programmes in Central & Eastern Europe*, 2001, at page 30.

²⁷⁴ Organisation for Security and Co-operation in Europe, High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Area*, 2000, at p 65.

²⁷⁵ US Department of State, *Country Reports for Human Rights Performance 1998*, at page 1189.

²⁷⁶ CEDIME-SE, *Minorities in Southeast Europe-Roma of Macedonia*, August 2000.

²⁷⁷ SAVE THE CHILDREN, *DENIED A FUTURE?*, 2001, at p 289.

²⁷⁸ European Commission against Racism and Intolerance, *Second Report on ‘the former Yugoslav Republic of Macedonia’*, Adopted 16 June 2000, CRI (2001) 5, at para 27.

²⁷⁹ E/CN.4/1999/49, E/CN.4/2000/6, E/CN.4/2001/52, E/CN.4/2002/60, the work of the Special Rapporteur focussed on gender in this regard, but the proposition here is that the conclusions are transferable. The relation between percentage of female teachers and percentage of female enrolment was not found to be universal.

²⁸⁰ *Supra* Save the Children, 2001, at p 284.

²⁸¹ European Roma Rights Centre, *Teacher attacks Roma in Macedonia*, http://errc.org/rr_nr2_2000/snap21.shtml.

by Roma students.²⁸² Such initiatives should be encouraged, although this does not pledge any level of education in the Romani medium. Other positive signs include views expressed by the Macedonian authorities to the European Commission against Racism and Intolerance (ECRI) including a statement that the Macedonian government was preparing a new curriculum for teaching in Romani and developing new courses to train teaching staff in the Romani language.²⁸³ There have been no reports of the realisation of this programme as yet.

Education in Macedonian is free, yet associated costs such as transportation may account for the dropout trends of Roma after grades 1-8 of compulsory education. Other factors include a large number of female dropouts on marriage around 14 or 15. Other factors may include feelings of dissociation with education after attending schools which teach a curriculum which ignores Roma culture in an unfamiliar language and in an environment often of fear.

It is said that in 1999-2000 there were twenty-nine Roma attending higher education, two of which were outside the country.²⁸⁴ The OECD puts the figure for 2000-2001 at 48, which would mark a significant increase, but would remain extremely low.²⁸⁵

²⁸² Supra OECD, 2001, at p 6.

²⁸³ Supra ECRI, "Second Report on the Former Yugoslav Republic of Macedonia", at p 12.

²⁸⁴ Supra CEDIME-SE, August 2000.

²⁸⁵ Supra OECD, 2001, at p 10.

Romania.

Although seemingly initially hostile to minority rights due to separatist fears, post Ceaucescu Romania has, since the mid 1990s, begun to take steps to address minority concerns. Much remains unaccomplished, however, particularly with regard to the Roma population.

Demography

From 1992 Census²⁸⁶:

Romanian	89.5%
Hungarian	7.1%
Roma	1.8%
German	0.5%
Ukrainian	0.3%
Serbian	0.1%
Other	0.7%

In addition to being outdated, these figures are considered unreliable. The OECD states that, "it is accepted that the percentage of Roma is inaccurate because many Roma did not identify themselves as such in the census".²⁸⁷ Given the heritage of discrimination against the Roma minority in Romania across various governments this is hardly surprising. Council of Europe research, from 1991-1994, put the number of Roma far higher, at a figure equivalent to 9.4% of the population.²⁸⁸

International Obligations

Once ratified, treaties are part of national law in Romania (Article 11 of the Constitution). International human rights commitments take precedence over "internal law" and the Constitution is to be interpreted in conformity,

with the Universal Declaration of Human Rights, with the Covenants and other treaties Romania is a party to. (Article 20 of the Constitution).

Romania is thus formally a monist state, in that international treaties, once ratified, take precedence over domestic legislation. It is unusual that Romania aims to interpret its constitution in conformity with the Universal Declaration of Human Rights as well as other human rights treaties, as the UDHR is not an internationally binding document. Unilateral declarations of this sort are however, certainly not prohibited in international law.

Romania has signed and ratified the FCNM and considers the provisions of the Convention to extend to the following minorities (the names are those used in the State Report): Magyars/Szeklers, Gypsies, Germans/Swabians/Saxons, Ukrainians, Russians/Lipoveni, Turks, Serbs, Tatars, Slovaks, Bulgarians, Jews, Croats, Czechs, Poles, Greeks, Armenians.²⁸⁹ When the first state report of Romania under this convention was being considered, the question of whether there were other groups which the Romanian government was not considering in its application of the convention was discussed. The Advisory Committee came to the conclusion that

"some representatives of the Csango community were most interested in benefiting from the measures taken by the state in favour of minorities. The Advisory Committee takes the view that, given the historic presence of the Csangos in Romania and the specific elements of their identity, the Romanian authorities should favourably consider the extension of the Framework Convention to persons stating that they are members of

²⁸⁶ A census was conducted in March 2002, but the results are not available in time for press.

²⁸⁷ OECD Centre for Cooperation with non-members, Directorate for Education, Employment, Labour and Social Affairs, Education Committee, *Thematic Review of National Policies for Education – Romania: the stability pact for South Eastern Europe*, 9 November 2001, CCNM/DEELSA/ED(2001)10.

²⁸⁸ LIEGEOIS, J-P & GHEORGHE, N, *Roma, Gypsies, Travellers*, Strasbourg, Council of Europe, 1994, at p34.

²⁸⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Romania*, adopted on 6 April 2001, <http://www.humanrights.coe.int/minorities/eng/frameworkconvention/advisorycommittee/opinions/romania.htm> (accessed 26 March 2002).

this community and should explore this question in consultation with the representatives of the Csangos.”²⁹⁰

Listing the groups to which the convention applies in this way may exclude smaller groups. Consequently, arbitrary listing of minority groups is contrary to international law, which requires that objective criteria be used, and where no such reasonable objective criteria can be determined, self-identification should be persuasive. This right to self-identification may not be fully recognised by a census which gives Roma, for example, the option to identify as gypsies (“_igani”), a label which holds pejorative connotations for many.

Romania is also a party to bilateral treaties with Hungary, Ukraine and Germany which guarantee the rights set out in the Framework Convention (and Council of Europe Recommendation 1201) to those residents of Romania holding Hungarian, German and Ukrainian nationality. The Bilateral treaty with Germany dates from 1992, that with Hungary from 1996 and Ukraine from 1997. Members of these minorities have a preferred status in Romania to members of other minorities. As an example, the treaty between Germany and Romania Regarding Amicable Cooperation and Partnership in Europe of 1992, declares in Article 15 that the provisions of the Copenhagen Document of the Conference on Security and Cooperation in Europe should be binding between the parties. The Copenhagen document, which as a political document is not directly binding on the signatories, states in Article 34,

The participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation.

In the context of the teaching of history and culture in educational establishments, they will also take account of the history and culture of national minorities.

Thus minority rights in education (instruction of and in minority languages and the content of education) is better secured in Romania to those national minorities with whose country of origin Romania has bilateral agreements. Roma, having no state to which they are related are a disadvantaged group in a situation where bilateral agreements determines minority rights.

Minority Education: law and practice

The Constitution

The Constitution of Romania contains equality and non-discrimination provisions including article 4(2) which provides for equality of all citizens without distinction as to, *inter alia* race, nationality, ethnic origin or language. Article 16 guarantees the equality of all citizens before the law. These are constitutionally restricted to citizens in Romania, and only partially extended to non-citizens by virtue of the *Law on the Status of Aliens*, article 2(1) of which states that,

In Romania, aliens shall enjoy the right to general protection of persons and their effects, as safeguarded by the Constitution and other laws, as well as rights provided for under international treaties.

Such a constitutional restriction is unfortunate and contrary to international law which has narrowed the scope of differential treatment between citizens and non-citizens.

Article 6 The State recognizes and guarantees the right of persons belonging to national minorities, to the preservation, development, and expression of their ethnic, cultural, linguistic, and religious identity.

The protecting measures taken by the Romanian State for the preservation, development, and expression of identity of the persons belonging to national minorities shall conform to the principles of equality and non-discrimination in relation to the other Romanian citizens

This provision includes both positive and negative obligations of the state. The Constitution provides that the state will both “protect” and “preserve” the development, and expression of ethnic, cultural, linguistic and religious identity. It would seem that the Constitution envisages that the state should protect the right of such national minority groups to preserve their own identity,

²⁹⁰ *ibid.*

and secondly that the state itself should take measures²⁹¹ to do the same. Where the state so acts, it must do so in a manner which “conform[s] to the principles of equality and non-discrimination in relation to the other Romanian citizens”. According to international law, measures taken by a state with the aim of preserving and protecting minority identity do not breach non-discrimination and equality provisions, provided that they based on reasonable and objective criteria, are of a temporary nature and are discontinued when the desired goal is achieved. There have been several programmes of affirmative action and special measures in education in Romania, in particular focussed on the Roma minority, but also in relation to Hungarians and Ukrainians, among others.

The constitution continually refers to *national* minorities, although it does not contain a definition of the term. There appears to be no definition of national minorities in Romanian law. In practice it is taken to mean those minorities that have lived in Romania for hundreds of years. The 1992 census recorded the existence of sixteen national minority groups and this is reflected in the national minority representation on the Council of National Minorities and in Parliament.

The constitution itself actually contains a provision recognising the right to mother language education of national minorities.

Article 32 (3), “The right of persons belonging to national minorities to learn their mother tongue, and their right to be educated in this language are guaranteed; the way to exercise these rights shall be regulated by law.”

The regulation for this is now in force, following consecutive amendments to the *Education Law 1995*, discussed below.

Language of instruction

The amended *Law on Education of 1995*²⁹² presents more detailed provisions on education of national minorities and of education in the mother tongue building on Article 32 of the Constitution.

Firstly, in Article 5(1), the Law on Education guarantees the right to education to all *citizens* of Romania, a restriction which conflicts with Romania’s obligations under international human rights law, where each child under within the jurisdiction of Romania has a right to education. Romania is far from unique in this restriction.

Article 8(2) of the same act reiterates the right of members of national minorities to mother tongue education,

*Article 118 Persons belonging to national minorities have the **right** to study and receive instruction in their mother tongue, at all levels and forms of education with appropriate request, according to the present law. (emphasis added).*

The provision is an explicit expression of the right to mother tongue education.

article 119

(1) Taking into account local needs, groups, classes, sections or school units with teaching in the languages of national minorities may be established, at request and in accordance with the provisions of this law.

(2) Paragraph (1) of this article shall be implemented without prejudice to the learning of the official language and the teaching in this language.

Much subordinate legislation has been passed in an attempt to transform these changes *de jure* into changes *de facto*. An example of this trend is Order *no 3113 of 31.01.2000*. Article 1 of which states that,

Lessons of the mother tongue for pupils belonging to national minorities who study in schools with tuition in Romanian language are ... included compulsorily in the timetables of schools.

²⁹¹ which this translation, from the University of Würzburg rather confusingly terms “protecting measures” see http://www.uni-wuerzburg.de/law/ro00000_.html, accessed 22 March 2002.

²⁹² Law no 151/1999.

Where there is no such provision, associations and alliances of national minorities may name the schools in which they wish this to take place. This is done by sending an official communication to the school and the inspectorate. The emphasis is thus on demand.²⁹³

The OECD calls Romania a “world leader” in the realisation of the right of minorities to be taught in their own language.²⁹⁴ No doubt this is based on the legislative right to mother language education until the tertiary level, and the relatively even participation rates across levels of education, with the exception of the Roma minority. Statistically it seems that around half of the Hungarian minority learn in Hungarian, whereas for Roma the picture is unclear, with the most generous estimate (10,000 pupils)²⁹⁵ amounting to less than 0.05% of the population, even the (low) official figure from the 1992 census places the percentage of Roma in the population at 1.8%. Indeed very few Roma are in formal education at all. It seems that, in reaching their conclusion, the OECD did not have in mind the Roma population.

What figures are available may be of some use in signalling how far reality has to go to catch up with the demands of the law. Statistics from the OECD give some indication of the percentages of minority children receiving education in the mother tongue. Comparing the demographic data presented above with the languages of instruction over all levels of education as provided by OECD statistics looks like this:

	Demographic %	Language of Instruction %
Romanian	89.5	95.6
Hungarian	7.1	4
German	0.5	0.3
Roma	1.8	?

Source: OECD, Thematic Review of National Policies for Education – Romania: the stability pact for South East Europe, 2001, page 10.

The OECD presents no data on the percentage of education in the medium of Romani (the largest Roma language in Romania).

Romanian relations with the huge Hungarian minority in the country have been the focus of much international attention since the fall of communism. Concerns have focussed not only on minority rights, but also on potential territorial disputes.

Given the tension in relations, the Education Law of 1995 was particularly controversial, due to the implications of article 120 which restricted minority language education. The law itself was drafted under the backdrop of a desire to appease not only the Hungarian minority, but also the European Union. The law was passed one month after the government of Romania submitted its application to join the EU, and was accompanied by a glossy pamphlet in English, “The New Education Law in Romania: one of the most democratic in Europe”. The pamphlet compares and contrasts provisions of the 1995 law with international standards, and also with Hungarian legislation.

The law, as initially passed, caused much controversy, as representatives of the Hungarian minority felt it insufficiently recognised their rights. After the change of governments in November 1996, a process of revision of the '95 law began. The revision of article 120, by ordinance in 1999, has significantly increased the chances of Hungarian language education, at least *de jure*. The figures presented above from the OECD, suggest that 4% of primary and secondary education in Romania is Hungarian medium.

Those that are not recognised as a minority still face *de facto* discrimination in education. The Romanian Helsinki Committee has been monitoring the problems of recognition of new minorities in Romania, particularly focussing on the Csangoes in Moldavia (a province of Romania).²⁹⁶ One finding of their field work,²⁹⁷ was that parents of children in one town in the

²⁹³ Article 2 of Order 3113.

²⁹⁴ Review of National Policies in Education: Romania, OECD 2001, at p 66.

²⁹⁵ See below and section on Roma.

²⁹⁶ for more information see, *Human Rights Developments in Romania – the activities of the Romanian Helsinki Committee (APADOR-CH)*, 2001, www.apador.org (accessed 10 July 2002).

region had requested optional classes in the Hungarian language since 1996. Following repeated inaction, the parents began organising private classes in September 2001. IHF reports that those organising the courses were subject to a, “campaign of intimidation and harassment...in some cases teachers also scolded the children who took part in the courses in front of their classmates, or lowered their grades of conduct.”²⁹⁸

Content

Art. 120 Law on Education.

...
(2) *In primary schools with tuition in the languages of national minorities, the History of the Romanians and the Geography of Romania are taught in these languages, according to **identical curricula and textbooks** as for the grades with tuition in Romanian; it is compulsory to transcribed and acquired the toponymy and Romanian proper names. In middle schools and in secondary schools, the History of the Romanians and the Geography of Romania are taught in Romanian, according to the same curricula and the same textbooks as for the grades with tuition in Romanian. Examination in the History of the Romanians and the Geo-graphy of Romania shall be taken in the language in which it was studied*²⁹⁹.

By law, content of education does not adapt to minority groups, even in classes where education is provided in the minority language. Specifically, textbooks are to be identical, and transliterations of proper nouns are seemingly disallowed.

The phrase, “history of Romanians” replaced the former phrase “history of Romania which encompasses all Romanian citizens regardless of origin”. The result of the more recent compromise in content of minority education is the provision in the following sub-section that,

(3) *In curricula and textbooks of world history and the History of the Romanians the history and the traditions of national minorities in Romania shall be also reflected.*

The Advisory Committee on the FCNM has questioned whether this integration of minority history and traditions is happening in practice, “the Advisory Committee is also concerned at reports from various sources that history teaching does not sufficiently reflect Romania’s ethnic diversity”.³⁰⁰

Finally, according to subsection (4), members of national minorities may request appropriate lessons in history and culture at the secondary level, but the Ministry of Education retains the right to oversee the content of textbooks and all curricula. Both in publicly funded minority education and in private education, according to international human rights law, the state must ensure that a minimum level of acceptability is reached in the content of education.³⁰¹ While revision of textbooks to ensure acceptable level of quality is justified, this cannot be used as an excuse for replicating the content from one language to another; teaching Hungarian, or Roma children the “history of Romanians” in high quality, well translated textbooks is missing the essential nature of minority rights in education: that education must balance the interests of all. Education must aim to promote intercultural understanding and a balanced approach between the history and culture of all groups within society.³⁰²

The current regulation of the provision of textbooks in minority languages is through a government ordinance which places the obligation on local school inspectorates. Without outside help, it seems unlikely that this obligation could be fulfilled. Indeed the Advisory Committee on the FCNM has commented that a, “shortage of minority-language textbooks and qualified teachers

²⁹⁷ International Helsinki Federation of Human Rights, *Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America Report of 2002*, at p 262. <http://www.ihf-hr.org/index.htm>

²⁹⁸ *ibid.*

²⁹⁹ Emphasis added.

³⁰⁰ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Romania*, adopted on 6 April 2001, <http://www.humanrights.coe.int/minorities/eng/frameworkconvention/advisorycommittee/opinions/romania.htm> (accessed 27 March 2002), at para 54.

³⁰¹ See the General Comment No. 13 of the Committee on Economic, Social and Cultural Rights.

³⁰² See the General Comment number 1 of the United Nations Committee on the Rights of the Child, “The Aims of Education”, 17/04/2001. CRC/GC/2001/1, CRC General Comment 1. (General Comments).

is still the rule for some minorities, in particular Armenians, Croats, Poles, Serbs, Slovaks, Turks and Tartars".³⁰³

This is despite the assistance of international actors such as the World Bank, the Dutch Government and the OSCE in facilitating the provision of textbooks.

Romania has been involved in protracted curriculum reform since 1992. This process, which apparently begun in earnest in 1997, is described by the OECD as, "allowing for the first time for an 'independent' pedagogical policy of each school, according to the specific needs of its pupils and of the regional/ local economic and social environment".³⁰⁴ This more adaptable approach should improve the content of minority education by focussing on the pupil, and redressing the imbalance as expressed in the Education Law, which promotes the culture and history of the Romanians. Nevertheless, in international law, the responsibility to ensure that this is the case lies with the government of Romania. It is in this sense imperative that effective monitoring procedures be developed and implemented.

One indicator of the acceptability of the quality of education is the number of pupils to every teacher. Crudely speaking, where the figure is higher, the teacher is over-stretched; where it is lower, the pupil receives more close attention.

Pupil : Teacher ratios

Language of Instruction	Pupil	:	Teacher ratio
National	17.28	:	1
Minorities	19.73	:	1
Hungarian	18.9	:	1
German	48	:	1

(source: 1992 Census, printed in "The Ethos of Education for National Minorities in Romania 1999/2000 school year")

These figures suggest overstretched teachers asked to teach a greater number of pupils in schools where the language of instruction is other than Romanian. A lack of qualified teachers in bilingual education and of teachers of the national language as a second language is a significant obstacle to the right to education of linguistic minorities.

It is striking that the pupil to teacher ratio is extraordinarily high for education in German. The German minority in Romania is relatively small, but there is a well reported stream of migrants from Romania to Germany. Many emigrated to Germany and Austria in the early nineties. In September 1992 Germany began repatriating many Romanians. Repatriation had a serious impact on the right to education, as the potential migrants often have given up their official documents in the hope of being granted asylum, and are now estimated to make up a high proportion of the stateless in Romania.³⁰⁵

Examinations

Importantly, and different from the position in other states under review in this paper, the language of examinations reflects the language of instruction.

³⁰³ Advisory Committee on the Framework Convention for the Protection of National Minorities, *Opinion on Romania*, adopted on 6 April 2001, <http://www.humanrights.coe.int/minorities/eng/frameworkconvention/advisorycommittee/opinions/romania.htm> (accessed 27 March 2002), at para 53.

³⁰⁴ Supra OECD REVIEWS OF NATIONAL POLICIES FOR EDUCATION: ROMANIA, at p 80.

³⁰⁵ Reported by UN Report of the Committee on the Elimination of Racial Discrimination : . 29/09/99. A/54/18. (Sessional/Annual Report of Committee), at paras 272-290, and by the Office for the Ombudsman, Bucharest, May 2001.

Art. 124 *In education at all levels entrance and graduation (school leaving) examinations can be taken in the language in which the respective subject matters have been studied, according to the present law.*

This final provisions replaces the earlier formulation which was more restrictive:

In the education at all levels admission and graduation examinations are taken in Romanian. Admission and graduation examinations may be taken in the mother tongue for schools, classes and specialization forms in which teaching is provided in the respective mother tongue, in accordance with the present law.

There is an imbalance in the application of this provision, however, as those who have studied in languages other than Romanian must, at all levels, take and pass more examinations than their peers who study in Romanian. In lower secondary education, there is a system of continual assessment and, after the eighth year there are official examinations administered by the Ministry of National Education in the Romanian language and literature, mathematics and Romanian history and geography, *plus*, for those who have studied in a language other than Romanian, an extra examination on the language and literature of national minorities. This is the prerequisite for the School Leaving Certificate, which is essential for entrance into Upper Secondary School. This is repeated at the end of Upper Secondary School in the baccalaureate examination, which is necessary, but not a sufficient for entrance into higher education.

Participation

Participation of ethnic groups in basic, upper secondary – general and tertiary education in Romania, 2000/2001

Ethnic Group	Basic education Grades I-VIII (%)	Secondary Education (%)	Tertiary Education (%)
Romanian	90.9	93.4	94.4
Hungarians	5.3	5.5	4.9
Germans	0.1	0.2	0.3
Serbians	0.1	0.1	0.1
Roma	2.8	0.1	**
Others	0.8	0.7	0.3
Total	100.0	100.0	100.0

Source: CEPS, Statistical data for background of OECD review: Romania, March 2001

(** Roma enrolment in tertiary education is less than 0.05%)

Progression rates between primary and secondary education in Romania are far more even across ethnic groups than is the case in Macedonia, with the notable and extreme exception of Roma.

The United Nations Development Programme in Romania considers that there is a need to focus, “renewed policy attention to growing dropout trends, especially among the vulnerable sectors of society.”³⁰⁶ This need is bolstered by figures issued by the Government of Romania for the period from 1988/89 to 1995/96 and reported by the OECD. Around 17% of the cohort entering grade 1 drop out before grade 8 – i.e. before completing compulsory education. To this figure should be added 2-3% for children who never entered school at all, “many of them Roma”.³⁰⁷

³⁰⁶ *ibid.*

³⁰⁷ OECD 2001, at p7.

Once again it is possible to gain a rough picture of progression rates between minority groups by using the relative enrolment figures by ethnicity collected for the OECD and comparing the percentage for each ethnic group remaining in education at the secondary level. For Romania the figures look like this:

Higher education.

Article 123 of the Education Law 1995, as amended by the Law on Education of 1999, explicitly permits education in the mother tongue in higher education:

(1) Within higher educational institutions run by the state, groups, sections, colleges, faculties teaching in mother tongue may be organised, according to the law, at request. In this case, the acquiring of the specialised terminology in Romanian language shall be assured. At request and according to law, multicultural higher educational institutions can be established. The languages of teaching shall be determined in the foundation law.

(2) Persons belonging to national minorities shall have the right to set up and manage their own private higher educational institutions according to the law.

...

Thus, not only does the law admit the possibility of minority language education in state higher education establishments, but it also (by subsection 2) explicitly permits private institutions of higher education run by members of minority groups. This was adopted under pressure from the international community, not least the OSCE High Commissioner on National Minorities. There is now a private Hungarian university in Transylvania, The Sapientia Hungarian University of Transylvania, which was officially opened in October 2001. Whilst the Hungarian government has reportedly pledged to support the university (and other Hungarian language universities in Romania) to the tune of almost four billion HUF (around 16.5m Euro)³⁰⁸ annually until 2004, the Romanian Public Information Minister is reported to have said at the opening of the university that, "under the current conditions, Romania cannot subsidize private universities, regardless of the language in which instruction is provided."³⁰⁹

Whilst this private university is beginning with the support of the Hungarian government, the European Commission has noted that the Romanian government has failed to comply with its earlier plans to found a public university teaching in Hungarian, German and Romanian (the Petöfi-Schiller University).

Socio-economic status of minorities

Non-Discrimination

A recent government ordinance, introduced in September 2000, prohibits discrimination by public employers, individuals, private companies and enterprises on the grounds of,

race, nationality, ethnic appurtenance[sic], language, religion, social status, beliefs, sex or sexual orientation, appurtenance to a disfavoured category or any other criterion.

The ordinance has been described by the European Commission as being, "broadly in line with the Council Directive on Implementing the Principle of Equal Treatment between Persons Irrespective of their Racial and Ethnic Origin"³¹⁰.

Whilst the Ordinance has been operational since November 2000, it lacks the necessary secondary legislation to bring it fully into effect. The Pivotal implementing agency for the Ordinance, the National Council for Preventing and Combating Discrimination, has not yet been established.

³⁰⁸ Calculated on 27 March 2002.

³⁰⁹ Reported by Radio Free Europe, <http://www.rferl.org/newsline/2001/10/041001.asp> and Romanian news service in English, the Nine o'clock News <http://www.nineoclock.ro/index.php?issue=2525&show=politics> (both accessed 26th March 2002).

³¹⁰ Commission of the European Communities, *Regular Report on Romania's Progress Towards Accession*, Brussels, 13 November 2001, SEC (2001) 1753.

This represents the first initiative of a pre-accession country to implement thorough non-discrimination legislation. The ordinance also envisages positive action to facilitate the effective achievement of the right to equal opportunities, including affirmative action programmes, which are named in the text,³¹¹ and special (“protective”) measures by public or private entities.³¹² Breaches are also criminalised, although the burden of proof in *prima facie* cases is not reversed, so that the affected party will have the duty to prove the guilt of the respondent on the balance of probabilities, which makes cases considerably more difficult to win. It follows the EU Directive in that it applies only to citizens,³¹³ discrimination against non-citizens is thus still permissible.³¹⁴ There is no clear definition of indirect discrimination in the Ordinance, which speaks instead of, *active or passive behaviour that generates effects liable to favour or disadvantage, in an unjustified manner.*³¹⁵

Roma

That the Roma minority in Romania still faces prejudice and discrimination was shown in the 2000 presidential election campaign, when one candidate, Mr Tudor, received 30% of the national vote in the final round despite, or perhaps due to, stating that, “gypsies who do not want to work...will be isolated in work camps”.³¹⁶

The International Management Foundation in Bucharest found that in the year 2000, the only ethnic group whose incidence of poverty was significantly higher than the population as a whole was the Roma minority.³¹⁷ This finding confirmed the earlier Integrated Household Survey of 1997, which found that the poverty rate among Roma was 79%, compared to the national rate of 31%.³¹⁸ Such dramatic figures accord with European Union estimates from 1998, that as little as ten per cent of the Roma population in Romania was engaged in the formal labour market.³¹⁹

In education, Roma children are the least likely to attend school in the compulsory phase, and if they do, are least likely to complete primary education.³²⁰ As was shown by the participation figures above, only a tiny percentage progress to higher education.

In 2000, the United Nations Special Rapporteur on Contemporary Forms of Racism was distinctly down-beat on the situation of Roma in education in Romania. He stated that, “the prevalence of anti-Roma feeling in schools, and particularly among many teachers, discourages parents from sending their children to school. Since teachers are assessed on the basis of the percentage of successful pupils, they tend to reject Roma children, fearing poor school results.”³²¹

This emphasis on the role of teachers (and of tests) in the continuity of discrimination against Roma, suggests a need for a greater representation of Roma among the teaching profession, which appears to be beginning, as reports indicate that there were 200 Roma teachers in the school year 2000/2001.³²²

³¹¹ Ordinance 137, Article 2(5)

³¹² Ordinance 137, Article 2(4)

³¹³ This includes, strangely, with regard to the right to obtain Romanian citizenship!

³¹⁴ although arguably, as Romania applies the provisions of the international human rights instruments to which it is a party as superior even to constitutional law the prohibition of discrimination against non-citizens in international human rights law would be directly applicable

³¹⁵ Ordinance 137, Article 2(2)

³¹⁶ from national media reports as cited in Open Society Institute, 2001, at p 390.

³¹⁷ POP, LUCIAN AND TESLIUC, MIHAELA, POVERTY, INEQUALITY AND SOCIAL PROTECTION, International Management Foundation, Bucharest, 2000.

³¹⁸ ZOON, INA, ON THE MARGINS: ROMA AND PUBLIC SERVICES IN ROMANIA, BULGARIA AND MACEDONIA, Open Society Institute, New York, 2001.

³¹⁹ Terms of Reference of Phare Project for the improvement of the situation of Roma, Chapter 4.1.

³²⁰ OECD REVIEWS OF NATIONAL POLICIES FOR EDUCATION: ROMANIA, Paris, 2000, at p 66.

³²¹ Report of the UN Special Rapporteur on Contemporary Forms of Racism, E/CN.4/2000/16/Add.1, at para 69.

³²² Supra Open Society Institute, 2001, at p 413.

A major survey on education of Roma by the Open Society Institute 2001 cites research suggesting that 41% of Roma children between 7-14 years old (i.e. compulsory school age) were not in school in 2000.³²³

As in Macedonia, these patterns of non-inclusion of Roma children in education suggest a lack of effective enforcement of compulsory schooling by the Romanian authorities with regard to Roma children and a lack of adaptation of education systems to the needs of the Roma child.

Recently, government policy has increased the number of classes taught in Romani, and has initiated quota systems for Roma at the secondary and tertiary level. Reports suggest that 445 children were receiving tuition in the Romani medium in 1996/97, and by 2000/2001 there were 200 Romani teachers, teaching over 10,000 students at the primary and secondary level.³²⁴ The affirmative action programme extend to higher education with 150 places reserved for Roma in various university faculties by a decree issued by the Ministry of National Education.³²⁵ Other universities have offered 162 places to Roma in the year 2000/2001.³²⁶ For the year 2001/2002 373 places were reserved for Roma students.³²⁷

The European Commission has emphasised the need to integrate Roma in Romanian society in its Reports on Romania's Progress Towards Accession. In 2000 the Commission concluded that, "the government's commitment to addressing this situation remains low and there has been little substantial progress in this area since the last regular report...One of the few positive developments that has taken place over the last year has been an initiative by the Ministry of Education to improve Roma's access to education by reserving a limited number of places for Roma in high schools, vocational schools, teacher training colleges and universities."³²⁸

Over the course of the year 2001, things improved somewhat, in the eyes of the European Commission, as the government of Romania issued a comprehensive "Strategy for the Improvement of the Roma Situation".³²⁹ Minority Rights Group International, was involved in its preparation as consultant, and education is one of the major "lines of action" in this plan. The strategy includes a commitment to properly record attendance of Roma children in education; to develop a plan to reduce drop-out; introducing prevention of discrimination into the school curriculum as a whole; encouraging the promotion of Roma teachers; increasing Romani language and history in the curriculum; providing lunch to school pupils; and increasing Roma community participation in decision making in education.

It is common to assume that the problem of non inclusion of Roma in education lies with the Roma communities themselves. Perhaps for this reason there is no recognition of the segregation of schooling in Romania along racial lines, nor of the obligation on the state itself to enforce compulsory education in the Strategy. Compulsion in attendance in education requires that the state ensure that the education available is acceptable to all, including the Roma children. The "plan" is in effect a series of statements of issues where the government has yet to develop a strategy. As such it is a list of aspirations and not a plan of action. Much of the impotence in the Strategy may be explained by the reported attitude of the former head of the National Office on Roma, Mr Dan Oprescu, the chief architect of the Strategy. He is of the opinion that, "the process

³²³ Open Society Institute, *Research on Selected Roma Education Programmes in Central & Eastern Europe*, 2001, at page 28.

³²⁴ Council of National Minorities, *The Education System in Romania: Tuition in the Language of National Minorities in the 1996/1997 school year*, 1998, and G.Sarau, *Programme strategice ale Ministerului Educatiei Nationale pentru participarea romilor la procesul de invatamant*, 2000, cited in supra Open Society Institute, Budapest, 2001, at p413.

³²⁵ Regarding secondary education, Order of Ministry of National Education no 4542/18.09.2000; regarding higher education Order no. 3577/15.04.1998.

³²⁶ supra Save the Children, 2001, at p 323, and the Romanian report at the Stockholm Forum "Combating Intolerance" 29-30 January 2001.

³²⁷ "Observations provided by the authorities of Romania", European Commission against Racism and Intolerance, *Second Report on Romania*, Adopted on 22 June 2001, CRI (2002) 5, at p 30.

³²⁸ Commission of the European Communities, 2000 Regular Report from the Commission on Romania's progress towards accession, 8 November 2000, at p 24

³²⁹ Government of Romania, Ministry of Public Information, *Strategy of the Government of Romania for Improving the Roma's Condition*, Bucharest, 2001.

is much more important than the product.”³³⁰ There is a need for immediate action to improve the right to education of the Roma population in Romania, which this sentiment seems to deny.³³¹

Roma children continue to face a variety of obstacles in realising their right to education in Romania. Many of these suggest fundamental violations of the right to education, of the sort indicated by the Committee on Economic, Social and Cultural Rights.³³²

In access to education, there are a number of bureaucratic requirements which act as obstacles and have particularly serious implications for Roma children.

European Roma Rights Centre has reported a requirement of birth certificate, residence permit and or identification documents for admission to education.³³³ Whilst these are not national level policies, the decentralisation of education monitoring leads to significant variation in practice across the country. Save the Children has likewise suggested that official documentation such as birth certificates or civil marriage certificates, “are required for gaining access to many public services, including education”.³³⁴ All such administrative requirements act as significant barriers to the child’s right to education.

The requirements also target those who emigrated to Germany, and were then later repatriated in 1992. There are reports that Romanian authorities have refused to recognise education abroad, and have then refused children (particularly Roma children) access to education on return to Romania on the grounds of age.³³⁵

Roma children have reportedly been greatly affected by an order of the Ministry of Education and Research from 2001 which provides that children who have been out of compulsory education for more than two years are considered drop-outs and may request admission into night classes, reduced attendance and distance education, education apparently no longer being compulsory for them.³³⁶ This is an extremely unusual piece of legislation which one would hope would be repealed once the negative effect it has on the rights of children is fully exposed. The effects are exacerbated by the Labour Code, which requires the completion of eight years of education to receive a work permit (which entitles the holder to pension, unemployment benefit, medical insurance and minimum wage protections).

Those Roma children who do find their way into the school system are often segregated from their non-Roma peers. More concerning still, are reports that a disproportionately high number of Roma children appear in special schools for the mentally disabled. This practice, which officially does not exist, is not addressed in the new action plan for Roma. Whilst, by law, children may only be sent to special schools with the consent of their parents, there are reports of financial incentives being offered to the parents or guardians of Roma children to agree to place their children in such special schools.³³⁷

Article 45 of the Law on Education states that,

1. *In pre-school and primary education, proposals can be made for a quick transfer from the special school to the regular school and conversely, depending on the progress in the child’s condition.*
2. *The transfer proposal is made by the teacher of the child concerned, and the school psychologist. A transfer is made by the expert commission, subject the family’s or legal supporter’s consent.*³³⁸

³³⁰ Reported interview with European Roma Rights Center, 2 February 2001.

³³¹ There is also a need for funding to realise these goals. Mr Eugeen Crai, project manager at MEDE, the consultant responsible for implementing the strategy has reportedly stated that, “there is no budget, therefore, there is no strategy”. Inforrom October 2001.

³³² The right to education (Art 13):. 08/12/99. E/C.12/1999/10 CESCR, General Comment 13.

³³³ European Roma Rights Centre, *Barriers to the Education of Roma in Europe: A position paper by the European Roma Rights Center*, 5 May 2002: also ERRC, *State of Impunity: Human Rights Abuse of Roma in Romania*, 2001.

³³⁴ *Supra* Save the Children, at p 326.

³³⁵ OSCE, High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Area*, 2000, at p 73.

³³⁶ Annex to the Order of the Minister of Education and Research no. 474/10.16.2001, kindly provided by PhD candidate at Babe_ Bolyai University, Romania, Ms Daniela Tarnovschi.

³³⁷ *supra* European Roma Rights Center, *State of Impunity*.

³³⁸ Official translation.

No official statistics exist indicating the percentage of Roma in the special school population. Unofficial statistics, however, indicate a worryingly high proportion.³³⁹

There are similar indications that special classes within regular schools are overpopulated by Roma. This has led the OSCE High Commissioner on National Minorities to comment that, "Perhaps no legally-sanctioned practice affecting Roma is more pernicious than the phenomenon of channelling Romani children to 'special schools' – schools for the mentally disabled...[in Romania] Romani children appear to be disproportionately referred to such schools or classes."³⁴⁰

Roma children also suffer from *de facto* segregation, where the effects of residential ghettos spill into the classroom. The close connection between segregated living and segregated schools means that inclusive education requires sustained government commitment.

As is the case in Macedonia, there are also reports of physical abuse of Roma children in Romanian schools. "In the village of Bonida, near Cluj-Napoca, in January 1998, for example, a schoolmaster reportedly pulled the ear of a ten year old Romani girl so hard that the girl's ear bled and she had to seek medical assistance."³⁴¹

³³⁹ Research by the European Roma Rights Center for example, has indicated that, in Cluj-Napoca 70% of children in special schools are Roma. *supra State of Impunity*.

³⁴⁰ OSCE, High Commissioner on National Minorities, *Report on the Situation of Roma and Sinti in the OSCE Area*, 2000, at p 74.

³⁴¹ *supra* European Roma Rights Center, *State of Impunity*.

Conclusions and Recommendations

The issues

The overview of minority rights and education highlights areas where there is a need for the European Union to develop and implement a coherent rights-based strategy.

These areas of concern, or 'issues' are gathered together in the following pages, and prefaced, where appropriate, with recommendations for the European Union. The first, and most pressing concern of the European Union should be the recognition of the rights of the Roma population who face extreme difficulties in the realisation of their right to education.

Gross violation of the rights of Roma³⁴²

The historic connection in Europe between minority rights and the state from which minorities originate has led to arbitrariness. Those communities that have close connection to the governing elite in one state are favoured there and abroad, whereas those groups which have never been in power in any state are often not recognised as beneficiaries of minority rights where regulation is by bilateral agreements. It is no coincidence that the protection of the rights of the Roma minority has been described as "often the worst of all groups".³⁴³

Official obstacles keep Roma children out of school, they are segregated (often into special schools), they are targeted for abuse, are forced to learn and repeat curricula which denigrates their culture. In short education does not respect Roma rights.

The overview suggests that members of the Roma minority have encountered the most numerous and serious obstacles to the full and effective realisation of their right to education. Only the most immediate of these are considered here separately, but the general recommendations which follow are also relevant to the Roma.

- **Access:** administrative obstacles (both officially sanctioned and otherwise) such as the need for residence permits, identity documents, the non-recognition of education completed, or time spent abroad, all appear to be significant obstacles to the realisation of the right to education, and also appear in practice to have a disproportionate impact on the Roma.
- **Segregation:** there are consistent reports of the diversion of Roma pupils from mainstream schooling and into special schools, and special classes for the mentally disabled. This has a clear impact on the quality of education which Roma children can expect, and also has a stigmatising effect. In addition, *de facto* school segregation, reflecting residential ghettos surrounding the schools, often leads to (racial) discrimination in resource allocation within the education system, with "Roma schools" routinely in far poorer shape. This also effects the quality of education, and may even endanger health and physical development.
- **Abuse:** There are reports of Roma children being targets of racial abuse within schools, both from teachers and unsanctioned among the pupils. Such physical abuse may be associated with racially directed corporal punishment.
- **Curriculum:** when Roma children attend inclusive schools, they may not feel welcome. Research indicates little attention in school curricula to the culture, history and way of life of the Roma. The Romani language is very rarely available whether as language of instruction or as optional second language classes.
- **Compulsory education:** Spectacularly low levels of attendance among Roma children suggest an inability, or unwillingness by States to actively promote and adapt education. Education *must* adapt to the individual if it is to be compulsory, which means principally the best interests of the child, and also the wishes of his or her parents.

³⁴² The term "Roma" is used throughout this report as it appears to be that with which the majority of the Roma community identify themselves. It is recognised, however, that other terms, such as "Romani", or "Gypsy" among others, are also used, although many feel these terms have pejorative connotations.

³⁴³ Max van der Stoep, OSCE High Commissioner on National Minorities. *Foreword, Report on the Situation of Roma and Sinti in the OSCE Area*. 10 March 2000.

9. Obstacles to minority rights in education.

Non-recognition of the group/ individual

There is no international definition of a minority and state practice varies widely. Where minorities are recognised, individuals may be excluded if they are not citizens, or if they are stateless.

Language of instruction

Where the state monopolises education or considers minority language education a threat to its existence, this is a barrier to access of those who have a different mother language.

Segregated schooling

Where parallel systems of education exist in official and minority languages, communities are effectively segregated, a barrier to the growth of integrated societies

Poor quality of minority schools

Where minority schooling is effectively segregated, these schools are relatively under-funded.

Cost of bilingual education

The effect of under-funding is exacerbated as bilingual schooling is considered more expensive.

Recommendations

- 1. Recognise that the existence of minorities is a question of fact to be determined by reasonable and objective criteria. Whilst there is no accepted definition of a minority, arbitrary distinctions based around recognition or non-recognition are discriminatory. The EU should ensure that objective criteria are used, and that these criteria respect the right to self-identification, and freedom to choose not to belong.**

Recognition of Minorities.

International law is based on the treaty commitments and practice of states. Agreements are concluded between states when they are considered to be in their mutual self-interest. Consequently the subjects and beneficiaries of international conventions tend, on the whole, to be the states themselves. Human rights law in this sense is revolutionary as it places the individual at the heart of international regulation. Nevertheless, the same factors which have shaped international law over the centuries continue to shape the newer area of human rights law. Whilst the individual is the subject, she has no direct role the formulation of human rights law. International law is still inter-national. In agreeing new standards it is the views of states which are the most important, as it is these that will shape the content of the norms, their implementation, and their enforcement. Furthermore, those without a state to support them (the stateless) are often left out of international agreements and their national implementation. Also, those who are either categorised as ethnically of one state to which they do not have citizenship (notably here "Russian" ex-citizens of the former Soviet Union in the Baltic states), or those who are classified as members of non-territorial minorities (e.g. Roma) may either be denied their right to education or face cultural and linguistic barriers to education.

Historically there has been no shortage of minority treaties. All but one of these have been bilateral and have regulated two states treatment of each others' citizens, nationals and/or descendants. This is a phenomenon which reached its zenith in the inter-war period in Europe, when the Permanent Court of International Justice adjudicated many cases based on the enforcement of these bilateral treaties. What has been absent in minority rights instruments is a universally binding standard which would, answer the question: "what is a minority?" At the European level, there is very little consensus on this. The most concrete answer many international lawyers can give is that, "the existence of a minority must be determined by a set of

objective and subjective facts which [are] independent of the recognition by the government”, whilst noting the importance, “that States recognize minorities on their territory”,³⁴⁴ there being no international standard, and hence no international arbiter on this issue.

Bilateral treaties can lead to inconsistency: the same minority will be treated differently in different states, and different minority groups will be treated very differently within the same state. However, such *prima facie* (apparent) discrimination will not be classified as such *de jure* (according to law) where *justifiable* following the interpretation of the Human Rights Committee (charged with interpretation and implementation of the International Covenant on Civil and Political Rights), such justifiable acts include positive measures to protect the identity of a minority.³⁴⁵ Other potential problems with bilateral minority treaties suggested by one minority rights scholar include:

- The danger of reduced standards as compared with international and regional instruments;
- Their emphasis on political rather than legal commitments;
- The unequal situation of the parties;
- The possible discriminatory impact of the treaty between groups within one of the contracting parties, leading to a “most-favoured-minority-clause”; and
- Their possible destabilising effect.³⁴⁶

Two important examples of bilateral treaties in the countries here considered are the Treaties on the Basic Principles of the Inter-State Relations between the Russian Soviet Federative Socialist Republic and the Estonian and Latvian Republics. These treaties *ought* to improve the position of ethnic Russians in Estonia and Latvia and vice-versa, as they aim to avoid statelessness among those groups by enforcing the legal principle of *jus soli* (whereby residence within the state territory is the determining factor for citizenship) for Estonians and Latvians in the Russian Federation, and for Russians in Estonia and Latvia. Whilst the two treaties have been implemented unilaterally by the Russian authorities, both the Latvian and Estonian authorities have reinstated a policy of *jus sanguinis* (whereby ethnicity is the determining factor for citizenship), and statelessness of ethnic Russians is a continuing phenomenon in both states.³⁴⁷

At the national level, and among the four states considered here, several factors affect recognition of groups as minorities. Many states classify minorities as either national or ethnic. Cultural, linguistic or religious minorities are often either ignored or subsumed into one of these categories. The effect of this **classification** is that ethnic groups are disfavoured. The greatest example of this in Europe is the Roma. All minorities are not equal in this model, *prima facie* in breach of human rights standards which require non-discrimination on ethnic grounds.³⁴⁸

Within these classifications, further differentiation is also made, with states often **listing groups** which will be considered minorities within their jurisdictions, and this can be done on any, or apparently no grounds. Often this is consecrated in the constitution, and once again appears to breach international human rights standards which proscribe discrimination on the grounds of national origin.

The lack of an internationally, or even a regionally, accepted definition of a minority (what is a minority?) encourages **inconsistency in recognition**. The existence or otherwise of a minority is currently treated as a political question, rather than one of fact.³⁴⁹

³⁴⁴ Report on the Working Group on Minorities 1998, by Rapporteur-Chairman, Mr Asbjørn Eide, E/CN.4/Sub.2/1998, para 44, see also Human Rights Committee, General Comment 23, Article 27 (Fiftieth session, 1994), Compilation of General Comments and General Recommendations Adopted by the Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994), para 5.2, at 46.

³⁴⁵ Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994), at para 10.

³⁴⁶ Alfredsson, G, *Identifying Possible Disadvantages of Bilateral Agreements and Advancing the 'Most-favoured-Minority-Clause'*, in BLOED & VAN DIJK (EDS.) PROTECTION OF MINORITY RIGHTS THROUGH BILATERAL TREATIES: THE CASE OF CENTRAL AND EASTERN EUROPE, The Hague, 1999.

³⁴⁷ Whilst both Latvia and Estonia operate a mixed system for conferring citizenship, naturalisation by residence is restricted, and mostly requires long standing residence over generations.

³⁴⁸ Exceptions to this principle are permitted in certain limited circumstances. This is discussed when considering the General Comments of the Human Rights Committee.

³⁴⁹ Compare the position in international law, outlined in the introduction.

The human rights approach highlights the need for both **formal and substantive equality**. The lack of clear provisions in minority rights has led academics and United Nations experts to tie themselves in knots attempting to define the limits of minority rights. A nuanced approach, recognising the substantive equality of all, and correcting effects of previous discrimination would move away from such discussions.

2. Monitor consistency and inclusion in the definition. The exclusion of individuals from the categories of minorities (for example non-citizens) is contrary to human rights, and may marginalize those without a state.

Recognition of individuals as members of minorities

The subjective element of recognition is essential. This accords to the individual the right to choose whether they identify with a minority or not. Minority rights must to be a matter of choice and not of compulsion, to avoid apartheid policies masquerading as minority rights and legitimate differentiation. This view was eloquently represented by Justice Tanaka in a decision on the apartheid regime in the Namibia case before the International Court of Justice in 1966.³⁵⁰ This is still considered something of a “fresh approach”,³⁵¹ which places a human rights approach above “awareness of belonging”.³⁵² Committees charged with implementing human rights treaties have applied this individual choice approach, noting that, “identification shall, if no justification exists to the contrary, be based on **self-identification** by the individual concerned.”³⁵³

Self-identification prioritises the element of individual choice. Where this choice is exercised on behalf of children by adults, as in education, it must be in their **best interests**.³⁵⁴ Tensions between adults easily affect children, leading to accusations that children are being used as “political pawns”. In North Belfast, Northern Ireland, children have been forced into riots, as their parents insist on their right to walk a certain route to school and adults of the other religious community block their way.³⁵⁵ In FYR Macedonia, there are reports that a minority of parents in the town of Centar Zupa denied their children any primary education after a private school they had established was closed down.³⁵⁶ In focussing on the rights of minority children, it is important to remember the indivisibility of human rights. It is for this reason that minority rights must be governed by genuine freedom of choice, and not a matter of obligation. For children, the principle of best interests replaces freedom of choice, where they are not yet capable of making informed decisions. So obligations to balance minority rights concerns lie on parents as well as on the state.

Despite growing consensus on the content and requirements of international treaty law, state practice often prioritises certain objective criteria which the state itself controls. International human rights law requires that **minority rights are human rights** and do not rely on citizenship.³⁵⁷ However, citizenship is often mentioned either in the definition of a minority group in national constitutions, or as a requirement under national legislation to full recognition of various human rights, including the right to education. Criteria for naturalisation are very often restrictive, as can be those for other legally recognised status (such as award of residence permits).

³⁵⁰ *Namibia (South West Africa) Case* [(1966) ICJ Rep at 294-9 (dissenting opinion of Judge Tanaka)].

³⁵¹ De Varennes, F, *To speak or not to speak: the rights of persons belonging to linguistic minorities*, Working paper submitted to the UN Sub-Commission on the Protection of Minorities and the Prevention of Discrimination (now Promotion and Protection of Human Rights), Working Group on Minorities, 21 March 1997. www.unesco.org/most/ln2pol3.htm (accessed 13 May 2002).

³⁵² Bengoa, J, *Existence and Recognition of Minorities*, Working paper, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Minorities, Sixth Session 22-26 May 2000, E/CN.4/Sub.2/AC.5/2000/WP.2, 30 April 2000, at p 16.

³⁵³ Identification with a particular racial or ethnic group (Art. 1, par 1 & 4):.22/08/90. CERD General recom. 8. (General Comments).

³⁵⁴ From the Convention on the Rights of the Child 1989, Article 3.

³⁵⁵ BBC News, talking point, *Are Children being used as political pawns?*, 15 January 2002, http://news.bbc.co.uk/hi/english/talking_point/newsid_1524000/1524975.stm (accessed 20 May 2002).

³⁵⁶ See textbox, *Centar Zupa*.

³⁵⁷ See textbox, *Minority rights are human rights*.

3. Promote multilingual education. Language can divide communities and restrict their mutual understanding. While knowledge of the majority language is a *sine qua non* for integration, knowledge of minority language is a core aspect of minority identity.

Language of Instruction

Often the most controversial issue in minority education is the language of instruction. The use of minority languages can be interpreted as a threat to statehood, as the choice of national language is reserved to the state, which, "is frequently either controlled by, or identifies strongly with, a dominant or majority ethnic".³⁵⁸ Human rights acts as a check on the unfettered use of state discretion in choice of official language. The individual, guaranteed substantive equality of treatment, has the right to learn his or her own language, in addition to the official language.

The Convention on the Rights of the Child emphasises the autonomy of children to an unprecedented extent. Children have the right to express an opinion, to be heard, and for their opinion to be taken seriously. Where decisions are taken on behalf of the child these must be taken in the child's best interests. The political reality is often of states where one set of interests (of a group) is prioritised over those of the individual. As one minority rights scholar has said, "by using one language exclusively in public schools...[the state] is showing a preference for this single, official or national language which will benefit some individuals for whom it is a primary language, to the detriment or disadvantage of others who have either no or lower proficiency in it or are denied the benefit or privilege of using their own language."³⁵⁹

UNESCO recognises the value of mother language education,³⁶⁰ as the cultural right to speak, promote and protect one's language is an essential aspect of belonging to a minority. UNESCO also recommends multilingualism, which is indisputably in the best interests of the child.³⁶¹

Human rights are indivisible and interdependent, thus these aspects are to be taken together. It is in the best interests of the child that his or her cultural right to master the mother language be upheld, and that education begin in this language in order to avoid the psychological trauma of incomprehension and alienation. It is in the continuing best interests of the child, and of society, that schools be linguistically integrated, in order to avoid de facto segregation along ethnic, national or other lines. Furthermore it is also in the best interests of the child that he or she become increasingly multilingual throughout the education process. This accords with the approach of UNESCO, and with international human rights law. It would also lead to more integrated societies, where all communities (majority or dominant, and minority) would understand each others' languages and be accustomed to interacting with one another from a young age.

Experts in international law, linguistics and pedagogy specialising in minority concerns took part in a series of consultations during the first half of the 1990s, and on this issue they reached the following recommendations among others:

³⁵⁸ Supra Stavenhagen 1988. Although not universally true, as Professor Eide has noted, "the word 'minority' can sometimes be misleading in itself. Outside Europe, and particularly in Africa, countries are often composed of a large number of groups, none of which make up a majority." Eide, A, *Commentary to the UN 'Minorities Declaration'*, Part I of the UN Guide for Minorities E/CN.4/Sub.2/SC.5/2001/2.

³⁵⁹ Supra De Varennes, 1997.

³⁶⁰ See for example the UNESCO Declaration on Cultural Diversity, and the UNESCO International Mother Language Day, http://www.unesco.org/education/imld_2002/index.shtml (accessed 15 May 2002)

³⁶¹ Resolution 12 of UNESCO's 30th General Conference 1999, http://www.unesco.org/education/imld_2002/resolution_en.shtml (accessed 15 May 2002)

10. Language and Minority Rights in Education.

“11) The first years of education are of pivotal importance in a child's development. Educational research suggests that the medium of teaching at pre-school and kindergarten levels should ideally be the child's language. Wherever possible, States should create conditions enabling parents to avail themselves of this option.

12) Research also indicates that in primary school, the curriculum should ideally be taught in the minority language. The minority language should be taught as a subject on a regular basis. The official State language should also be taught as a subject on a regular basis preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background. Towards the end of this period, a few practical or non-theoretical subjects should be taught through the medium of the State language. Wherever possible, States should create conditions enabling parents to avail themselves of this option.

13) In secondary school, a substantial part of the curriculum should be taught through the medium of the minority language. The minority language should be taught as a subject on a regular basis. The State language should also be taught as a subject on a regular basis, preferably by bilingual teachers who have a good understanding of the children's cultural and linguistic background. Throughout this period, the number of subjects taught in the State language should gradually be increased. Research findings suggest that the more gradual the increase, the better for the child.

14) The maintenance of the primary and secondary levels of minority language education depends a great deal on the availability of teachers trained in all disciplines in the mother tongue. Therefore, ensuing from their obligation to provide adequate opportunities for minority language education, States should provide adequate facilities for the appropriate training of teachers and should facilitate access to such training.”

Source: Education rights of minorities: the Hague Recommendations, Working Paper submitted by Mr. Guillaume Siemienski, E/CN.4/Sub.2/AC.5/1997/WP.3, 5 May 1997

4. Question and oppose segregated schooling, because learning apart does not encourage living together.

Segregation or inclusion?

There is a danger of a strictly mono-lingual/ mono-religious/mono-cultural or even mono-racial approach leading to ghettoization of minorities. Parallel education systems can be divisive: communities separated as children tend to stay apart as adults. It is regularly language that is the dividing line between communities, language is often an important part of minority identity, and education an essential means of communicating that identity to future generations. Solutions should seek to balance interests.

Language is not the only issue in considering integrated education. The curriculum too should reflect the cultural heritage of all communities. While segregated education and fragmented societies go hand in hand, so too do inclusive education and integrated societies.

Freedom to establish independent schools

The birth of compulsory education in Europe has been associated with an attempt to homogenize demographically diverse societies, with those who refused to adapt to inappropriate education systems labelled as criminal at best, or even as treacherous.

Consequently, it is a well-established norm in international law that the state cannot monopolize the provision of education. The freedom to establish one's own schools, according to one's philosophical beliefs has been upheld by the European Court of Human Rights.³⁶² Such formal freedom will lead to inequality of opportunity if it is not supported by the state which must at least ensure that primary education is available to all free of charge. Where this is not the case minority groups which are economically well established benefit over excluded groups. There is ample research suggesting that members of the Roma minority are significantly less well off than those belonging to other minority groups. It is for this reason that equality in fact often requires more than mere non-discriminatory enforcement of the law, but also action of the state in order not to indirectly further continued inequality. International human rights law requires states to eliminate discrimination and redress the effects of historical discrimination.

The balance between the freedom to establish one's own schools, and the desirability of inclusive education is a delicate one. Clearly this must go to the heart of national decision making on support for publicly funded education in minority languages, at least at elementary level.

5. Ensure quality of minority education and promote intercultural content of education. Where *de facto* minority schools exist, their quality must be raised to the national level and discrimination in funding addressed. This includes, but is not limited to multi-lingualism, and multi-culturalism, in the training of teachers and the development of textbooks.

Improving the quality of education to equalise opportunity is something that the European Union is perfectly placed to help with, through economic assistance.

i. Teachers

Teachers should reflect the demographic composition of society. Without qualified bi(multi)lingual teachers education in minority languages will remain of inferior quality. In many instances higher education is restricted to the national or official language, thus teachers must train in that language in order to teach in another language. Also, without the full realisation of teachers' rights (conditions of service, remuneration and the right to collective bargaining-freedom of association and teachers' unions, and freedom of expression) the profession continues to be undervalued, leading to the perverse situation where there is high graduate unemployment, and teacher shortages.

ii. Curricula and textbooks.

What is taught should be relevant to all pupils. Inclusive schools requires balanced curricula reflecting the cultural heritage of all, teaching of and in more than one language. Not only this, but there is a need for the content of education to be analysed to ensure that it fully respects all communities. The critical thinker George Santayana has said that, "history is a pack of lies about events that never happened told by people who weren't there".³⁶³ Unfortunately this often leads to representations of historical fact that are highly politically motivated. This has been noted by the UN Special Rapporteur on the right to education in her annual report from 2002. "School textbooks have been found to have included descriptions of 'Serbian aggressors' as 'merciless barbarians who ran amok' in Croatia. In Serbia, the same historical period was described as 'enforced expulsion of the Serbian population', reminiscent of the 'genocide 50 years earlier'."³⁶⁴

While educational content should adapt to cultural circumstances of the individual pupil, there is a need to promote common understanding of historical events represented in textbooks. This will help education to become a source of societal integration. Representation of both minority and majority communities in the curriculum should be systematically reviewed from the perspective of inclusive societies.

³⁶² See the discussion on the Belgian Linguistics case.

³⁶³ Cited in supra BUSH & SALTARELLI, at p 12.

³⁶⁴ ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Annual report of the Special Rapporteur on the right to education, Katarina Toma-čević, submitted pursuant to Commission on Human Rights Resolution 2001/29, E/CN.4/2002/60, at para 67 (footnotes omitted).

Textbooks should not only be balanced but also available in sufficient quantities in minority languages, and be equally up-to-date. Adequate texts teaching the national language as a second language will improve opportunities for self-reliance and integration by choice. Barriers to progress in education should also be addressed. Where examinations are essential to continuation, they should not discriminate against those whose education has not prepared them adequately; examinations must reflect the multilingual reality of education.

6. Help eliminate financial obstacles to rights-based reforms. The European Union is a large funder of education in Europe and beyond. As such it can have a positive impact on helping to realise rights-based reform of education, following the typology begun here.

Donor agencies should ensure that the bulk of their resources are directed to those projects which are in the best interests of all members of society. Where education of minorities is effectively devolved to the parents of minority children themselves, by permitting, but not facilitating, minority education, this will prejudice minority groups with less resources (especially the Roma).³⁶⁵

Increasingly multilingual education may be cheaper in the long run, and would equalise opportunity to continue in education to the higher levels, something that proportionately fewer minorities than speakers of the official language have managed to do in all four of the states considered here. This approach would secure minority rights in, and through education. It would also provide societies with a more educated labour force, and more integrated communities.

The cost of provision of bilingual education must then be weighed against the price of high drop out rates among speakers of languages other than the official language in systems that do not adapt to them. These children who drop out of education may be “particularly susceptible to the machinations of ethnic mobilizers”. Not least if one accepts that, “ethnicity neither causes conflict, nor in many cases does it accurately describe it. Rather ethnicity/identity is increasingly mobilized and politicised in contemporary violent conflicts”³⁶⁶

7. Encourage rights-based data collection. Without properly disaggregated data it is extremely difficult to effectively design and implement policy to address minority rights in education.

Anonymous data collection which is properly disaggregated (i.e. statistics which differentiate minorities) allows ease of comparison on educational and socio-economic indicators. Currently, there is far too little of this to allow more than “informed speculation” as to the reality for Europe’s minorities. Experience in data collection must be shared, and the most demonstrative axes of disaggregation prioritised in cooperation with the European Union. This in turn will allow the development of well focused, rights-based policy, and reduce the risk of societal abandonment.

There is a second, nefarious practice of recording ethnicity: where the individual’s ethnicity is recorded in public documents that are not anonymous. This is the case in Latvia, where ethnicity is recorded in passports, and other official documents. The procedure itself invites discrimination and as such is unpopular with the United Nations Committee for the Elimination of Racial Discrimination.³⁶⁷

³⁶⁵ This issue of the balance between state funding for minority education and freedom to establish private schools is discussed under the section on “Minority Rights in Education in International Law”.

³⁶⁶ Supra BUSH & SALTARELLI, 2000, at pp 16, vii.

³⁶⁷ Concluding observations of the Committee on the Elimination of Racial Discrimination : Latvia. 12/04/2001. CERD/C/304/Add.79. (Concluding Observations/Comments), at para 16.

8. Recognise that minority rights extend into all levels of education. There is a tendency to focus human rights discussion of education only on primary (or “basic”) education. This is inconsistent with international law, and leaves other areas open to political processes without human rights safeguards. This is precisely what the human rights approach avoids.

Higher education has an enormous political importance. Minorities face admission obstacles even where their rights are recognised in primary and secondary schools. Some entrance examinations are in national language only. Also very often no, or only a very few subjects, are offered in minority languages.

9. Recognise minority rights beyond education as human rights are indivisible. The link between the realisation or denial of rights in education with employment is intrinsic. As such the full realisation of the right to education requires that the individual be able to benefit from it. Unequal opportunities for employment for minorities is thus a significant impediment to the realisation of human rights.

Employment

The fulfilment of the right to education should amplify opportunities to realise other human rights, such as the right to access the labour market. In order to realise both, however, it is important to ensure that education does not simply reflect discrimination in the workplace. Both Estonia and Latvia have regulated the level of linguistic capacity in the employment market. Such legislation may indirectly discriminate against those minorities for whom Estonian or Latvian is not their mother language. Whilst multi-lingual education and societies is an ideal, and forced uni-lingualism an aberration of minority rights, employment legislation must not prejudice the employment opportunities of entire communities. This current practice in the Baltics does not reflect the reality of education. Where education and employment do not respect human rights standards minorities become increasingly marginalised. The creation of a minority underclass seems remarkably short sighted.

The effects of recognition/ non-recognition of minority rights in education

The realisation of minority rights *in* education impacts on the realisation of minority rights *through* education. Where educational opportunities are inequitable one sees imbalance in achievement and the spectrum of opportunities that flow from education is denied.

Human rights were recognised as an interdependent, indivisible whole in the Universal Declaration on Human Rights in 1948. With the onset of the Cold War, however, it took until the 1960s before civil, cultural, economic, political and social rights were included in an internationally binding treaty, in the International Convention on the Elimination of All Forms of Racial Discrimination of 1965. This was repeated in the Convention on the Elimination of Discrimination Against Women in 1979 and in the Convention on the Rights of the Child in 1989, and in the Vienna Declaration and Programme of Action in 1993.³⁶⁸ Here the impact of denial of the full realisation, or unequal realisation, of the right to education on employment is used to illustrate the interdependence of human rights.

³⁶⁸ This last, while not binding, was the result of a World Conference on Human Rights, attended by representatives of 171 states, which adopted the Vienna Declaration and Programme of Action by consensus.

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Appendix.

11. Changing governments, changing commitments

Prime Ministers since re-independence

Estonia

Seven governments in twelve years

April 1990-January 1992	Edgar Savisaar (Popular Front of Estonia)
January 1992-October 1992	Tiit Vahi (no party)
October 1992-September 1994	Mart Laar (National Coalition Party Pro Patria)
November 1994-April 1995	Andres Tarand (no party)
April 1995-March 1999	Tiit Vähi (Estonian Rural Union)
March 1999-January 2002	Mart Laar (Pro Patria Union)
February 2002-present	Siim Kallas (Reform Party)

Latvia

Eight governments in twelve years

May 1990-July 1993	Ivars Godmanis (Latvia Popular Front)
July 1993-September 1994	Valdis Birkavs (Latvian Way)
September 1994-December 1995	Maris Gailis (Latvian Way)
December 1995-July 1997	Andris Skele (no party)
August 1997-November 1998	Guntars Krasts (Fatherland and Freedom Union)
November 1998-July 1999	Vilis Kristopans (Latvian Way)
July 1999-May 2000	Andris Skele (People's Party)
May 2000-present	Andris Berzins (Latvian Way)

fYR Macedonia

five governments in eleven years

March 1991-July 1992	Nikola Kljusev (no party)
July 1992-August 1992	Petar Gosev (Social Democratic Union of Macedonia)
August 1992-November 1998	Branko Crvenkovski (Social Democratic Union of Macedonia)
November 1998 – 2002	Ljubco Georgievski (Internal Macedonian Revolutionary Organisation-Democratic Party of Macedonian National Unity)
September 2002 – present	Branko Crvenkovski (Together for Macedonia Coalition)

Romania

Nine governments in thirteen years

Dec 1989- Oct 1991	Petre Roman (National Salvation Front)
Oct 1991- Nov 1992	Theodor Dumitru Stolojan (no party)
Nov 1992-Dec 1996	Nicolae Vacaroiu (no party {Party of Social Democrats in Romania March 1994-September 1996})
Dec 1996-Mar 1998	Victor Ciorbea (Democratic Convention of Romania, National Peasant Party, Christian Democrat)
Mar 1998- Apr 1998	Gavril Dejeu (Democratic Convention of Romania, National Peasant Party, Christian Democrat)
Apr 1998-Dec 1999	Radu Vasile (Democratic Convention of Romania, National Peasant Party, Christian Democrat)
Dec 1999-Dec 1999	Alexandru Athanasiu (Romanian Social Democrat Party)
Dec 1999-Dec 2000	Constantin Murgu Isarescu (no party)
Dec 2000- present	Adrian Năstase (Party of Social Democrat in Romania, Social Democrat Party)

12. Obligations under international human rights law

State/ Treaty	C C P R	O P I	C E S R	C E R D A.14	U N E S C O	S tate- less	H R I XII	R E S C M	F C N M	E C R M L	E C N				
Estonia	X	X	X	X	No	X	No	No	X	X	S	X	X	No	N o
Latvia	X	X	X	X	No	X	X	X	X	X	S	No	S	No	S
FYR Macedonia	X	X	X	X	X	X	X	X	X	X	S	No	X	S	S
Romania	X	X	X	X	No	X	X	No	X	X	S	X	X	S	S
Key:	<p>CCPR International Covenant on Civil and Political Rights 1966</p> <p>OP I Optional Protocol I to the International Covenant on Civil and Political Rights (right to individual petitions)</p> <p>CESCR International Covenant on Economic, Social and Cultural Rights 1966</p> <p>CERD International Convention on the Elimination of Racial Discrimination</p> <p>CERD A.14 Declaration under Article 14 of CERD (recognising standing of individual complaints)</p> <p>CRC Convention on the Rights of the Child 1989</p> <p>UNESCO UNESCO Convention Against Discrimination in Education 1960</p> <p>stateless 1954 Convention Relating to the Status of Stateless Persons</p> <p>ECHR European Convention on Human Rights and Fundamental Freedoms 1950</p> <p>P I First Protocol to the ECHR (right to property and the right to education)</p> <p>P XII Twelfth Protocol to ECHR (non-discrimination) <i>not in force</i></p> <p>RESC Revised European Social Charter 1996</p> <p>FCNM Council of Europe Framework Convention for the Protection of National Minorities 1995</p> <p>ECRML European Charter for Regional and Minority Languages</p> <p>ECN European Convention on Nationality</p>														

X = treaty to which the state is bound legally by ratification; S = treaty which the state has signed, but not yet ratified; NO = treaty which the state has neither signed nor ratified.



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