



EU-CITZEN: ACADEMIC NETWORK ON EUROPEAN CITIZENSHIP RIGHTS

Pilot Study for TYPE A REPORT – The Position of Linguistic Minorities During Elections

A focus on speakers of autochthonous languages

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1 LIST OF ABBREVIATIONS AND DEFINITIONS

Abbreviation	Definition
EC	European Commission
EU	European Union
ACFC	Advisory Committee on the Framework Convention on the Protection of National Minorities (CoE)
CJEU	Court of Justice of the EU
CoE	Council of Europe
ECHR	European Convention on Human Rights (CoE)
ECRML	European Charter for Regional or Minority Languages (CoE)
ECtHR	European Court of Human Rights (CoE)
FCNM	The Framework Convention on the Protection of National Minorities (CoE)
HCNM	OSCE High Commissioner on National Minorities
HRC	UN Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights (UN)
ICERD	International Covenant on Elimination of All Forms of Racial Discrimination (UN)
ODIHR	Office for Democratic Institutions and Human Rights (OSCE)
OHCHR	UN Office of the High Commissioner on Human Rights
OSCE	Organization for Security and Cooperation in Europe
TEU	Treaty on The European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations



2 Introduction

This thematic case study reviews the compliance of the selected countries with international and European norms for the protection of linguistic minorities during elections as assessed by the respective monitoring bodies and enforced by judicial bodies.

1. MAIN FINDINGS

- 1) The use minority languages during campaigns belongs to the field of the private domain, and the use of R/M languages on posters, and in documents or the meetings and other activities of political parties, non-governmental organizations, lobbying groups or private individuals may not be restricted by the law. Legal restrictions on campaigning in the official language only are at odds with international standards and should be banned in the EU.
- 2) In the public domain, the state may make legislation on the official languages to be used in communication, when not discriminatory or arbitrary. In this field a 'sliding scale' model can be applied, taking into account the number of R/M language users, degree of fragmentation, and administrative and financial capacities of the State.
- 3) The right to participate in the political life of a country and to participate in political processes at the European Union level are integral elements of active citizenship, participating in elections is the first threshold in this participation. Involvement of citizens belonging to linguistic minorities in all aspects of society is an important factor in their integration of society and in the prevention of conflicts.
- 4) In every stage of the election process implications of the legal framework and the law in action for R/M language users should be taken into account.

Key elements of the election process are:

- a. The legal framework of the elections must be free from discrimination. Equality under the law is the basis of a legal framework that protects the civil rights of national minorities and indigenous communities.
- b. Information on the legal framework of the elections must be accessible in all languages used in the State.
- c. Information on elections by neutral institutions must be made available in R/M languages.
- d. Political messages (via state-controlled media) must be broadcasted in minority languages.
- e. Sign language users must be addressed in information campaigns.
- f. R/M language users have the right to organize in political parties on the basis of freedom of association.
- g. The lists of candidates of main stream political parties ought to include R/M language users.
- h. Financial or signature registration required for party lists and candidates of R/M languages may not be burdensome.
- i. Electoral district boundaries may not be drawn discriminatory.
- j. Exemptions from threshold requirements, reserved seats or veto rights have often proved useful to enhance the participation of R/M language users in elected bodies.
- k. Electoral officials on the day of elections must be able to answer questions in R/M languages.
- l. Election paperwork and digital voting systems should be made available in R/M language.

- m. Language requirements can exclude and deprive citizens belonging to a linguistic minority to be elected and participate in elected bodies.
- n. Denial of the right to vote due to language requirements is generally discriminatory.
- o. The registration of voters prior to elections must provide effective measures to include minorities on the voter register.
- p. Limiting the possibilities of acquiring citizenship by imposing language requirements focusing on the official languages of the country can be a discriminatory obstacle to participation in public life.
- q. Non-partisan election observers must foster and report on the participation of all segments of the population, including national minorities.

2. INTRODUCTION: Linguistic minority Rights & elections

The right to participate in the political life of a country and to participate in political processes at the European Union level are integral elements of active citizenship. Involvement of citizens belonging to linguistic minorities in all aspects of society is an important factor in their integration of society and in the prevention of conflicts.¹ Approximately 8 % of Union citizens belong to a national minority and approximately 10 % speak a regional or minority language.² Research has shown that in certain EU member states, there is a clear gap in the level of political participation of people belonging to a linguistic minority in comparison with other citizens of the state. Lower voter turnout among national minorities was noted by electoral authorities of Netherlands, Bosnia, and Ireland.³ A small number of minority representatives were nominated as candidates and election officials.⁴ For most of the minorities in Europe, language is the main or only characteristic to distinguish from the majority of the citizens of the state they live in.

A balanced system of elections is an important feature of a democratic society. Electoral systems are not neutral: 'An electoral system can help 'engineer' specific outcomes, such as encouraging cooperation and accommodation in a divided society.'⁵ Hate speech during elections against linguistic minorities will divide a country, inclusive election systems will bridge different groups in society: 'electoral systems can influence aspects of the political environment (e.g., development of party structures) as well as the link between citizens and their leaders (e.g., political accountability, representation, and responsiveness). In divided societies, for example, where language, religion, race or other forms of ethnicity represent a fundamental political division, particular electoral systems can reward candidates and parties who act in a cooperative, accommodating manner with other groups, or they can punish these candidates, rewarding those who appeal only to their own group.'⁶ But even in

¹ Venice Commission, 'Study on Electoral Law and National Minorities', CDL-INF(2000)4 (Strasbourg: 25 January 2000), p. 2. As well the Ljubljana Guidelines.

² European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (2015/2254(INL)) (2018/C 215/25), Official Journal of the European Union, 19 June 2018, C 215/162.

³ N. Kaczorowski (OSCE/ODIHR), *Minority Participation In Electoral Processes: Summary Of Findings*, 28 Sept. 2007, HDIM.ODIHR/252/07

⁴ N. Kaczorowski (OSCE/ODIHR), *Minority Participation In Electoral Processes: Summary Of Findings*, 28 Sept. 2007, HDIM.ODIHR/252/07

⁵ D. Tuccinardi ed., *International Obligations for Elections, Guidelines for Legal Frameworks*, Stockholm: International IDEA 2014, p. 70.

⁶ D. Tuccinardi ed., *International Obligations for Elections, Guidelines for Legal Frameworks*, Stockholm: International IDEA 2014, p. 70.

countries where there is apparently no social tension, refusing to include people from outside the political centers on political lists can lead to indignation and tension.⁷

Free, fair and periodic elections are the cornerstone of contemporary democracies in the EU. The Universal Declaration of Human Rights states in art. 21(3) that 'The will of the people shall be the basis of the authority of government'. This standard is also codified in art. 25 of the International Covenant on Civil and Political Rights as well as art. 3 of Protocol I of the European Convention on Human Rights. The Copenhagen Document of the OSCE gives substance to this international legal standard in paragraphs 5 and 6, stating that periodic and genuine elections are part of 'those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings', forming the fundament of the authority and legitimacy of all governments.

Resolutions issued by the United Nations Security Council have changed in terminology with regards to elections in the past decades, 'adjectives such as 'transparent', 'inclusive', 'open' and 'credible' have been added to define the meaning of the notion of 'free and fair' [elections]'.⁸ The recurring UN General Assembly Resolution on the 'Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization' insist on the importance of periodic and genuine elections by universal suffrage and secret vote or equivalent free voting procedures.⁹ In 1997 the principle of free and fair elections was broadened and elections must be free from coercion and intimidation.¹⁰ Since 2009 voters must have the freedom to seek, receive and impart information, and have the freedom to access information and media. That year also the importance of transparency as a fundamental feature of free and fair elections was introduced.¹¹ In 2013 was stated that the state has responsibilities and obligations to take appropriate measures to ensure that every citizen has the right and opportunity to participate in elections on an equal basis.¹²

In many countries, the mother language is the same one as the official language used in schools, by the state, in court, and in the mass media. However, when people's home language differs from the official language, and the state does not provide sufficient measures to safeguard this language, human rights issues can be at stake. Language policy is considered an internal affair, based on the territoriality principle; international law leaves state sovereignty unaffected. On the other hand, the use of a language in the 'private domain' is protected by freedom of expression and association.¹³ International law protects historic language minorities against assimilation processes; this principle is changing more and more towards an active responsibility.

⁷ 'Platteland slecht vertegenwoordigd op kandidatenlijst Tweede Kamer', 23 February 2017, www.rtlnieuws.nl; 'Voor wie een Fries in de Tweede Kamer wil', 8 March 2017, www.actiefonline.nl.

⁸ D. Tuccinardi ed., *International Obligations for Elections, Guidelines for Legal Frameworks*, Stockholm: International IDEA 2014, p. 9.

⁹ All Resolution are consultable at <https://digitallibrary.un.org>.

¹⁰ Strengthening the role of the United Nations in enhancing the effectiveness of the principle of periodic and genuine elections and the promotion of democratization: resolution, adopted by the General Assembly, 12 December 1997, A/RES/52/129.

¹¹ Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization: resolution, adopted by the General Assembly, 18 Dec. 2009, A/RES/64/155.

¹² Strengthening the role of the United Nations in enhancing periodic and genuine elections and the promotion of democratization: resolution, adopted by the General Assembly, 18 December 2013, A/RES/68/164.

¹³ S. van der Jeught, *EU Language Law*, Groningen: Europa Law Publishing 2015, p. 263.

The problem in the relationship between international law and linguistic justice is that international law addresses states on the one hand and gives individuals certain guarantees for the protection of human rights, but it is restrained to allot collective rights to groups.¹⁴ Certain individual language rights are generally recognized, like the right of suspects and accused persons to receive information about their rights in a simple and accessible language they understand.¹⁵ Nevertheless, it is quite useless to be allowed to speak your minority language to yourself, language depends on communication with others. When language is the main characteristic of individuals belonging to a minority, the loss of this language due to assimilation, implies the end of the minority. The protection of the home-language – certainly when it is spoken by a small group of people- is important to safeguard the intangible heritage of mankind, because a lot of knowledge on flora, fauna, geography and local history is only accessible in that language. It is also important to educate children in their home-language to have an effective learning process. Access to the democratic process in local government bodies is only possible when all the languages spoken in the region are taken into account. International organizations attach great importance to linguistic diversity and the protection of small languages, not only from the point of view of 'rights' but also to guarantee cultural diversity.¹⁶ Against this background, this pilot report explores the right to political participation for persons belonging to linguistic minorities, the barriers that exist to the exercise of that right and the good practices and promising initiatives exhibited at the EU level itself and in selected EU Member States. The methodology for this report is based primarily on (legal doctrinal) desk research, drawing on primary and secondary sources of law and policy. The report includes pilot case studies on political participation of persons belonging to linguistic minorities at the EU level and in a selection of a 6 given EU Member States: Bulgaria, Denmark, Estonia, Germany, Ireland, and the United Kingdom. Those case studies also draw on desk research conducted by the author alone.

3. THE INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK

Legally binding instruments and other declarations and documents with regard to the interconnectedness of non-discrimination, linguistic matters, and election rights are:

- Art. 1, 21(1), 21(3), 27 Universal Declaration of Human Rights
- Art. 13 & 15, International Covenant on Economic, Social and Cultural Rights (UN, 1966)
- Art 2, 25, 26, 27, International Covenant on Civil and Political Rights¹⁷ (UN, 1966)
- Art. 2, 5(c), 18, 19, 21, 22, 25, International Convention on the Elimination of All Forms of Racial Discrimination (UN, 1965)
- Art. 14, European Convention on Human Rights (CoE, 1953)
- Art. 3 & 14 Protocol No. 11, European Convention on Human Rights (CoE, 1994)
- Art. 4, 10 & 15, Framework Convention for the Protection of National Minorities (CoE, 1995)

¹⁴ A. Spiliopoulou Åkermarck, *Justifications of minority protection in international law* (London: Kluwer Law International 1997) p. 43-48.

¹⁵ art 6, lid 3, EVRM.

¹⁶ UNESCO Ad Hoc Expert Group on Endangered Languages, *Language Vitality and Endangerment* (2003, CLT/CEI/DCE/ELP/PI/2003/1) p. 8 ff.

¹⁷ Art. 27 must be read in conjunction with: UN Human Rights Committee, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service, Article 25, CCPR/C/21/Rev.1/Add.7, 12 July 1996.

- Art. 3 of Protocol No. 1, European Convention on Human Rights (CoE, 1998)
- Art. 10, European Charter for Regional or Minority Languages (CoE, 1992)
- Art. 21, 22, 39, 40, Charter of Fundamental Rights of the European Union (2000)
- Article 20(2)(b), 22 Treaty on the Functioning of the European Union (2008)
- Art. 2, Treaty of The European Union (2007)
- Art. 2 (2) (3) (4) & (5), Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)
- Rec. 11 & 15, Guidance Note of the UN Secretary-General on Racial Discrimination and the Protection of Minorities (2013)
- Par. 5, 6, and 35 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990)
- The Hague Recommendations Regarding the Education Rights of National Minorities (OSCE, 1996)¹⁸
- Oslo Recommendations Regarding the Linguistic Rights of National Minorities (OSCE, 1998)¹⁹
- Lund Recommendations on the Effective Participation of National Minorities in Public Life (OSCE / HCNM, 1999)²⁰

In April 2009 the ACP-EU Joint Parliamentary Assembly called on ACP and EU countries to adopt proactive policies to promote the fair representation of different ethnic, cultural and linguistic groups in public offices, electoral systems, administration, the police and security sector, by fighting any form of discrimination and developing targeted recruitment policies, including, where appropriate, affirmative action.²¹

In addition to the aforementioned international and European conventions, jurisprudence also set the tone and ensured further development of the subject.

EU's approach and legal and policy frameworks on minority protection

In art. 2 of the TEU, the general rule of respect for human rights and non-discrimination is codified. Art. 3 states that the EU 'shall respect its rich cultural and linguistic diversity'. But there is no Union legal framework to guarantee their rights as a linguistic minority.²² In the field of education, the EU fully respects cultural and linguistic diversity (Article 165(1) TFEU). Since the promotion of mobility and intercultural understanding is an important aim of the EU, it attributes to language learning a high priority. Multilingualism is a key factor in Europe's competitiveness. These aims lead to the 'three languages policy'; European citizens should master in addition to their mother tongue two other languages (COM(2008) 0566). This may include a minority language. Van der Jeught: 'the aim of achieving unity through language is lacking altogether in the EU'.²³

¹⁸ International Journal on Minority and Group Rights, Volume 4, No. 2, 1996/97.

¹⁹ International Journal on Minority and Group Rights, Volume 6, No. 3, 1999.

²⁰ HCNM, The Lund Recommendations on the Effective Participation of National Minorities, The Hague, 1999.

²¹ Official Journal of the European Union, 14 sept. 2009, C 221/19.

²² European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (2015/2254(INL)) (2018/C 215/25), Official Journal of the European Union, 19 June 2018, C 215/162.

²³ S. van der Jeught, *EU Language Law*, Groningen: Europa Law Publishing 2015, p. 263.

This 'respect' is a recent development; not all national languages of EU member states have been accorded the status of official EU languages.²⁴ Irish got the status of 'treaty language' at the moment of accession (1973) but only became an official and working language in 2007.²⁵ In the years 2004 – 2007 there was a temporary derogation from the obligation to draft acts in Maltese and to publish them in the Official Journal of the EU.²⁶ Catalan, as spoken by millions of citizens, is not an EU Treaty language, whereas far less widely spoken languages, such as Maltese or Irish, do enjoy such status.²⁷

A coherent framework is missing. Like in most national legislation, EU rules on language are 'scattered about in numerous treaty provisions, regulations, directives rules of procedure and implicit practices'.²⁸ Here The EU core values like language diversity and EU integration clash. In a common market, it is easier for producers to sell products in a monolingual state, than in multilingual states. The category of 'easily understood languages' is introduced in EU legislation.

The EU supports two centers for research on languages, the European Centre for Modern Languages (ECML) and the European Research Centre on Multilingualism and Language Learning (Mercator). The EU initiated a website for multilingualism in Europe, Poliglotti4.eu, promoting best practice in language policy and language learning.

A complex set of languages can be traced²⁹:

- English as lingua franca for transnational communication;
- EU official language status, depending on the 'Treaty languages'. Art. 55(1) TEU. Every citizen of the EU has the right to write to any of the institutions or bodies of the EU in one of those languages and to receive an answer in the same language, Art. 24 TFEU.
- National or 'official state' languages that are official in the whole territory of a Member State; Art. 53 TEU; Art. 44 ECFR; Art. 20 (d) TFEU.
- R/M languages in a member state across EU that are an official language of the EU.³⁰ Every citizen of the EU has the right to write to any of the institutions or bodies of the EU in one of those languages and to receive an answer in the same language, pursuant to Art. 24 TFEU.
- R/M languages across EU;
- Dialects of the 'official state' languages

²⁴ These include Luxembourgish, an official language of Luxembourg since 1984, and Turkish, an official language of Cyprus. The act of adaptation of the terms of accession of the United Cyprus Republic to the EU (COM(2004) 189 fin.), art. 8 'Turkish shall be an official and working language of the institutions of the European Union.'

²⁵ Council Regulation (EC) No 920/2005. Irish has been temporarily derogated as a working language, until 2021 due to difficulty finding qualified translators. OP/B.3/CRI, Interinstitutional style guide, par. 7.2.4.

²⁶ Council Regulation (EC) No 930/2004 of 1 May 2004 (OJ L 169, 1.5.2004, p. 1).

²⁷ Individual member states decide on the 'Treaty language', essential to get EU official language status.

²⁸ S. van der Jeught, *EU Language Law*, Groningen: Europa Law Publishing 2015, p. 264.

²⁹ G. Extra & D. Gorter (eds.), *Multilingual Europe: Facts and policies*, Berlin: Mouton de Gruyter 2008; M. Nic Craith, *Europe and the Politics of Language*, Hampshire: Palgrave Macmillan 2006.

³⁰ In the judgment of the CJEU of 27 March 2014 on the use of language rules applicable to civil proceedings, the court decided that an EU national may not be placed in a less favorable position as nationals when the use of languages is concerned, as was already decided in the case Bickel and Franz (C-274/96, par. 20): 'a citizen of the European Union, who is a national of a Member State other than the Member State concerned, is entitled, in criminal proceedings, to rely on language rules such as those at issue in the main proceedings on the same basis as the nationals of the latter Member State, and, therefore, may address the court seised in one of the languages provided for by those rules [...]'. Grauel Rüffer, C-322/13, ECLI:EU:C:2014:189; see also: ECLI:EU:C:2012:456 and the Opinion AG Fennelly, Case C-334/94 (16 Nov. 1995).

- immigrant minority languages in a member state across EU that are an official language of the EU. Every citizen of the EU has the right to write to any of the institutions or bodies of the EU in one of those languages and to receive an answer in the same language (Art. 24 TFEU).
- immigrant minority languages across EU.

The European Parliament resolution of 11 September 2013 on endangered European languages and linguistic diversity in the European Union called on all Member States who have not yet done so, to ratify and implement the ECRML. It also called on the Commission to propose concrete policy measures for the protection of endangered languages.³¹

The ECtHR has, in several occasions, taken the view that the European Parliament forms part of the 'legislature' within the meaning of Article 3 of Protocol No. 1 ECHR.³² Insights in the relation between national minorities and elections are given in several cases.

ECtHR judgments

Lindsay and others v the United Kingdom (1979)

The UK European Assembly Elections Act 1978 specified that the European Assembly elections in the UK would be held using the simple majority system of voting 'first past the post' (England, Scotland and Wales) and under a proportional representation system of the single transferable vote in Northern Ireland.³³ The question was to what extent a vote must have the same consequence irrespective of the area of the State in which it is cast to guarantee free and democratic election. The ECtHR decided that having different election systems within one State to protect the participation right of minorities, was a legitimate measure.

Mathieu-Mohin and Clerfayt v Belgium (1987)

In the Mathieu-Mohin and Clerfayt cases against Belgium, the applicants claim that there was a violation of art. 3 of the 1 Protocol to the Convention (right to freedom of expression) in conjunction with the non-discrimination provision of art. 14.³⁴ The applicants were elected to the Belgian Senate and the Chamber of Representatives, respectively in the bilingual region of Brussels and in an administrative district forming part of the Dutch-speaking Council. The applicants had to take an oath in the Dutch language for the eligibility test for the Council, but only wished to take the oath in French. Due to this dispute, they were not allowed to take their seat. The ECtHR concludes that art. 3 of the first protocol has not been violated. The Court ruled that the applicants could appeal to art. 14 but that there was no discrimination because the purpose of the distinction was reasonable.

Magnago and Südtiroler Volkspartei v. Italy (1996)

The Südtiroler Volkspartei was, as a minority party, unable to obtain at least 4 % of the votes in the country as a whole. On this ground the SVP contested the new electoral law of Italy. The ECtHR declared

³¹ (2013/2007(INI)) (2016/C 093/07).

³² *Matthews v. the United Kingdom* (1999) 28 EHRR 361, §§ 45-54; *Occhetto v. Italy* (dec.) no. 14507/07, 12 Nov. 2013, § 42.

³³ *Lindsay and others v the United Kingdom* (App no 8364/78) (1979) 15 DR 247.

³⁴ Appl. no 9267/81, judgment 28 Jan. 1987.

that the ECHR did 'not compel the Contracting Parties to provide for positive discrimination in favour of minorities'.³⁵

Nicoletta Polacco and Alessandro Garofalo v Italy (1997)

The ECmHR considered a minimum of four year residence as a requirement to vote in elections in Trento (Italy) was legitimate, because this condition was introduced to protect the rights of the German and Ladin minorities in the Region of Trentino Alto-Adige.³⁶

Podkolzina v. Latvia (2002)

A citizen and member of a political party were included in the list of the candidates for the 1998 Latvian parliamentary elections.³⁷ The ECtHR stated that an obligation to have sufficient knowledge of the official language may pursue a legitimate aim. But art. 3 of Protocol 1 of the ECHR was violated because this candidate, who had a valid proficiency certificate in the use of the state's official language, Latvian, was reexamined by an official from the State Language Inspectorate, who considered the language level insufficient and the candidate ineligible to stand for election. The ECtHR emphasized 1) that the validity of the applicant's certificate was never questioned by the Latvian authorities. 2) the second verification was by only one official instead of a board of experts and in this examination, there was a lack of procedural safeguards. 3) questions outside the scope of validating language skills were included in the reexamination.

In a comparable case, *Ignatane v. Latvia*, the CCPR decided that a person removed by the government from the list of candidates for election to city council on the basis of insufficient proficiency in the official state language suffered a violation of rights under Article 25 and Article 2 of the ICCPR.³⁸

The rules on the command of the Latvian language and the tests making candidates ineligible to stand for election when considered the language level was insufficient has been changed in 2011.³⁹

Fryske Nasjonale Partij v the Netherlands (2002)

In the case of *Fryske Nasjonale Partij v. the Netherlands*, the applicants argued that their right to freedom of expression had been violated because they could not register their candidature in Frisian, and stand as candidates for the elections because their registration for the elections was only available in Dutch.⁴⁰ The ECtHR ruled that the right to freedom of expression does not guarantee the use of the chosen language in communications with public administration. It must be mentioned that the Dutch electoral laws were changed after the ECtHR ruling, and registering candidates was made possible in Frisian. A bylaw was published by the Minister of the Interior and Kingdom Relations on 16 December 2010, introducing standard forms in the Frisian language for the nomination of candidates for the election of the members of the provincial councils of Friesland.⁴¹

³⁵ *Magnago and Südtiroler Volkspartei v. Italy*, no. 25035/94 (1996)

³⁶ *Nicoletta Polacco and Alessandro Garofalo v Italy* (App no 23450/94) (1997); similar: *Marie-Helene Gillot v France* (Communication no 932/2000) (2002) UN Doc A/57/40, 270 and *Py v France* (App no 66289/01) (2005).

³⁷ Appl. no 46726/99, judgment 9 April 2002.

³⁸ CCPR/C/72/D/884/1999, 72nd Session (31/07/01); <http://www.unhcr.org/refworld/country,,HRC,,RUS,,3f588ef83,0.html>

³⁹ <http://www.saeima.lv/en/legislation/rules-of-procedure>.

⁴⁰ Appl no 2578/94, judgment 10 May 2001; Appl no 46726/99, judgment of 9 April 2002. See on the development in Friesland: B.D. van der Velden, *Waar gaan wij heen met het Fries? Het gebruik van de Friese taal in het juridische en in het bestuurlijke verkeer in de laatste twee eeuwen* (Nijmegen: Wolf Legal Publishers 2004).

⁴¹ *Staatscourant*, Nr. 20760, 24 December 2010. To be found in an annex to the Kies- en referendumregeling (6 November 2013, no. 2013-0000435969) bylaw of the Kieswet and the Kiesbesluit.

*Aziz v Cyprus (2005)*

As a member of the Turkish-Cypriot community Aziz was not allowed to register for the electoral roll, in order to vote in the parliamentary elections of Cyprus in 2001. The ECtHR concluded that there was no reasonable and objective justification for the differential treatment of Turkish Cypriots and found a separate breach of art. 14 ECHR in conjunction with art. 3 of Protocol No. 1 ECHR.⁴²

Görzelik and others v Poland (2005)

The applicants complained that the Polish authorities had refused to register their association under the name of 'Union of People of Silesian Nationality'. According to the Katowice Governor (Wojewoda) registration was not possible since 'In particular, under the relevant provisions of the Law of 28 May 1993 on Parliamentary Elections (hereinafter referred to as the "Law on Parliamentary Elections") (Ordynacja wyborcza do Sejmu Rzeczypospolitej Polskiej), registration of the Union would give it a privileged position in respect of the distribution of seats in Parliament.' The ECtHR ruled: 'This coincidence, together with the name proposed for the applicants' association, gives the impression that in future the members of the association might, in addition to the pursuit of the objectives expressly set out in their programme, aspire to stand in elections. [...] In that connection, the Court cannot but note that the applicants could easily have dispelled the doubts voiced by the authorities, in particular by slightly changing the name of their association and by sacrificing, or amending, a single provision of the memorandum of association [...]. Those alterations would not, in the Court's view, have had harmful consequences for the Union's existence as an association and would not have prevented its members from achieving the objectives they set for themselves.'⁴³

Sejdić and Finci v Bosnia and Herzegovina (2009)

To stand for elections to the House of Peoples of the Parliamentary Assembly and the Presidency, the domestic legislation of Bosnia and Herzegovina, stipulated that the candidate had to declare their affiliation to one of the three constituent peoples (Bosnians, Serbs and Croats).⁴⁴ Citizens of Roma and Jewish origin were due to this rule deprived from the right to be elected. Such legislation is at odds with art. 14 ECHR read together with art. 3 of Protocol 1 ECHR and art. 1 of Protocol 12 to the ECHR, the domestic legislation was without an objective and reasonable justification.

Şükran Aydın and Others v. Turkey (2013)

Though States have the discretion to determine their linguistic policies and are entitled to regulate the use of languages during election campaigns, in the case of Şükran Aydın and Others v. Turkey, the ECtHR decided that a blanket ban on the use of other than official languages coupled with criminal sanctions is not compatible with freedom of expression and as such a violation of art. 10 of the ECHR. Such rights cannot be limited by a law, including a ban on the use of any language other than the official language during election campaigns.⁴⁵

⁴² Aziz v Cyprus (App no 69949/01) (2005) 41 EHRR 11

⁴³ Görzelik and others v Poland (App no 44158/98) (2005) 40 EHRR 4

⁴⁴ Sejdić and Finci v. Bosnia and Herzegovina (App. nos. 27996/06 and 34836/06) (2009). See also: Zornić v. Bosnia and Herzegovina (Application no. 3681/06) (2014)

⁴⁵ Appl. no 49197/06, judgment 22 January 2013.

Partei Die Friesen v. Germany (2016)

The political party Die Friesen was discriminated against by the 5% threshold applied at the parliamentary elections in the Land of Lower Saxony.⁴⁶ According to the ECtHR, the 'Convention does not call for a different treatment in favour of minority parties in this context.'

E.C. v Hungary/Hongrie and Bakirdzi v Hungary/Hongrie

There are thirteen recognized national minorities in Hungary. The first applicant (E.C.) belongs to the Armenian minority and the second applicant (Bakirdzi) to the Greek minority. As members of recognized national minorities, they both requested registration as national minority voters in the electoral roll before the parliamentary elections of 2014. Members of national minorities who had registered for "minority elections" could only vote for a candidate on the list of national minorities in one constituency. The applicants claim that their exclusion from participation in the national elections infringes the free elections. The case is not yet decided.⁴⁷

Private domain / public sphere / communication with the state

The main distinctions in the debate on R/M languages rights and elections can be devised in the use of language in the private domain, the public sphere, and communication with the state. In the private, informal or non-governmental sphere of national life, citizens are free to decide in what language they want to communicate: 'Political parties or associations are not part of the administrative structure of the state and may not, therefore, be prevented from using a minority language, even during elections. Their activities are therefore part of the private domain, even if heavily regulated by the state. A prohibition on the use of a minority language would be contrary to the right to freedom of expression, Article 27 of the International Covenant on Civil and Political Rights, as well as being in all probability discriminatory.'⁴⁸

The public domain, or civic realm of the nation-state, the state may make legislation on the official languages to be used in communication: 'Any use by the public authorities of a minority language (such as the registration of a political party or association, the broadcasting of political messages on state-controlled media, etc.) falls outside of the private domain. These issues mainly involve whether or not a particular restriction or requirement is discriminatory, rather than problems of freedom of expression or Article 27.'⁴⁹

Sliding-scale formulation of linguistic rights and the ECRML

⁴⁶ *Partei Die Friesen v. Germany* (Application no. 65480/10) (2016)

⁴⁷ ECtHR, Information Note on the Court's case-law, July 2018, p. 24, *E.C. – Hungary/Hongrie*, 65678/14, *Bakirdzi – Hungary/Hongrie*, 49636/14.

⁴⁸ F. de Varennnes, 'The Existing Rights of Minorities in International Law', in Kontra e.a. eds, *Language: A right and a resource: Approaching linguistic human rights* (Central European University Press 1999).

⁴⁹ F. de Varennnes, 'The Existing Rights of Minorities in International Law', in Kontra e.a. eds, *Language: A right and a resource: Approaching linguistic human rights* (Central European University Press 1999).

In the public domain many 'best practices' can be formulated, but it is important to keep in mind that the number of speakers of R/M-languages can vary from a hundred up to some millions within a state. One can imagine that different measures are possible for a state depending of the number of R/M language users, degree of fragmentation, and administrative and financial capacities of the State. These major differences makes it necessary to take flexibility into account, within the framework of the ECRML but also when discussing the situation in countries that are not a member state to the ECRML (or implications of application of good practices. The ECRML has introduced a 'sliding-scale formula' to tackle this problem. States have to make a choice from the concrete undertakings in several areas of public life as mentioned in Part III of the ECRML, most these provisions consist of several options, of increasing degrees of stringency, one of which has to be chosen for the language at stake. This menu ought to fit languages spoken only by several people, languages used by large groups, by citizens living concentrated in one area, or living dispersed all over a country, and this system ought to fit the situation of each language. De Varennes calls this system a 'sliding-scale formula': at the bottom of this sliding scale there is a minimum protection for R/M languages with a small number speakers, and at the top of the scale 'much more generous rights' in case large groups of minority speakers live in a country.⁵⁰

Part I of the ECRML defines the R/M language. This is a language that has traditionally been used in a particular area of a state by a group of inhabitants that is smaller than the population of the rest of the state (Art. 1). It is of no importance how big the group of citizens speaking a particular language is, the ECRML does not give minimum numbers. In the view of the experts drafting the ECRML, the menu of Part III is flexible enough to create an acceptable (minimum) framework for the protection of these languages and to adopt a higher level for languages spoken by larger groups. Dialects of official languages fall outside the scope of the ECRML. Nor are immigrant languages protected by the ECRML.⁵¹

Part II sets out a number of general principles and requirements that the ratifying state must apply to all R/M languages spoken in the state (Article 2, paragraph 1). Part II contains an obligation to respect the administrative unit of language, a non-discrimination principle, the possibility of education in R/M languages and the promotion of contact between users of different languages. Art. 7 sets out objectives and principles necessary to constitute the framework for the preservation of R/M languages, including respect for the geographical area of each R/M language, need for positive action for the benefit of R/M languages and elimination of discrimination. Recent development in Spain shows that the committee of experts can convince countries to make part II applicable to languages not 'designated' by the member state at the moment of ratification.

States have to make a choice from the concrete undertakings in several areas of public life as mentioned in Part III, most these provisions consist of several options, of increasing degrees of stringency, one of which has to be chosen for the language at stake. This menu ought to fit languages spoken only by several people, languages used by large groups, by citizens living concentrated in one area, or living dispersed all over a country, and this system ought to fit to the situation of each language. De Varennes calls this system a 'sliding-scale formula': at the bottom of this sliding scale there is a minimum protection for R/M languages with a small number speakers, and at the top of the scale 'much more generous rights' in case large groups of minority speakers live in a country.⁵² Art. 10 gives a wide range of concrete undertakings in the field of administrative authorities and public services. Elections

⁵⁰ F.J. de Varennes, *Language, minorities and human rights* (The Hague: Martinus Nijhoff 1996) p. 96, p. 195.

⁵¹ See also the discussion on this subject in: Venice Commission, Report on non-citizen and minority rights (CDL-AD(2007)001) §§62, 115, 120, 142.

⁵² F.J. de Varennes, *Language, minorities and human rights* [S.l.: s.n.] p. 96, p. 195.

are not mentioned as such, but states should take measures in administrative districts of the State in which the number of residents who are users of R/M languages justifies this, that the administrative authorities use the regional or minority languages, and to ensure that users of R/M languages may submit oral or written applications and receive a reply in these languages, and to make available widely used administrative texts and forms for the population in the R/M languages or in bilingual versions. In the text that follows, different stages in the electoral process will be discussed and implications for the use of R/M languages will be given

Part IV gives the CoE two tools to keep up to date on the situation of R/M languages in member states. Firstly, these countries should report periodically to the Secretary-General of the CoE on the measures taken for the benefit of the languages. The obligations of the member states are monitored by a committee of experts every three years. An important source of information is the direct dialogue with the people using R/M languages.⁵³

‘Minority SafePack — one million signatures for diversity in Europe’

The aim of the 2017 European Citizens’ Initiative for a Minority SafePack is ‘a Council directive, regulation or decision on the basis of Article 20(2) TFEU and Article 25 TFEU, for the purpose of strengthening within the EU the place of citizens belonging to a national minority, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of Members of the European Parliament.’ The European petition campaign for the Minority SafePack was a successful and gathered by May 2018 1,320,000 statements of support and reached the threshold in 11 Member States.

The Commission was hesitating whether the goals of the Minority SafePack could be reached within the legal framework of the EU, especially on elections for the EU Parliament:

‘A legal act of the Union for the purpose of implementing the Treaties cannot be adopted for the purpose of strengthening within the EU the place of citizens belonging to a national minority, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of Members of the European Parliament. Article 20(2) TFEU provides for the rights of the citizens of the Union. Those rights include the right to vote and to stand as candidates in elections to the European Parliament in the Member State of residence, under the same conditions as nationals of that State. Article 25 TFEU provides that on the basis of a report from the Commission the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may adopt provisions to strengthen or to add to the rights listed in Article 20(2) TFEU. However, the rights strengthened or added by such provisions must be directed against other Member States than that of which the Union citizen concerned is a national or against the Union institutions. Conversely, the legal act envisaged by the proposed citizens’ initiative entitled ‘Minority SafePack — one million signatures for diversity in Europe’ contains no similar qualifications. Accordingly, it would also create rights enforceable against the Member State of which the Union citizen is a national.

⁵³ E. J. Ruij Vieztesy, *Working together: NGOs and regional or minority languages* (Strasbourg: CoE 2004).

Therefore Article 25 and Article 20(2) TFEU cannot constitute legal bases for the adoption of a legal act of the Union for the purpose of implementing the Treaties ‘for the purpose of strengthening within the EU the place of citizens belonging to a national minority, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of Members of the European Parliament’. Inasmuch the legal act envisaged by the proposed citizens’ initiative entitled ‘Minority SafePack — one million signatures for diversity in Europe’ would in essence regard the provisions necessary for the election of the Members of the European Parliament by direct universal suffrage, it is the latter institution which, in accordance with Article 223 TFEU, shall draw up a proposal to lay down these provisions, in accordance with a uniform procedure in all Member States or with principles common to all Member States. Therefore, the Commission is not empowered by the Treaties to submit a proposal for such a legal act.’⁵⁴

Despite the reluctance of the Commission, throughout the process of elections legal norms can be found or formulated on the way governments ought to act when taking into account the rights of minorities during election times.

The legal framework of the elections and information on the legal framework

Freedom from discrimination and equality under the law is the basis of a legal framework that protects the civil rights of national minorities and indigenous communities.⁵⁵ The principles of freedom from discrimination and equality under the law demand that the legal framework of the elections ensures equal protection under the law (art. 26 ICCPR).⁵⁶ Information on the legal framework must be publicly accessible on grounds of transparency and the right to information. Art. 19(2) ICCPR: ‘Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’ This concept is developed in the CCPR, GC 25, p. 11: ‘Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community.’ And p. 12: ‘Information and materials about voting should be available in minority languages.’⁵⁷

The right of minority languages to organize in political parties

Art. 2 par. 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that: ‘Persons belonging to minorities have the right to establish and

⁵⁴ Commission Decision (EU) 2017/652 of 29 March 2017 on the proposed citizens’ initiative entitled ‘Minority SafePack — one million signatures for diversity in Europe’, Official Journal of the European Union, 6 April 2017, L 92/100

⁵⁵ D. Tuccinardi ed., *International Obligations for Elections, Guidelines for Legal Frameworks*, Stockholm: International IDEA 2014, p. 128-129.

⁵⁶ D. Tuccinardi ed., *International Obligations for Elections, Guidelines for Legal Frameworks*, Stockholm: International IDEA 2014, p. 65.

⁵⁷ UN Human Rights Committee, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service, Article 25, CCPR/C/21/Rev.1/Add.7, 12 July 1996.

maintain their own associations...'. The importance of this principle is explained in the Lund Recommendation No. 8: 'The regulation of the formation and activity of political parties shall comply with the international law principle of freedom of association. This principle includes the freedom to establish political parties based on communal identities, as well as those not identified exclusively with the interest of a specific community.' The freedom of expression, association, and assembly includes the right to use minority languages in the names of political parties.

Lists of candidates of (main stream) political parties

There should not only be parties for R/M language speakers, also the list of candidates of the main stream parties must be a reflection of society, and therefore also their list should contain representatives of linguistic minorities in electable places. The UN Forum on Minority Issues, 2009 (A/HRC/13/25) formulated in par. 30: 'Political parties should be aware of the diversity of the society and/or communities that they represent and make active efforts to take concrete steps to reflect such diversity.' This includes in countries with a system of proportional representation placing people belonging to minorities high enough on the list to be elected (par. 34): 'It is crucial that political parties select their candidates based on internal democratic processes that allow and facilitate the participation of persons belonging to national minorities.'⁵⁸

Quotas could be applied to guarantee a fair representation of specific ethnic, linguistic, social, or geographical minorities. However, a 2015 report on Candidate selection procedures for the European elections, written on demand of DG Internal Policies, shows that such quotas are not very common in party statutes (1.4pc), only the Latvian Green Party and the Basque Party EAJ-PNV in Spain have such rules.⁵⁹

Financial or signature registration required for party lists and candidates

Burdensome financial or signature registration required for party lists and candidates are perceived to be disadvantageous for minority representation.⁶⁰ (see below the regulations on this issue in Germany).

Information on elections by neutral institutions

⁵⁸ *Handbook On Observing and Promoting the Participation of National Minorities in Electoral Processes* (Warsaw: OSCE Office for Democratic Institutions and Human Rights 2014). See, Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), Commentary on Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs (Commentary on Effective Participation), adopted on 27 February 2008, ACFC/31DOC(2008)001, par. 78.

⁵⁹ Jean-Benoit Pilet e.a. / Cevipol / DG Internal Policies, Candidate selection procedures for the European elections, 2015, PE 519.206.

⁶⁰ N. Kaczorowski (OSCE/ODIHR), Minority Participation In Electoral Processes: Summary Of Findings, 28 September 2007, HDIM.ODIHR/252/07.

R/M language speakers need information in minority languages in order to be informed voters and participate effectively in the democracy they live in. States must ensure access to voter information in minority languages. Par. 12 of the 1996 United Nations Committee on Human Rights General Comment 25 to Art. 25 of the ICCPR states that ‘information and materials about voting should be available in minority languages.’⁶¹ Furthermore, states must organize civic and voter education concerning minority rights (art. 5 ICERD).⁶² States must take into account that there might be a lack of information in the R/M language community about language services offered to them.⁶³

The UN Forum on Minority Issues, 2009 (A/HRC/13/25) formulated in par. 19: ‘As far as possible, electoral authorities should provide voting information in both the official language and those minority languages used by voters in the areas where they are concentrated.’ And the Forum continues in par. 20: ‘civic education programmes specifically directed at informing minorities about how they can have access to the electoral system should be developed and tailored, as far as possible, to every minority group present in the State’, and governments should sponsor these programs. There is a need for accurately translated and effectively distributed materials. Information must be shared as widely as possible.⁶⁴ The Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations states that during election observation missions special attention should be given to ‘the ability of prospective voters, including indigenous peoples and other traditionally marginalized populations, to seek and receive (including in minority languages) accurate and adequate information upon which to make electoral choices’⁶⁵ In parts of a country where minority language speakers are living in large numbers, ballots, election information documents, and information on plebiscites and other processes leading to decision-making in government bodies should be sufficiently available in their R/M language. This will lead to better-informed citizens, a higher percentage of participation and greater integration of minorities in society.⁶⁶

In Norway, electoral information is provided in many languages, including the different Sami languages.⁶⁷ The material was also available in Norwegian bokmål, Norwegian Nynorsk, Russian, English, Persian/Farsi, Serbian/Croatian/Bosnian, Somalian, Turkish, Urdu, Arabic, Filipino and Vietnamese.⁶⁸

In Finland electoral information for the European Elections is made available by the Ministry of Justice next to Finnish and Swedish, in Northern Sami language, Skolt Sami, Estonian, Russian, Somali and English, but also in Plain language Finnish.⁶⁹

⁶¹ UN Human Rights Committee, General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service, Article 25, CCPR/C/21/Rev.1/Add.7, 12 July 1996.

⁶² D. Tuccinardi ed., *International Obligations for Elections, Guidelines for Legal Frameworks*, Stockholm: International IDEA 2014, p. 135.

⁶³ Taapsi Ramchandani e.a ed., *The next generation of accessible voting, Designing election systems for language access* (Draft – July 10, 2017) at: civicdesign.org.

⁶⁴ Office for Democratic Institutions and Human Rights, *Guidelines to Assist National Minority Participation in the Electoral Process* (OSCE: Warsaw, 2001), <<http://www.osce.org/odihr/elections/17569?download=true>>, p. 9.

⁶⁵ Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations, <https://www.gndem.org/gndem.org/declaration-of-global-principles/>.

⁶⁶ F. de Varennes, *Language Rights of Linguistic Minorities, A Practical Guide for Implementation* (Geneva, March 2017); Office for Democratic Institutions and Human Rights, *Guidelines to Assist National Minority Participation in the Electoral Process* (Warsaw: OSCE 2001) p. 16. Available at <http://www.osce.org/odihr/elections/17569?download=true>.

⁶⁷ F. de Varennes, *Language Rights of Linguistic Minorities, A Practical Guide for Implementation* (Geneva, March 2017) p. 37.

⁶⁸ <https://valg.no/en/elections/Parliamentary-election-2017/right-to-vote/information-brochures-in-different-languages/>.

For some minorities it is important to publish and distribute neutral information on elections and voter registration in an accessible language, a sort of Mass Training of Voters to increase awareness and aiming at a higher grade of participation as a good practice: ‘In order to increase the electoral participation of Roma, this activity focused on producing voter education material, including in the Romani language, which was to be distributed among target communities in the framework of organized information campaigns and trainings.’⁷⁰ This kind of projects were only partly successful. Other approaches to raise awareness is the ‘Model elections’, training of potential candidates, facilitating electoral coalitions to increase the chances of representation of Roma on elected bodies, especially at the national level.

Creating multilingual websites for different R/M language groups where they can access materials in their own language can create an image of inclusiveness and openness.⁷¹

The use minority languages during campaigns

The use of R/M languages during campaigns belongs to the field of the private domain. Fernand de Varennnes, United Nations Special Rapporteur on minority issues, states: ‘The use of minority languages must be allowed on posters, and in documents or the meetings and other activities of political parties, non-governmental organizations, lobbying groups or private individuals.’⁷² Legal restrictions on campaigning to the official language only, as they exist in Bulgaria, are at odds with international standards.⁷³ The Advisory Committee on the Framework Convention for the Protection of National Minorities: ‘State Parties should ensure that parties representing or including persons belonging to national minorities have adequate opportunities in election campaigning. This may imply the display of electoral advertising in minority languages.’⁷⁴

The ECtHR ruled: ‘The Court would also point out that pluralism and democracy are, by the nature of things, based on a compromise that requires various concessions by individuals and groups of individuals. The latter must sometimes be prepared to limit some of their freedoms so as to ensure the greater stability of the country as a whole. This is particularly true as regards the electoral system, which is of paramount importance for any democratic State.’⁷⁵ The Venice Commission stated that a law

⁶⁹ <https://vaalit.fi/en/information-about-european-elections-in-different-languages>.

⁷⁰ S. Krause, ‘Mapping the Electoral Participation of Roma in South-Eastern Europe’ (Expert Paper, 2007), part of: ODIHR – European Commission joint project “Roma use your ballot wisely!”

⁷¹ Taapsi Ramchandani e.a ed., *The next generation of accessible voting, Designing election systems for language access* (Draft – July 10, 2017) at: civicdesign.org.

⁷² F. de Varennnes, *Language Rights of Linguistic Minorities, A Practical Guide for Implementation* (Geneva, March 2017)

⁷³ Par. 32.5 of the 1999 OSCE Istanbul Document states that persons belonging to national minorities have the right “to disseminate, have access to and exchange information in their mother tongue”. See also article 9.1 of FCNM, article 27 of the ICCPR, and paragraph 12 of the 1996 United Nations Committee on Human Rights General Comment 25 to Article 25 of the ICCPR.

⁷⁴ Advisory Committee On The Framework Convention For The Protection Of National Minorities, Commentary On The Effective Participation Of Persons Belonging To National Minorities In Cultural, Social And Economic Life And In Public Affairs, Adopted on 27 February 2008, ACFC/31DOC(2008)001.

⁷⁵ *Görzelik and others v Poland* (App no 44158/98) (2005) 40 EHRR 4

making one language the only official language might be legitimate to promote unity in newly formed states.⁷⁶

The right to use minority languages in the broadcasting of political messages (via state-controlled media)

The government should make time available for broadcasts in minority languages via the public television and radio channels in programs dedicated to elections, within the 'sliding scale' principles. This contributes to more effective communication between government and minorities and ultimately to greater participation in public life.⁷⁷

Sign language

Not only minority languages should be taken into account, also sign an important instrument to communicate: 'states should help persons with disabilities overcome language barriers by requiring electoral authorities to ensure that sign language interpretation is available throughout the entire electoral process'⁷⁸ The European Union of the Deaf published in 2014 a 'Manifesto on the European Elections', to make elections accessible for deaf sign language users.⁷⁹

Electoral district boundaries

Depending on the electoral system, the question can be posed if the electoral boundaries are discriminatory? Freedom from discrimination and equality under the law must be taken into account when drawing electoral barriers. The ACFC formulated good practices regarding the drawing of electoral-district boundaries, states should ensure that constituency changes do not reduce the opportunities for the election of persons belonging to national minorities.⁸⁰ The UN Forum on Minority Issues, 2009 (A/HRC/13/25), par. 15: 'Governments should not change the electoral system or electoral boundaries in a way that would be likely to weaken minority representation.' The Lund Recommendation (no. 10) is stated: 'The geographic boundaries of electoral districts should facilitate the equitable representation of national minorities.' The provisions in the ECRML that parties shall respect the geographical area of each regional or minority language in order to ensure that existing or new administrative division does not constitute an obstacle to the promotion of the relevant regional or minority language are also applicable on electoral district (part II, art. 7.1.b of the ECRML).

⁷⁶ Venice Commission, Opinion on the Act on the State Language of the Slovak Republic (CDL-AD(2010)035) §§40-45, 47, 53, 57, 134.

⁷⁷ F. de Varennes, *Language Rights of Linguistic Minorities, A Practical Guide for Implementation* (Geneva, March 2017).

⁷⁸ D. Tuccinardi ed., *International Obligations for Elections, Guidelines for Legal Frameworks*, Stockholm: International IDEA 2014, p. 142.

⁷⁹ <https://www.eud.eu/news/edf-manifesto-european-elections/>.

⁸⁰ Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), Commentary on Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs (Commentary on Effective Participation), adopted on 27 Feb. 2008, ACFC/31DOC(2008)001.

Within the municipality of Šuto Orizari where mainly members of the Roma minority live (a district of Skopje) in Macedonia, a new electoral district was created, making it possible to elect a representative from this constituency.

When electoral district geographic boundaries are drawn for the same municipal council with substantial differences between the number of inhabitants per elected representative, this is a violation of art. 25 (a) and (c) ICCPR.⁸¹

Reserved seats

Reserved seats are seats in which a determinable criterion such as religion, ethnicity, language, gender or external registration is a requirement for nomination or election. Exemptions from threshold requirements, reserved seats or veto rights have often proved useful to enhance the participation of linguistic and other minorities in elected bodies.⁸² Rules guaranteeing minorities reserved seats or providing for exceptions to the normal seat-allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not, in principle, run counter to equal suffrage.⁸³ The ACFC formulated good practices regarding introducing lower electoral thresholds and reserved seats.⁸⁴

In Croatia, citizens belonging to a minority can vote for a national list or for specific minority's lists. Larger communities of minorities such as the Hungarians, Serbs, and Italians each have one earmarked seat in Parliament, while the smaller minorities together choose one delegate among themselves.⁸⁵

The member states of the European Union have different types of electoral systems. E.g., the electoral system in the Netherlands is based on proportional representation and does not have a district system for the second chamber of parliament. Within this system, discussions arise if political parties have lists that are a representation of all provinces or mainly formed by politicians from the political and economic center of the country. In such a system politicians from Friesland could be underrepresented.

Electoral officials on the day of elections

⁸¹ Mátyus complained that the number of residents per representative in five voting districts in the town of RoňÁava was not proportional to the number of inhabitants in the various districts. *Mátyus v Slovakia* (Communication no 923/2000) (2002) CCPR/C/75/D/923/2000. Gulara Guliyeva, *The rights of minorities in the European Union*. PHD University of Birmingham, 2010.

⁸² Advisory Committee on the Framework Convention For The Protection Of National Minorities, *Commentary On The Effective Participation of Persons Belonging To National Minorities In Cultural, Social And Economic Life And In Public Affairs*, Adopted on 27 February 2008, ACFC/31DOC(2008)001.

⁸³ Venice Commission, *Code of Good Practice in Electoral Matters*, Opinion No. 190/2002, Document CDL AD (2002)023, 23 May 2003.

⁸⁴ Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), *Commentary on Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs* (Commentary on Effective Participation), adopted on 27 Feb. 2008, ACFC/31DOC(2008)001.

⁸⁵ F. de Varennes, *Language Rights of Linguistic Minorities, A Practical Guide for Implementation* (Geneva, March 2017); Parties representing minorities were in the past elections the Independent Democratic Serb Party, Democratic Union of Hungarians of Croatia, Union of Roma in Croatia "Kali Sara", Union of Albanians in Croatia, and two Independents for the Italian minority and the Czech/Slovak minority.



On the day of elections all kinds of questions arise, questions are posed to electoral officials and need an answer. There is a need for bilingual election personnel. How are prospective voters able to satisfy electoral officials that they are legally entitled to cast a vote and be issued a ballot paper?⁸⁶ There could be problems with the voting machines. Voters are not sure of their electoral district. They may not be able to read the ballot. Failure to employ bilingual poll officials at all voting stations where they are needed can deprive citizens of their right to vote. The Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations: ‘the conduct of voting, including in minority languages, counting, tabulation and announcement of results, including transparency of procedures and adequacy of safeguards against inaccuracies and malfeasance’⁸⁷

Use of Minority languages on election paperwork

When a minority language is used by sufficient people in a district, the use of minority languages on election paperwork might be necessary. Fernand de Varennes, United Nations Special Rapporteur on minority issues, states: ‘Steps to encourage and facilitate the effective participation of minorities in public life include, where practicable, the use of their languages in electoral, consultative and other public participation processes. In areas where speakers of a minority language are concentrated and in significant numbers, electoral information, ballots and other public documents pertaining to elections or public consultation and participation events should be made available in that language.’⁸⁸

In Norway, voting ballots are also available in the Samí language for elections to the indigenous Samí Parliament.⁸⁹

For non-written R/M languages, the digital voting systems must have an audio output that is usable by voters who can see the screen. Such audio devices can also be useful for others who may not have experience with digital interfaces or who have low literacy.⁹⁰

Trust in the voting system is essential for free and transparent elections. States must ensure that R/M language speakers feeling confident that the translated information presented to them is accurate and does not disenfranchise them in any way.⁹¹

Exclusion from Elected Positions due to Language Requirements

⁸⁶ Mai Chen, Superdiversity, Democracy & New Zealand’s Electoral & Referenda Laws, Published with the support of the New Zealand Law Foundation (Chair, Superdiversity Centre for Law, Policy and Business 2014).

⁸⁷ Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations, <https://www.gndem.org/gndem.org/declaration-of-global-principles/>.

⁸⁸ F. de Varennes, Language Rights of Linguistic Minorities, A Practical Guide for Implementation (Geneva, March 2017).

⁸⁹ F. de Varennes, Language Rights of Linguistic Minorities, A Practical Guide for Implementation (Geneva, March 2017) p. 37.

⁹⁰ Taapsi Ramchandani e.a ed., *The next generation of accessible voting, Designing election systems for language access* (Draft – July 10, 2017) at: civicdesign.org.

⁹¹ Taapsi Ramchandani e.a ed., *The next generation of accessible voting, Designing election systems for language access* (Draft – July 10, 2017) at: civicdesign.org.



Elected positions should be open for all citizens of a country. The right and opportunity to be elected includes that candidate registration may not disadvantage or exclude minorities.⁹² Language requirements can exclude and deprive citizens belonging to a linguistic minority to be elected and participate in elected bodies. The Advisory Committee On The Framework Convention For The Protection Of National Minorities considers Language proficiency requirements imposed on candidates for parliamentary and local elections are not compatible with Article 15 of the Framework Convention, 'in so far as they have a negative impact on the effective participation of persons belonging to national minorities in public affairs'.⁹³ The UN Forum on Minority Issues, 2009 (A/HRC/13/25), par. 18: 'Literacy, language, religious or other requirements that exclude minorities from the right to vote or to stand for elected office at the national, regional or local level should be removed, as they may breach the prohibition of discrimination and result in minorities not being able to participate effectively in political life.'

Fernand de Varennes, United Nations Special Rapporteur on minority issues, states: 'The electoral process supervised and conducted under the auspices of the state is part of the "public" sphere. Attempts by minorities and others to obtain the right to use their language in this area by claiming that a state is obliged to respect their right to freedom of expression have therefore unavoidably failed when they have been raised at the international level or under the European Convention for the Protection of Human Rights and Fundamental Freedoms. There are, however, other fundamental human rights that have an important impact on the electoral process for minorities. For example, a law or other state measure which excludes individuals from being candidates or from holding an elected public position because they do not speak the official language may be in breach of international law. It may constitute an unreasonable, and therefore discriminatory, restriction. In this way, members of minorities who would be excluded from running for or occupying an elected office could argue that the state is acting in breach of a fundamental human right in international law. In light of the importance of a free and democratic process open to all citizens, the exclusion of individuals, who may be members of a minority, because of the linguistic preferences of public authorities is such a serious consequence that it is more than likely contrary to non-discrimination with respect to language in international law.'⁹⁴

Denial of the Right to Vote due to Language Requirements

Language requirements for participation in elections or other forms of political participation non-discriminatory, and are not reported in the EU. Excluding people because of their language knowledge, or not having a perfect command of the official language, leads to exclusion from participation in public life, and is generally discriminatory.⁹⁵ Fernand de Varennes, United Nations Special Rapporteur on

⁹² D. Tuccinardi ed., *International Obligations for Elections, Guidelines for Legal Frameworks*, Stockholm: International IDEA 2014, p. 136.

⁹³ Advisory Committee On The Framework Convention For The Protection Of National Minorities, Commentary On The Effective Participation Of Persons Belonging To National Minorities In Cultural, Social And Economic Life And In Public Affairs, Adopted on 27 February 2008, ACFC/31DOC(2008)001.

⁹⁴ F. de Varennes, 'The Existing Rights of Minorities in International Law', in Kontra e.a. eds, *Language: A right and a resource: Approaching linguistic human rights* (Central European University Press 1999).

⁹⁵ UN OHCHR, *Language Rights of Linguistic Minorities, A Practical Guide for Implementation* (2017).

minority issues, states: ‘The denial of the right to vote simply because of insufficient fluency in the official or other prescribed language would almost certainly constitute a violation of non-discrimination with respect to language in international law, since it excludes individuals who are only or mainly fluent in a minority language – or other languages – from the right to vote or benefits to be gained by voting because of a language distinction.’⁹⁶

Registration of voters

The registration of voters prior to elections is mandatory in certain member states. Already in this phase states must take the necessary steps to give effect to the right to vote (art. 25 ICCPR). When previous registration as a voter is obligatory, the legal framework must provide effective measures to include minorities on the voter register to ensure the right and opportunity to vote.⁹⁷ When registration of voters is mandatory to vote, this process must be well announced to all citizens. Stefan Krause conducted research on the electoral participation of Roma in South-Eastern Europe: ‘Generally, there appears to be limited knowledge among Roma voters on how to check whether they are on the voter list and how to be included if they are missing from it. This appears to be a widespread problem which has been reported in numerous countries and territories in the region, including Kosovo. In many countries, voter education tries to address this issue, often in minority language broadcasts including in Romani. However, it appears that further efforts are needed to address this issue, for example by providing hands-on assistance with civic and voter registration at the community level.’⁹⁸

In spite of good intentions, obligatory registering as a linguistic ‘minority’ may lead to difficulties.⁹⁹ Mandatory registration as a ‘minority voter’ seems at odds with free elections, the International Covenant on Civil and Political Rights Human Rights Committee is: ‘concerned at the administrative shortcomings of the minority election register, and the self-government system, which, inter alia, renders it obligatory for minorities to register their ethnic identity, and, therefore, deters those who do not wish their ethnic identity to be known, or have multiple ethnic identities, from registering in particular elections (arts. 2 and 25). The State party should adopt measures to address the shortcomings of the minority election register, and the minority self-government system in general, in order to ensure that it does not deter and disenfranchise minorities from participating in minority self-government elections.’¹⁰⁰

Nationality

⁹⁶ F. de Varennes, ‘The Existing Rights of Minorities in International Law’, in Kontra e.a. eds, *Language: A right and a resource: Approaching linguistic human rights* (Central European University Press 1999).

⁹⁷ D. Tuccinardi ed., *International Obligations for Elections, Guidelines for Legal Frameworks*, Stockholm: International IDEA 2014, p. 133.

⁹⁸ S. Krause, ‘Mapping the Electoral Participation of Roma in South-Eastern Europe’ (Expert Paper 2007), part of: ODIHR – European Commission joint project “Roma use your ballot wisely!”

⁹⁹ See also *E.C. v Hungary/Hongrie* and *Bakirdzi v Hungary/Hongrie* discussed above.

¹⁰⁰ CCPR/C/HUN/CO/5, Hungary (2010), p. 21.

Limiting the possibilities of acquiring citizenship by imposing language requirements focusing on the official languages of the country can be a discriminatory obstacle to participation in public life. If these requirements are arbitrary or unreasonable, a language requirement can be considered discriminatory in the case of minorities. Moreover, women from minority groups are generally even more vulnerable to the consequences of denial of citizenship.¹⁰¹ In the UK, next to English, sufficient fluency in Scottish Gaelic or Welsh satisfies the language requirements for citizenship.

Names of candidates

When translating or making a transliteration of names of candidates, standards should be set and the opinion of the candidate taken into account. This problem can become more important when the translation involves a transliteration from Latin in Cyrillic characters.¹⁰²

Party Registration and Administrative Use of Minority Languages during Elections

In the communication with the state, there is no legal ground to demand the use of other languages than the official language of the state. As pointed out in several ECtHR decisions, there is no unqualified obligation for public authorities to accept documents in R/M languages.¹⁰³ Fernand de Varennes, United Nations Special Rapporteur on minority issues, states: 'However, under a general non-discrimination provision contained in Article 26 of the International Covenant on Civil and Political Rights and other documents, this type of function is an example of an administrative activity by public authorities. When dealing with a numerically important or territorially concentrated minority, it could be described as unreasonable for public authorities not to use the appropriate minority language to some degree. This means that under the sliding-scale model of what is "reasonable" or "appropriate", public authorities would have to use the minority language for the registration of documents and in other aspects of the electoral process as may be required in consideration of what is non-discriminatory.'¹⁰⁴

Non-partisan election Observers

A systematic follow-up of EU Election Observation Missions and their reports in support of the whole electoral cycle, ensuring effective implementation of their recommendations, as well as the reports of other election observation bodies (eg OSCE/ODIHR) is a cornerstone of effective support to democracy on EU level.¹⁰⁵ The UN Forum on Minority Issues, 2009 (A/HRC/13/25, 2010), par. 10: 'Governments should take effective measures to end discrimination. They should consider, for instance, instituting independent monitoring and complaints mechanisms designed to prevent discrimination in voting, vote

¹⁰¹ F. de Varennes, *Language Rights of Linguistic Minorities, A Practical Guide for Implementation* (Geneva, March 2017).

¹⁰² Taapsi Ramchandani e.a ed., *The next generation of accessible voting, Designing election systems for language access* (Draft – July 10, 2017) at: civicdesign.org.

¹⁰³ See *Fryske Nasjonale Partij v. Netherlands* above.

¹⁰⁴ F. de Varennes, 'The Existing Rights of Minorities in International Law', in Kontra e.a. eds, *Language: A right and a resource: Approaching linguistic human rights* (Central European University Press 1999).

¹⁰⁵ Council Of The European Union, 2012 Strategic framework on human rights and democracy, 11855/12.

fraud, intimidation and similar acts that inhibit the effective participation of all, especially members of minorities, in electoral activities. Such mechanisms might include, inter alia, ombudspersons, independent electoral commissions and/or free legal services. These mechanisms should be made available in the geographic regions and languages of minority communities, and should be adequately resourced.’

In the Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations, is stipulated that Non-partisan election observers must ‘foster the participation of all segments of the population, including indigenous peoples, national minorities, ...’¹⁰⁶

The reports of such missions must treat the position of minorities during the elections: ‘Non-partisan election observation and monitoring by citizen organizations should evaluate whether electoral related processes are free of discrimination proscribed by the national legal framework and the country’s international human rights obligations, including whether equality before the law and equal protection of the law is honored in the electoral context, so that universal and equal suffrage of electors and those seeking election are safeguarded. The organizations endorsing this Declaration pledge to include findings and recommendations in their reports concerning the participation in election processes of women, youth, indigenous peoples, national minorities and other traditionally underrepresented portions of the population, such as, those with disabilities and internally displaced persons (IDPs), as well as concerning steps taken by authorities, electoral contestants and other actors to encourage full participation of such groups and/or to remove barriers to their participation, including those affecting voter registration, candidate selection and qualification, voting and receiving accurate and adequate information in minority languages in order to make informed electoral choices.’¹⁰⁷

It is advisable to carry out a periodical review in order to ensure that minority rights adequately reflect developments in society, and the reports of election observers play an important role in this assessment.¹⁰⁸

The *International Obligations for Elections, Guidelines for Legal Frameworks* contains a set of checklists for election Observers including a checklist on Equal Opportunities for Minorities and Marginalized Groups.¹⁰⁹

5.2 CASE STUDY ON BULGARIA

Bulgaria did not ratify the ECRML. The population is 84.8% Bulgarians, Turks 8.8%, Roma 4.9%, others 1.5% (including Russian, Armenian, Tatars, and Vlach). (2011 census). There are Greek-speaking

¹⁰⁶ Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations, <https://www.gndem.org/gndem.org/declaration-of-global-principles/>.

¹⁰⁷ Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations, <https://www.gndem.org/gndem.org/declaration-of-global-principles/>.

¹⁰⁸ Advisory Committee On The Framework Convention For The Protection Of National Minorities, Commentary On The Effective Participation Of Persons Belonging To National Minorities In Cultural, Social And Economic Life And In Public Affairs, Adopted on 27 February 2008, ACFC/31DOC(2008)001.

¹⁰⁹ D. Tuccinardi ed., *International Obligations for Elections, Guidelines for Legal Frameworks*, Stockholm: International IDEA 2014, p. 300.

enclaves in Bulgaria. Other languages spoken include Aromanian, Crimean Tatar, Deli Orman Gagauz, Judezmo, Maritime Gagauz, and Torlakian.¹¹⁰ Bulgaria did ratify the FCNM.

In Bulgaria, minority parties are explicitly prohibited.¹¹¹ However, this provision has been subject to court decisions by the Constitutional Court, and should be interpreted that it only prohibits ‘those parties that explicitly restrict their membership within one ethnic group’.¹¹²

Art. 181. (2) of the Bulgarian Electoral Code states: ‘The election campaign shall be conducted in Bulgarian language.’¹¹³ This Code is also applicable to elections for members of the European Parliament for the Republic of Bulgaria (Art. 2). The ban on the use of national minority languages to campaign in the Bulgarian Electoral Code (adopted in March 2014), is a rule contrary to international standards. The provision in Art. 181 (2) was criticized by the Venice Commission and OSCE/ODIHR.¹¹⁴ According to the Bulgarian government, the rules in the Electoral Code on the use of the Bulgarian language during election campaigns do not affect normal discussions inside minority groups, including on election topics.¹¹⁵ During the elections of 2017, the District Election Commissions received 19 complaints regarding the use of the Turkish language.¹¹⁶ Complaints mean that other parties, police and election organizers complained about or banned the use of Turkish. For example, ‘on 9 March, the RB [Reformist Bloc, political party] filed a complaint to the DEC [District Election Commissions] that the DPS [Movement for Rights and Freedoms, political party] conducted a campaign event in Dobrich in Turkish. On 9 March, in Varna, Regional Police Department filed an alert to the DEC against DOST [Union Democracy for Responsibility, Freedom and Tolerance, political party] campaigning in Turkish in village Asparukhovo. The CEC [Central Election Commission] banned one campaign advertisement as it contained subtitles in Turkish.’¹¹⁷ In the Final Report on the Early Parliamentary Elections in Bulgaria (26 March 2017) the OSCE recommended promoting effective participation in public affairs, by allowing individuals who identify themselves as belonging to national minorities to campaign in their mother tongue.¹¹⁸ The OSCE came in their Final Report on the Early Parliamentary Elections in Bulgaria (26 March 2017) to the recommendation that ‘education could be enhanced in scope and duration and consideration should be given to producing materials other than in the Bulgarian language as necessary.’¹¹⁹

Minorities were the scapegoat during the electoral campaigns of political parties. In a footnote of the OSCE report is stated: ‘On 3 March, in Sofia, UP [United Patriots, political party] representatives used highly inflammatory language to describe actions of the Turkish minority and DPS and DOST. On 5 and 12 March, on Channel 3 during a paid GERB [Citizens for European Development of Bulgaria, political party] interview, the Roma community was portrayed in a negative way. On 13 March, a BNT [Bulgarian

¹¹⁰ Ch. Moseley, ed. *Atlas of the World’s Languages in Danger. Memory of Peoples* (3rd ed.), Paris: UNESCO Pub. 2010.

¹¹¹ Bulgarian Constitution, Art. 11(4); Political Parties Act, Art. 5; N. Kaczorowski (OSCE/ODIHR), *Minority Participation In Electoral Processes: Summary Of Findings*, 28 September 2007, HDIM.ODIHR/252/07.

¹¹² OMO Ilinden – PIRIN, Decision No. 1/2000, 29 Feb. 2000.

¹¹³ ‘Election Code of Bulgaria adopted on 5 March 2014’, Venice Commission, Strasbourg, 18 June 2014, Opinion No. 750 / 2013, CDL-REF(2014)025.

¹¹⁴ Venice Commission & OSCE/ODIHR, *Joint Opinion On The Draft Election Code of Bulgaria*, Strasbourg, 24 March 2014, Opinion No. 750 / 2013, CDL-AD(2014)001.

¹¹⁵ Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure, Fourth periodic reports of States parties due in 2016, Bulgaria [Date received: 3 November 2016] CCPR/C/BGR/4.

¹¹⁶ Bulgaria, Early Parliamentary Elections, 26 March 2017: Final Report, OSCE, 30 June 2017. p. 13, 22.

¹¹⁷ Bulgaria, Early Parliamentary Elections, 26 March 2017: Final Report, OSCE, 30 June 2017. p. 22.

¹¹⁸ Bulgaria, Early Parliamentary Elections, 26 March 2017: Final Report, OSCE, 30 June 2017.

¹¹⁹ Bulgaria, Early Parliamentary Elections, 26 March 2017: Final Report, OSCE, 30 June 2017. p. 8, 25.

National Television] Volya [political party] paid advert called on Bulgarian citizens to eliminate Roma votes. On 16 March, the UP used highly inflammatory language against Roma in a BNT debate.¹²⁰

At the Parliamentary elections of June 2001 the Movement for Rights and Freedoms (DPS, part of ALDE) registered with a party of national minorities, mainly ethnic Turks but also Roma, they entered the Bulgarian National Assembly with 21 seats out of 240, going up to 38 in 2014.¹²¹

5.3 CASE STUDY ON DENMARK

Denmark did ratify the ECRML in 2000 and made it applicable on the German (in Southern Jutland). Other languages spoken in Denmark are Faroese, Low Saxon, Scanian, South Jutish, and Yiddish.¹²² Denmark did ratify the Framework convention recognizing the German national minority in South Jutland.

Denmark received a positive mark from the ECRML Committee of Experts with regard to the implementation of art. 10.1.a and 10.4.c ECRML on the use of German by administrative authorities and public services. Denmark ensures that users of German may validly submit a document in German to local branches of the national authorities, and citizens may expect that public service employees have a knowledge of German in the territory in which that language is used.¹²³

The national broadcasting corporation DR expects to make political debates in election times accessible for viewers with disabilities, including using sign language and subtitles.¹²⁴

While Danish parties aim for inclusive lists, generally they did not have specific internal policies to promote women or minority candidates and, in most cases, gave local branches autonomy in the candidate nomination process.¹²⁵

Territorial reforms in 2007, incorporating the former region of South Jutland in the South Denmark region also involved the mergers of a number of municipalities in the area. These territorial reforms (art. 7.1.b ECRML) had negative effects on the possibilities of using the German language, and the Fifth report of the Committee of Experts in respect of Denmark stressed that ‘in the areas where minority language speakers live have been reduced thanks to the rules guaranteeing the presence of representatives of the German speakers in the local councils of the new municipalities.’¹²⁶ The Danish election law requires submission of signatures of voters in the amount that corresponds as a minimum to 1/175 of the total number of valid votes cast in the previous elections. No declarations of support are necessary for registering the party of the German minority.¹²⁷ The Schleswigsche Partei has a long

¹²⁰ Bulgaria, Early Parliamentary Elections, 26 March 2017: Final Report, OSCE, 30 June 2017. p. 13.

¹²¹ Roma Electoral Participation in Europe: Mention of Roma in ODIHR Election Observation Mission Reports, 2002–2007.

¹²² Ch. Moseley, ed. Atlas of the World’s Languages in Danger. Memory of Peoples (3rd ed.), Paris: UNESCO Pub. 2010.

¹²³ Fifth report of the Committee of Experts in respect of Denmark, CM(2017)117, 25 September 2017.

¹²⁴ OSCE/ODIHR Needs Assessment Mission Report, Denmark, Early General Elections, 18 June 2015.

¹²⁵ OSCE/ODIHR Needs Assessment Mission Report, Denmark, Early General Elections, 18 June 2015.

¹²⁶ Fifth report of the Committee of Experts in respect of Denmark, CM(2017)117, 25 September 2017.

¹²⁷ OSCE/ODIHR Needs Assessment Mission Report, Denmark, Early General Elections, 18 June 2015.

history, but after failing to win a seat in the 1971 national elections, the party has not participated any further on a national level, although it continues to participate in local politics in North Schleswig. At the local elections in 2013, nine representatives of the Schleswigsche Partei were elected in several municipal councils. In 2017 they were represented in the municipalities of Apenrade, Hadersleben, Sonderburg, and Tønder.¹²⁸

5.4 CASE STUDY ON ESTONIA

Estonia did not ratify the ECRML. Next to Estonians (68.7%) the population consists of Russians (24.9%), Ukrainians (1.8%), Belarusians (0.9%), Finns (0.6%).¹²⁹ Other minority languages are Romani, Yiddish, and Võro in the Võro County, all three definitely endangered.¹³⁰ Estonia did ratify the Framework convention

The Constitution stipulates that Estonian is the only official language. The Estonian sign language is recognized as an independent language in the Estonian Language Act (§ 3.2).

Residents of Estonia without citizenship are not allowed to vote in either for the Riigikogu (the national parliament) or the European Parliament but are only entitled to vote in municipal elections (Municipal Council Election Act, § 5).¹³¹ After the regained independence of the country, uncertainty with regard to nationality arose in the country. Some 147,000 people acquired between 1992 and 2007 Estonian or Russian citizenship or left the country, due to this the proportion of stateless persons was reduced from 32% to around 6.3% in 2015. A major obstacle to acquiring citizenship was the perceived difficulty of the Estonian language tests in § 8 of the Estonian Citizenship Act.

In the document *Estonia: Accession Partnership* (1997) the European Commission proposed several language-related action points but did not stress on language issues in fair and transparent elections.¹³²

Observers in Estonia reported that election-related documents were only available in the official state language.¹³³ Spots and publications in minority languages in the mass media were broadcasted in Estonia.¹³⁴

In the 2015 elections, the National Electoral Committee website contained election information only in Estonian, though some general information was also available in English. The voting instructions sent to voters, as well as information in polling stations and on ballots, were only in Estonian. Some information about Internet voting was available in Russian and English.¹³⁵ The National Electoral Committee

¹²⁸ <http://www.schleswigsche-partei.dk>, available in German, Danish and English.

¹²⁹ <http://pub.stat.ee>.

¹³⁰ Ch. Moseley ed., *Atlas of the World's Languages in Danger. Memory of Peoples* (3rd ed.), Paris: UNESCO Pub. 2010.

¹³¹ Arch Puddington, Aili Piano, Camille Eiss, Tyler Roylance, "Estonia". *Freedom in the World: The Annual Survey of Political Rights and Civil Liberties* (Freedom House / Rowman & Littlefield 2007) p. 248.

¹³² Estonia: Accession Partnership, Official Journal of the European Communities (98/C 202/03).

¹³³ N. Kaczorowski (OSCE/ODIHR), *Minority Participation in Electoral Processes: Summary of Findings*, 28 Sept. 2007, HDIM.ODIHR/252/07.

¹³⁴ N. Kaczorowski (OSCE/ODIHR), *Minority Participation in Electoral Processes: Summary of Findings*, 28 Sept. 2007, HDIM.ODIHR/252/07.

¹³⁵ OSCE/ODIHR, *Final Report on the Estonian Parliamentary Elections*, 1 March 2015.

maintained that ‘as only Estonian citizens have the right to vote in parliamentary elections, they should possess sufficient Estonian language proficiency to understand information about voting’.¹³⁶ Despite a previous OSCE/ODIHR recommendation, the electronic voting interface was in 2015 only in Estonian.¹³⁷

No Estonian language proficiency requirement has been established for members of the Riigikogu and local government councils.¹³⁸

The Estonian Language Act established in 2011 stipulates that when a foreign language is used in outdoor advertising, it must contain an identical text in Estonian and this one may not be less visible than the other language. The Language Inspectorate monitors compliance with language legislation and prosecutes complaints about possible infringements. For example, before the start of the campaign period, an oral warning was issued to a party since in an outdoor advertising party the Russian language message was more prominent than the Estonian text. Estonian public radio has broadcast election discussions in Russian on television and radio.¹³⁹

One of the outcomes of the 2017 European Union Agency for Fundamental Rights Second European Union Minorities and Discrimination Survey was that respondents from the Russian minority in Estonia indicate levels of trust in public institutions that are similar to those expressed by the general population of the country.¹⁴⁰

5.5 CASE STUDY ON GERMANY

Germany ratified the ECRML on 16 September 1998. The Charter is applicable on the Danish (in Schleswig-Holstein), Upper Sorbian (in the Free State of Saxony), Lower Sorbian (in Brandenburg), North Frisian (in Schleswig-Holstein), Saterland Frisian (in Lower Saxony) Low German, Low Rhenish, and Romani languages. Specific provisions under part III are ratified for Low German in Bremen, Hamburg, Mecklenburg-Vorpommern, Lower Saxony, and Schleswig-Holstein. Also, Yiddish and Romani are protected. Next, to these R/M languages, there is a long list of other languages or variants of German spoken in Germany, like Alemannic, Bavarian, East Franconian, Limburgish–Riparian, Low Saxon, Moselle Franconian, Rhenish Franconian, Swabian German and South Jutish.¹⁴¹

In the German electoral system voters cast two votes in the Bundestag elections. The first vote goes to a specific candidate from the voter's district, the second to a political party. The German electoral system is a mixture of the district system as known in the UK and the principle of proportional representation as used in the Netherlands. The German electoral system has a 5% threshold. Parties that do not reach that percentage do not enter the Bundestag unless they have three directly elected representatives, the

¹³⁶ OSCE/ODIHR, *Final Report on the Estonian Parliamentary Elections*, 1 March 2015.

¹³⁷ OSCE/ODIHR Election Assessment Mission Report, *Republic of Estonia Parliamentary Elections*, 4 March 2007, p. 19; OSCE/ODIHR Election Assessment Mission, *Final Report, Estonian Parliamentary elections*, 6 March 2011, p. 22; OSCE/ODIHR, *Final Report on the Estonian Parliamentary Elections*, 1 March 2015.

¹³⁸ Fourth periodic report submitted by Estonia under article 40 of the ICCPR, CCPR/C/EST/4, 2 April 2018.

¹³⁹ OSCE/ODIHR, *Final Report on the Estonian Parliamentary Elections*, 1 March 2015.

¹⁴⁰ European Union Agency for Fundamental Rights, *Second European Union Minorities and Discrimination Survey, Main results, 2017*

¹⁴¹ Ch. Moseley, ed. *Atlas of the World's Languages in Danger. Memory of Peoples* (3rd ed.), Paris: UNESCO Pub. 2010.

so-called Direktmandate. For National minorities, certain exceptions are made. Candidates and Land-lists of parties seeking to represent national minorities are exempted from collecting support signatures, the need to surpass the five-percent threshold in order to receive seats, and the need to secure the minimum level of votes to receive state funding.¹⁴² The so-called five-percent threshold in Bundestag elections does not apply to the parties of national minorities (§ 6 Abs 6 S. 2 of the Bundeswahlgesetz / Federal Electoral Act).¹⁴³ According to the Parteiengesetz (federal party law), the parties of national minorities are privileged with regard to state funding and the collection of foreign donations (§ 18 Abs 3 and 4, § 25 Abs 2 S. 1 Nr 1b Parteiengesetz).¹⁴⁴

The Electoral Act of the Land Schleswig-Holstein contains privileges for parties of the Danish minority corresponding to the rules in the Bundestag Federal Electoral Act. In other words, the so-called five-percent threshold, according to which only parties which receive at least five percent of the second votes or which have won a direct mandate in at least three constituencies are taken into account in Landtag elections, does not apply to parties of the Danish minorities in Schleswig-Holstein. In the same way, the Brandenburg State Election Ordinance (BbgLWahlV) contains privileges for parties of national minorities and the five-percent clause does not apply to the parties of the Sorbs.

Both the Brandenburg State Election Ordinance (BbgLWahlV) and the Saxon State Election Ordinance (LWO) contain a provision that makes it possible to publish election documents in the Sorbian language for the state (Land) and local elections in the Sorbian settlement area. These provisions do not apply to Bundestag and European elections. The German Government asked in their most recent report for the ECRML the Committee of Ministers to issue recommendations for the application of such rules on other relevant decision-making levels and, for example, with the possible aim to initiate an amendment to the Federal Electoral Code.¹⁴⁵

It seems the OSCE/ODIHR Election Expert Team on the 2017 elections in Germany did not address in their Final Report language or minorities issues.¹⁴⁶

5.6 CASE STUDY ON IRELAND

Ireland did not ratify the ECRML. In Ireland Irish, Scots and English are spoken. Irish, though it is an official EU language, is from a socio-linguistical point of view ‘definitely endangered’.¹⁴⁷ Ireland ratified the Framework convention

¹⁴² OSCE/ODIHR Election Assessment Mission Report, Federal Republic of Germany Elections to the Federal Parliament (Bundestag) 27 Sept. 2009.

¹⁴³ According to which only parties which receive at least five percent of the second votes or which have won a direct mandate in at least three constituencies are taken into account in Bundestag elections.

¹⁴⁴ *Nationale Minderheiten, Minderheiten- und Regionalsprachen in Deutschland*, Berlin: Bundesministerium des Innern 2014

¹⁴⁵ Sechster Bericht der Bundesrepublik Deutschland gemäß Artikel 15 Absatz 1 der Europäischen Charta der Regional- oder Minderheitensprachen (2017) submitted 19/02/2018.

¹⁴⁶ OSCE/ODIHR Election Expert Team Final Report, Federal Republic Of Germany Elections To The Federal Parliament (Bundestag) 24 Sept. 2017.

¹⁴⁷ Ch. Moseley, ed. *Atlas of the World’s Languages in Danger. Memory of Peoples* (3rd ed.), Paris: UNESCO Pub. 2010.



In advance of the 2014 European Parliament and local elections in Ireland, several initiatives were designed to assist registration authorities in compiling the register of electors. A Multilingual Prompt Card was translated into 17 languages to facilitate staff engaged by registration authorities in their door-to-door registration work. The Prompt Card was available in Irish. Two information leaflets were updated which are available on several government websites and available also in Irish. A leaflet 'How Members of Local Authorities are Elected' was produced in 17 languages.¹⁴⁸ The brochure 'How Ireland's MEPs are Elected' was produced in 14 EU languages.¹⁴⁹

5.7 CASE STUDY ON THE UNITED KINGDOM

The United Kingdom ratified the ECRML in 2001, and an extension was made for the Isle of Man in 2003. The languages protected in the UK are Cornish, Irish, Scots, Ulster-Scots, Scottish Gaelic, Welsh, and Manx. The UK did ratify the Framework convention.

The electoral legislation is enacted for the whole of the UK, although certain aspects are regulated differently for Wales, Scotland and Northern Ireland. There are two registers for political parties, one for Great Britain and one for Northern Ireland. Ballot papers and other materials are available in English and Welsh in Wales (under the 1993 Welsh Language Act). The Electoral Commission works within the framework of the Welsh Language Standards set by the Welsh Language Commissioner.¹⁵⁰

Political parties must register with the Election Commission. This means that the name of a party, and its description, are registered, and these determine how party candidates are listed on the ballot papers. A party name may not be longer than six words. However, it is possible to register a party name in English and Welsh (in Great Britain)¹⁵¹ or in English and Irish (in Northern Ireland)¹⁵², albeit with a limit of six words for each language, and both names will appear on the ballots. It is also possible to register a name in Welsh or Irish without translation. The description 'Welsh Labour Party Candidate' will become 'Ymgeisydd Plaid Llafur Cymru'.¹⁵³ A party description is an optional identity mark that can be registered in addition to the party name. A voter should be able to recognize the party from the description. Independent candidates can place the word 'Independent' (or 'Annibynnol' if standing in Wales) appearing next to their name on ballot papers.¹⁵⁴

¹⁴⁸ Arabic, Chinese, Czech, French, German, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Romanian, Russian, Slovakian, Spanish; at: <https://www.sdcc.ie/en/services/our-council/elections-and-voting/local-elections/> ; But it seems local governments are only distributing a limited number of languages: <http://www.donegalcoco.ie/services/registerofelectors/how%20meps%20and%20local%20authority%20members%20are%20elected/>

¹⁴⁹ Ireland's Combined 5th, 6th and 7th Periodic Report, International Convention on the Elimination of All Forms of Racial Discrimination, ICERD/C/IRL/5-9, 2 Oct. 2018. Available in: Spanish, Slovakian, Romanian, Portuguese, Polish, Lithuanian, Latvian, Italian, Hungarian, German, French, Czech. <https://www.sdcc.ie/en/services/our-council/elections-and-voting/>

¹⁵⁰ D. Mac Sithigh, 'Official status of languages in the UK and Ireland', Common Law World Review, (2018) 47(1).

¹⁵¹ Political Parties, Elections, and Referendums Act 2000, sch 4, para 2(1).

¹⁵² Political Parties, Elections and Referendums Act 2000, sch 4, para 2(3).

¹⁵³ <http://search.electoralcommission.org.uk/Registrations/PP53>.

¹⁵⁴ <https://www.electoralcommission.org.uk>.

It seems the OSCE/ODIHR Election Expert Team on the 2015 and 2017 elections in the UK did not address in their Final Report language or minorities issues.¹⁵⁵

In advance of the 2015 elections, the Electoral Commission undertook via several forms of media a campaign to alert voters about the new requirement to individually register, in several languages including in Welsh and some 20 foreign languages.¹⁵⁶

While informing on constituency-related electoral matters, the Welsh language broadcaster S4C, as well as the BBC, must strictly follow due to impartiality.¹⁵⁷

After the UK referendum on membership of the European Union, AEGEE Election Observation recommended providing example translations of the ballot paper in minority languages: 'Information on how to vote was available in minority languages in all polling stations, which polling station staff appeared to be well informed about. However, except for the Welsh language in polling stations in Wales, no translations were available of the ballot paper, which could be an impediment to some voters in areas with large minority populations.'¹⁵⁸

An assessment of the Welsh-language provision on party websites during the 2007 Welsh Assembly elections, the conclusion was that the Welsh language was highly marginalized. While Welsh-language elements were identified on ten of the 18 websites, only four websites attempted to make a bilingual provision. Only one web site offered a fully Welsh-language content.¹⁵⁹ The 2016 National Assembly for Wales and Police and Crime Commissioner Elections report of the Welsh Language Commissioner stressed on complete equality of digital content on government websites in English and Welsh. The main findings were: an increase in the range of documents that were available in Welsh; every registration form was available in Welsh through the availability of forms was inadequate and finally, there was an inconsistency in announcing election results bilingually.¹⁶⁰

¹⁵⁵ OSCE/ODIHR Election Expert Team, Final Report, United Kingdom of Great Britain And Northern Ireland Early General Election, 8 June 2017; OSCE/ODIHR Election Expert Team Final Report, United Kingdom of Great Britain and Northern Ireland General Election, 7 May 2015.

¹⁵⁶ The languages are not mentioned in the OSCE report. OSCE/ODIHR Election Expert Team Final Report, United Kingdom of Great Britain and Northern Ireland General Election, 7 May 2015.

¹⁵⁷ OSCE/ODIHR Election Expert Team, Final Report, United Kingdom of Great Britain and Northern Ireland Early General Election, 8 June 2017.

¹⁵⁸ AEGEE Election Observation United Kingdom Referendum on membership of the EU, 23 June 2016, Final Report.

¹⁵⁹ D. Cunliffe made an assessment of 18 of the websites of the 19 parties contesting the election. 'Welsh-language provision on party websites during the 2007 Welsh Assembly election', *Aslib Proceedings*, (2008) Vol 60, No 3, p.199-215.

¹⁶⁰ Welsh Language Commissioner, *2016 National Assembly for Wales and Police and Crime Commissioner Elections*, Feb. 2017.