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International Developments 2018: Economic and Social Life in the Context of European Minority Rights

*Mariya Riekkinen**

Abstract

This overview summarizes international developments in the area of the socioeconomic rights of individuals belonging to minorities. Taking into consideration the focus of the European Yearbook of Minority Issues on European minorities, this review considers the developments at the level of the United Nations (UN, Human Rights Council, the UN Forum on Minority Issues, Special Rapporteur on Minority Issues), the Council of Europe (CoE, including the developments within the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities, the European Court of Human Rights, and the European Committee for Social Rights), the Organization for Security and Cooperation in Europe (OSCE, the Office for Democratic Institutions and Human Rights and the High Commissioner on National Minorities), and the European Union (EU, the Agency for Fundamental Rights). The most significant development is a change in the monitoring procedure under the European Charter for Regional or Minority Languages aimed at strengthening this mechanism and entering into force on 1 July 2019.

Keywords

social inclusion – adequate housing – access to health care – economic rights

1 Introduction

This overview focuses on a cluster of socioeconomic rights relating to members of minority groups, including the right to education. We analyze report

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materials published by the United Nations (UN) and the Council of Europe (CoE), in particular concerning the European Charter for Regional or Minority Languages (ECRML), the Framework Convention for the Protection of National Minorities (FCNM) targeting said rights. The case-law of the European Court of Human Rights (ECtHR) primarily under Article 8 (the right to respect for private and family rights) is also analyzed, as well as the materials of the Organization for Security and Co-operation in Europe (OSCE), the Office for Democratic Institutions and Human Rights (ODIHR), and the High Commissioner on National Minorities (HCNM). Finally, the EU's Agency for Fundamental Rights (FRA) annual report is also subject to analysis. All the materials reviewed below were either issued in 2018 and so available to the public or promulgated in 2018 and so possibly restricted in 2017.

2 The United Nations

2.1 *Human Rights Council*

The 2018 Report of the UN Human Rights Council (UNHRC) devoted a section to the rights of persons belonging to national or ethnic, religious and linguistic minorities.¹ The report mostly covered the tenth session of the Forum on Minority Issues from the year 2017, which addressed the topic of minority youth rights. The UNHRC urged the states *inter alia* to take measures ensuring that minority youth have equal access to education of equal quality “delivered in an inclusive environment that fosters greater achievement for all”,² to refrain from adopting policies segregating students into different educational institutions or classes based on their minority status.³ Other recommendations of significance included engaging youth through sport and culture,⁴ promoting cultural diversity, inclusion, and tolerance.⁵

2.2 *Forum on Minority Issues*

The eleventh Session of the Forum on Minority Issues convened in Geneva between 29 and 30 November 2018 on the theme “Statelessness: A Minority Issue”. Due to the focused theme, economic rights and social inclusion did not feature on the agenda, except for during panel 5: “Minority women and children

1 UNHRC, Report of the Human Rights Council, UN Doc. A/73/53, at <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/258/79/PDF/G1825879.pdf?OpenElement>>.

2 *Ibid.*, para. 6 (a).

3 *Ibid.*, para. 6 (c).

4 *Ibid.*, para. 6 (h).

5 *Ibid.*, para. 6 (m).

affected by statelessness: advancing gender equality in nationality laws". Participants in this panel, in particular, discussed how to advance gender equality in nationality laws and the terms of children's access to healthcare services, as well as the access of women to sexual and reproductive health services and rights.⁶

2.3 *Special Rapporteur on Minority Issues*

The 2018 annual report of the Special Rapporteur Dr. Fernand de Varennnes was entitled "Priorities and vision of the mandate".⁷ This report outlined the main priorities and vision for the mandate for the Rapporteur, which included promoting the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities "through consultations with governments and other stakeholders".⁸ In his concluding remarks to the workshop, the Special Rapporteur encouraged the adoption of strategies and laws at the national level to eradicate discriminatory practices against Roma individuals and communities and to ensure that they had adequate access to health care, social services, and employment.⁹

3 Council of Europe

3.1 *European Charter for Regional or Minority Languages*

Among the most significant developments in the monitoring procedure under the European Charter for Regional or Minority Languages (hereinafter ECRML or Language Charter) in 2018 is the adoption of changes by the Ministers'

6 UNHRC, Forum on Minority Issues, Eleventh session, Provisional agenda and annotations, A/HRC/FMI/2018/1, 3 October 2018, at <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/294/03/PDF/G1829403.pdf?OpenElement>>. As of 23 December 2018, the Recommendations of the Forum have not yet been published. For more information on the materials of the Forum regarding education and media in a minority context see contribution by Csilla Varga "International Developments 2018: Cultural Activities and Facilities, Education and Media in the Context of European Minorities and from the Perspective of International Law", in this volume.

7 UN Special Rapporteur on Minority Issues, "Priorities and vision of the mandate", 16 January 2018, A/HRC/37/66, at <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/008/79/PDF/G1800879.pdf?OpenElement>>. For more information regarding the references of the Report to the issues of education and the media in a minority context see the contribution by Csilla Varga "International Developments 2018: Cultural Activities and Facilities, Education and Media in the Context of European Minorities and from the Perspective of International Law" in this volume.

8 *Ibid.*, para. 4.

9 *Ibid.*, para. 22.

Deputies to be made in the operation of its monitoring mechanism with a view to strengthening it. These changes enter into force on 1 July 2019.¹⁰ In brief, the reform presupposes that State Parties submit periodical reports every five years, explaining their policies and the actions they have taken to fulfil the commitments they have undertaken, followed by a mid-cycle document two and a half years thereafter, containing information on the implementation of the recommendations for immediate action. The reports must be drafted according to the outlines adopted by the Committee of Ministers of the CoE. The periodical State Reports are published and may be obtained from the states concerned and from the Council of Europe.¹¹

During 2018, a fourth report on implementing the ECRML was submitted by Czech Republic;¹² a fifth report was submitted by Luxembourg (in French, not available in English as of January 2019),¹³ the Slovak Republic¹⁴ and Spain.¹⁵ Germany submitted its sixth report.¹⁶ The seventh report was submitted by Hungary¹⁷ and Switzerland (in French, German, Italian, and Romansch, not available in English as of January 2019).¹⁸ The United Kingdom submitted a

10 See the information about this reform on the web page of the Council of Europe, at <<https://www.coe.int/en/web/european-charter-regional-or-minority-languages/about-the-charter>>.

11 CoE, Ministers' Deputies, Decision "European Charter for Regional or Minority Languages. Strengthening the monitoring mechanism of the European Charter for Regional or Minority Languages", CM/Del/Dec(2018)1330/10.4e, 28 November 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808f22ea>.

12 ECRML, Fourth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter by Czech Republic, 6 March 2018, MIN-LANG (2018) PR 3, at <<https://rm.coe.int/czechreppr4-docx/16807937ff>>.

13 ECRML, Fifth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter by Luxembourg, 10 December 2018, MIN-LANG (2018) PR 6, at <<https://rm.coe.int/luxembourgpr5-fr-doc/1680900ea4>>.

14 ECRML, Fifth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter by Slovak Republic, 28 August 2018, MIN-LANG (2018) PR 5, at <<https://rm.coe.int/sloviapr5-en/16808d05b8>>.

15 ECRML, Fifth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter by Spain, 28 September 2018, MIN-LANG (2018) PR 2, at <<https://rm.coe.int/spainpr5-en/16808de6fc>>.

16 ECRML, Sixth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter by Germany, 19 February 2018, MIN-LANG (2018) PR 1, at <<https://rm.coe.int/germanypr6-en/168078a778>>.

17 ECRML, Seventh periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter by Hungary, 6 April 2018, MIN-LANG (2018) PR 4, at <<https://rm.coe.int/hungarypr7-en-docx/16807b69d7>>.

18 ECRML, Seventh periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter by Switzerland, 14 December 2018, MIN-LANG (2018) PR 7, at <<https://rm.coe.int/switzerlandpr7-fr-docx/1680902993>>.

revised version of its report on 23 January 2018.¹⁹ The following reports on implementing the ECRML remain due as of January 2019: a third report for Bosnia and Herzegovina, Poland, and Romania, the fifth report for Slovenia, and a sixth report for the Netherlands, and Cyprus.

In 2018 the Committee of Ministers (CM) adopted Recommendations on: Austria,²⁰ Cyprus,²¹ Finland,²² Norway,²³ Romania,²⁴ and Ukraine.²⁵ Recommendations related to economic and social rights of members of minorities emphasized the significance of taking further measures to ensure the accessibility of welfare services in minority languages, in particular, in Finland with respect to social and health care in Swedish and in the Sámi languages, and in Norway regarding the promotion of services in all Sámi languages in hospitals and retirement homes.

3.2 *Framework Convention for the Protection of National Minorities*

As for national reports on implementing the Framework Convention for the Protection of National Minorities (hereinafter FCNM or Framework Convention), a third report was submitted by the Netherlands on 11 July 2018²⁶ and

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- 19 ECRML, Fifth periodical report presented to the Secretary General of the Council of Europe in accordance with Article 15 of the Charter by the United Kingdom, 23 January 2018, MIN-LANG (2017) PR 8, at <<https://rm.coe.int/ukpr5-en-revised/168077fb40>>.
- 20 CM, Recommendation CM/RecChL(2018)2 on the application of the European Charter for Regional or Minority Languages by Austria, Adopted on 4 April 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016807b4267>.
- 21 CM, Recommendation CM/RecChL(2018)1 on the application of the European Charter for Regional or Minority Languages by Cyprus, Adopted on 4 April 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016807b4266>.
- 22 CM, Recommendation CM/RecChL(2018)5 on the application of the European Charter for Regional or Minority Languages by Finland, Adopted on 3 October 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808e35f5>.
- 23 CM, Recommendation CM/RecChL(2018)4 on the application of the European Charter for Regional or Minority Languages by Norway, Adopted on 4 July 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808b7d02>.
- 24 CM, Recommendation CM/RecChL(2018)3 on the application of the European Charter for Regional or Minority Languages by Romania, Adopted on 4 April 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016807b4268>.
- 25 CM, Recommendation CM/RecChL(2018)6 on the application of the European Charter for Regional or Minority Languages by Ukraine, Adopted on 12 December 2018, at <https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016809026af>.
- 26 FCNM, Third Report submitted by the Netherlands pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, 11 July 2018, ACFC/SR/III(2018)/001, at <<https://rm.coe.int/third-report-netherlands-en/16808c8feb>>.

fourth reports were submitted by Portugal on 8 October 2018²⁷ and Serbia on 18 September 2018.²⁸

The following 2018 opinions of the Advisory Committee on the FCNM (ACFC) remain restricted as of December 2018: 11 October 2018 Opinion on Albania, 10 October 2018 Opinion on Ireland, 30 May 2018 Opinion on Lithuania, 20 February 2018 Opinion on the Russian Federation, as well as 31 May 2018 Opinion on Switzerland. Yet the 23 February 2018 Opinion on Latvia was promulgated.²⁹ The Committee called on the authorities to assess the situation related to access to the rights of persons belonging to national minorities, including in order to develop “more targeted measures to promote full and effective equality in society.”³⁰ The major issue of concern with respect to participation in social and economic life regarded the specific challenges and discrimination of Roma in the socioeconomic sphere, “preventing in some cases their access to public services, and called on the authorities to address this situation without further delay.”³¹ Moreover, it was found that many Roma “live in small communities on the outskirts of villages and towns, often facing difficult substandard living conditions”³² and face obstacles in accessing health care services.³³ Respectively, the Committee recommended that the authorities develop programmes targeting these problems³⁴ and aim “to increase employment rates by more targeted training programmes and considering affirmative action, promote awareness programmes among members of Roma communities about equal access to the health care system and design more targeted social housing policies.”³⁵

The following opinions delivered in 2017 were promulgated in 2018: 9 November 2017 Opinion on Bosnia and Herzegovina;³⁶ 22 June 2017 Opinion on

27 FCNM, Fourth Report submitted by Portugal pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, 8 October 2018, ACFC/SR/IV(2018)002 at <<https://rm.coe.int/4th-sr-portugal-en/16808e563a>>.

28 FCNM, Fourth Report submitted by Serbia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, 18 September 2018, ACFC/SR/IV(2018)001, at <<https://rm.coe.int/4th-sr-serbia-en/16808d765e>>.

29 ACFC, Third Opinion on Latvia, 23 February 2018, ACFC/OP/III(2018)001, at <<https://rm.coe.int/3rd-op-latvia-en/16808d891d>>.

30 *Ibid.*, para. 53.

31 *Ibid.*, para. 178.

32 *Ibid.*, para. 181.

33 *Ibid.*, para. 182.

34 *Ibid.*, par 183.

35 *Ibid.*, para. 184.

36 ACFC, Fourth Opinion on Bosnia and Herzegovina, Adopted on 9 November 2017, at <<https://rm.coe.int/4th-op-bih-en/16808e2c53>>.

Romania;³⁷ 21 June 2017 Opinion on Slovenia;³⁸ and 10 March 2017 Opinion on Ukraine.³⁹

The issue of social inclusion and the integration of Roma communities in society featured in all Opinions. All the states under consideration adopted special documents setting forth measures targeted at Roma integration. In particular, Romania and Ukraine introduced special strategies to integrate Roma communities. While Ukraine's 2013 strategy has yielded some positive results, such as the provision of identity documents for Roma individuals, Romania's revised strategy adopted in 2015 does not contain concrete mechanisms of implementation, nor an indication of sources of funding. Bosnia and Herzegovina developed an initiative undertaken in the context of the Decade of Roma Inclusion 2005–2015 to collect data on the situation of Roma communities throughout Bosnia and Herzegovina, recording socioeconomic indicators and mapping out their needs. Slovenia relies on the 2007 Roma Community Act, the implementation of which, in the opinion of the Committee, is not fully satisfactory. Based on all the four opinions under consideration, the Roma continue to face the following socioeconomic challenges: systemic discrimination in access to adequate housing, health services and employment. Moreover, in Ukraine and Slovenia a specific problem related to a lack of effective action by public authorities to facilitate the rights of Roma can be identified. While in Ukraine police misconduct and harassment against some groups, including the Roma, coupled with ineffective investigation of mob violence events against Roma have been reported, in Slovenia it was found that “the uncooperative attitude of some local authorities, combined with the reluctance of central authorities to intervene, does not help to solve this long-standing and serious situation”.⁴⁰

As for country-specific problems, outlined in the 2017 opinions, Ukraine faces significant issues related to the political climate and economic and social life. This is due to a conflict, which, due to the annexation of Crimea, created “an atmosphere in which persons who hitherto felt comfortable with complex,

37 ACFC, Fourth Opinion on Romania, Adopted on 22 June 2017, Published on 16 February 2018, ACFC/OP/IV(2017)005, at <<https://rm.coe.int/fourth-opinion-on-romania-adopted-on-22-june-2017/168078af76>>.

38 ACFC, Fourth Opinion on Slovenia, Adopted on 21 June 2017, Published on 25 January 2018, ACFC/OP/IV(2017)003, at <<https://rm.coe.int/fourth-opinion-on-slovenia-adopted-on-21-june-2017/16807843c7>>.

39 ACFC, Fourth Opinion on Ukraine, Adopted on 10 March 2017, Published on 5 March 2018, ACFC/OP/IV(2017)002, at <<https://rm.coe.int/fourth-opinion-on-ukraine-adopted-on-10-march-2017-published-on-5-marc/16807930cf>>.

40 ACFC, Fourth Opinion on Slovenia, Adopted on 21 June 2017, Published on 25 January 2018, ACFC/OP/IV(2017)003, at <<https://rm.coe.int/fourth-opinion-on-slovenia-adopted-on-21-june-2017/16807843c7>>.

layered and multiple identities, feel the obligation to choose sides by showing loyalty to the state. The persons most impacted in this regard are those who identify as ethnic Russians or those who identify with the Ukrainian majority but communicate in the Russian language”.⁴¹ Among the areas of concern remains a lack of a clear legislative framework on the protection of national minorities.⁴²

As for Slovenia, persons belonging to the “nations of Albanians, Bosniaks, Montenegrins, Croats, Macedonians and Serbs” in the former Yugoslavia, as well as the German-speaking ethnic community – including the Kočevje Germans known as Gottscheer – benefit from some support in the fields of culture, media, language and education. That said, the Committee remains unsatisfied with the measures taken by these communities.⁴³

In 2018, the Committee of Ministers issued Resolutions on Armenia,⁴⁴ Bulgaria,⁴⁵ Georgia,⁴⁶ Malta,⁴⁷ Norway,⁴⁸ Slovenia,⁴⁹ Sweden,⁵⁰ and the United

41 ACFC, Fourth Opinion on Ukraine, Adopted on 10 March 2017, Published on 5 March 2018, ACFC/OP/1V(2017)002, at <<https://rm.coe.int/fourth-opinion-on-ukraine-adopted-on-10-march-2017-published-on-5-marc/16807930cf>>.

42 “The Law ‘On the Principles of the State Language Policy’ was referred to by the Constitutional Court of Ukraine in 2014 and its examination is pending. Other laws adopted in recent years, or currently considered by the Verkhovna Rada, do not provide adequate access to rights protected under the Framework Convention. For instance, the Law ‘On State Service’ contains no provision on the use of national minority languages in relations between persons belonging to national minorities and the administrative authorities”. *Ibid.*

43 ACFC, *op. cit.*, note 38.

44 CM, Resolution CM/ResCMN(2018)5 on the implementation of the Framework Convention for the Protection of National Minorities by Armenia, 2 May 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807cod84>.

45 CM, Resolution CM/ResCMN(2018)2 on the implementation of the Framework Convention for the Protection of National Minorities by Bulgaria, 7 February 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168078753c>.

46 CM, Resolution CM/ResCMN(2018)7 on the implementation of the Framework Convention for the Protection of National Minorities by Georgia, 30 May 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808af6d4>.

47 CM, Resolution CM/ResCMN(2018)8 on the implementation of the Framework Convention for the Protection of National Minorities by Malta, 4 July 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808b79ee>.

48 CM, Resolution CM/ResCMN(2018)6 on the implementation of the Framework Convention for the Protection of National Minorities by Norway, 2 May 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807cod85>.

49 CM, Resolution CM/ResCMN(2018)12 on the implementation of the Framework Convention for the Protection of National Minorities by Slovenia, 24 October, 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e85f4>.

50 CM, Resolution CM/ResCMN(2018)9 on the implementation of the Framework Convention for the Protection of National Minorities by Sweden, 12 September 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808d5a35>.

Kingdom.⁵¹ Armenia was recommended to review legislation relating to forced marriages, i.e. weddings “conducted without the valid consent of both spouses, where pressure or abuse is used”⁵² an issue rooted in the sociocultural practices of members of minorities and in conflict with international human rights standards. Bulgarian authorities were recommended *inter alia* to sufficiently fund the Action Plans developed under the National Roma Integration Strategy in order to face “significant socio-economic challenge”⁵³ in fields such as housing, employment and health care. Georgia was recommended to effectively implement the 2014 Antidiscrimination Law “by raising awareness of the applicable standards and relevant redress mechanisms amongst society”,⁵⁴ as well as promote equal access to education for persons belonging to national minorities, while actively preventing religious indoctrination in schools. Norway was recommended to strengthen the efforts targeted at maintaining the indigenous Sámi culture. In particular, Sweden was recommended for immediate action to ensure that the Sámi can “maintain and develop their culture whenever decisions are taken that affect areas inhabited traditionally by them”.⁵⁵ Moreover, with respect to the general legal and social position and rights of the Sámi peoples, Sweden was recommended to develop a truth and reconciliation process which would “thoroughly address past human rights violations against the Sámi” and create “awareness of this issue in society as a whole”.⁵⁶

As for the issues of concern relevant to socio-economic rights of members of minorities, outlined by the Committee the following were common for several states under consideration. Firstly, recommendations concerned reducing inequalities in the access of Roma individuals to housing. Norway was recommended in particular to conduct research in order to assess the situation and Slovenia was recommended “to ensure security of tenure for the Roma living in

51 CM, Resolution CM/ResCMN(2018)1 on the implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom, 7 February 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680787538>.

52 CM, Resolution CM/ResCMN(2018)5 on the implementation of the Framework Convention for the Protection of National Minorities by Armenia, 2 May 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807cod84>.

53 *Ibid.*

54 CM, Resolution CM/ResCMN(2018)7 on the implementation of the Framework Convention for the Protection of National Minorities by Georgia, 30 May 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808af6d4>.

55 CM, Resolution CM/ResCMN(2018)9 on the implementation of the Framework Convention for the Protection of National Minorities by Sweden, 12 September 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808d5a35>.

56 *Ibid.*

informal settlements, including through their legalization where possible, and guarantee adequate living conditions”.⁵⁷

Secondly, recommendations suggested measures to accommodate members of minorities in society and broaden public awareness of the status of minorities. Sweden was recommended “to invest in the implementation of the Long-term strategy for Roma inclusion 2012–2032 based on clearly defined target indicators and regularly reviewed implementation plans and gradually move from short-term projects to long-term institutionalized support for initiatives that have proven to be effective”.⁵⁸ Norway was recommended to address problems on assimilation policies towards the Tater/Romani minority “by taking effective measures to rebuild trust, including by broadening awareness of the recognition of public responsibility; expand knowledge about this minority and encourage dialogue within the community, with the authorities and society at large”.⁵⁹ Finally, the United Kingdom was recommended to “collect disaggregated data on Gypsies, Travellers and Roma to help devise policies targeting the socio-economic inequalities that persons belonging to those minorities experience in England”.⁶⁰

Thirdly, recommendations related to pursuing efforts in facilitating the access of members of minorities to employment. Norway was recommended to facilitate the access of persons belonging to the Tater/Romani and Roma minorities to employment and apprenticeship opportunities and the United Kingdom was recommended to “intensify targeted initiatives to maximize participation of persons belonging to national and ethnic minorities in employment, training and career progression in line with the Vision 2020 targets”.⁶¹

Finally, recommendations followed the need to improve the access of members of minorities to public services where Slovenia was recommended to

57 CM, Resolution CM/ResCMN(2018)12 on the implementation of the Framework Convention for the Protection of National Minorities by Slovenia, 24 October, 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016808e85f4>.

58 CM, Resolution CM/ResCMN(2018)9 on the implementation of the Framework Convention for the Protection of National Minorities by Sweden, 12 September 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016808d5a35>.

59 CM, Resolution CM/ResCMN(2018)6 on the implementation of the Framework Convention for the Protection of National Minorities by Norway, 2 May 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016807cod85>.

60 CM, Resolution CM/ResCMN(2018)10 on the implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom, 7 February 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090001680787538>.

61 CM, Resolution CM/ResCMN(2018)1 on the implementation of the Framework Convention for the Protection of National Minorities by the United Kingdom, 7 February 2018, at <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090001680787538>.

guarantee the effective access of Roma to basic services and infrastructure and Sweden was advised to take measures to allow elderly persons belonging to national minorities to receive care in their minority language.

3.3 *European Court of Human Rights*

Two cases related to social inclusion (and exclusion) based on a minority status were considered by the European Court of Human Rights (ECtHR) in 2018. These are the case of *Burlyta and others v. Ukraine* where individuals of Roma ethnicity were expelled from the local village and their houses ransacked during mob attacks, and the case of *Jansen v. Norway* where the Roma background of a child placed in a foster family was considered among a set of reasons to grant the biological parents meeting rights for the sake of, *inter alia*, the child not losing ties with Roma culture. Hence, the case of *Burlyta v. Ukraine* represents a further step in facilitating the rights of Roma individuals in Ukraine, where the latter, following the reports of the international treaty-monitoring bodies, face disadvantages vis a vis law-enforcement bodies.⁶² The case of *Jansen v. Norway* represents an example of a case where Article 8 is closely linked with the provisions of international human rights law guaranteeing minority children the right to be associated with minority culture and language. When it comes to exclusion from a community based on minority status or, on the contrary, not providing the opportunity for a member of a minority group to be included in the social and cultural circles of this group, the ECtHR found a violation of Article 8 (the right to respect for private and family life). The situation where minority status was the reason for breaking into and destroying homes

62 See, e.g., para. 56 of the 2001 second report on Ukraine by the European Commission against Racism and Intolerance (ECRI) noting “with concern frequent reports of excessive use of force, ill-treatment, verbal abuse and destruction of property by law enforcement personnel”. See also para. 76 of the 2007 third report on Ukraine by the ECRI having specified that “Roma face a number of problems in their relationship with the police and other law enforcement agencies”. Moreover, following the 2008 Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities Second Opinion on Ukraine, “law-enforcement agencies are reported to be more reluctant to investigate crimes committed against Roma”. See also, the ACFC 2017 fourth Opinion on Ukraine specifying that “the Roma continue to face numerous social challenges” and highlighting the problem of “police misconduct and harassment against some groups, including the Roma” as well as “mob violence against Roma in Loshchynivka and the alleged collusion of the local authorities”. Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Ukraine – adopted on 10 March 2017 Published on 5 March 2018, ACFC/OP/IV(2017)002, at <<https://rm.coe.int/fourth-opinion-on-ukraine-adopted-on-10-march-2017-published-on-5-marc/16807930cf>>.

was considered a violation of Article 3 of the Convention (prohibition of torture or inhuman or degrading treatment).

The situation where social exclusion had been based on minority status, causing economic disadvantage, was considered by the ECtHR in the 2018 case of *Burlya and Others v. Ukraine*.⁶³ The case was initiated by a group of Ukrainian nationals of Roma ethnicity who used to live in the village of Petrivka, Ivanivskyy District, Odessa Region before 2002.⁶⁴ On 7 September 2002 an ethnic Ukrainian was murdered in the village during an “altercation between Romany men and other youngsters from the village”, “allegedly by a Romany man who was apparently convicted of the murder afterwards”.⁶⁵ The next day a village meeting resulted in a call that “the Roma be expelled from the village”,⁶⁶ and the village council decided to “support the decision of the meeting of the village residents to expel persons of Gypsy ethnicity from the village”.⁶⁷ On 9 September 2002 the village council met again where it had been decided to ask law enforcement authorities “to ensure the expulsion of socially dangerous individuals, regardless of ethnic origin, from the village”.⁶⁸ The same day applicants were advised by the local police to leave the village, as a “pogrom” – or mass disorder presupposing destruction of property [MR] – was about to begin. The electricity and gas supply to the homes of the applicants were cut, and in the course of the night of 9 to 10 September 2002 “a crowd of several hundred people [...] ransacked the houses belonging to the Roma, destroying their belongings”.⁶⁹ The house where the first applicant lived had burned down.⁷⁰ The police was present during the events but did not intervene. One applicant stated that she had been at home with her two granddaughters when the attack started. She saw “stones [...] flying through the windows, four attackers had broken down the door and started shouting”.⁷¹ Other victims of the “pogrom”, who had been away from the village at the time of the events, learned about the events after they returned on 20 September.⁷² They stated that they

63 ECtHR, Appl. No. 3289/10, *Burlya and others v. Ukraine*, judgment of 6 November 2018, reproduced in the official database of the ECtHR decisions “Hudoc” and at <[https://hudoc.echr.coe.int/eng#{"fulltext":\["Burlya"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-187508"\]}](https://hudoc.echr.coe.int/eng#{)>.

64 *Ibid.*, para. 6.

65 *Ibid.*, para. 7.

66 *Ibid.*, para. 8.

67 *Ibid.*, para. 10.

68 *Ibid.*, para. 11.

69 *Ibid.*

70 *Ibid.*

71 *Ibid.*, para. 18.

72 *Ibid.*, para. 14.

had to sell their houses “very cheap[ly]”⁷³ and move to another town where they had to “live with family and friends in overcrowded and inadequate conditions”.⁷⁴

On 10 September 2002, the district police initiated criminal proceedings against persons unknown on suspicion of disorderly conduct committed in a group.⁷⁵ Some applicants got “the official status of aggrieved parties or of civil claimants”⁷⁶ but not all of them.⁷⁷ In the process of investigating village residents, those who were later accused by the applicants’ representative of having a role in the attack were questioned by the police.⁷⁸ The villagers “generally stated that there had long been tensions in the village between the Roma and non-Roma populations (many mentioning that this was connected with the alleged involvement of Roma residents in the drug trade)”.⁷⁹ In the opinion of the villagers, some of whom “expressed approval of the attacker’s actions”, the events of the night of 9 September 2002 had meant “to ensure that Roma would be expelled from the village”.⁸⁰ In February to April 2003 the police suspended the investigation “for failure to identify the perpetrators”,⁸¹ and the district prosecutor’s office “refused to institute criminal proceedings against the village council’s officials for lack of constituent elements of a crime in their actions”.⁸² In the meantime on 21 March 2003 the District Court “quashed the village council’s decision of 9 September 2002 on the grounds that it was contrary to the Constitution and had been taken under the pressure exerted by a crowd of angry villagers in order to calm them down and prevent the lynching of the Roma”.⁸³ On 23 December 2005 the applicants “lodged with the District Court a civil claim for damages against the District Administration and the village council”⁸⁴ which had been rejected on 23 November 2007 based on the fact that this claim fell within the jurisdiction of another court.⁸⁵ After the applicants lodged a claim seeking to have the prosecutor’s office and the district

73 *Ibid.*

74 *Ibid.*, para. 21.

75 *Ibid.*, para. 22.

76 *Ibid.*, para. 30.

77 *Ibid.*, para. 50.

78 *Ibid.*, para. 27.

79 *Ibid.*

80 *Ibid.*

81 *Ibid.*, paras. 33 and 35.

82 *Ibid.*, para. 34.

83 *Ibid.*, para. 45.

84 *Ibid.*, para. 46.

85 *Ibid.*, para. 47.

police's investigation into the incident declared unlawful,⁸⁶ the Circuit Administrative Court rejected the claim, stating that "it fell outside the jurisdiction of the administrative courts".⁸⁷ This ruling was upheld by the court of appeal.⁸⁸ On 5 June 2008 the District Court initiated proceedings concerning the claim by the applicants under the Code of Criminal Procedure "in which they challenged the decision to suspend the investigation" yet, according to the applicants, "at the time of the application to the European Court of Human Rights the proceedings were still pending before the District Court and no decision had been made".⁸⁹

The applicants, hence, complained under Article 3 of the Convention that "the attack on their houses and their destruction had amounted to inhuman and degrading treatment, for which the State was responsible on the grounds that the authorities had been complicit in the attack and had failed to protect them from it and to investigate it effectively".⁹⁰ They further argued that "the State was responsible for the degrading living conditions that they had experienced following their displacement".⁹¹ They also complained that they had suffered discrimination "owing to their Roma ethnic origin, contrary to Article 14, taken in conjunction with Article 3".⁹² Moreover, the applicants also invoked Article 8 of the Convention, alleging that Ukraine had been responsible for the attack on their homes and was responsible for the inadequate living conditions that they had experienced following their displacement.⁹³ Because of the above, the applicants claimed they had suffered discrimination owing to their Roma origin, contrary to Article 14, taken in conjunction with Article 8.⁹⁴ Violation of Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention on account of the damage done to their houses and the destruction of their household items had also been alleged by the applicants.⁹⁵ Finally, the applicants complained that they had no effective remedy in respect of their other complaints under Article 13.⁹⁶

86 *Ibid.*, para. 48.

87 *Ibid.*, para. 49.

88 *Ibid.*

89 *Ibid.*, para. 50.

90 *Ibid.*, para. 92.

91 *Ibid.*

92 *Ibid.*

93 *Ibid.*, para. 151.

94 *Ibid.*

95 *Ibid.*, para. 172.

96 *Ibid.*, para. 181.

The ECtHR differentiated two groups of applicants: those who “were present in the village in the run-up to the attack of the night of 9–10 September 2002 and had to flee their homes in the village under the threat of that attack”, and those who “by their own admission, were away from their homes at the time of the events in question”.⁹⁷

Assessing the merits of the claims regarding the first group of applicants, the Court emphasized that Article 3 “cannot be limited to acts of physical ill-treatment; it also covers the infliction of psychological suffering”.⁹⁸ Yet the Court further noticed that “not every form of threatening behaviour [...] even if it involves a large group of individuals [...] will bring Article 3 into play”.⁹⁹ Therefore, “where threats reach a certain level of seriousness and target victims as members of a particular ethnic or racial group”, they may bring Article 8 into play, as it was in the 2017 case of *Király and Dömötör v. Hungary*, “where the applicants, Roma residents of a village, were in their houses and had to observe a threatening demonstration, which involved anti-Roma speeches and the throwing of objects at their houses, and which was overseen and contained but not dispersed by the police”.¹⁰⁰ Hence, in the assessment of the Court “in the event of threatening actions on the part of third parties, a significant police presence protecting the applicants has a role in attenuating its effect so as to make Article 3 inapplicable while Article 8 was still engaged”¹⁰¹ as was the case in *R.B. v. Hungary*.¹⁰²

Nevertheless, positive obligations under Article 1 to secure for everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, “require states to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals”.¹⁰³ The required measures should, at least, provide effective protection, in particular of children and other vulnerable persons and should include reasonable steps to prevent the ill-treatment of the

97 *Ibid.*, para. 94.

98 *Ibid.*, para. 121.

99 *Ibid.*, para. 122.

100 *Ibid.*, para. 122. On the case of *Király and Dömötör v. Hungary*, see: Mariya Riekkinen, “Sociocultural rights and the media: international developments 2017”, EYMI (2017/16), 33–62.

101 *Ibid.*, para. 123.

102 ECtHR, Appl. No. 64602/12, *R.B. v. Hungary*, judgment of 12 April 2016, reproduced in the official database of the ECtHR decisions “Hudoc” and at <[103 ECtHR, *op. cit.*, note 63, para. 124.](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-161983%22]}>”.></p>
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victims, which the authorities had or ought to have had knowledge.¹⁰⁴ Article 3 further requires that the authorities conduct an effective official investigation into the alleged ill-treatment, even if private individuals have inflicted such treatment.¹⁰⁵

The Court found a violation of Article 3 and Article 14, with respect to the Group I applicants.¹⁰⁶ Commenting on the substantive aspect of Article 3, the Court established that although the police authorities were aware of the pogrom being prepared, none of the officials intervened.¹⁰⁷ Also, the presence of the police force during the ransacking of the applicants' homes without intervention coupled with the decision of the village council of 9 September 2002 to endorse the expulsion of "socially dangerous individuals" from the village "created the appearance of official approval for the attackers' actions".¹⁰⁸ The ECtHR found it a positive fact that the council's decision was quashed several months later yet, in the opinion of the ECtHR, it was "immaterial for the assessment of the gravity of the attack and its impact on the applicants at the time that it occurred and in its immediate aftermath".¹⁰⁹ Hence, the applicants who had been warned about the attack "were put in a situation where they had to conclude that, because of their family relations and their ethnicity, they could not count on the protection of the law in the place where they had lived in regular accommodation for a substantial period of time".¹¹⁰ The Court concluded that the abovementioned role of the police "was such as to constitute an affront to the applicants' dignity sufficiently serious as to be categorized as "degrading" treatment".¹¹¹

Therefore, the Court considered that:

- (i) the attack on the applicants' homes was motivated by anti-Roma sentiment;
- (ii) the police failed to take any measures to protect the applicants' homes from the attack and no objective reason was given for their inaction;
- (iii) the village council's resolution and in particular the police presence and passivity at the scene of the attack created an appearance of official endorsement for the attack; and

104 *Ibid.*, para. 124.

105 *Ibid.*, para. 125.

106 *Ibid.*, para. 137.

107 *Ibid.*, para. 131.

108 *Ibid.*, para. 132.

109 *Ibid.*, para. 133.

110 *Ibid.*, para. 134.

111 *Ibid.*

(iv) the attack constituted degrading treatment, in particular on account of the attitude of the authorities.¹¹²

As for the violation of a procedural aspect of Article 3, taken in conjunction with Article 14, the Court found a violation based on the fact that the investigation into the incident cannot be considered as having been effective.¹¹³

As for the Group II applicants, the Court rejected their complaints under Article 3, taken alone or in conjunction with Article 14, as incompatible with the Convention *ratione materiae*.¹¹⁴ The reasoning is that the said individuals had been away from their homes at the time of the events and had no knowledge of the imminent attack and were not prompted to flee their homes “only learned about the damage done to them afterwards”.¹¹⁵

Instead, their allegations were considered under Article 8 and Article 14, “on account of the role the authorities played prior to and in the course of the attack on the applicants’ homes and their failure to conduct an effective investigation into the attack”.¹¹⁶ The Court reiterated that in addition to its primarily negative undertaking, Article 8 may imply positive obligations inherent in an effective respect for private or family life involving *inter alia* the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves.¹¹⁷ The State’s positive obligation under Article 8 to safeguard an individual’s physical integrity may also “extend to questions relating to the effectiveness of a criminal investigation”.¹¹⁸ The Court, therefore, extended its conclusions with respect to Group I applicants that “there were grave failures on the part of the domestic authorities to protect the [...] Group I applicants from the attack on their homes”¹¹⁹ to the Group II applicants “because the only difference between them and the former group was that they were absent from the village at the time of events of 7–10 September 2002 and only returned to the village later to find their homes damaged”.¹²⁰ The Court found it established that the homes of all applicants “were targeted in the attack [...] and they suffered displacement from their homes as a result”¹²¹ while it would have been “unreasonable to expect” that applicants

112 *Ibid.*, para. 136.

113 *Ibid.*, para. 146.

114 *Ibid.*, para. 150.

115 *Ibid.*, para. 149.

116 *Ibid.*, para. 170.

117 *Ibid.*, para. 160.

118 *Ibid.*, para. 161.

119 *Ibid.*, para. 164.

120 *Ibid.*, para. 165.

121 *Ibid.*, para. 166.

would reside in damaged houses “in a locality where the authorities had clearly communicated to them that they would have no protection against mob violence”.¹²² The damage caused to the applicants’ homes, therefore, “constituted grave and unjustified interferences with the applicants’ right to respect for their private and family life and home”.¹²³

Since the issues regarding the effectiveness of investigation and availability of remedies have already been examined under Articles 3 and 8, the Court did not find it necessary to examine them separately under Article 13.¹²⁴

Allegations under Article 1 protocol No. 1 were found manifestly ill-founded and had been rejected by the Court.¹²⁵ The Court noted that the applicants have failed to provide any evidence in support of their claims, and have not provided any details of unfavourable deals with the property they had to leave behind nor any relevant documentation.¹²⁶ They have neither provided detailed descriptions of the property they lost, including household items, nor specified which of the applicants were the owners.¹²⁷ In such circumstances, the Court considered that the applicants “have failed to develop and substantiate their complaint or to provide a cogent explanation for their inability to do so”.¹²⁸ Claims with respect to Article 14 and Protocol No. 1 of Article 1 were found unsubstantiated.

In contrast, the theme of social inclusion based on minority status was invoked by the ECtHR in case of *Jansen v Norway*.¹²⁹ The applicant and Y. who are both Norwegian Roma had a child, A.¹³⁰ Due to an array of circumstances, A. was first taken away under emergency care order and later placed with foster parents.¹³¹ *Inter alia*, it was established that A. was “a vulnerable child who had experienced considerable instability and disorder in her first year”,¹³² had attachment problems and was in need of “a calm life, extra security and

122 *Ibid.*, para. 167.

123 *Ibid.*, para. 168.

124 *Ibid.*, para. 185.

125 *Ibid.*, para. 180.

126 *Ibid.*, paras. 177 and 178.

127 *Ibid.*

128 *Ibid.*, para. 179.

129 ECtHR, Appl. No. 2822/16, *Jansen v. Norway*, judgment of 6 September 2018, reproduced in the official database of the ECtHR decisions “Hudoc” and at <[https://hudoc.echr.coe.int/eng#{"fulltext":\["\CASEOFJANSENV.NORWAY"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-185495"\]}](https://hudoc.echr.coe.int/eng#{)>.

130 *Ibid.*, paras. 5 and 6.

131 *Ibid.*, para. 56.

132 *Ibid.*, para. 14.

therapy”.¹³³ Both parents supported the order and requested only visiting rights.¹³⁴ Yet, due to serious concerns of probable abduction where A. “would probably be subjected to more neglect”,¹³⁵ the municipality asked the court to deny both parents contact.¹³⁶ After a series of trials and appeals handled by the City Court,¹³⁷ twice by the High Court,¹³⁸ and by the Supreme Court in full,¹³⁹ the matter reached the ECtHR which considered the case under Article 8.

What matters for our present discussion, are references by the ECtHR to the minority status of A. The ECtHR did find a violation of Article 8 in this present case *inter alia* because “the separation of A from her mother could also lead to an alienation of A. from her Roma identity”.¹⁴⁰ According to the Court’s jurisprudence, “measures that totally deprive an applicant of his or her family life with the child and are inconsistent with the aim of reuniting them should “only be applied in exceptional circumstances and could only be justified if they were motivated by an overriding requirement pertaining to the child’s best interests”.¹⁴¹ Moreover, under the case-law of the ECtHR, “it is imperative to consider also the long-term effects which a permanent separation of a child from her natural mother might have”.¹⁴² The interpretation of the principle of the best interest of the child by national authorities was found, therefore, incompatible the Court’s jurisprudence “whereby a care order should be regarded as a temporary measure, to be discontinued as soon as circumstances permit [...], which is, furthermore, followed by the positive duty to take measures to facilitate family reunification as soon as reasonably feasible”.¹⁴³ While accepting that the decisions of the national authorities “were made in what they considered to be the best interests of the child”, the Court held that in the present case “the potential negative long-term consequences of losing contact with her mother for A. and the positive duty to take measures to facilitate family reunification as soon as reasonably feasible were not sufficiently weighed in the balancing exercise”.¹⁴⁴

133 *Ibid.*, para. 56.

134 *Ibid.*, para. 15.

135 *Ibid.*, para. 56.

136 *Ibid.*, para. 21.

137 *Ibid.*, paras. 21–25.

138 *Ibid.*, paras. 26–30 and 39–59.

139 *Ibid.*, paras. 31–37.

140 *Ibid.*, paras 103 and 105.

141 *Ibid.*, para. 93.

142 *Ibid.*, para. 103.

143 *Ibid.*, para. 101.

144 *Ibid.*, para. 104.

According to the Defender of Rights, “between 15,000 and 20,000 people in France live in shanty towns in conditions of extreme hardship and that a third of these are children”.¹⁵⁰ He further informed the Committee that the complaints from families living “in makeshift dwellings on illegally occupied sites” who are subject to eviction by the authorities are submitted to him regularly. These complaints relate both to the eviction operations and access to health-care and education for children.¹⁵¹ Moreover, legal and material conditions in which evictions are carried out “do not sufficiently respect the rights of the persons concerned and the guarantees enshrined in internal legal provisions and supranational standards, particularly those of the Charter”.¹⁵² As to the right of children to education, the Defender of Rights claimed that this right is still “somewhat ineffective where children from the Roma community are concerned”.¹⁵³

The Committee noted that the anti-discrimination measures provided for by Article E also cover “the positive obligation to treat differently persons whose situations are different”.¹⁵⁴ According to the Committee, in France “discrimination always derives from particular formal or non-formal acts – decisions, words or measures – whose effect is to identify one group in relation to another and make it difficult for it to obtain a right or deprive it thereof, directly or indirectly”.¹⁵⁵

The Committee, considered that the said acts by the authorities which “engendered discrimination through social rejection had the effect or consequence of impeding access to schooling for the children concerned or impeding or preventing access by young adults to vocational training and depriving them of support in access to employment or employment policy measures, thereby placing them in a less favourable position than non-Roma persons”.¹⁵⁶ As the complaint relates to such decisions by mayors and to action taken by the police, the Committee found a violation of Article E taken in conjunction with Article 10 §3 and 5, as well as a violation of Article E taken in conjunction with Article 17 §2.¹⁵⁷

Violation of Article E taken in conjunction with Article 16 of the Charter was not found in this case.¹⁵⁸ This is because the consequences of the impugned

150 *Ibid.*, para. 14.

151 *Ibid.*, para. 14.

152 *Ibid.*, para. 15.

153 *Ibid.*, para. 21.

154 *Ibid.*, para. 108.

155 *Ibid.*, para. 110.

156 *Ibid.*, para. 113.

157 *Ibid.*, para. 114.

158 *Ibid.*, para. 122.

law, regulation, measure or conduct which would “deprive the beneficiaries of the social and family benefits to which they are entitled, a dwelling adapted to the family’s needs, benefits for the newly married or all other appropriate measures whose goal is to contribute to the economic, legal and social protection of the life of families” were not documented in this case.¹⁵⁹

Yet the Committee found a violation of Article E taken in conjunction with Article 31 of the Charter.¹⁶⁰ This is because the group of persons concerned by the complaint do not in practice enjoy the right to adequate housing¹⁶¹ provided by the Charter and are therefore victims of a discriminatory treatment.¹⁶²

Finally, since the guarantees required to accompany eviction orders did not function properly in the present case, this, coupled with a lack of prior consultation with the persons concerned, put the persons concerned in a situation of encountering difficulties *inter alia* “in terms of housing and schooling, which worsened their living conditions and prevented or reduced their enjoyment of social rights”.¹⁶³ Therefore, the Committee held that there was a violation of Article E taken in conjunction with Article 30 of the Charter.¹⁶⁴

This case considered by the European Committee of Social Rights, set up clear legal standards for protecting the rights of Roma individuals to education, healthcare and housing which is the issue often referred to by the OSCE and the ACFC.¹⁶⁵

159 *Ibid.*, para. 120.

160 *Ibid.*, para. 126.

161 The Committee recalled that “adequate housing” means (Conclusions 2003, Article 31§1, France): “1.a dwelling which is safe from a sanitary and health point of view, i.e. that possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc. and where specific dangers such as the presence of lead or asbestos are under control; 2.a dwelling which is not over-crowded, that the size of the dwelling must be suitable in light of the number of persons and the composition of the household in residence; 3.a dwelling with secure tenure supported by the law” (para. 124).

162 European Committee of Social Rights, *op. cit.*, note 145, para. 125.

163 *Ibid.*, para. 128.

164 *Ibid.*, para. 129.

165 See, for examples, ODIHR, 2017 Human Dimension Implementation Meeting, Consolidated Summary, 46, at <<https://www.osce.org/odihr/365486?download=true>>, p. 152–153. See about it Riekkinen, *op. cit.*, note 100; See also: ODIHR Annual Report, 2015, 26 June 2016, at <<http://www.osce.org/odihr/248251>>; ACFC Fourth Opinion on Hungary, 25 February, 2016, ACFC/OP/IV(2016)003, at <<https://rm.coe.int/16806aco4b>>; on the two previous documents see also Mariya Riekkinen, “International Developments 2015: Cultural Activities and Facilities, Including the Media”, EYMI (2015/14), 90–119, at 63, 82.

4 The Organization for Security and Cooperation in Europe

4.1 *High Commissioner on National Minorities*

The Report of the High Commissioner on National Minorities (hereinafter HCNM or High Commissioner) of 7 June 2018 mentioned that in the first year of his mandate, the High Commissioner has seen “how State and non-State actors alike attempt to use language and education issues to fan the flames of conflict”.¹⁶⁶ The issues of education were central in the High Commissioner’s activities, which included entering into a dialogue with the government, national minorities and other parties in Ukraine,¹⁶⁷ as well as visits to Kyiv and the Zakarpattia region¹⁶⁸ and Kyrgyzstan,¹⁶⁹ and co-organizing a round table on multilingual education in Uzbekistan.¹⁷⁰ Finally, the High Commissioner has engaged in dialogue with the Latvian authorities about the new education law, but has not been able to visit the country yet.¹⁷¹

As for the issues of social inclusion, in Moldova the High Commissioner noted the adoption of the Action Plan for the implementation of the Strategy for the Consolidation of Interethnic Relations 2017–27 which he will continue to support.¹⁷² In a visit to Budapest, the High Commissioner observed that “Roma communities, however, continue to face challenges which impact their access to education and equal treatment before the law”.¹⁷³ Having concluded a visit to Estonia, the High Commissioner found that “positive results have been achieved” in the field of education “where the knowledge of the State language among national minorities has improved, while the preservation of minority identities is ensured through the continued provision of education in minority languages”.¹⁷⁴

4.2 *Office for Democratic Institutions and Human Rights*

The 2018 OSCE Office for Democratic Institutions and Human Rights (ODIHR) Third Status Report on the Implementation of the OSCE Action Plan on Roma

166 Report by the High Commissioner on National Minorities, Ambassador Lamberto Zannier, 7 June 2018, 2, at <<https://www.osce.org/permanent-council/384168?download=true>>.

167 *Ibid.*, 6.

168 *Ibid.*

169 *Ibid.*, 11.

170 *Ibid.*

171 *Ibid.*, 10.

172 *Ibid.*, 8.

173 *Ibid.*, 8.

174 *Ibid.*, 9.

and Sinti touched upon socioeconomic rights and education.¹⁷⁵ The Action Plan focuses on combating racism and discrimination but comments *inter alia* on ensuring equal access for Roma and Sinti in “employment, housing and health services, enhancing public and political participation, and assisting Roma and Sinti in crisis and post-crisis situations”.¹⁷⁶ It remarked *inter alia* that Roma women have limited access to employment, education, health, social services and decision-making.¹⁷⁷ Respectively, the Committee on Employment and Social Affairs called on the European Commission of the European Union “to adopt a systematic approach to gender equity and the active participation of Roma women as agents of change”.¹⁷⁸ As for recommended actions by participating states, adoption and implementing effective anti-discrimination legislation to combat racial and ethnic discrimination in all fields, “including, *inter alia*, access to housing [...], employment, health and social services” were put forward.¹⁷⁹ Moreover, participating states were recommended to promote the increased representation of qualified Roma and Sinti people in public employment,¹⁸⁰ to develop training programmes “to prepare under-represented groups such as Roma and Sinti for employment in local public administration and other areas, and develop policies to encourage employment of the graduates of these programmes as civil servants”;¹⁸¹ They were also recommended to reassess the impact of subsidized employment programmes, “[...] ensuring that these will aim to increase the competitiveness of Roma and Sinti people on the labour market”,¹⁸² develop policies and programmes, “including vocational training, to improve the marketable skills and employability of Roma and Sinti people, particularly young people and women”¹⁸³ and adopt social policies “that strengthen incentives to seek employment, as a sustainable way to avoid dependency on social benefits”.¹⁸⁴ In the area of health care, it was recommended for participating states

175 ODIHR, Third Status Report on the Implementation of the OSCE Action Plan on Roma and Sinti, 11 December 2018, Reporting period: 2013–2017, at <<https://www.osce.org/odihr/406322>>.

176 *Ibid.*, 13.

177 *Ibid.*, 11.

178 *Ibid.*

179 *Ibid.*, 63.

180 *Ibid.*

181 *Ibid.*

182 *Ibid.*

183 *Ibid.*

184 *Ibid.*

to ensure that Roma and Sinti people have access to health care services on a non-discriminatory basis; to promote awareness about the specific needs of the Roma and Sinti population amongst health care personnel; to address the high incidence of disease and malnutrition among Roma communities; to encourage access by Roma and Sinti populations to general public health services; to pay special attention to the health of women and girls,¹⁸⁵ as well as to pay special attention to the health of Roma and Sinti children through the provision of appropriate paediatric care.¹⁸⁶

The participating states were also recommended to ensure that national legislation includes adequate provisions banning racial segregation and provides effective remedies for violations of such legislation and to “develop and implement comprehensive school desegregation programmes aiming at: (1) discontinuing the practice of systematically routing Roma children to special schools or classes (e.g., schools for mentally disabled persons, schools and classes exclusively designed for Roma and Sinti children); and (2) transferring Roma children from special schools to mainstream schools.”¹⁸⁷

5 European Union

5.1 *Agency for Fundamental Rights*

The 2018 Fundamental Rights Report highlighted the sociocultural rights of minorities, including education.¹⁸⁸ To start with, a special Section 5 of the Report is devoted to Roma integration and, in particular, to the issues of education, employment, and housing. In the opinion of the Agency for Fundamental Rights (FRA), an important barrier to Roma inclusion is anti-Gypsyism; Roma people face continuous discrimination in access to education, employment, housing and healthcare because of their ethnicity.¹⁸⁹ The FRA recommends that “Member States should ensure that combating anti-Gypsyism is mainstreamed into policy measures and combined with active inclusion policies that address ethnic inequality and poverty.”¹⁹⁰ Moreover, according to the

185 *Ibid.*

186 *Ibid.*, 67.

187 *Ibid.*, 78.

188 FRA, Fundamental Rights Report 2018, at <<https://www.osce.org/odhr/roma-sinti-action-plan-2018-status-report?download=true>>.

189 *Ibid.*, 111.

190 *Ibid.*

findings, “improved educational participation of Roma has not always resulted in higher employment rates or labour market participation”, leaving long-term unemployment a challenge with young Roma and Roma women facing even more difficulties in integrating into the labour market.¹⁹¹ In order for Roma integration measures to succeed, “the meaningful participation of Roma in projects and in the design and implementation of local policies and strategies is essential”.¹⁹² Member States should also implement “outreach efforts to Roma to support their full integration into the labour market”.¹⁹³ Recommendations for Member States should also review national Roma integration strategies or integrated sets of policy measures in order to advance efforts to promote participatory approaches to policymaking and in integration projects.¹⁹⁴ Finally, member states are recommended to “improve or establish monitoring mechanisms on Roma integration, in line with the 2013 Council Recommendation on effective Roma integration measures in the Member States” since this 2013 Council Recommendation calls on EU Member States to appropriately monitor and evaluate the effectiveness of their national strategies and social inclusion policies.¹⁹⁵

References to socio-cultural rights of members of minorities are also found in Section 3 of the Report, titled “Equality and Non-Discrimination”. In particular, FRA found that “discrimination and unequal treatment on different grounds remain realities in key areas of life throughout the EU”.¹⁹⁶ It also suggested that “The EU legislator should continue its efforts for the adoption of the Equal Treatment Directive to ensure that the EU offers comprehensive protection against discrimination in key areas of life, irrespective of a person’s sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.¹⁹⁷

6 Concluding Remarks

Reports on 2018 international developments in the area of the socioeconomic and cultural rights of members of minorities highlighted many problems

191 *Ibid.*

192 *Ibid.*, 112.

193 *Ibid.*

194 *Ibid.*

195 *Ibid.*

196 *Ibid.*, p. 65.

197 *Ibid.*, 65.

related to the integration of Roma individuals. Persistent systemic problems limited access to adequate housing, health care and employment.

Anti-Gypsyism, as a societal attitude, was named by many international human rights bodies as the main barrier to the effective integration of Roma in the area of employment. When it came to access to housing, the European Committee of Social Rights promulgated a landmark decision on a 2017 case *European Roma and Travellers Forum (ERTF) v. France*, where a lack of effective public measures was found to be in violation of the non-discrimination principle in implementing the said substantive right.¹⁹⁸

The ECtHR advanced its interpretation of Article 8 with respect to protecting the rights of members of minorities to participate in society. In particular, in the 2018 case of *Burlyta and others v. Ukraine*, the Court proclaimed that a lack of reaction on the side of public authorities to the decision of municipal gatherings to expel Roma individuals from a community amounted to a violation of the right to respect for private and family life. In the 2018 case of *Jansen v Norway*, the Court articulated a link between Article 8 of the ECHR and the international right of children belonging to national minorities to be associated with minority culture and language and, *inter alia*, stated that the interest to maintain minority identity and language should be considered among the circumstances supporting the meeting rights of parents belonging to a minority group.

The most significant procedural advancement in 2018 is the reform strengthening the monitoring procedures under the ECRML, introducing *inter alia* the commitment to submit follow-up information on the implementation of the recommendations for immediate action by the Committee of Experts.

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¹⁹⁸ European Committee of Social Rights, *European Roma and Travellers Forum (ERTF) v. France*, No. 119/2015, decision on the merits on 5 December 2017, at <[0004545997.INDD 79](https://hudoc.esc.coe.int/eng#{%22ESCDIdentifier%22:[%22cc-119-2015-dmerits-en%22]}>.>.</p>
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