Socio-Cultural and Economic Rights, Education, and the Media in the Context of European Minorities: 
International Developments in 2020

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Abstract

This contribution accounts for the key 2020 international developments related to social inclusion, economic and cultural rights, education and issues concerning media in the context of European minorities. Among the most significant advancements are the recognition of the associative element of the right to peaceful assembly in General Comment No. 37 to the ICCPR; clarifying the scope of positive obligations in two ECtHR cases, those of Adám and others v. Romania concerning education in minority languages and of Hudorovič and others v. Slovenia related to accessing fresh water and sanitation by minority communities. No least significant is speeding up the process of elaborating a concrete definition of “a minority” by the UN Special Rapporteur on Minority Issues.

Keywords: categories of minorities, positive obligations, minority language education, self-identification, right to fresh water and sanitation

I. INTRODUCTION

This contribution overviews the 2020 international developments in the area of socio-cultural entitlements, including cultural activities and facilities, economic rights and education, as well as the issues of media or, more broadly, freedom of expression, from the perspective of the members of European minorities. The article departs from the developments inside the UN, continues with the advancements within the Council of Europe, the EU, and the OSCE. The author mostly reflects on the advancements related to implementation of the legally binding articles in international human rights law, i.e. Art.8, 11-13 of the 1992 European Charter for Regional or Minority Languages (ECRML),¹ as well as Art. 5, 6 and 9, 12-15 of the Framework Convention for the Protection of National Minorities (FCNM).²

II. UN

A. UN Human Rights Committee

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On 17 September 2020, the new General Comment No. 37 to the ICCPR on the right of peaceful assembly (article 21) was adopted by the UN Human Rights Committee (UN HRC).\(^3\) It proclaimed several significant principles of implementing the right to assemble peacefully vis-à-vis the rights of individuals belonging to ethnic, religious or linguistic minorities.

For the first time ever, the associative element of the right of peaceful assembly is officially proclaimed by the HRC: this right protecting the non-violent gathering by persons for specific purposes, principally expressive ones, “constitutes an individual right that is exercised collectively” (para. 4). This associative element is recognized as “inherent to the right” (Ibid.) akin to the collective element in the right of persons belonging to ethnic, religious or linguistic under Art. 27 of the ICCPR to enjoy language, culture and practice religion in community with others. This is an asset for expressing group self-government sentiments since “the pursuits of self-determination” should not be used as a ground for restricting the peaceful assembly, neither directly nor implicitly (para. 49). The principle of non-discrimination in implementing the right to assemble is reinstated by spelling out that the right to non-discrimination “protects participants against discriminatory practices in the context of assemblies (arts. 2 (1), 24 and 26)” (para. 100). Non-discrimination covers all the process of conducting the assemblies, starting with the mere entitlement to this rights belonging to everyone (para. 5), extending to sanctioning organizers or participants for unlawful conduct (para. 67), as well as to impermissibility of banning the assemblies under antiterrorist legislation, especially if the definitions of the crimes in question are discriminatory (para. 68). Training in human rights is expected from the law enforcement officials engaged in policing of assemblies with the view of “sensitizing” the latter “to the specific needs of individuals or groups in situations of vulnerability” (para. 80).

\(\text{A. UN Committee on Economic, Social and Cultural Rights}\)

The 2020 annual report of the UN Committee on Economic, Social and Cultural Rights (ICESCR)\(^4\) reflected on the consultation process regarding the draft General Comment on land (para. 51) remarking that the discussants considered the “particular concerns” of various groups such as indigenous peoples regarding questions such as land ownership, free, prior and informed consent, and landlessness (para. 52). The Report tackled the theme of language and education which resulted in recommendation to “move towards the recognition” of minority languages in educational systems,


“including, when feasible, education of and in these languages” (para. 6). The urgency of promoting and revitalizing indigenous languages as “a paramount part of cultural rights” was emphasized (para. 2). The Report comments on social inclusion referring to the concept of “leaving no one behind” which implies “a commitment to prioritize the needs of the most disadvantaged and marginalized” (para. 66).

B. UN Special Rapporteur on Minority Issues

The 2020 Thematic Report of the UN Special Rapporteur on Minority Issues to the Human Rights Council focused on education, language and the human rights of minorities. The Report acknowledged the work on the definition should target the elaboration of a concept conforming “with the general rule of treaty interpretation and the ordinary meaning of the word “minority” in its “context and in the light of its object and purpose” in the absence of a clearly intended special meaning, as well as a working definition that is consistent with the Human Rights Committee’s own views and interpretation of article 27 of the International Covenant on Civil and Political Rights” (para. 69). The Special Rapporteur also recommended drafting “a series of practical guidelines” concerning the “content and implementation” of the minority right to use of their languages in the field of education which would built upon the basic principles contained in the document “Language Rights of Linguistic Minorities: A Practical Guide for Implementation” (para. 81).

The discourse on categorization of minorities continued in the 2020 Report to the General Assembly. The highlight of this Report is the account of the thematic study on the significance and scope of the four categories of minorities – national or ethnic, religious and linguistic accompanied by a number of recommendations for the UN agencies and beyond appealing to “review their approaches in relation to the above categories so as to avoid confusion and contradictions” (para. 78). These four categories are seen like this:

1. “A linguistic minority exists objectively regardless of constitutional or legal status or recognition. Languages include non-verbal languages, such as sign languages, as well as languages that may have little or no literary tradition or even alphabet or script, and may be orally unintelligible from others, even if they share an identical script. Dialects within a same language according to prevailing scientific views do not constitute distinct languages” (para. 76a);
2. The category of “religious or belief minorities” includes “a wide range of religious, non-religious, non-theistic and other beliefs, such as unrecognized and non-traditional religions or beliefs, including animists, atheists, agnostics, humanists, “new religions”, etc.” (para. 76 b);

3. An ethnic minority is a “broad, inclusive, category bringing together individuals on the basis of origin, lineage or culture and therefore includes nomadic and caste-based groups” (para. 78 c);

4. A national minority “seems to refer to an ethnic or linguistic minority with traditional or long-standing presence on the territory of a State” (para. 78 c).

“Free self-identification of individuals for all of the above categories” is significant (para. 77). “Wherever possible the term “religious minorities” should be replaced with “religious or belief minorities” (para. 76 b).

C. UN Special Rapporteur on the rights of indigenous peoples

The 2020 Report of the Special Rapporteur elaborated on the impact of this mandate on the protection of indigenous rights. It concluded that the mandate “continues to play an essential role in promoting the individual and collective rights of indigenous peoples enshrined in international human rights instruments” (para. 81 a) yet “the situation of the individual and collective human rights of indigenous peoples in all regions of the world remains a serious cause for concern” (para. 81 b). It called on the member states to increase their support to this mandate and to develop ways to encourage all countries to cooperate effectively with the mandate holder (para. 81 c and d).

III. THE COUNCIL OF EUROPE

A. The European Committee of Social Rights

In 2020, the European Committee of Social Rights (ECSR) issued a decision on the merits of case *European Roma Rights Centre (ERRC) and Mental Disability Advocacy Centre (MDAC) v. Czech Republic*, which is of reference to the issue of socio-cultural and economic rights of the members of minorities, the ECSR elaborated on the issue of culture-sensitive services. The complainant organisations alleged violations of Art.17 of the 1961 European Social Charter (ESC) because the state had not provided opportunities for de-institutionalisation of care for children under 3 years of age, in particular children with disabilities, and of Roma origin (para. 2). They argued against the widespread practices of placing young children in child centres thus failing to provide non-

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institutional and family-like alternative forms of care (para. 131). The ECSR unanimously found violations of Art. 17 of the ESC (the right of mothers and children to social and economic protection) in incapacity of legal framework of institutional care to protect the children under the age of 3 coupled with inadequate services in family- and community-based family-type settings which would allow to “progressively de-institutionalise the existing system of early childhood care.” (para. 178). With regards of culture-sensitive services, the ECSR found a violation of the said Art.17 of the ESC in this case due to a lack of necessary measures to ensure the right to appropriate protection and appropriate care services of Roma children (and also children with disabilities) under the age of 3 (Ibid.).

B. Framework Convention for the Protection of National Minorities

In 2020, five state periodic reports were submitted, three opinions were adopted by the FCNM Advisory Committee and four advisory opinions issued in 2019, were promulgated. Advancements can be found in eight resolutions issued by the Committee of Ministers: on Denmark, Finland, Georgia, the Netherlands, Poland, Portugal, the Russian Federation and Ukraine. The recommendations highlighted several significant issues:

1. Definitions were a matter of concern in Recommendations on Denmark when the Committee suggested reconsideration of legislative approach differentiating immigrants and their

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descendants of Western and non-Western origin. Thus is because of possible discrimination with regards to birth or citizenship which is reflected in the so-called “Ghetto law”.18

2. Calling for integration for the purposes enhancing tolerance and intercultural understanding was featuring in almost all the recommendations under consideration, except the one on Portugal. Russia was reminded that programmes targeting intercultural understanding and societal integration should see minority communities “as an equal … part of society.” Denmark was called to undertake measures promoting “intercultural understanding and dialogue” at local level in German-inhabited areas. It was recommended to create favourable environment, in particular for Roma individuals with “proactive integration and inclusion measures”. Finland was suggested undertaking a “sustainable approach” in funding activities promoting tolerance and intercultural dialogue. Georgian society was considered by the Committee to likely benefit from policies focusing on “strengthening the integration of persons belonging to national minorities.” Georgia was recommended to “condemn … all instances of intolerance, in particular in public discourse” and to review teaching materials with the view of promoting tolerance and intercultural dialogue. The Netherlands was also recommended to promote “intercultural understanding and integration of society” with the remark that “a key element to build an integrated, cohesive society is to ensure that all its components are listened to”. The Committee expressed concerns with “the lack of trust between Roma, Sinti and Traveller communities on the one hand and representatives of the authorities on the other hand” in the Netherlands. Likewise, Ukraine was recommended to promote “respect and intercultural understanding among different groups in society as a whole” while increasing efforts “to combat manifestations of any kinds of intolerance”. Poland was recommended to take resolute measures promoting “intercultural dialogue and mutual understanding between the majority and the different minority groups”, condemning “at the highest political level all manifestations of intolerance and ethnically motivated hostility in political discourse and in the media and promote actively a sense of belonging to a shared country”.

3. The issue of free self-identification of the members of national minorities becomes more evident which can probably be addressed to the on-going process related to the complaint by the group of Sami indigenous people to the UN HRC related to the indigenous autonomy regarding self-identification.19 The need to ensure that persons belonging to minority communities are aware of the

18 The practices known as Ghetto law imply the plans to do away with the areas heavily inhabited by immigrants in Denmark. As the result, individuals of immigrant background may be offered to leave their residence which is potently causing discrimination on the grounds of citizenship, and ethnic affiliation vis-a-vis the place of residence. See e.g., Facing Eviction, Residents Of Denmark’s ‘Ghettos’ Are Suing The Government (August 2020), at: <https://www.npr.org/2020/08/15/900874510/facing-eviction-residents-of-denmarks-ghettos-are-suing-the-government?t=1609851241537.>

right to free self-identification was highlighted for Denmark, especially to prevent Roma individuals from refraining “from identifying themselves publicly as Roma” and thus from “showing their identity”. Developing a system of voter registration to the Sami Assembly of Finland is a recommendation targeting at striking “an adequate balance between the interest of the community in preserving its structures of self-governance on the one hand, and the principle of free self-identification on the other.” Consensual legislative reforms, ratification of ILO Convention No. 169 on Indigenous Tribal People, as well as and the Nordic Sami Convention were indicated as the means to ensure Sami cultural and institutional autonomy in Finland. Poland was recommended to protect and promote “cultures and identities of persons belonging to national minorities”. Georgia and Russia were recommended to ensure that the forthcoming population censuses take full account of the principle of free self-identification. In Georgia, progress was acknowledge in relation to minority self-identification via personal names, since transliteration of names, according to the Committee, ”appears to be a resolved matter as no complaints were reported recently”.

4. The theme of combating racism and xenophobia also remains recognizable. Denmark should, in the opinion of the Committee, renew action plan against racism with the goal of monitoring of hate speech “in political and public discourse”. Finland should increase resources for law enforcement bodies dealing with hate crime. Georgia was reminded of a need in “a clear commitment on the part of the authorities” to combat hate speech which necessitates necessary arranging training on, in particular, the standards of freedom of expression as protected by the ECtHR for the authorities. The Netherlands were recommended to combat racism, Islamophobia and anti-Semitism by increasing efforts counteracting hate speech and hate crime. Poland should “effectively monitor cases of discrimination, hatred and racism,” undertaking efforts targeted at awareness-raising with respect of remedies available to victims the said offences. Improving remedies available to victims of discrimination, hatred and racism remains topical for Portugal. Russia was recommended to take resolute measures to prevent and combat “racially and ethnically motivated acts, including those against persons from the North Caucasus and against migrants”. Ukraine should investigate and sanction the instances of racism, xenophobia and hate speech.

5. The issues of freedom of speech and the media in a minority context are identifiable in almost all the recommendations, except on Finland and Portugal. Denmark was recommended to eliminate prejudice against the “editorial independence of the press, an assessment of the way persons belonging to minority communities as well as migrants are portrayed in the media”. Georgia should provide persons belonging to national minorities “access to internet, in particular in remote areas, and report publicly on the internet coverage in Georgia,” especially in the light of the digital strategy implemented by the Public Broadcaster. Russia was urged to abstain from arbitrary infringing on the
freedom of expression of persons belonging to defend the rights of national minorities, “both online and offline.” It was further recommended to provide access to the media for persons belonging to minorities with respect of licences for TV and radio broadcasting “in minority languages at local level” and to account for “the various needs and habits of media consumers.” Ukraine should take measures ensuring that persons belonging to national minorities “have wider access to media available in their own languages”.

6. Integration of Roma in socio-economic life also remained on the agenda in recommendations under review, except on Denmark, Georgia and Finland. Poland was recommended to adopt and implement Roma Integration Programme for 2020 onwards. Denmark should take measures aimed at integration of Roma, “including those living in Denmark for several generations” and strive towards “a more comprehensive and efficient approach to the poverty problems of those concerned, most of whom have a Roma background”. The urgency of combating anti-Gypsyism as a phenomenon relevant for integration in social life was emphasized for Poland and Russia. In Poland and in Portugal, Roma was acknowledged to be the group particularly exposed to discrimination. Russia was recommended to elaborate action plan targeting at “full and effective equality of the Roma covering all relevant areas” and, in particular, to undertake effort to stop “the continued serious violation of rights of Roma children in schools and to redouble efforts to remedy other shortcomings faced by Roma children”.

7. Improving implementation of minority socio-economic rights is also a matter of concern. A “structural lack of data and the next census is expected to be conducted in accordance with the 2020 World Round of Population and Housing Census Programme” was found in Georgia. Georgia should thus ensure that persons belonging to minorities “benefit from the infrastructure projects carried out” especially in areas which had been traditionally inhabited by these persons or where they live in substantial numbers. The issue of integration of persons belonging to national minorities “in the social and economic life of the country including through the development of infrastructure” was seen as a priority for Georgia which was recommended to promote “equal access to the labour market, medical and social services to persons belonging to national minorities”. Finland was recommended to extend the mandates of Non-Discrimination Ombudsman and National Non-Discrimination and Equality Tribunal “to the area of employment, grant the latter the right to award compensation”. The theme of economic rights was further applied to the situation of specific minority groups. Socio-economic status of indigenous peoples is a matter of concern for Finland and Russia. Finland was urged to improve decision-making decisions on the use of traditional Sami land in consultation with the Sami. Clarifying the statutory rights related to Sami-language health care and welfare services, both inside the Sami homeland and outside was also seen as a matter of further improvement in Finland. Russia
should provide opportunities for the indigenous peoples’ “effective participation in matters concerning them, including the use of land and resources”. The situation of the Swedish-speakers in Finland requires guarantees of accessing health-care and welfare services in the Swedish language. Special efforts should be invested in Finland in combating “any intersectional discrimination against Swedish-speaking children, the elderly, and persons with disabilities using such services”. The most significant number of recommendation regarded the socio-economic right of Roma individuals. Promoting Roma participation in economic and social life was found to be relevant for Poland, Portugal, and Russia. Ensuring that allocated funds are spend exactly for the purposes of improving the housing conditions of Roma is significant for Poland. Likewise, Portugal was recommended to develop “affordable and adequate housing conditions for vulnerable Roma communities” including the rehousing of those Roma individuals who are still living in substandard conditions. Portugal should implement additional affirmative measures in the field of Roma employment. Russia was recommended to ensure “adequate access to housing, health services and employment, including through targeted vocational education and training” for the Roma individuals.

8. A number of more general recommendations related to promoting minority cultures. Denmark should provide “an appropriate level of visibility of the German culture” vis-à-vis the Danish education system. The Netherlands were recommended to ensure that the 2019-2023 Administrative Agreement on the Frisian Language and Culture “results in substantial and lasting improvements for the rights of persons belonging to the Frisian national minority”. Portugal was recommended extending the scope of the programme on Intercultural Municipal Mediators to cover more municipalities and the professional status of socio-cultural mediators. Supporting cultural activities of NGOs and national cultural autonomies was seen as a matter of concern for Russia.

9. Finally, the significant number of recommendations related to education in a minority context. 9 a. General issues. Finland should “consolidate the support for Sami language teaching, paying particular attention to language nests, distance education, and teacher training”. The efforts of Georgia were acknowledged, related to the special innovative “1 + 4” program implemented in order to facilitate access to higher education for the members of national minorities. Yet Georgia should improve teaching materials and professional development of teachers; extend the teaching in and of languages spoken by numerically smaller minorities so that it would cover more schools and include more hours. Improving teaching materials in minority languages is also topical for Poland where “teacher training, with a particular focus on multilingual education” still remains a matter of concern for Georgia. Ukraine should ensure that teaching in minority languages does not suffer from the processes of regionalization processes and from the establishment of large hub schools.
recommended to ensure that “knowledge about national minorities, including about their histories, is provided in education, in particular in teaching and learning materials”.

9 b. Bi- and multilingual education. Georgia was recommended to develop and monitor “a multilingual education model adapted to the Georgian context and implement it at pre-school, primary and secondary levels”. Netherlands’ efforts were acknowledged in implementing trilingual schooling which led to increasing the number of trilingual schools, expanding the Network of Trilingual Schools, and enriching the collection of methods in multilingual teaching. Russia was recommended to strengthen bilingual and multilingual teaching approaches in “teaching in and of minority languages from kindergarten to higher education”.

9 c. Ensuring the status of the concrete minority languages in teaching is also a matter of concern. The Netherlands should enhance the Frisian language teaching at preschool, secondary school, and teacher education levels as well as to assess the need for “providing Frisian language teaching outside the Province of Fryslân”. In Poland “securing the availability of qualified teachers, in particular in the Kashubian language” should be improved.

9 d. Strengthening opportunities of schooling for Roma is topical for Poland which should expand the Roma school assistants programme and “increase participation of Roma children, especially in preschool and in secondary education”. Portugal was recommended to take affirmative measures targeted at inclusion of the Roma individuals in the field of education by inter alia ensuring school attendance and reducing “school absenteeism and early dropping out among Roma children”. Russia should eliminate practices leading “to the continued serious violation of rights of Roma children in schools and to redouble efforts to remedy other shortcomings faced by Roma children”.

C. European Charter for Regional or Minority Languages

The developments within the ECRML can be distilled from the analysis of the Recommendations submitted in 2020 on Armenia, Croatia, Montenegro, the Netherlands.

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20 Recommendation CM/RecChL(2020)6 of the Committee of Ministers to member States on the application of the European Charter for Regional or Minority Languages by Armenia (8 December 2020), at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a0a39f>.

21 Recommendation CM/RecChL(2020)7 of the Committee of Ministers to member States on the application of the European Charter for Regional or Minority Languages by Croatia (8 December 2020), at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a0a393>.

22 Recommendation CM/RecChL(2020)4 of the Committee of Ministers to member States on the application of the European Charter for Regional or Minority Languages by Montenegro (8 December 2020), at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a0a392>.

23 Recommendation CM/RecChL(2020)3 of the Committee of Ministers to member States on the application of the European Charter for Regional or Minority Languages by the Netherlands (23 September 2020), at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809fab3c>.
These recommendations raised several substantive issues.

Firstly, the need for the enhancement of minority language teaching and education was emphasized with regards of almost all the states under consideration. The recommendation on Sweden stands out for being very elaborate with respect of education vis-à-vis the minority languages. Thus, the significance of the needs-based approach towards strengthening education of or in all minority languages was emphasized which would account the situation of each of the minority languages (para. 2). Efficiency of “mother tongue” education was highlighted which should lead to achieving the pupils' mature literacy in the languages concerned” (para. 3). The strengthening of “bilingual education available in Finnish and Sami” as well as establishing bilingual education in Meänkieli was also emphasized (para. 4).

When it comes to other six states, the particular emphasis was put on several topics related to minority-language education.

a. strengthening pre-school education in minority languages in Armenia and the Netherlands. Armenia has to strive towards providing “at least a substantial part” of pre-school education in Assyrian, Greek, Kurdish and Yezidi (para. 1) and the Netherlands ought to “extend the offer” of the said education in Limburgish and Low Saxon (para. 3).

b. improving minority language teaching in primary and secondary education is an issue in need of further elaboration. Such a matter of concern is relevant with regards of general minority-language education in Armenia (para. 3), Montenegro with respect of introducing Romani language in education (para. 2), the Netherlands concerning teaching of Frisian (para. 1) and developing teaching of Limburgish and Low Saxon as regular school subjects (para. 3), Slovenia regarding Romani (para. 2), the United Kingdom vis-à-vis the Scottish Gaelic education (para. 2).

c. improving teacher training and teaching materials is still topical for Armenia (para. 2), Montenegro with respect of reaching in Romani (para. 2), for Sweden with regards of developing teacher training according to the needs of the speakers (para. 5), and for the United Kingdom concerning, Scottish Gaelic education (para. 2).

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24 Recommendation CM/RecChL(2020)2 of the Committee of Ministers to member States on the application of the European Charter for Regional or Minority Languages by Slovenia (23 September 2020), at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809fab3b>.
25 Recommendation CM/RecChL(2020)5 of the Committee of Ministers to member States on the application of the European Charter for Regional or Minority Languages by Sweden (8 December 2020), at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680a0a395>.
26 Recommendation CM/RecChL(2020)1 of the Committee of Ministers to member States on the application of the European Charter for Regional or Minority Languages by the United Kingdom (1 July 2020), at <https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809ee5cf>.
Secondly, the theme of the media the context of minority language and culture was actively addressed to. Croatia is still challenged by the need to promote “awareness and tolerance vis-à-vis the minority languages and the cultures they represent” in the media (para. 2) as well as to increase the duration and regularity of broadcasting in TV and radio in the national broadcast channels by “allocating time slots to each minority language” (para. 5). Similar recommendations also regraded the needs of protecting special language groups in the media. Thus, Armenia was recommended introducing the broadcasting in Assyrian, Greek, Kurdish and Yezidi as a public television programme run regularly and with sufficient duration (para. 3) and Slovenia ought to allocate sufficient resources for broadcasting TV programmes in Hungarian and Italian (para. 3).

Thirdly, the issue of recognizing minority cultures was taken up through references to the need of adopting names of places in minority languages in Armenia (para. 5) and a more elaborate recommendation to promote using the minority language scripts in heritage signage in Croatia (para. 1).

Fourthly, the recommendations touched upon the significance of public support of cultural activities in a minority context and the facilities related thereto. Armenia was recommended to provide adequate funding particularly those cultural activities which are carried out by the national minority associations and aim “to ensure the promotion of the minority languages, including extracurricular education” (para. 6). Sweden ought to extend the operation of the Sami language centres while also establishing similar centres “for all regional or minority languages” (para. 6). Montenegro was recommended to ensure the sustainable and adequate funding to minority language projects (para. 4).

Fifthly, the issue of social inclusion was also touched upon through more general references to tolerance, consultation, and non-discrimination. Thus, Croatia has got recommendation to take measures aiming at proactive encouraging the minority language speakers to make use of minority language education (para. 4). The Netherlands ought to adopt a structured policy in co-operation with the speakers for the implementation of the Charter with respect of Romanes and Yiddish (para. 2). Sweden is still to ensure that language is a ground for discrimination in the Discrimination Act (para. 1).

D. European Court of Human Rights

Several important judgments were delivered by the European Court of Human Rights (ECtHR) in 2020 which are of reference to the theme of socio-cultural and economic rights as well as education. The case of Mile Novaković v. Croatia27 marked the continuation of the discourse on minority

background vis-à-vis the employment in public organs and organizations highlighted in the 2019 case of *Tasev v. North Macedonia*, albeit the latter case concerned the negative aspect of minority affiliation.28 Mr. Novaković, a Croatian national of Serbian origin, argued that his dismissal from the school where he taught classes in Serbian language for students of various ethnic origins, violates his right under the ECHR Art.8, 14 and Art. 1 of the ECHR Protocol No. 12. The applicant worked in the Darda Region, an area in Eastern Slavonia which “peacefully reintegrated after the war into Croatian territory by 15 January 1998” (para. 6). In 1997/1998, the provision of the Law on Secondary Education began to be implemented stipulating that all instruction should be in Croatian language. 19 November 1998 an anonymous complaint was filed in against the applicant and three other teachers alleging that none of them used “the standard Croatian language when teaching,” as witnessed by the language inspector having attended their classes (para. 9). No teacher of Croatian origin was subject to the said inspection (Ibid.). The school received “an oral directive from the competent authority” regarding the turn to instruction in Croatian language at the end of October 1998, and the inspector’s visit had been undertaken “less than a month after that instruction had been received” (para. 12). After having first been suspended from teaching, the applicant was dismissed on 29 March 1999 based on “personal reasons” (par. 13), in particular to 1. a lack of available positions at school where the instruction in Serbian could be given which would meet his qualifications and to 2. the alleged certainty that no results of professional language training would lead to the mastering the standard Croatian by him, based on his age (55) and the 29 long experience in teaching in Serbian (par. 13). Unsuccessful in challenging his dismissal before the national courts of law, the applicant addressed the alleged violations to the ECtHR. He died on 2 June 2019, and his wife and children continued with the application on his behalf (pars. 31and 34). The ECtHR found a violation of the ECHR Art. 8 since the applicant’s dismissal interfered with his right to respect for private life (para. 57).

Violation of the ECHR Art.8 was found since the dismissal was closely linked with the applicants’ ethnic origin, since the applicant was dismissed for teaching his classes in Serbian rather than in Croatian (para. 62). The rules on using the particular language in teaching were found to be not “clear-cut” since the instruction in minority languages remained permissible under national legislation which should have had a particularly significant meaning amidst the peaceful reintegration process in Eastern Slavonia (para. 62). The fact that the undertaken language inspection targeted solely the teachers of the Serbian origin was linked with the ECRI’s findings of “a number of unjustified dismissals of members of the Serbian national minority” coupled with significant underrepresentation of members of minority groups in Croatian education (para. 63). The latter one

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“could justifiably raise an issue of compatibility with the prohibition of discrimination” (Ibid.). The ECtHR remarked that no serious consideration of the alternatives for the dismissal had been revealed in the decision of the language inspector (pars. 64 and 65). Finally, according to the ECtHR, the authorities failed to justify why the applicant could not successfully improve his language skills, although the dismissal on “personal grounds” presupposes undertaking additional training under domestic law (para. 68). Taking into account a particular post-war situation in Eastern Slavonia, the dismissal of the applicant did not meet the pressing social need in violation of the ECHR Art. 8 (para. 69).

The case of Hudorović and others v. Slovenia\textsuperscript{29} represents advancement in the area of socio-economic rights, as the ECtHR had “for the first time” invoked the ECHR Art. 8 in order to check “to what extent, if any”, it “guarantees a right of access to clean water in a case where the applicants have been legally unable to connect to the public water-distribution system”.\textsuperscript{30} From the perspective of minority rights the case is interesting because of taking up the issue of positive obligations under the ECHR Art. 8 \textit{vis-à-vis} the legitimate interests of the applicants, Mr Branko Hudorovič and his son Mr Aleks Kastelic who are of Roma ethnic origin.

More than 10\% of the population in the proximities of the Ribnica Municipality, nearby which the applicants live in Goriča vas settlement, “established in an irregular manner” (para. 13), are lacking access to drinking water (para. 7). In order to use the public sewage system, those who live outside the town have to “be equipped with their own septic tanks or individual water treatment plants installed at the expense of each facility or investor” (Ibid.). The public subsidy to rent such equipment was paid to only the limited number of low-income households (para. 8). Mr Branko Hudorovič lives in a self-made wooden hut, against which the demolition order was issued yet not executed because of \textit{inter alia} the difficulties with providing alternative accommodation (para. 10). The hut has no access to water, sewage and sanitation (para. 12). Due to the unsettled legal status of Goriča vas, the applicants could not succeed in negotiating with the authorities regarding the legitimization of their dwelling and contracting to the usage of water and sewage infrastructure (para. 13). After series of further negotiations, the applicants could benefit from the co-financing agreement with the authorities who bought and installed the water tank and provided subsidies for covering the water transportation services (paras. 15-17, 19, 22). The parties “disagreed on the subsequent course of events and the current situation as regards access to drinking water in the settlement” (para. 17): the applicants claim

\textsuperscript{29} ECtHR, Appls. Nos. 24816/14 and 25140/14, Hudorović and others v. Slovenia, judgment of 10 March 2020.
that the water tank became unusable due to mold gathered there in the course of time (para. 18) while the authorities consider that the tank had subsequently been sold (Ibid.). The Government asserted that the water tank had already been installed there, and it is a responsibility of the Ribnica Municipality to arrange spatial planning at the local level (Ibid.). The applicants addressed the ECtHR invoking the ECHR Art. 3, Art. 14 and, a fortiori, 8 when challenging insufficiency of measures undertaken by the authorities in order to provide access to safe-drinking water and sanitation for Roma communities (para. 106). The applicants’ allegations were joined with claims by other applicants living in the informal Roma settlement at Dobruškation vas in the Škocjan Municipality (paras. 24 and 77). The ECtHR was of the opinion that the “case raises mainly issues under Articles 8 and 14 of the Convention” (para. 107).

The key issue for the ECtHR regarded the scope of positive obligations to react on long-lasting lack of access to safe-drinking water which can exert effect on health and human dignity thus “effectively eroding core rights under Article 8” (para. 158). “Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference” (para. 139). In order to decide on the existence and content of the said positive obligations, the ECtHR had to consider if the authorities’ actions could maintain a fair balance between the competing interests of the individual and of the community as a whole (para. 140). Having assessed the circumstances of the applicants, on the one hand, and socio-economic situation within the state, on the other hand, the ECtHR found no violation of the ECHR Art. 8 (para. 159). Firstly, the states are accorded wide margin of appreciation in the matters of housing. Secondly the authorities were proven to actively address the specific needs of Roma when undertaking actions to provide access to drinking water and sanitation. Thirdly, a considerable number of population in remote areas is in the similar position (para. 158). As for the personal situation of the applicants, they received social benefits which could be used for improving living conditions (Ibid.).

The applicants also alleged that the authorities had not sufficiently considered their “specific needs as members of a disadvantaged Roma community in the provision of basic utilities, notably water and sanitation” (para. 159). In the two municipalities were the applicants live, there had allegedly been “discriminatory attitudes, prejudice and stereotypes” in “inactive approach to resolving the applicants’ lack of basic infrastructure” (Ibid.). The ECtHR considered that there has been no violation of the ECHR Art.14 “for the reasons stated above” (para. 161). As regards the alleged violation of the ECHR Art. 3 with respect of “discomfort and pain” resulting from the applicants’ lack of basic amenities (para. 163), the ECtHR considering this complained as “linked to the one examined above” declared it admissible (para. 164). Thus, this case first, created a precedent
of employing the ECHR Art.8 to pronounce the right to water, and secondly, nuanced the interpretation of positive obligations with respect of socio-economic rights belonging to Roma by emphasizing the interplay between the majority and minority socio-economic rights vis-à-vis national socio-economic situation.

The case of *R.R. and R.D. v. Slovakia*\(^3\) continued the line against police violence against Roma. The applicants are Slovak nationals who addressed the ECtHR challenging the police physical violence against them, followed by a lack of a proper investigation, both on the grounds of their Roma origin. The police had undertaken a large-scale operation on the street, which is home to a Roma community (para. 5). That operation aimed at “searching for wanted persons and objects originating from criminal activities” (para. 7). According to the Ombudsman, “the number of general search operations carried out in areas with segregated Roma communities was disproportionate compared to the rest of Slovakia” (para. 9). Both applicants were beaten and struck with electroshock device (pars. 16-38). Their injuries were most likely caused by blows with a baton (pars. 25, 38 and 151). The recordings of the use of force during the operation used as evidence in investigation and trials (para. 157) did not include beating with batons (para. 151): “in so far as any force was used specifically against the applicants, it was noted only retrospectively in the decisions concerning their detention and in the reports concerning the use of coercive measures against them” (para. 149). Neither did the recordings indicate any “extraordinary circumstances, events or security incidents” during the police operation in question which would justify the use of batons (para. 152). The initial investigation thus was lacking “verifiable assessment of the adequacy and necessity of the use of coercive measures against the applicants” necessary in the absence of proper recordings (para. 186). Addressing the ECtHR, the applicants alleged violation of their rights under the ECHR Art. 3 by police ill-treatment and the failure to conduct an effective investigation into it. They invoked the ECHR Art.3, Art.13 and Art.3 in conjunction with Art.14 challenging the possible racist motive behind the said allegations and a lack of remedy against them (para. 1). The ECtHR found a violation of the ECHR Art.3 on a substantive limb, since usage of physical violence when arresting the applicants amidst the police operation in Roma community which had not been substantiated with evidence was “indispensable and not excessive” (para. 148) and amounting to inhuman and degrading treatment (para. 165). Unjustified use of batons was a “repressive” element in arrests (pars. 152-153). The said Art.3 was also found to have been violated on a procedural limb since no proper initial investigative response was made and the subsequent investigation was not effective (para. 187). Violation of the ECHR Art.14 taken in conjunction with Art.3 was also found because of a lack of investigation of the racial

bias behind the ill-treatment and ineffective investigation. This omission debarred implementing state’s positive obligation to “take all reasonable steps to unmask any racist motive and to establish whether or not ethnic prejudice may have played a role in the applicants’ treatment” (para. 207). Notably, this case already fully operates with the concept of “institutional racism” which had been proclaimed under the comparable context of racially-based police violence in 2019.32

The case of Ádám and others v. Romania highlights a significant development in adjudicating the modalities of bi- and multi-language teaching.33 The applicants of ethnic Hungarian origin live in a district in Romania which is “inhabited primarily by ethnic Hungarians” (para. 2). They were taught at Romanian school in their mother tongue and were obligated to pass two additional school-leaving exams with the aim to assess their proficiency in mother tongue (Ibid.). The applicants failed the school-leaving exam due to not obtaining the minimum required grade for passing the exams in Romanian language and literature (Ibid.). They all obtained the required grades in the other exams (Ibid.). The applicants challenged the practice of arranging two additional exams in their native language (oral and written) during the short period, set for the national final examinations (para. 1). They also asserted that the compulsory exams in Romanian language and literature had been very difficult for them (Ibid.) and maintained that pupils of Hungarian ethnic origin had “less time than Romanian pupils to prepare for their exams or to simply rest between them, and less chance of success” in the school leaving exams. According to the Government, during the period of 2013-2018, the success rate in the Romanian language and literature exams was “17 to 18% lower for Hungarian language students than for their Romanian peers” (para. 7). Since it was a personal choice of the applicants to be taught in their mother tongue, they “had to accept the consequences of that choice” (para. 80) meaning extra examinations.

The applicants referred their allegations of discriminatory treatment to the ECtHR under Art. 1 of the ECHR Protocol 12 (prohibition of discrimination) accounting the standards of protection within the ECHR Art.14 (Ibid.). They insisted that the events taken place during the final high school exams amount to discrimination based on ethnic minority origin of pupils studying in their native language. They claimed that Romani was to protect “the security, identity and lifestyle of ethnic minorities, not only for the purpose of safeguarding the interests of the minorities themselves, but to preserve a cultural diversity of value to the whole community” (para. 70). The applicants did not argue against the usefulness of learning Romanian language but emphasized that the knowledge in Romanian language and literature can be also tested in their mother tongue (para. 71). Assessing their

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33 ECtHR, Appl. Nos. 81114/17 and 5 others, Ádám and others v. Romania, judgment of 13 October 2020.
proficiency in Romanian language “on an equal footing with Romanian native speakers was, in their view, a clear case of discrimination” (Ibid.). The Romanian language and literature exams were allegedly difficult “even for native speakers” by involving “complicated and outdated language which had nothing to do with the practical use of the Romanian language and their real needs” (Ibid.). They also asked to acknowledge their situation as inhabitants of a region where Romanian was not spoken in daily life, providing no opportunity to practice it (Ibid.) and making the official strives “to adapt the curriculum for learning Romanian, albeit laudable” as non-beneficial for them “in any way” (para. 73).

The ECtHR noted a margin of appreciation afforded to the states “in assessing whether and to what extent differences in otherwise similar situations justify a different treatment,” since national authorities “are in principle better placed than an international court to evaluate local needs and conditions”, including “the necessity to treat groups differently in order to correct ‘factual inequalities between them’” (para. 90). Nevertheless, national policy should accommodate opportunities for providing education in minority language and at the same time ensure sufficient knowledge of state language (para. 99). However, determining the modalities of testing knowledge “which the applicants submitted had been high not only for them but also for their Romanian peers” falls “undoubtedly within the scope of the margin of appreciation of each state” (Ibid.). In the opinion of the Court, introducing additional exams is “the inevitable consequence” of personal choice to study in a minority language and therefore as such “did not place them in a different situation that was sufficiently significant for the purposes of Article 1 of Protocol No. 12 to the Convention” (para. 106). Neither the examination timetables were found by the ECtHR as “excessive burden on applicants” (para. 103). The applicants thus had not been placed in a different situation compared with their Romanian peers (para. 92) meaning that there was no violation of Art.1 of Protocol No.12 to the ECHR (para. 108). The ECtHR noted with satisfaction that nothing in this case allowed to conclude that the “applicants were deprived in practice of a real choice to receive education in their mother tongue or that the State had an agenda of forced assimilation” (para. 104). The added value of this case for the advancement of the minority rights discourse is in the fact that the ECtHR explicitly referred to the FCNM provisions when emphasizing “an emerging international consensus among the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle” which serves the goals of both, protecting the interests of the minorities and preserving a cultural diversity (para. 94). In particular, the Court has proclaimed that “the rights of persons belonging to national minorities to use their mother tongue and receive education in this language” anchored in positive obligation to protect and encourage the development of minority languages “are among the principles safeguarded by the international instruments” (Ibid.).
IV. OSCE

A. The High Commissioner on National Minorities

On 4 December 2020, Ambassador Kairat Abdrakhmanov of Kazakhstan took a mandate of the OSCE High Commissioner on National Minorities, having thus become the Sixth High Commissioner. Therefore, the key 2020 developments have taken place under the aegis of the Fifth High Commissioner Lamberto Zannier. In particular, the High Commissioner discussed the issues of implementing the law on languages in Moldova during his visit to Moldova between 28-31 January 2020.

34 On 20 February 2020 office of the OSCE High Commissioner on National Minorities co-organized a conference in Kyiv in support of multilingual education pilot programme in four regions of Ukraine: Zakarpattia, Chernivtsi, Odesa and Zaporizhzhia.35 High Commissioner recommended multilingual education for balancing the preservation and promotion of minority languages with the support of social integration through strengthening the role of the state language.36 As the limitations of movement and other freedoms associated with the COVID-19 pandemic came in effect, 26 March 2020 the High Commissioner issued recommendations on short-term responses to COVID-19 that support social cohesion. These recommendations addressed the national governments with the appeals to consider “the needs of everyone in society, including persons belonging to national minorities and other marginalized communities” in their efforts to combat the pandemic spread.37

The following were among the key messages of these recommendations: ensuring human rights, including those of persons belonging to national minorities; encompassing the needs of all groups in society; sensitivity to language needs; protecting the economically vulnerable; maintaining zero tolerance for discrimination and xenophobia by inter alia avoiding “otherization,” and building on positive examples while promoting social cohesion.

B. The Office for Democratic Institutions and Human Rights

Naturally, the pandemic events influenced the ODIHR activity in the field of minority rights protection. On 7 April 2020, on the eve of the International Roma Day, the ODIHR and the EU Agency for Fundamental Rights (FRA) gave a statement emphasizing the vulnerability of Roma amidst the pandemic spread due to inter alia poor living condition and poor access to sanitation.38

34 OSCE High Commissioner on National Minorities discusses language and education in Moldova (31 January 2020), at <https://www.osce.org/hcnm/445219>.
36 Ibid.
With the worsening of pandemic situation the ODIHR was monitoring “the effect of government emergency measures on Roma communities” in order to complement its activities on assisting the states in the OSCE region in enhancing the inclusion of Roma communities.

Impact of limitation measures associated with slowing down the pandemic spread on human rights of minorities was among the highlight of the 2020 OSCE/ODIHR report, entitled “OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic”. The findings of this report demonstrate that the pandemic limitations “added new layers of complexity” to the issue of counteracting discrimination and hate crime “by exacerbating intolerant discourse and the racist scapegoating of minorities”. Events of organized hate groups demonstrating hostility towards “protected groups” and “assigning blame to different minority communities” are regrettable. On the positive side is that some OSCE states “recognized the need for special support to minority communities” by inter alia providing special health-care support for indigenous or “carried out other symbolically important acts to signal inclusiveness and tolerance”. Among the areas of concern is the situation of Roma and Sinti vis-à-vis the pandemic spread and, particularly, disposed to hate crimes and discrimination, living below the poverty threshold, inadequate access to health-care, medication, drinking water and sanitation, inadequate access to digital services.

V. THE EUROPEAN UNION FUNDAMENTAL RIGHTS AGENCY

Fundamental Rights Agency’s Fundamental Rights Report 2020 published on 11 June 2020 summed up the key developments in 2019. The Report concluded that racism still remains an issue of concern in EU member states, legal and policy initiative targeting counteracting of racism are insufficient. The plans and policies on Roma inclusion, albeit having strong intentions are, nevertheless, weakly implemented. The major challenge in the area of Roma and Sinti rights remains their mainstream segregation. “Discriminatory profiling based on ethnicity” was also a significant challenge in 2019 calling for action to prevent such profiling. In this connection, the Report reiterated the 2019 “landmark case” of Lingurar v. Romania where the ECtHR had first time employed the term “ethnic

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40 Ibid at 17.
41 Ibid.
42 Ibid.
43 Ibid., at 141 – 146.
45 Ibid. at 56-76.
46 Ibid. at 80-99.
47 Ibid.
48 Ibid. at 71.
profiling” for situations of the police using ethnic profiling to justify raids on the homes of Roma families which was found discriminatory.49

V. CONCLUDING SUMMARY

The year 2020 brought several significant advancements in the area of socio-cultural, economic rights of the members of European minorities, as well as in the field of education and media.

The development within the UN towards elaborating a universal definition of “a minority” based on the four categories - linguistic, religious (or belief), ethnic and national – became vocal under the mandate of the Special Rapporteur on Minority Issues. Noteworthy is also the work of the UN agencies on prohibition of “otherization”. The ECtHR advanced its jurisprudence by nuancing the scope of positive obligations vis-à-vis the education in minority languages, ensuring positive self-identification, and access to fresh water and sanitation. It employed the term “institutional racism” when deciding on the merits of the case of the police violence against Roma. The ECSR articulated the positive obligation to ensure the appropriate care services of Roma children. Stronger appeals for strengthening of the practice of bi- and multi-language teaching vis-à-vis the minority languages came from the praxis under the FCNM and the ECRML.