

**COMMON AND DIFFERING IMPACTS  
OF THE EUROPEAN FRAMEWORK  
FOR THE PROTECTION OF NATIONAL MINORITIES  
WITH SPECIAL CONSIDERATION OF SWEDEN AND POLAND**

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## INTRODUCTION

Minority protection norms entered the European landscape in the early 1990s with the growing concern over instances of ethnic conflict in the aftermath of the fall of communism. Although a large-scale ethnic conflict did not materialize, this provided an impetus for the adoption of European level treaties and policies concerning minority protection, including a convention that is legally binding on the European states. The European minority protection framework provides specific guidelines and requires states to develop legal frameworks for minority protection within their borders. The way in which states approach their minorities has also been a feature of the European Union (EU) enlargement processes since the end of the Cold War as new EU candidate states were required to fulfill minority protection requirements prior to being admitted as EU members.

This study focuses on the similarities and differences in the ways in which the 27 European Union member states have approached these European level expectations and obligations. At one level, the study supports neoinstitutional expectations of nation-level isomorphism (Meyer et al 1997; Meyer et al. 1987; Hironaka 2003). Neoinstitutional scholars have focused upon adoption of formal legislative structures such as treaty ratifications and national laws. These arguments are supported in the case of European minority protection. Since the late 1990s, all except *one* EU member state have *signed* the main European Convention, the Framework Convention on the Protection of National Minorities (FCPNM). All but *four* EU states have ratified the Convention and adopted national minority protection legislation required by the Convention.

However, the findings from this dissertation also challenge the neoinstitutional perspective. While all except four EU member states have adopted similar minority protection legislation, there are significant national differences in how these obligations are understood and implemented. This dissertation extends neoinstitutional theory by considering the effectiveness of the implementation of treaties and legislation as well as their formal adoption. It finds that along with a degree of institutional homogenization, there is a significant variation in both the interpretation of these international obligations and in national policy.

This dissertation finds that the continuing influence of particular national identities and nationalist aspirations in policy-making creates reluctance to adopt some minority protection measures and peculiarities in how states interpret the obligations. Evidence from the case studies suggests that despite international obligations to grant additional protections to national minority groups, states simultaneously take measures to protect and preserve the dominant culture as well as promote the dominant ethnic identity, language, and culture. This rise in nationalist thinking might be especially true about countries that have experienced a sudden influx of immigrants in recent decades, such as Sweden, Spain, Germany or the Netherlands. In such cases, the state would attempt to fulfill international obligations, but might limit the number of minorities included or interpret minority protection in a way that is less threatening to majority groups.

In the case of Sweden, the study shows that despite the international perception of Sweden as a country that is progressive on social issues and generous with social security

provisions, attempts to preserve national identity and the tradition of assimilation of minority groups have led to non-inclusive minority policy. In Sweden, these pre-existing structures and approaches have affected the implementation of the new framework and reduced its effectiveness.

In the case of Poland, a complex history of state relations with minorities and the attempt to overcome the perception that the government and society are not minority-friendly influence the adoption of inclusive minority laws and policies. At the same time, as a result of the absence of prior frameworks for minorities and the small percentage of minorities in the general population, the adoption of the framework occurs in a top-down fashion. In Poland, these top-down processes have led to a less effective implementation of the legal framework for minorities.

In sum, this study finds that along with institutional isomorphism in how international norms and laws diffuse, there is national variation in policy due primarily to differences in national history and culture. The study finds that while Poland and Sweden have similar formal legal frameworks and all appearances of formal adherence to international norms and obligations, there are country-specific factors that shape the meaning and outcomes of minority protection. Those country-specific factors include different national histories and cultures that continue to shape the contemporary approaches to minorities. Consequently, despite the diffusion of norms and laws and the appearance of formal adherence, there is still both formal and substantive lack of protection.

The European Union seems to be an excellent case for testing these arguments. According to neoinstitutional theory, the member nation-states of the European Union should be most amenable to the pressures of international isomorphism. The European Union is an organization of states that have ratified common treaties and agreed to harmonize in a variety of policy areas. One would expect the system to have become increasingly coherent and homogenous, and the member states increasingly similar to one another in law and policy. Thus, the members of the European Union should exhibit less variation in the implementation of laws and policies than comparable groups in other regions. Because the European Union conforms so strongly to neoinstitutional arguments, it should be hardest to find evidence of national cultural and historical differences among these states.

The presentation of research is organized as follows. Chapter 1, the *Literature Review*, situates the research question within the existing theoretical frameworks in sociology and discusses literature that is relevant to the analysis of minority protection in the EU. This chapter reviews the neoinstitutional literature and provides some critiques. In addition, this chapter reviews three other literatures that might explain the formation of minority protection regimes in Europe: 1) Social movement theory suggests that political opportunity structures may provide an explanation of mobilization of minority groups in processes of transition in Europe. In particular, the transition to democracy for the Eastern European states provided a significant political opportunity in which to create minority protection regimes; 2) Scholars of the welfare state argue that state structure may account for better protections for minorities in corporatist welfare states, which

already provide a higher level of social protection to its citizens. According to these arguments, welfare states such as Germany and the Scandinavian states may provide more effective minority protection through the extension of welfare provisions than other European states; 3) Nationalism, cultural identity, and collective memory literatures may account for obstacles for the formation of minority protection regimes.

Chapter 2, *Method and Case Selection*, provides the logic of case selection based on the use of most different cases design that is meant to contrast and account for variation in minority protection. Additionally, this chapter explains the rationale for using mixed methods in the study. It also explains the ranking of countries according to how they fulfill minority protection criteria, which uses measures derived from principles and requirements typically contained in international human rights treaties. The chapter also addresses some weaknesses inherent in using such measures.

Chapter 3, *European Minority Protection Institutions and Norms*, explains how the European minority protections work providing the contextual background on the complex system of minority protection in Europe. It examines the EU and European level institutions, norms, treaties, policy, and monitoring mechanisms on minority protection. It explains how the EU and larger European institutions and treaties are used to reinforce each other in reviews of states' compliance with obligation under these treaties. The chapter addresses some explanations for the lack of ratification by four out of twenty-seven EU member states. Finally, it discusses the system of monitoring of compliance with minority protection and examines some findings of the minority protection monitoring mechanisms.

Chapter 4, *All EU States: Quantitative Analysis*, discusses the results of a quantitative analysis of all EU member states using several variables, measures of minority protection. It also discusses how Poland and Sweden fit into the analysis of all member states.

Chapter 5, *Case Study 1: Sweden*, provides an overview of nation-building in Sweden, discusses the Swedish minority groups, and discusses the adoption of laws and policy of minority protection. It critically assesses Sweden's legal minority framework in the context of the prevailing cultural norms and tradition of assimilation.

Chapter 6, *Case Study 2: Poland*, provides an account of nation-building in Poland and presents Polish minority groups and laws and policy of minority protection. The chapter discusses the development of Poland's legislative framework in response to EU obligations. It addresses the results of this "top down" legislative process in the context of a nationalist political discourse and in the absence of significant numbers of minorities.

The *Conclusion* revisits the research question and explains ways in which the national cultures interact with European laws. It also addresses some limitations of the study. These limitations indicate further avenues of study of minority laws and policies suggested by the analysis of the EU and the case studies of Sweden and Poland.

## CHAPTER 1: LITERATURE REVIEW

The existing sociological literature offers several theoretical approaches that may be helpful in addressing the research question posed in this study that is to explain the variation in minority protection among the EU member states despite the formal compliance with the European level requirements. The literature suggests several possible explanations. One is that the implementation differences may be a result of varying political opportunities in some of the EU member countries stemming from major political events during which groups tend to mobilize and put pressure on the government to grant recognition and protections. Another possibility is that the incorporation of minority groups (as interest groups) into the policy-making of the country will result in different policy outcomes. It is possible that interests of some minority groups may be represented to the disadvantage of others depending on mobilization and efforts of a particular group. The welfare state status of the country may also affect minority protection. In particular, a country's welfare status may explain the higher levels of minority protection than in non-welfare states. Additionally, the enduring importance of national identity in some states, and a perceived "threat" to that identity, may lead to governments' efforts to protect the dominant identity and may prevent a minority protection framework from being implemented. Lastly, the question of the influence of world-level processes on the national level, and neoinstitutional explanations are considered to examine whether these frameworks are relevant to the analysis of the EU minority protection framework.

In order to explore the applicability of these different theoretical frameworks to answer the research question, this chapter reviews literature on political process theory, with a focus on political opportunity structures, welfare/ corporatist state, identity/ nationalism, and neoinstitutional approaches, and it discusses how these theoretical frameworks are relevant to this study.

### **Political Opportunity Structures**

The concept of political opportunity is at the heart of the political process theory. At the basis of political opportunity structures lies the assumption that the political environment and social context as well as a perception of opportunity may lead to the emergence of mobilization and social movements (Eisinger 1973; Tilly 1978; Tarrow 1998; Marks and McAdam 1999; David Meyer 2004). The concept was originally developed to analyze the conditions of success or failure of social movements (Tarrow 1994). According to Tarrow (2011), the most important dimensions of opportunity structures involve increasing access to participation for new actors, shifting alignments within the polity, divisions among the elites, the presence of influential allies, and a lessening state's capacity (or willingness) to repress dissenters (76). One could argue that some if not all of these dimensions have been present in the processes of democratic transitions in eastern, central, and southern Europe.

Along with the idea of political opportunity, theorists have also drawn attention to the concept of threats that may also be a factor in mobilizing movements. Threats may lead to the sense of outrage and increase the perception of the cost of failing to act

(McAdam, Tarrow, and Tilly 2001). McAdam, Tarrow, and Tilly (2001), argue that both opportunities and threats are not objective structures and may be the result of attribution by challengers, and requiring a dynamic approach that would capture the interaction of multiple actors that are involved in this process.

The concept of political opportunity structures (conditions that give power to social movements or groups and are a trigger for action) has been applied to ethnic movements (Marks and McAdam 1999; Aminzade and McAdam 2001). For the purpose of this study, the concept of political opportunity structures is understood as an opening for minorities to mobilize for change. This results from major transitions and political events (such as democratic transitions in Europe).

Contention resulting from political opportunity structures may take different forms, including “institutional reform efforts,” which is a strategy that has been prevalent in Europe. Some observers and scholars have noted that contemporary Europe sees relatively little social movement activity in the tradition sense (Tarrow 1995), but others have argued that the movements have not diminished, but their forms and activities have changed (Marks and McAdam 1999; McAdam, Tarrow, and Tilly 2001). Marks and McAdam (1999) point to the prevalence of “conventional activity, i.e., institutionalized, elite lobbying taking place continuously within established political channels,” over “uninstitutionalized, symbolic or mass protest” (Marks and McAdam 1999: 103). Political opportunity literature draws attention to the use of institutions as a strategy that is commonly used in Europe instead of more unconventional activities.

This literature is relevant to the study because many of the EU countries have experienced democratic transitions in recent history. The transitions may have created power conditions and incentives to collective action of minorities that constituted political opportunities for these previously marginalized minority groups. The literature explains mobilization and pressure on the state to adopt policies for specific groups and would expect to see some groups benefitting more than others depending on the size of the group and extent of its activism. This is reasonable from the political opportunities standpoint because the transitions provided were rapid social change that created an opening to ethnic groups that had been silenced and marginalized under universalizing ideas of communism. The collapse of the authoritarian rule made it possible for the ethnic groups to make claims on the state and also on the international institutions. In the cases of EU applicant countries, these political opportunity structures were often reinforced by conditions imposed by the EU requiring the governments to take minority protection measures. This was the case in countries such as Poland, Hungary, Czech Republic, and Slovak Republic. Thus, this framework may account for variation in minority protection in Europe. It would expect a higher level of minority protection in the countries that have undergone transitions. Moreover, it would also account for differences in minority protection within specific nation states depending on the level of mobilization of each group.

## **Welfare States and Corporatism Literature**

Welfare and corporatist state literature can provide a framework to explain differences in minority protection. Welfare state literature (Huber and Stephens 2001, Esping-Andersen 1990, 1999; Janoski and Hicks 1994; Janoski, Alford, Hicks, and Schwartz 2005), would expect a better level of minority protection, both quantitatively and qualitatively, in countries that are wealthier welfare state countries. This is because those countries already provide a high level of social security protections for all citizens or at least higher than non-welfare state countries. Minorities would be covered by these policies and arguably enjoy better protection than in non-welfare states. In the case of minority rights, I identify these EU states as welfare states: Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Great Britain, and these as non-welfare states: Bulgaria, Cyprus, Czech Republic, Greece, Hungary, Estonia, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia.

Furthermore, many of the older EU member states are neo-corporatist regimes, countries in which state involves a variety of interest groups in the policy-making process (Granados and Knoke 2005: 293). Although in those countries, the state takes the leading role in policy-making, and these policies result from effective negotiation with a variety of interest groups, including ethnic minority groups. In the case of the EU, according to Granados and Knoke (2005), the EU institutions and system provide a “lobbying alternative for national and subnational interest organizations” (104).

The distinctive feature of neocorporatist policy-making is that it presumes

consensus rather than conflict among the major groupings in society and would expect that an ethnic group's input into decision making would be reflected in policies adopted by the state. In particular, this body of literature would expect to see a higher level of minority protection in welfare/ neocorporatist regimes and would explain a dimension of variation among the EU member states.

### **Nationalism, Cultural Identity, and Collective Memory Literature**

It may be that the process of adopting a minority protection framework on the national level is also influenced in some ways by nationalistic tendencies of the states to hold on to its national identity. States, when faced with minority protection expectations that threaten the national identity and nation's "collective memory," may adopt laws to fulfill any international obligations but also seek to preserve that identity. Literature on nationalism (Anderson 1983; Gellner 1983; Smith 1987, 1991, 1995, 2009; Hansen and Weaver 2003) posits that even under the condition of the seeming decline of the nation state, as in the case of the EU membership, national identity has an enduring importance and is essential to the state's sense of national cohesion and security. For this reason, states continue to value and protect their national identity. One way in which this is done is through the adoption of laws that institutionalize international norms and respond to international legal obligations, but ultimately institutionalizes "collective memory as law" (Savelsberg and King 2007). For example, states may be willing to institutionalize international norms (such as human rights or minority norms) by adopting a national legal framework for the disadvantaged groups, but they do so in a way that preserves

some key national features, events, and memories. For example, states would generally favor established national minorities over newer immigrant minorities in policy-making, because the “older” groups have already been part of the nation and its identity for a long time. The older groups are part and do not threaten the state’s national identity to the same extent that new immigrant groups do. Some scholars also draw attention to the complex ways in which the incorporation of “out-groups” (such as minorities) into the “core” group of society occurs (Alexander 2001). According to Alexander (2001), incorporation of outsiders does not only occur in the public arena through the group’s demands for recognition, but also happens outside the public arena and extends from “micro interactions, such as intermarriage, to macro arenas like labor markets” (242). Nonetheless, the process of incorporation is often marked by “symbolic and material” conflicts between the core and out-group that extends into the public sphere and the legislative process as well. The state may attempt to institutionalize incorporation in a variety of ways, including an assimilation of the out-group into the dominant culture and society (Alexander 2001: 242-243). A different response of the state may involve the adoption of the multiculturalist framework that recognizes and celebrates the differences and diversity, a process which leads to the incorporation of aspects of previously excluded identities into the core culture (Alexander 2001: 246-247).

When faced with international obligations to grant additional legal protections to national minority groups, the nationalism literature would expect states to take measures to protect and preserve the dominant culture as well as promote the dominant ethnic identity, language, and culture. This might be especially true about countries that have

experienced recent rapid influx of immigrants, such as Sweden, Spain, Germany or the Netherlands. A sudden and rapid influx of immigrants might create a perceived threat to the national identity. In such cases, the nationalism literature would expect that the state would counteract the adoption of the minority protection legal framework by simultaneously adopting laws and policies aimed at preserving the dominant identity. At the same time, countries that have mostly national minorities (minority groups that have resided in the territory of the state for many generations) will be more likely to grant rights to those established groups and will be more likely to enact minority protection than those with immigrant populations. The nationalism literature is relevant to this study as it can explain the variation in minority protection based on the type of minority population in a given EU member state.

### **Neoinstitutional Approaches**

The following two sections discuss the general assumptions of the neoinstitutional theory, including some newer approaches within this specific body of literature. Neoinstitutional literature studies norms and policy diffusion in institutional environments and is relevant to the analysis of the minority protection system in Europe and particularly among the EU member states, which can be considered an institutional environment.

### **World Polity Approaches**

Neoinstitutionalism focuses on the increasing homogenization in the international system and predicts that states and other actors that are part of larger institutional

environments are largely shaped by the norms and culture prevalent in the institutional framework of which they are a part. In the cases of organizations of states, such as the EU, world polity literature would expect that norms, policies, and laws in member countries would originate from that larger institutional environment and not *primarily* out of local conditions and history (Thomas et al. 1987; Meyer et al. 1997: 147). Thus, work by Meyer, Thomas, DiMaggio and Powell, Hironaka, Schofer, Boyle, Dobbin, and others shows that organizations that are part of a larger organizational structure will gradually become similar to one another and, in particular, adopt similar laws and policies. The “compliance” with international norms may not be the result of explicit expectations, but is often explained by organizations’ focus on achieving and maintaining legitimacy in a given institutional context (DiMaggio and Powell 1983).

National institutional isomorphism within the international system is a topic that is well-covered in sociology by scholars working within the neoinstitutional framework. Much work has been done on the diffusion of norms, rules, and laws for a variety of issues areas and policies, including constitutional design (Boli 1987), the regime form (Finnemore 1996), educational curricula (Benavot 1996), female suffrage (Ramirez, Soysal, and Shanahan 1997), weapon’s taboos (Price 1997), women’s rights (Berkovitch 1999; Berkovitch and Bradley 1999; Boyle, Songora, and Foss 2001; Boyle 2002), environmental policies (Frank, Schofer, and Hironaka 2000; Hironaka 2002; Schofer and Hironaka 2005), and affirmative action policy (Dobbin 2009).

The neoinstitutional framework is relevant to this study because these states form an institutional environment in which policy convergence is either required or

encouraged. Convergence may also occur by virtue of membership and participation in the organizational structures. To some extent, one ought to be able to find a level of convergence in minority protection among the EU member states. One of the objectives of this study is to explore whether there is diffusion of minority protection within the EU and its member states, to what extent there is policy convergence, and whether there is any variation, and if so, explain the reason for variation. In particular, this study examines whether these states will resemble each other in laws, policies, and approaches to minority protection irrespective of the actual applicability and need for such laws. For example, they might adopt minority protection laws even though they do not have a significant number of minorities and there may be no internal pressures and demands on the state to do so.

### **Isomorphism, but...**

While the traditional neoinstitutional approaches are helpful in explaining similarity among EU member states, they are not as useful in accounting for any existing variation. In order to examine and explain any divergence in minority protection within the EU, it is also useful to consider strands of neoinstitutional theory that look beyond formal homogenization within organization environments. Some authors working in this research tradition recognize that isomorphism takes place to some extent, but they also draw attention to and explain differences in the implementation of the “same” laws and policies.

In *Inventing Equal Opportunity* (2009), Frank Dobbin focuses on anti-discrimination policies and how their implementation has changed over time with the

changing personnel profession because of the influence and differing interpretations (and shifting interests) of those who were in charge of implementing the law. According to Dobbin (2009), this “social construction” by the professionals who are considered “experts” and are charged with the implementation of laws is made possible by the *ambiguity* of the anti-discrimination law itself and also results from the piecemeal fashion, in which the law was introduced. He also argues that the ambiguity of the consequences of non-compliance with the law made it possible to interpret the same law in different ways by different professionals within organizations. This ambiguity, according to Dobbin, has limited the effectiveness of these laws.

In his earlier comparative cross-country study of the diffusion of industrial policy, Dobbin shows how the “same” industrial policy and the railway system in three different countries was planned and developed differently. In *Forging Industrial Policy: The United States, Britain, and France in the Railway Age* (1994), Dobbin argues that the way the policy was developed was to a large extent influenced by each of these country’s customs, tradition, and it eventually happened “in the image” of already existing institutions (Dobbin 1994). In his account, even if international norms provide impetus for new policy ideas, the actual adoption of new national policies and, in this case industrial policy is shaped to a large extent by “identifiable social and historical forces rather than ... extra-societal economic precepts” (Dobbin 1994: 27).

Another approach that accounts for the variation within institutional frameworks is the work by Elizabeth Heger Boyle, Fortunata Songora, and Gail Foss (2001). Boyle et al. explore “variation in the method and meaning of policies adopted in the global process

of isomorphism” on the topic of anti-female-genital cutting laws (Boyle et al. 2001: 537). They find that universal principles and norms are in some cases contested when introduced locally. This resistance and contestation modify these norms to some extent and, in some cases, change the meaning and consequences of policies depending on the particular environment. According to Boyle et al. “the diffusion of laws and policies around the globe can mask important differences in the meaning and implications of policies for different countries.” (Boyle et al. 2001: 537)

Boyle et al. looks at somewhat different processes than those investigate in this study, ones in which national policy-makers make decisions that address and incorporate global ideas but also take into account local conditions and constituents in making policy (Boyle et al. 2001: 538). Nonetheless, they draw attention to the complex ways in which global norms and laws diffuse within organizations and states. The work by Boyle et al and Dobbins demonstrates that the influence of global level ideas, laws, and policies is modified by either the culture of organizations or by national culture, and existing institutional arrangements.

Other scholars also point to the role of culture in policy change at different stages of the political process, including agenda setting, the development of policy proposals, and the struggle for adoption of the proposals (Burstein 1991). Paul Burstein focuses on “policy domains,” or parts of the political system that are organized around specific substantive issues and around which “organizations and individuals orient their actions” (Burstein 1991: 328). According to this theoretical framework, public policy is “created and given meaning” by culture (Burstein 1991: 346).

The newer generation of neoinstitutional literature may be relevant to the case of minority rights protection in Europe as it points to the possible influence of specific national, cultural, and historical features in the formulation and implementation of national policy that is the source of variation.

### **Other Approaches in the Study of Europe**

Much of the current social science literature on the EU is concerned with the possibility of the emergence of post-national European identity (Soysal 1994; Rumford 2002; Rumford and Delanty 2005; Taras 2009). In particular, scholars debated the development and future of EU social policy and its effects on national social policy regimes (Geyer 2000). Social scientists have also examined the increasing salience of ethnicity and the assertion of ethnic identity by multiple large and small minority groups in Europe and political activism of those minorities, such as Ukrainians, Germans, Jews and Kashubs in Poland (Zielonka 2002: 122–23; Jasiewicz 2012).

Other scholars who study the question of convergence within the EU draw attention to the importance of larger national factors in thinking about minority protection. According to Ray Taras (2009), cultural differences persist and affect the EU despite the “vener of EU unity” (3). Taras argues that “national –level religious phobias and prejudice, antipathies and sympathies,” as well as stereotypes continue to affect approaches to minorities and immigrants in European societies (Taras 2009: 3-4). He focuses on the differences in how national leaders and citizens approach the idea of “belonging” that determines who is viewed as entitled to participate in a given society

(Taras 2009: 1-2). Taras draws attention to the divide between the old and new versus new Europe (or older vs. newer member states). He contrasts the west's "liberal, inclusive, and bound to a civic and multicultural" (societies such as Sweden) and east's "paranoiac, exclusionary, and committed to promoting an ethnic reading of the state and its inhabitants" ideas of belonging (societies such as Poland) (Taras 2009: 2). Some of the literature that examines these developments and analyzes Sweden and Poland within the EU context will be discussed in Chapters 6 and 7, respectively.

As all of these different literatures are considered and tested to see whether they all may contribute to the explanation of causes of variation in minority protection among EU member states. In particular, this study draws on the work by Boyle and Dobbin to the extent that they focus on the role of national social institutions and national political culture in modifying isomorphism on the national level to examine how cultural and other national-level factors in the EU member states result in different policy outcomes of seemingly similar laws and approaches. This study expands neoinstitutional arguments by theorizing the causes of variation in isomorphism. It shows that the process of isomorphism is not simple and straightforward, but rather that specific histories and political cultures set the tone for the interpretation and adoption of minority policy.

## CHAPTER 2: METHOD AND CASE SELECTION

The study uses a mixed-methods approach, a process of collection, analysis and the use of both quantitative and qualitative data within a single study (Tashakkori & Teddlie, 2003). This approach is used in social sciences in order to obtain richer findings and understand the research problem more completely than if only one type of a method was used. The reasoning for mixing methods is based on the understanding that, in some studies, a neither qualitative nor quantitative method would be sufficient to capture the important aspects of a particular subject. Using both types of methods to complement each other allows for a more in-depth analysis and understanding (Rocco, Bliss, Gallagher, & Perez-Prado 2003: 26). In quantitative research, a researcher relies on numerical data and uses post-positivist claims that involve the reduction to variables, hypotheses, and specific questions. In effect, the purpose of quantitative analysis is to test theories. In qualitative research, on the other hand, the goal is to provide a richer description, explanation, and understanding of the phenomenon under review in order to gain a more “complex, holistic picture” (Creswell, 1998: 15). This is accomplished by an analysis of concepts, reports, and other types of written evidence that provide perspectives of the subjects or observers of a given phenomenon. In qualitative research, knowledge claims are thus based in constructivist perspectives and data analysis is based on worldviews of participants or authors of the analyzed materials (Guba & Lincoln, 1982).

However, it is important to recognize that this project studies the complex multi-level phenomena involved in minority protection in Europe, which poses a number of challenges to making generalizations and finding clear causal mechanisms. For example, it underscores the importance of understanding the shifting meanings of terms such as “national minority.” In order to provide more meaningful accounts of such phenomena, scholars such as Andre Sayer argue for a problem-driven research and analysis in social science. According to Sayer, focusing on finding causal mechanisms and clear correlations in social sciences is often misguided because “social systems are always open and usually complex and messy” (Sayer 2000: 19). Instead of making the qualitative/quantitative distinction when deciding on methodology, he proposes the use of intensive versus extensive research strategies to move beyond the focus on finding correlations and toward the identification and understanding of mechanisms that produce patterns of correlations (Sayer 1992, 2000).

Intensive research strategy aims at finding “substantial relations of connection” as opposed to only the “formal relations of similarity” as is the case in extensive research strategy (Sayer 1992: 243; 2000: 21). In intensive research, one investigates “causal groups” (individuals, groups, or institutions) and takes into account “groups or networks of specific people, institutions, discourses and things with which they interact” (Sayer 2000: 20). The strength of the intensive research method (which often involves qualitative analysis but also involves the general approach to the study of social phenomena) is that it provides a rich causal explanation and interpretation of meanings

within the context instead of looking for simple association between variables. This type of research tends to be time-consuming, and it is best used to address a small number of cases. While it may produce explanations that may not be “representative” and cannot be easily generalized to other cases (Sayer 2000: 20-21), intensive approach provides a richer and more meaningful explanation of these phenomena. Sayer’s intensive method implies a general orientation toward the study of social phenomena, and gives primacy to qualitative methods.

This study does not apply Sayer’s framework directly; rather, it uses the approach as a guideline, and the qualitative analysis is dominant (Rocco, Bliss, Gallagher, & Perez-Prado, 2003: 22; Sayer 1992, 2000). Due to a very small number of cases and a resulting small population, there are limitations to the quantitative analysis. Nonetheless, the quantitative analysis is used as the starting point in order to both see the “big picture” and test several hypotheses about the sources of differences in minority protection among EU member states. The results of quantitative analysis (logistic regression) suggest variation in minority protection norms and policy among the EU member states that is not primarily due to the assumptions made at the outset.

The qualitative method (case studies) is meant to complement the analysis, render richer findings, provide a better understanding of minority protection among EU member states, and account for its variation. In order to explain the variation, in-depth case studies of Poland and Sweden are meant to examine and highlight the causes of the variation by analyzing the cultural and historical basis for the variation that could not be

captured by the quantitative study alone. The cases were selected based on their differences, using the most different systems design that is explained later in the chapter.

The case studies provide a rich account of the minority rights landscape in each country. They discuss some defining historical and national developments, describe the features of minorities, trace the laws, address the process of minority law adoption, and explain differences in law, policy, and implementation among states and the discrepancy between law and implementation. They also provide some insights into societal attitudes towards minorities.

### **Quantitative Analysis**

In the *quantitative* part of the study, all EU members are ranked according to how they fulfill ethnic minority protection criteria. Since there was no existing ranking of states with respect to minority protection for all twenty-seven EU member states, several measures were set up to assess minority protection in each country. This ranking represents a contribution of this study to the literature. The measures are derived from principles found in a variety of human rights instruments at European institutions and the United Nations. They refer to the norms with respect to ethnic and also other minorities. These measures are also universal human rights concepts used in the international law and thus can in principle be used to study minority protection anywhere, and not only in the EU.

Analysis of the level of minority protection requires the use of comparable national data on the different aspects of minority protection in each EU member country,

and of measures and indicators that have precise and consistent definitions. The study uses indicators that are relevant, specific, and used in the European context, but are also universal concepts. In order to obtain information that is objective, an effort was made to use data primarily from EU institutions monitoring the level of compliance with a variety of EU laws, policies, and principles with regard to ethnic minorities. In the absence of reviews on a specific country and to complement and confirm data on a given country, the data were supplemented from additional sources. The data were derived primarily from the Council of Europe's (COE) Monitoring Mechanism of the Framework Convention for the Protection of National Minorities.<sup>1</sup> The data from the United Nations (UN) Treaty Bodies database<sup>2</sup> and 2007 human rights reports by United States Department of State were also used in this study.<sup>3</sup> The indicators were set up following a detailed and careful analysis of data from these sources and reports by outside organizations, and checked against the same or similar data in different sources.

### *Variables*

*My independent variables:* length of membership in an organizational structure (EU); major political event such as a transition; national vs. immigrant minorities; and welfare state status.

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<sup>1</sup> Council of Europe, *Monitoring the Implementation of the Framework Convention for the Protection of National Minorities*, available at: [http://www.coe.int/t/dghl/monitorings/minorities/2\\_Monitoring/Monitoring\\_Intro\\_en.asp](http://www.coe.int/t/dghl/monitorings/minorities/2_Monitoring/Monitoring_Intro_en.asp), accessed on 12/10/2008.

<sup>2</sup> United Nations Human Rights Office for the High Commissioner for Human Rights, *UN Treaty Body Documents Database*, available at: <http://tb.ohchr.org/default.aspx>, last accessed on 12/20/2008.

<sup>3</sup> United States Department of State, *2007 Country Reports on Human Rights Practices*, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/index.htm>, accessed on 12/1/2008

The “length of membership” in the EU indicates the extent to which a country is integrated into the institutional structure of an organization. Longer period of EU membership means that the country is more integrated into the institutional structure of the EU and it might also indicate that the country is more compliant with policies and norms of the organization. The “old” vs. “new” distinction is tied to the institutionalization of minority protection in international discourses. Minority protection became institutionalized in the mid-to-late 1990s (in part, as a result of Balkan conflicts in early 1990s and the fear of spillover of conflict to other multiethnic countries) and has only become “institutionalized” since the 2004 enlargement toward the East. “Old” EU countries for the purpose of this study are those that joined before 2004 (the last enlargement before 2004 was in mid-1990s). Thus, Sweden, for example, is considered to be an “old” EU country (joined EU in 1995) because at the time of its accession the minority protection principles were not institutionalized and were not part of the EU enlargement and accession “conditions.”

A “major political event” indicates a major transition, such as a transition out of an authoritarian rule to a democratic rule. Major political events often result in a variety of important cultural, economic, and political outcomes and create political opportunities for formerly excluded groups to assert themselves and make demands on the state. All of the Eastern European EU members were coded “transition” countries due to their recent transitions away from Communism.

The number of “national vs. immigrant minorities” indicates whether the state has mostly older national minority populations or mostly newer immigrant minorities. This is

based on the available data reporting percentages of these minorities in relation to the general population.

Finally, “welfare state” indicates whether the country is considered to be a welfare state or not. All of the western European states were coded as such for the purpose of this study. The western European states were coded as welfare states based on the classification and categorizations typically used in social science (Hicks and Kenworthy 2003; Esping-Andersen 1990). The context of welfare provision is different for Eastern European countries than it is for the western European states, and they are usually not included in these theoretical frameworks (Cook 2007). The Eastern European countries are newer and weaker democracies than the advanced industrial states, and approaches to welfare reform in these countries were affected by the economic crisis of the 1990s that was experienced more severely than in the Western states. Under communism, “welfare” meant the provision of broad but very *basic* services to the population unlike in the Western democracies. The eastern European welfare reforms were undertaken under post-communist conditions and affected by corruption which also distinguishes them from the other welfare states (Cook 2007: 11).

The wealthier welfare states fit the traditional Western welfare state model(s), due to their emphasis on the individual right to social provisions and the principles of comprehensive and universal rights. Better levels of minority protection, both quantitatively and qualitatively, would be expected in those countries than in the poorer and/or post-communist states.

The independent variables have some limitations due to their ambiguities. For example, while major political transitions often result in political opportunities for minorities and previously excluded groups, they also present opportunities to majorities and may constitute threats to minorities. The size and type of minorities also may have a different effect on the political and social outcomes depending on some other factors (such as the socioeconomic status of a given group, the level of political mobilization, or its relationship to outside states).

*The dependent variable* indicates the level of minority protection. In order to measure the level of minority protection, five indicators were used: minority representation in Congress, official language, financial support for cultural activities by the state, financial support to improve societal integration, and the implementation of anti-discrimination law. These indicators were chosen because they were relatively quantifiable and easy to measure.

Numbers of minority representatives in the national parliament are generally available, but the number fluctuates fairly often with new elections. A country was ranked high if there were more than two ethnic and racial minority representatives identified as such and representing minority populations at any time in 2000s. The database and links available through the Inter-Parliamentary Union, the international organization of parliaments,<sup>4</sup> and a variety of other sources, including specific country parliament websites, were used to collect the data.

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<sup>4</sup> Inter-parliamentary Union official website available at: <http://www.ipu.org/english/whatipu.htm>, accessed 8/1/2008.

A country was ranked high if there was more than one official language, even if additional languages had a co-official status, or were official only regionally. Government websites and the CIA World Factbook, which lists any official and administrative languages, were used.<sup>5</sup>

In the case of support for cultural activities, a country was ranked high if there was any public culture and language-related financial support from the government. These data were compiled based on reports and reviews by the FCPNM, and UN country reports to several human rights committees (particularly the Committee on the Elimination of Racial Discrimination, CERD, and Committee on Economic, Social, and Cultural Rights, CESCR).

For the measure of financial support to improve social integration of ethnic and racial minorities, the country was ranked high if there were governmental initiatives and efforts, specifically in education (e.g. school curricula), news media campaigns, employment, and affirmative action programs. These data were also compiled based on the reports and review by the FCPNM and UN country reports to several human rights committees (particularly CERD and CESCR).

For the measure of implementation of anti-discrimination law (if any), the country was ranked high if there was evidence that the law has been used or somehow applied in practice (law enforcement, court cases, campaigns, etc.) These data were compiled based on a variety of reports and reviews by the FCPNM and UN country reports to several human rights committees (particularly CERD and CESCR).

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<sup>5</sup> CIA World Factbook official website available at: <https://www.cia.gov/library/publications/the-world-factbook/>

Data on minority representation, official language, and implementation of non-discrimination law were available in official government sources, including official government websites. These and the remaining measures are also among the ones that are routinely used by international institutions (the UN and a variety of European institutions) to measure countries' compliance with the requirements of minority protection under international treaties. They are also used by non-governmental watchdog organizations to assess governments' efforts at the promotion of ethnic minorities. For example, during reviews of states under the Framework Convention for the Protection of National Minorities, the reviewing Committee routinely comments on financial support provided by government for the advancement of ethnic and racial minority groups.

### **Sources**

It is difficult to obtain detailed and reliable data that would also be comparable across all the EU member states. The EU member states differ in many ways including economic development, the size and makeup of the minority population (e.g. small percentage of minorities, mostly immigrant vs. mostly established minority groups, and so on). For example, even reviews of different EU states by the same human rights committee and international organizations differ in their emphasis on issues depending on either a particular concern or the economic and political status of a given country. Thus, multiple sources were used for each of the indicators and compared in order to get the most reliable data possible. The study uses official data published by individual governments and documents published following reviews of states by a variety of United Nations human rights committees (especially CESCR and CERD) and European

institutions that focus on minorities (especially the Commission monitoring the compliance with the Framework Convention of the Protection of National Minorities). It also uses a wide range of inter-governmental and non-governmental sources. For example, to assess the extent of minority representation in Congress, the information compiled by the Inter-Parliamentary Union, was used. Other U.S.-issued data and reports are used, such as the CIA World Factbook, U.S. Department of State Human Rights reports and a variety of other sources.<sup>6</sup>

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<sup>6</sup> The following sources were used to compile the ranking of all EU members: Inter-Parliamentary Union, available at <http://www.ipu.org/english/home.htm>; Council of Europe, *Framework Convention for the Protection of National Minorities*, available at [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNDocs/Table\\_en.asp](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNDocs/Table_en.asp); United Nations Human Rights Office for the High Commissioner for Human Rights, *UN Treaty Body Documents Database*, available at: <http://tb.ohchr.org/default.aspx>, accessed on 12/20/2008; United States Department of State, *2007 Country Reports on Human Rights Practices*, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/index.htm>, accessed on 12/1/2008.

**Table 1: Ranking of all EU members according to how they fulfill minority protection criteria**

	<b>Minority representation in Parliament</b>	<b>Official language</b>	<b>Financial support for cultural activities</b>	<b>Financial support to improve societal integration of minorities</b>	<b>Implementation of anti-discrimination law</b>
Austria	Low	Low	High	Low	Low
Belgium	High	High	Low	High	High
Bulgaria	High	Low	High	Low	High
Cyprus	Low	High	Low	Low	Low
Czech Rep.	Low	Low	High	High	Low
Denmark	High	High	Low	Low	High
Estonia	High	High	Low	High	High
Finland	High	High	High	High	High
France	Low	Low	Low	High	High
Germany	High	Low	High	High	High
Greece	Low	Low	Low	Low	Low
Hungary	Low	Low	Low	Low	Low
Ireland	Low	High	Low	High	High
Italy	High	High	High	High	High
Latvia	High	Low	High	Low	Low
Lithuania	Low	Low	Low	Low	High
Luxemburg	Low	High	Low	Low	Low
Malta	Low	High	Low	Low	Low
Netherlands	High	High	Low	Low	High
Poland	Low	Low	Low	High	Low
Portugal	Low	High	Low	Low	Low
Romania	High	High	Low	Low	Low
Slovakia	High	Low	High	High	Low
Slovenia	Low	High	Low	Low	Low
Spain	High	High	High	Low	High
Sweden	Low	High	High	High	High
United Kingdom	High	High	Low	Low	Low

**Table 2: Ranking of all EU members according to how they fulfill minority protection criteria (scores)**

	<b>Minority Protection Score</b>
Finland	5
Italy	5
Estonia	4
Germany	4
Spain	4
Sweden	4
Bulgaria	3
Cyprus	3
Denmark	3
Ireland	3
Netherlands	3
Slovakia	3
Czech Rep.	2
France	2
Latvia	2
Romania	2
UK	2
Austria	1
Belgium	1
Lithuania	1
Luxemburg	1
Malta	1
Poland	1
Portugal	1
Slovenia	1
Greece	0
Hungary	0

The indicators were set up following a detailed and careful analysis of data from numerous sources, reports by outside organizations and treaty bodies; I checked the same data against different sources. All other research followed the same pattern: in-

depth study of data and extensive reading in existing relevant literature. Thus, the data are not perfect, but they are reasonably reliable as a result of careful and comprehensive research and comparison.

### **Coding**

All 27 EU members were coded depending on their status as new or older EU states (1=new; 0=old); a major political event or transition, such as the ending of communism and transition to democracy (1=political opportunities; 0=if no political opportunities); and country's status as a welfare state (1=welfare state; 0=not a welfare state).

All EU members were coded either high or low on all of the dependent variables (Table 1).

### **OLS Regression**

As a statistical method, OLS multiple regression was used. It is appropriate in this case and allows for meaningful comparisons as it reveals associations between the independent and dependent variables when everything else is controlled. In multiple regression, the coefficient for each variable shows the relationship between that variable and the dependent variable after accounting for the relationship between the dependent variable and all other independent variables used in the model.

Although OLS multiple regression is usually more appropriate for interval-level variables, it is also appropriate for a continuous normally distributed dependent variable. Although the minority protection measure is ordinal, OLS is commonly used on ordinal

variables as well. The sample of 27 is small and possibly too small to generate meaningful results, but the results were helpful in showing some relationships and showing variation in policy among EU member states. Logistic regression is not an ideal method to use when there is only a small number of cases available. In such cases another method might be better suited. For example, Qualitative Comparative Analysis (QCA) can be applied to analyze a small number of cases. QCA allows for an intensive and integrative analysis of a limited number of cases.

### **Qualitative Analysis**

In the *qualitative* part of the study, in-depth cases studies of Poland and Sweden were used and compared to assess the differences of the two states and how they interpret principles of minority protection. They use historical accounts and content analysis, utilizing a variety of primary sources such as official governmental data and reports, publications by various European institutions and the United Nations (human rights treaty bodies), and news articles. They also use a variety of additional governmental and non-governmental publications. Beyond these primary sources, a variety of secondary sources on various aspects of the phenomenon of minority protection (historical studies, books, and articles) supported the research.

### **The Logic of Case Selection**

The selection of cases is based upon a different systems design approach (Przeworski and Teune 1970: 31-34; Przeworski and Teune 2000; Seawright and Gerring 2008: 305-306). In the most different system design, “differences among systems are taken into account as they are encountered in the process of explaining social phenomena

observed within these systems” (Przeworski and Teune 1970: 31). When using this method, the researcher identifies cases that are different on most or all independent variables. The method involves a process of falsification or elimination of causes of social phenomena as opposed to finding positive relationships between variables as in the instances where the most similar cases are selected for comparison and analysis.

For this study, three different hypotheses on the formation of a minority protection regime were taken into account in case selection. The first hypothesis is that the length of EU membership is a key factor in the minority protection regime. Drawing from neoinstitutional arguments, those states that entered the European Union at the time when minority protection was becoming “institutionalized” in international discourses should have better minority protection than older EU states that predate the global minority protection regime. Thus, the newer EU members such as Poland and other Eastern European states will be more likely to have more current minority protection than older EU members such as France, Britain or Sweden.

A second hypothesis is that the occurrence of political opportunities, especially as a result of the transition to democracy, is a key factor in the formation of minority protection regimes. Improved minority protection may result from the mobilization of previously marginalized or repressed groups as a result of political opportunities on the domestic level arising from major political events and transitions. Several EU members have experienced significant political changes in the 1990s that potentially created political opportunities for minority groups to mobilize and demand social protections. In particular, the former communist states such as Poland or Hungary – but also countries

such as Spain and Portugal – experienced transitions out of authoritarian rule that created such openings for many groups, including ethnic and national minorities. In those countries, one might expect better minority protection especially for those groups.

A third hypothesis is that countries with larger minority or ethnic populations might be more likely to have improved minority protection. This might occur due to the increased political weight of ethnic voters in these countries, or might simply be a recognition of demographic realities. Alternately, countries with large ethnic populations might experience a strong anti-immigrant or anti-minority sentiment that blocks effective minority protection. This factor functions as a control in case selection. Efforts were made to compare countries with comparably-sized ethnic/immigrant populations within reasonable parameters.

Cases for this study were selected by contrasting the two factors of older vs. newer members of the European Union and political opportunities vs. no political opportunities. There was a focus on EU countries with reasonably comparable ethnic/immigrant populations. This led to the following 2 x 2 table:

**Table 3: Case selection**

	<b>Political opportunities</b>	<b>No political opportunities</b>
Older EU member	Spain	Sweden
Newer EU member	Poland	Austria

The table is imperfect, but attempts to take into account theoretically important differences between the states. Poland and Sweden were selected because they differed on both independent variables and have reasonably-sized ethnic/immigrant populations.

Sweden is an older EU member while Poland is a more recent entrant. Sweden has not experienced a major political transformation, and Poland underwent a transition from communism to a democracy in the past 20 years. Sweden has a large percentage of national and immigrant minorities; Poland has one of the lowest percentages of minorities in the world. Sweden is a traditional welfare state; Poland is not a welfare state.

These countries are also of interest from the neoinstitutional perspective because of their different international reputations. Sweden is internationally considered to be a country progressive on human rights while Poland has been historically noted as closed to minorities. Poland has received international publicity for anti-Semitic incidents and societal attitudes in the past. These differences were helpful in comparing, contrasting, and making theoretical generalizations about the differing impact of the European level minority protection norms, laws, and policy. These differences also highlighted reasons for variation in minority policies among EU member states. The cases provide some good contrasts and similarities that are helpful in highlighting the role of history and cultural orientation as they related to minority protection.

The original plan of the dissertation was to use 4 case studies, including Austria and Spain. Unfortunately, for logistical reasons the last two case studies have not yet been undertaken. Hopefully, a post-dissertation extension of this research will include these useful comparison cases.

## **CHAPTER 3: EUROPEAN MINORITY PROTECTION INSTITUTIONS AND NORMS**

This chapter examines the European level institutions and legal instruments for minority protection in order to set the two cases within the context of the minority protection “regime” in Europe. The chapter starts with the examination of the EU and European level institutions, instruments (treaties), policies, and norms on minority protection and the obligations/ enforcement/ expectations of EU member states. The chapter continues to explore some of the rationales used to explain the non-ratification of FCPNM (the main minority protection treaty) by four EU countries. The chapter ends with a discussion of the minority protection monitoring mechanisms and some of the findings with respect to EU member states.

The European minority protection rights regime is rooted in the discourse of human rights and the international human rights law that developed after the Second World War. Following and along with the developments at the United Nations in the 1940s, a variety of European institutions and organizations have turned its attention to the protection of human rights and minority rights. The most significant of those initiatives were undertaken at the Organization for Security and Cooperation in Europe (OSCE), the COE, and subsequently, the EU.

The Conference for Security and Cooperation in Europe (CSCE, the predecessor of OSCE) in Copenhagen adopted the so-called “Copenhagen Document”<sup>7</sup> that declared as follows:

Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law. The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.<sup>8</sup>

Since the 1990s, the OSCE has implemented a variety of activities and programs, under the headings of human rights, minority rights, and tolerance and non-discrimination.<sup>9</sup> Although OSCE’s decisions are *not* legally binding on its 56 member states, the organization’s initiatives and its emphasis on human rights has contributed to the visibility and political importance of human rights and minority rights, in particular. OSCE has, for example, called for establishing standards for the rights of people who belong to national minority groups.<sup>10</sup>

The Framework Convention for the Protection of National Minorities (FCPNM or the Convention) was the first-legally binding, multilateral document devoted to the protection of national minorities. FCPNM was adopted by the Council of Europe in 1994. The Convention reaffirmed the importance of other human rights conventions and instruments for the protection of national minorities, including those at the United

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<sup>7</sup> Conference on the Human Dimension of the CSCE, Document of The Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, available at: [http://www.osce.org/documents/odhr/1990/06/13992\\_en.pdf](http://www.osce.org/documents/odhr/1990/06/13992_en.pdf), accessed on 5/10/10, paragraphs 30-40.7, pp. 16-21.

<sup>8</sup> Ibid., p. 18.

<sup>9</sup> Organization for Security and Cooperation in Europe. Activities: Human Dimension, available at: <http://www.osce.org/activities/18805.html>, accessed on 5/10/2010.

<sup>10</sup> Ibid.

Nations and other European bodies, such as OSCE.<sup>11</sup> The document reaffirms and emphasizes the importance of protection of national minorities for the security and stability of Europe. It also underscores the importance of respect for “ethnic, cultural, linguistic and religious identity of each person belonging to a national minority” and the creation of conditions to “express, preserve, and develop this identity” for a “genuinely democratic society” (Council of Europe, FCPNM 1994).

The significance of minority protection in the law and practice of the EU steadily increased and gained importance following the end of the Cold War as an effort to prevent ethnic conflict in Europe. Currently, the protection of minorities is part of the EU policy on human rights, and it is an integral part of its external policy. Specifically, Article 6 of the Treaty on European Union refers to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. All EU members ratified its Article 14 which states that the rights and freedoms laid down in the Convention should “be secured without discrimination on any ground such as sex, *race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*” (Council of Europe, FCPNM 1994). In addition, the EU Charter of Fundamental Rights of December 2000 stipulates “the equality before the law of all people” (Article 20), prohibits discrimination on any ground (Article 21), and calls for the respect for cultural, religious and linguistic diversity (Article 22).<sup>12</sup>

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<sup>11</sup> Text of the Framework Convention for the Protection of National Minorities (Strasbourg, 2/1/1995). Available at: <http://conventions.coe.int/Treaty/en/Treaties/html/157.htm>. Accessed 3/1/2012.

<sup>12</sup> Text of the European Charter of Fundamental Rights. Available at: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf). Accessed 3/1/2012.

After the collapse of communism, looming civil and ethnic conflict gave impulse to the development of interest in minority issues in various European institutions. Since the early 1990s, the minority protection principles and norms have also been at the center of the EU's external relations. Within this context, the EU has taken actions that have included the recognition of new states after the break-up of Yugoslavia and agreements with central and eastern European countries concerning their ethnic minorities.

However, since the minority protection norms gained importance after the EU accession of the first fifteen countries, the issue was a matter of external EU policy and not a matter that was discussed within the EU (Johns 2003; Zielonka 2002: 151–52). Some policies and programs targeted at minorities within the EU were instituted prior to the entry of the ten new mostly former communist countries in 2004 and 2007. These programs included the financial support for the preservation of various minority cultures and languages, and funding devoted to a peace initiative in Northern Ireland (Zielonka 2002: 151–55).

In the process of the EU enlargement to central and eastern Europe, the European Parliament called on the European Council and European Commission to encourage the passing and implementation of laws in accession countries to counter discrimination against minorities (EU online). The minority protection principles and norms were at the center of the political accession criteria spelled out at the Copenhagen European Council in 1993 (the “Copenhagen criteria”) and contained conditions that required reform of candidate countries' legislation and policy. The protection of minorities was one of the central criteria for fulfilling political conditions of EU membership. Thus, prior to May 1,

2004, when ten mostly post-communist countries joined the EU, the countries were under significant pressure from the EU to improve their minority rights record and adopt relevant legislation to guarantee rights and protection of minorities. As a result, those countries established a host of laws, policies, and institutions.

Some scholars have pointed out that the new EU members were expected to fulfill minority conditions that older EU members did not live up to (Johns 2003), but according to the timing and evidence of the development of minority legislation in older EU states, those countries also adopted legal frameworks for minority protection in the 2000s.

### **Obligations of EU Member States Concerning Minorities**

There is an important analytical distinction between the principle of “non-discrimination,” which is present in the EU law since its inception, and the principle of “protection,” which has not been explicit in the EU law. The principle of “non-discrimination” is often referred to as “negative minority rights.” Although the non-discrimination principle forms the basis of protection, it is often considered to be only the first step in the protection of disadvantaged groups and individuals. The non-discrimination principle is sometimes considered to be detrimental to the maintenance of cultural identities as alone it may lead to assimilation and the destruction of separate cultural identities. The term “positive rights,” on the other hand, refers to the protection of minorities through specific measures taken to protect and promote the minority cultures. In international law, it is often labeled “affirmative action” or “special measures.” Scholars claim that such positive measures are necessary to achieve a *de facto* equality and protection, as well as eliminate inequalities and disadvantages of

minority groups and individuals. These positive measures would also promote and protect separate minority identities.

The principle of “non-discrimination” has long been present in primary EU law. Specifically, the principle of non-discrimination on the basis of culture, ethnicity, and race is contained in the primary legal documents of the EU. Furthermore, the issue of racism, for example, was mentioned for the first time in 1985 by the European Parliament’s Committee of Inquiry. According to the Parliament’s official papers, this was propelled by the “growing evidence of racial discrimination, racist violence and the increased popularity of the parties of the extreme-right have underlined the need for more effective action in this sphere.”<sup>13</sup> The EU possesses mechanisms and strategies for not only combating discrimination and xenophobia, but also promoting social inclusion.”<sup>14</sup> In recent years, for example, the EU established a Fundamental Rights Agency in 2007 that replaced the earlier European Monitoring Centre on Racism and Xenophobia.<sup>15</sup>

Currently, the protection of minorities is part of the EU policy on human rights. The EU Fundamental Rights Charter contains the principle of non-discrimination and encourages the Member States to respect cultural, religious and linguistic diversity as a legally-binding part of EU primary law. The EU Charter on Fundamental Rights of December 2000 stipulates “the equality before the law of all people” (Article 20), prohibits discrimination on any ground (Article 21), and requests that the EU protect

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<sup>13</sup> European Parliament, *Directorate-General for Research*. European Union Anti-Discrimination Policy: from Equal Opportunities Between Women and Men to Combating Racism Working Document, *Public Liberties Series LIBE 102 EN*, available at:

[http://www.europarl.europa.eu/workingpapers/libe/102/default\\_en.htm](http://www.europarl.europa.eu/workingpapers/libe/102/default_en.htm), accessed on 3/31/2010.

<sup>14</sup> Europa, Policy Areas: Employment and Social Affairs, available at: [http://europa.eu/pol/socio/index\\_en.htm](http://europa.eu/pol/socio/index_en.htm), accessed 4/4/2010.

<sup>15</sup> European Commission. *Justice: Fundamental Rights*, available at: [http://ec.europa.eu/justice\\_home/fsj/rights/fsj\\_rights\\_agency\\_en.htm](http://ec.europa.eu/justice_home/fsj/rights/fsj_rights_agency_en.htm)

cultural, religious and linguistic diversity.”<sup>16</sup> All EU members ratified its Article 14 which states that the rights and freedoms laid down in the Convention should “be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” (Council of Europe, FCPNM 1994).

The Treaty of Amsterdam, that entered into force on 1 May 1999 amended and made substantial changes to the Treaty on European Union signed at Maastricht in 1992 with respect to minorities. Specifically, The Treaty of Amsterdam added a new Article 6a providing the EU with the option of adopting binding legislation against racial discrimination<sup>17</sup> which replaced a previous non-discrimination principle, as follows:

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.<sup>18</sup>

However, it is the Treaty of Lisbon that entered into force on December 1, 2009, that is the first document of primary EU law that explicitly refers to “rights of persons

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<sup>16</sup> EU on-line, available at: [http://europa.eu.int/comm/external\\_relations/human\\_rights/rm/index.htm](http://europa.eu.int/comm/external_relations/human_rights/rm/index.htm). Accessed in 8/1/2005.

<sup>17</sup> European Parliament, *Directorate-General for Research*. European Union Anti-Discrimination Policy: from Equal Opportunities between Women and Men to Combating Racism Working Document, *Public Liberties Series LIBE 102 EN*, available at:

[http://www.europarl.europa.eu/workingpapers/libe/102/default\\_en.htm](http://www.europarl.europa.eu/workingpapers/libe/102/default_en.htm), accessed on 3/31/2010.

<sup>18</sup> European Union, *The Treaty of Amsterdam, Amending the Treaty on European Union, the Treaties Establishing the European Communities and certain related acts*, Amsterdam, 2 October, available at: [http://ec.europa.eu/economy\\_finance/emu\\_history/documents/treaties/amsterdamtreaty.pdf](http://ec.europa.eu/economy_finance/emu_history/documents/treaties/amsterdamtreaty.pdf), pp. 24-25.

belonging to minorities” (Article 1a).<sup>19</sup> The Treaty amends the earlier Treaty on European Union (TEU, Maastricht, 1992) and the Treaty establishing the European Community (TEC, Rome, 1957).

Although the EU primary law has not until now had explicit measures requiring minority protection of Member States, since the early 1990s, the minority protection principles and norms have been at the center of its policy concerns by forming part of its EU’s external relations. As mentioned earlier, in particular, in the process of EU enlargement to central and Eastern Europe, the European Parliament called on the European Council and European Commission to encourage the passing and implementation of laws in accession countries to counter discrimination against minorities.<sup>20</sup> The minority protection principles and norms were part of the political accession criteria spelled out at the Copenhagen European Council in 1993 (the so-called “Copenhagen criteria”) with obligatory consequences for candidate countries’ legislation and policy. Significantly, the protection of minorities was one of the central criteria of fulfillment of political conditions of EU membership. Prior to 1 May 2004, when 10 mostly post-communist countries joined the EU, the countries were under significant pressure from the EU to improve their minority rights record and adopt legislation to guarantee rights and protection of minorities. All applicant states were expected to achieve “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities” (Matlary 2002: p. 77). According to

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<sup>19</sup> Elena Gaita, “Minority Rights Protection in the EU: Contradictions and Problems.” *European Alternatives Magazine*, available at: [www.euroalter.com/2009/minority-rights-protection-in-the-eu-contradictions-and-problem/](http://www.euroalter.com/2009/minority-rights-protection-in-the-eu-contradictions-and-problem/), November 23, 2009, accessed on 4/20/10.

<sup>20</sup> Ibid.

scholars, as a result of these conditions, many countries of central and eastern Europe have adopted laws and other mechanisms dealing with the protection of minorities (Gál 2000: 12).

Scholars studying these developments, however, emphasize that this “impressive” framework does not automatically mean that minority protection obligations have been fulfilled by these states (Gál 2000: 12). According to Kinga Gál’s 2000 study on the implementation of minority protection in several eastern and central European countries, the actual implementation of these laws depends on “the political structure of the actual government and the political will of those in power” (Gál 2000: 12). Significantly, Gál draws attention to the *possibility* that legal provisions in some countries of the region have been adjusted to fit the needs and preferences of national and local authorities (Gál 2000: 12).

Some scholars have criticized the EU’s approach to minorities that focused solely on new candidate members. They have argued that requiring applicant countries to adopt measures that were not necessarily in place in current EU member states was unfair and created a situation of expectations of new members that the old EU member states were not held to (Johns 2003). Some commented that the EU has treated minority protection as an “export” and not a policy for “domestic consumption” (DeWitte 2000).

Nonetheless, as a result of these conditions and monitoring, the EU candidate countries established a host of laws, policies, and institutions aimed at minority protection. Furthermore, even though these obligations were not part of internal EU policy but referred to external relations, they have created new minority protection norms

and influenced other EU member states. The evidence that this occurred to some extent comes from a review of legislative activity within the older EU members. It reveals that new laws and policies for minorities were being adopted and new programs were being implemented there as well in the late 1990s and early 2000s.<sup>21</sup>

It was the COE during its Copenhagen meeting in June 1993 that decided to impose conditions on the applicant EU countries from eastern, central and southern Europe. The “Copenhagen criteria” consequently specify among other things that it was necessary for the states to achieve “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.”<sup>22</sup> The relationship between the COE and the EU in minority protection is complex, and there is some of both cooperation and overlap with human rights and minority issues. Currently, unlike the COE, the EU has limited legal competencies in minority protection. Some observers and scholars argue that it should stay this way and the EU should not become a full-fledged legal system of minority protection. This would constitute an unnecessary duplication of COE’s minority protection work and requirements that already applies to EU Member States, which are also all members of the Council.<sup>23</sup> It is then possible to see the Council and the EU, along with other European institutions, as cooperating and together constituting one system of minority protection.

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<sup>21</sup> *European Parliament, Directorate-General for Research. European Union Anti-Discrimination Policy: European Union Anti-Discrimination Policy: from Equal Opportunities Between Women and Men to Combating Racism Working Document Working Document, Public Liberties Series LIBE 102 EN, available at: [http://www.europarl.europa.eu/workingpapers/libe/102/default\\_en.htm](http://www.europarl.europa.eu/workingpapers/libe/102/default_en.htm), accessed on 3/31/2010.*

<sup>22</sup> European Commission, *Enlargement Policy: Conditions for Membership*, available at: [http://ec.europa.eu/enlargement/policy/conditions-membership/index\\_en.htm](http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm)

<sup>23</sup> Gabriel N. Toggenburg, [http://www.eurac.edu/NR/rdonlyres/DF8C9CA4-48AC-494B-A5BC-7DC7E340E437/0/Web\\_del30EUandminortiyprotection.pdf](http://www.eurac.edu/NR/rdonlyres/DF8C9CA4-48AC-494B-A5BC-7DC7E340E437/0/Web_del30EUandminortiyprotection.pdf), accessed on 4/20/10.

In effect, the only legally-binding documents on minority protection on the European level emerged from the work of the COE. The COE adopted the first legally-binding, multilateral European instrument devoted to the protection of national minorities, the FCPNM. The FCPNM and the European Charter for the Protection of Regional or Minority Languages entered into force in 1998, and the Organization for Security and Cooperation in Europe's (OSCE) various contributions to the elaboration of a European standard also occurred in the late 1990s. The COE's Framework Convention has been *signed* by all but one (France) EU member state and has been *ratified* by all but four EU countries (Belgium, France, Greece, and Luxembourg).

FCPNM reaffirms the importance of other human rights conventions and instruments with respect to the protection of national minorities, including those at the United Nations and other European bodies, such as OSCE. In paragraph 26 of its Preamble, the Framework Convention explicitly links the document to the UN treaties:

The reference to United Nations conventions and declarations recalls the work done at the universal level, for example in the International Covenant on Civil and Political Rights (Article 27) and in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. However this reference does not extend to any definition of a national minority, which may be contained in these texts.<sup>24</sup>

The document emphasizes the importance of protection of national minorities for security and stability of Europe. It also underscores the importance of respect for "ethnic, cultural, linguistic and religious identity of each person belonging to a national minority

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<sup>24</sup> Council of Europe, *Framework Convention for the Protection of National Minorities, Explanatory Report*, available at: <http://conventions.coe.int/Treaty/en/Reports/Html/157.htm>, accessed on 5/18/10.

and the creation of conditions to “express, preserve, and develop this identity” for “genuinely democratic society” (Council of Europe, FCPNM). CITE

The core issues of minority protection under the FCPNM are: the right to non-discrimination, the protection of cultural, linguistic, and religious identity of minorities (art. 4, 5, 6), linguistic rights and language use (art 10, 11), educational rights (art. 12, 13), participation and representation in decision-making (art. 15), and trans-border cooperation (art. 18) (Gál 2000: 4). According to the official FCPNM website:

The Convention is the first legally binding multilateral instrument concerned with the protection of national minorities in general. Its aim is to protect the existence of national minorities within the respective territories of the Parties. The Convention seeks to promote the full and effective equality of national minorities by creating appropriate conditions enabling them to preserve and develop their culture and to retain their identity.

The Convention sets out principles relating to persons belonging to national minorities in the sphere of public life, such as freedom of peaceful assembly, freedom of association, freedom of expression, freedom of thought, conscience and religion, and access to the media, as well as in the sphere of freedoms relating to language, education, transfrontier co-operation, etc.<sup>25</sup>

Under the FCPNM, states parties are obligated to submit the first report within a year of ratification of the Convention and then submit periodic reports every five years explaining its efforts and implementation of its provisions. The state reports are then reviewed by the Advisory Committee of 18 independent members who are considered to be experts on minority protection. Following the review, the Committee of Ministers

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<sup>25</sup> Council of Europe, *Framework Convention for the Protection of National Minorities, Summary*, available at: <http://conventions.coe.int/Treaty/en/Summaries/Html/157.htm>, accessed 5/18/2010.

issues comments and makes recommendations for improvement.<sup>26</sup> Both the drafting and review of the state reports are processes that often involve consultation with minority and non-governmental organizations, who are encouraged to submit specific information.<sup>27</sup> In addition to these ongoing reviews of state party reports, the Advisory Committee conducts periodic country visits to meet with government officials, representatives of minorities, and a variety of non-governmental organizations.<sup>28</sup>

According to scholars, the monitoring mechanism is one element that has given impetus to minority protection (Gál 2000: 14). Based on a survey of the state reports, however, it appears that the process is not flawless, and comments and recommendations to state parties are not always consistent on the same issues. For example, while the Netherlands was criticized by limiting the number of groups protected under the FCPNM, there is no mention of the same practice in the review of Sweden. Furthermore, many of the state reports are submitted several years late. For example, the report by the Austrian government was not yet submitted in May 2010, even though it was due on July 1, 2009.<sup>29</sup>

At the same time, it also appears that the scope of the country reviews is wider than the original intention of the FCPNM. In particular, despite the focus of the

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<sup>26</sup> Council of Europe, *Monitoring the Implementation of the Framework Convention for the Protection of National Minorities*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/2\\_Monitoring/Monitoring\\_Intro\\_en.asp](http://www.coe.int/t/dghl/monitoring/minorities/2_Monitoring/Monitoring_Intro_en.asp), accessed on 5/18/10.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Council of Europe, *Democracy: Framework Convention for the Protection of National Minorities*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp), 5/19/2010.

Convention on “national minorities,”<sup>30</sup> the concluding comments and resolutions often include issues and comments about the treatment of immigrants as well. In the next section, I survey the most recent country reviews and present the typical comments on states’ implementation of minority protections.

### **EU state parties to the Framework Convention**

In the following sections, I examine the ratifications, including the timeline, of the FCPNM among the EU member states and discuss the review mechanism of the Convention. Then I discuss some specific issues of non-compliance that have arisen during country reviews.

Table 4 shows the majority of EU member states have signed and ratified the Framework Convention by 2000 or shortly thereafter.

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<sup>30</sup> The Framework Convention does not provide a definition of “national minority,” which was a “pragmatic” decision at the time of adoption of the treaty in 1995. It was recognized that it was impossible to come up with a definition that would receive support from all Council members. See for example: [http://www.minelres.lv/coe/FC\\_exr.htm](http://www.minelres.lv/coe/FC_exr.htm) accessed 5/22/10.

**Table 4: Ratification of the Framework Convention by EU member states as of 10/1/2012<sup>31</sup>**

	<b>Date of Signature</b>	<b>Date of Ratification</b>	<b>Entry into Force</b>
Austria	1995	1998	1998
Belgium	2001		
Bulgaria	1997	1999	1999
Cyprus	1995	1996	1998
Czech Rep.	1995	1997	1998
Denmark	1995	1997	1998
Estonia	1995	1997	1998
Finland	1995	1997	1998
France			
Germany	1995	1997	1998
Greece	1997		
Hungary	1995	1995	1998
Ireland	1995	1999	1999
Italy	1995	1997	1998
Latvia	1995	2005	2005
Lithuania	1995	2000	2000
Luxembourg	1995		
Malta	1995	1998	1998
Netherlands	1995	2005	2005
Poland	1995	2000	2001
Portugal	1995	2002	2002
Romania	1995	1995	1998
Slovakia	1995	1998	1998
Slovenia	1995	1998	1998
Spain	1995	1995	1998
Sweden	1995	2000	2000
UK	1995	1998	1998

As of 2010, out of the 27 EU member states, four (Belgium, France, Greece, and Luxembourg) did not ratify the FCPNM. While Belgium, Greece, and Luxembourg have signed it indicating the government’s agreement with the basic premises of the treaty, France is the only EU state that has not signed the treaty at all. Belgium, France, Greece, and Luxembourg have refused to ratify the Convention “on the ground that they respect

<sup>31</sup> Council of Europe, *Convention for the Protection of National Minorities: Status*, available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=157&CM=&DF=&CL=ENG>, accessed on 3/1/2012.

the principle of non-discrimination in their domestic law.”<sup>32</sup> The next few paragraphs, discuss some of the reasons for non-ratification by these four states.

According to available documentation and discussions of Greece’s non-ratification at the COE, Greece’s interpretation of the term “minorities” is restrictive, and it relies on a historical understanding of “national minorities” created by the dissolution of empires or agreements concluded at the end of wars, which limits the definition to communities identified in specific bi-lateral treaties. Greece does not recognize the minority status of any other communities and routinely states that claims by those communities are unsubstantiated or politically motivated.<sup>33</sup>

In its official explanations to the COE, Greece’s government has insisted that “the Greek constitutional and legislative framework is fully in conformity with the fundamental principles set forth in international instruments, including the FCPNM.”<sup>34</sup> However, since there are no constitutional or legal obstacles to the ratification, Greece is expected to ratify the Convention in the future. In fact, the Greek government has commented on the scope of the Convention and drawn the attention to the shortcomings of the FCPNM and exclusion of “new minorities resulting from immigration.”<sup>35</sup>

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<sup>32</sup> Council of Europe, *Ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe* (12 June 2006), available at <http://assembly.coe.int/Documents/WorkingDocs/Doc06/EDOC10961.pdf>, page 5.

<sup>33</sup> United Nations. Office of the High Commissioner for Human Rights, *Universal Human Rights Index of UN Documents*, <http://www.universalhumanrightsindex.org/hrsearch/displayDocumentVersions.do?jsessionid=F8FA6B2D0040831098CA03BA87C66DB1?lang=en&docId=1479>, accessed on 11/25/10.

<sup>34</sup> Council of Europe, *Ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe* (12 June 2006), available at: <http://assembly.coe.int/Documents/WorkingDocs/Doc06/EDOC10961.pdf>, page 5.

<sup>35</sup> Council of Europe, *Ratification of the Framework Convention for the Protection of*

Belgium's refusal to ratify the Convention is considered to be a more sensitive issue due to the specific "institutional and linguistic situation in Belgium."<sup>36</sup> Resolution 1301 (2002) on protection of minorities in Belgium has recommended that "the Kingdom of Belgium and its respective competent parliamentary assemblies (including those on the level of the regions and the communities) ratify the FCPNM without further delay, in a spirit of tolerance, ensuring that all minorities identified by the Assembly are duly recognized as such on the state and regional level"<sup>37</sup> The COE has recognized that "the case of Belgium is specific because it is based on a complex, sophisticated system of balancing mechanisms between the regional, local and federal entities, the outcome of a lengthy pursuit of compromise."<sup>38</sup> Belgium's concern is that the principle of territoriality, which constitutes the organic principle of Belgium's federal structure, would be incompatible with the FCPNM. This principle divides Belgium into four language zones, three of which are unilingual (Dutch-speaking, French-speaking and German-speaking) and one bilingual (Brussels-Capital). This results in two types of sub-states (communities and regions). In principle, all public acts in the unilingual zones are implemented solely in the language of that zone. With the exception of the bilingual zone of Brussels-Capital, where Dutch and French are on an equal footing, and the recognition of 27 communes with facilities for the linguistic minorities, there exist homogeneous linguistic zones that imply the assimilation of the linguistic minorities. This territorial principle was recognized by the European Convention on Human Rights in the Belgian

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National Minorities by the member states of the Council of Europe (12 June 2006), <http://assembly.coe.int/Documents/WorkingDocs/Doc06/EDOC10961.pdf>, page 5.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

linguistic case and in the case of *Mathieu-Mohin and Clerfayt v. Belgium* (1987).<sup>39</sup> To express a concern, Belgium signed the FCPNM on 31 July 2001, and at the time of signature entered a reservation stating that “The Kingdom of Belgium declares that the Framework Convention applies without prejudice to the constitutional provisions, guarantees or principles, and without prejudice to the legislative rules which currently govern the use of languages. The Kingdom of Belgium declares that the notion of national minority will be defined by the inter-ministerial conference of foreign policy.”<sup>40</sup> Nonetheless, Belgium is expected to ratify in the near future, and Belgian authorities have stated to the COE that “they are doing their utmost to find an appropriate answer, based on consensus, to the question of ratification of the Framework Convention.”<sup>41</sup>

In the case of Luxembourg, according to the government “there are no national minorities in Luxembourg.”<sup>42</sup> However, the government claims to support the principle of equality in law and practice. Article 10 bis of the Luxembourg constitution establishes the principle that Luxembourgers are equal in law and Luxembourg is *de facto* a multicultural country, and 39 percent of residents are not Luxembourg citizens. A 1984 law recognizes Luxembourgish as the national language and confirms the existence of two other official languages, French and German. The parliamentary delegation states that the country pursues “a policy of promoting the spirit of tolerance and intercultural dialogue, while seeking to preserve the essential elements of each person’s identity,

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<sup>39</sup> Council of Europe, *Ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe* (12 June 2006), <http://assembly.coe.int/Documents/WorkingDocs/Doc06/EDOC10961.pdf>, page 5.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

his/her religion, language, traditions and cultural heritage,” as well as a “policy of combating any discrimination on grounds of the ethnic, cultural and religious identity of persons residing on its territory.”<sup>43</sup>

France is the only country that is considered unlikely to sign and ratify the FCPNM in the foreseeable future. The French government puts forward a constitutional argument that the nation is indivisible and thus “France does not recognize the existence of minority groups enjoying rights exercisable in its judicial system.”<sup>44</sup> According to the government, the French system of law is based on the principle of equality for all citizens in law, which implies non-discrimination. It also incorporates the principle of unity and indivisibility of the nation, both the territory and the population.<sup>45</sup> According to the French official position, the principles of non-discrimination and equality make it impossible to recognize any “collective rights enjoyed by groups.”<sup>46</sup> According to the Committee, France’s constitutional order and position is an obstacle to the recognition and ratification of the Framework Convention as “France cannot accede to international legal instruments which recognize the existence of a group, or make it identifiable, on the ground of its race, religion, sex, ethnic background.”<sup>47</sup>

France is a party to international legal instruments, which prohibit discrimination (the International Covenant on Civil and Political Rights and the International

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<sup>43</sup> Council of Europe, *Ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe* (12 June 2006), <http://assembly.coe.int/Documents/WorkingDocs/Doc06/EDOC10961.pdf>, page 5.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Council of Europe, *Ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe* (12 June 2006), <http://assembly.coe.int/Documents/WorkingDocs/Doc06/EDOC10961.pdf>, page 5.

Convention on the Elimination of all Forms of Racial Discrimination), and is considered to be attentive to the human rights issue. According to the FCPNM monitoring Committee “French legal system is very coherent, but is not at all in keeping with the spirit of the Framework Convention. Barring a radical reshaping of the constitutional system, it is probable that France will never ratify it.”<sup>48</sup>

The following section examines the findings of the monitoring mechanism of the Convention and presents some comments issued about particular countries’ compliance or non-compliance with minority obligations.

### **Framework Convention Monitoring Mechanism: Periodic Country Reviews**

Comments and recommendations on countries’ compliance with the FCPNM and practices in minority protection include the use of minority languages and, in particular, the use of bilingual signs especially in areas where minorities constitute more than 20 percent of the total population (review of Romania).<sup>49</sup> In its most recent comments on Austria, for example, the government is praised for taking actions to “further the operation of the unique system of bilingual education in Carinthia and Burgenland,”<sup>50</sup> but criticized for the lack of support for bilingual signs in Carinthia that “is creating an atmosphere that is not conducive to harmonious relations and may hamper the effective

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<sup>48</sup> Ibid.

<sup>49</sup> Council of Europe, *Report on Romania*, [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Romania\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Romania_en.pdf)

<sup>50</sup> Council of Europe, *Report on Austria*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Austria\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Austria_en.pdf)

implementation of other rights of persons belonging to national minorities.”<sup>51</sup> Germany was also advised to “ensure proper implementation of the legal provisions with regard to the use of minority languages in the public sphere and in bilingual signs”<sup>52</sup>

Another area that is often presented in reviews is the use of minority languages. In the most recent review of Bulgaria, the Committee called for additional legislative efforts to “enable persons belonging to minorities to use their languages in dealings with the administrative authorities and in topographical indications.”<sup>53</sup> Estonia was also asked to take steps to comply with provisions including “private language signs.”<sup>54</sup> In the case of Finland, problems were noted “in the implementation of the new language laws, which pertain to Swedish and the Sámi languages,” and also with regard to the “language situation of the Russian-speakers in the provision of public services.”<sup>55</sup> Hungary was advised to “employ officials who can speak minority languages” in order to serve minority populations in administrative matters.<sup>56</sup>

States are routinely advised to increase the access of minorities to the media through “increasing the volume of minority language television and radio broadcasts and providing further support for educational projects both in terms of resources and

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<sup>51</sup> Ibid.

<sup>52</sup> Council of Europe, *Report on Germany*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Germany\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Germany_en.pdf)

<sup>53</sup> Council of Europe, *Report on Bulgaria*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_CM\\_Res\\_Bulgaria\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_CM_Res_Bulgaria_en.pdf)

<sup>54</sup> Council of Europe, *Report on Estonia*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Estonia\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Estonia_en.pdf)

<sup>55</sup> Council of Europe, *Report on Finland*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Finland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Finland_en.pdf)

<sup>56</sup> Council of Europe, *Report on Hungary*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Hungary\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Hungary_en.pdf)

sustainability” (review of Italy),<sup>57</sup> more attention given to the use of minority languages in the media (review of Czech Republic),<sup>58</sup> encouragement in developing minority language media and “review the current subsidy system with a view to ensuring that it takes into account the specific situation of minority language print media” (review of Finland).<sup>59</sup> Germany was advised to “pursue efforts to improve the access to and representation in the media of persons belonging to national minorities, particularly in the public service media”<sup>60</sup> and Poland was advised to consult representatives of national minorities to ensure “access of persons belonging to national minorities to the radio and television programs.”<sup>61</sup> The Committee recommended to Sweden to “further measures to support minority language media and cultural initiatives of national minorities, including by ensuring that the eligibility criteria of the related subsidy systems take into account the specific concerns of national minorities.”<sup>62</sup> In the case of Denmark, the Committee encouraged the government to provide support to “local radio and televisions broadcasting for the German minority” and “Examine... how to better reflect the culture, history, language and religion of persons belonging to the German minority and other ethnic and religious groups in the curriculum and textbooks.”<sup>63</sup>

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<sup>57</sup> Council of Europe, *Report on Italy*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Italy\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Italy_en.pdf)

<sup>58</sup> Council of Europe, *Report on the Czech Republic*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_CzechRepublic\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_CzechRepublic_en.pdf)

<sup>59</sup> Council of Europe, *Report on Finland*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Finland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Finland_en.pdf)

<sup>60</sup> Council of Europe, *Report on Germany*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Germany\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Germany_en.pdf)

<sup>61</sup> Council of Europe, *Report on Poland*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_OP\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Poland_en.pdf), p. 42

<sup>62</sup> Council of Europe, *Report on Sweden*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Sweden_en.pdf), p. 3

<sup>63</sup> Council of Europe, *Report on Denmark*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Denmark\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Denmark_en.pdf)

The Committee routinely encourages work by governments to improve societal inclusion by supporting cultural and educational activities. For example, Cyprus was encouraged to “provide support for the cultural activities of the Armenians, the Maronites and the Latins.”<sup>64</sup> Countries are also asked to review textbooks and curricula to be more inclusive of minorities in order to ensure “a more objective reflection of the history, culture and traditions of national minorities.”<sup>65</sup>

The Committee pays a great deal of attention to public incidents of xenophobia and intolerance calling on countries to take measure to prevent and combat these problems, for example “during sporting events; encourage more actively respect for cultural diversity among the public” (review of Poland)<sup>66</sup> and “on the political scene, via every possible means” (review of Slovenia).<sup>67</sup> Countries are encouraged to take measures at awareness-raising among “public, politicians and the media regarding the importance of tolerance and respect for diversity”<sup>68</sup> and to “redouble efforts to raise awareness, about the problems of discrimination and racially-motivated crime among the police, prosecuting authorities, judges, and media, as well as the general public” (review of Spain).<sup>69</sup> United Kingdom was asked to “continue to direct resources to identifying and prosecuting hate crime; introduce a statutory prohibition on incitement to religious hatred

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<sup>64</sup> Council of Europe, *Report on Cyprus*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Cyprus\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Cyprus_en.pdf)

<sup>65</sup> Council of Europe, *Report on Poland*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_OP\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Poland_en.pdf), p. 42

<sup>66</sup> Ibid.

<sup>67</sup> Council of Europe, *Report on Slovenia*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Slovenia\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Slovenia_en.pdf)

<sup>68</sup> Council of Europe, *Report on Romania*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Romania\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Romania_en.pdf), p.2.

<sup>69</sup> Council of Europe, *Report on Spain*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Spain\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Spain_en.pdf), p. 2

in Scotland; review the use of stop and search powers to ensure that they do not discriminate directly or indirectly against persons belonging to minorities.”<sup>70</sup> Denmark’s government was asked to “act upon manifestations of intolerance and xenophobia, including in the political arena, and counter these phenomena with the tools available.”<sup>71</sup> Malta was criticized for “incomplete” legislative and institutional framework for combating discrimination as it was pointed out that “isolated incidents of discrimination on ethnic grounds have been reported”<sup>72</sup>

Another area of interest to the Committee is involvement of minorities in public and political affairs of the states. For example, the Czech Republic was advised to “enhance efforts to improve participation in public affairs by persons belonging to national minorities, particularly at local level, where it should be ensured that committees for national minorities are established wherever the legal conditions are fulfilled.”<sup>73</sup> The Committee called on Poland to “identify without further delay adequate solutions to the situation of cultural properties confiscated by the communist regime.”<sup>74</sup>

Although the Framework Convention does not specifically mention immigrants, the Committee appears to broaden the scope of its work by bringing up issues that have to do with immigrants and access to citizenship in some of the country reviews. For example, Austria was commended on its efforts to “promote the integration of

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<sup>70</sup> Council of Europe, *Report on the UK*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_UK\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_UK_en.pdf), 3

<sup>71</sup> Council of Europe, *Report on Denmark*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Denmark\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Denmark_en.pdf)

<sup>72</sup> Council of Europe, *Report on Malta*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Malta\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Malta_en.pdf)

<sup>73</sup> Council of Europe, *Report on the Czech Republic*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_CzechRepublic\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_CzechRepublic_en.pdf)

<sup>74</sup> Council of Europe, *Report on Poland*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_OP\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Poland_en.pdf)

immigrants.”<sup>75</sup> In the case of Denmark, concerns were raised with respect to Danish “Aliens Act” and policy.<sup>76</sup> Estonia was encouraged to “take further positive measures to facilitate and encourage naturalization”<sup>77</sup> and Germany was asked to “address the problem of the over-representation of Roma/Sinti and immigrants’ children in special schools for under-achievers (*Sonderschulen*).”<sup>78</sup> In the case of Lithuania, the Committee pointed out that “Particular attention should be paid to the discriminatory effect, on persons belonging to national minorities, of the provisions relating to dual citizenship in the new law on citizenship.”<sup>79</sup>

The Roma is the one group that comes up in nearly all country reviews. For example, Austrian government was praised for “taking valuable initiatives to improve the situation of the Roma” but criticized for the lack of “comprehensive policies, programs and resources to promote equal opportunities.”<sup>80</sup> In the case of Bulgaria, the Committee found that “Roma continue to be confronted with instances of discrimination and social exclusion,” including the spheres of employment, housing and health, and education. The government was asked to focus on improving school attendance and lowering drop-out

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<sup>75</sup> Council of Europe, *Report on Austria*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Austria\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Austria_en.pdf), 5/19/10.

<sup>76</sup> Council of Europe, *Report on Denmark*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Denmark\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Denmark_en.pdf)

<sup>77</sup> Council of Europe, *Report on Estonia*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Estonia\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Estonia_en.pdf)

<sup>78</sup> Council of Europe, *Report on Germany*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Germany\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Germany_en.pdf)

<sup>79</sup> Council of Europe, *Report on Lithuania*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_CM\\_Res\\_Lithuania\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_CM_Res_Lithuania_en.pdf)

<sup>80</sup> Council of Europe, *Report on Austria*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Austria\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Austria_en.pdf)

rates, and “undue placement of Roma children in special schools.”<sup>81</sup> The Czech government was also asked to find solutions to the many difficulties encountered by the Roma, including allegations of the sterilization of Roma women without their prior free and informed consent.<sup>82</sup> In the case of Denmark<sup>83</sup> and Finland<sup>84</sup>, the Committee raised concerns about educational problems of the Roma as well. Also in Germany, the “situation of the Roma/Sinti remains an issue of deep concern” including “stigmatization” in the media and racist attacks.<sup>85</sup>

Hungary was asked to end “exclusion and segregation practices at the expense of Roma pupils.”<sup>86</sup> In the case of Ireland, the Committee asked to ensure “Traveler representatives’ effective participation in various bodies dealing with Traveler issues”<sup>87</sup> and in the case of Italy, asked the government to “step up efforts at the state level to ensure legal protection of the Roma, Sinti and Travelers” and improve their socio-economic position.<sup>88</sup> Poland was asked to take steps to “address difficulties faced by many Roma in housing, employment, and healthcare.”<sup>89</sup> Also in Portugal, the Committee

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<sup>81</sup> Council of Europe, *Report on Bulgaria*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_CM\\_Res\\_Bulgaria\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_CM_Res_Bulgaria_en.pdf)

<sup>82</sup> Council of Europe, *Report on the Czech Republic*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_CzechRepublic\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_CzechRepublic_en.pdf)

<sup>83</sup> Council of Europe, *Report on Denmark*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Denmark\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Denmark_en.pdf)

<sup>84</sup> Council of Europe, *Report on Finland*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Finland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Finland_en.pdf)

<sup>85</sup> Council of Europe, *Report on Germany*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Germany\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Germany_en.pdf)

<sup>86</sup> Council of Europe, *Report on Hungary*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Hungary\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Hungary_en.pdf)

<sup>87</sup> Council of Europe, *Report on Ireland*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Ireland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Ireland_en.pdf)

<sup>88</sup> Council of Europe, *Report on Italy*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Italy\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Italy_en.pdf)

<sup>89</sup> Council of Europe, *Report on Poland*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_OP\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Poland_en.pdf)

found that despite efforts at the local level, many persons belonging to the Roma minority continued to be confronted with discrimination in various areas of daily life, including substandard housing.<sup>90</sup> Romania was asked to take more “resolute action” to counteract societal exclusion of the Roma and this minority’s many problems in employment, housing, health, and education.<sup>91</sup>

The Committee recommended that Slovakia “take further steps to put an end to isolation practices affecting Roma pupils”<sup>92</sup> and Slovenia “take all necessary measures to eradicate completely the practice of segregating Roma children in the school system.”<sup>93</sup> In the case of Spain, the government was called on to involve Roma representatives in the “design, implementation, monitoring and evaluation of programs aimed at promoting social and economic integration, including in the process of drafting a new Roma Development Plan.”<sup>94</sup>

The Netherlands was the only country where the Committee found that the application of the Framework Convention was limited to the minority of Frisians while other groups with long ties to the Netherlands, such as the Roma and Sinti, were left out.<sup>95</sup>

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<sup>90</sup> Council of Europe, *Report on Portugal*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_OP\\_Portugal\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_OP_Portugal_en.pdf), 1.

<sup>91</sup> Council of Europe, *Report on Romania*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Romania\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Romania_en.pdf), p. 2

<sup>92</sup> Council of Europe, *Report on Slovak Republic*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_SlovakRep\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_SlovakRep_en.pdf)

<sup>93</sup> Council of Europe, *Report on Slovenia*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Slovenia\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Slovenia_en.pdf)

<sup>94</sup> Council of Europe, *Report on Spain*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Spain\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Spain_en.pdf), p. 3.

<sup>95</sup> Council of Europe, *Report on the Netherlands*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_OP\\_TheNetherlands\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_OP_TheNetherlands_en.pdf)

As the above examples of comments by the COE demonstrate, the Committee merely “encourages,” “recommends,” and “asks” state parties to make efforts and improve in areas of interest to the Convention.<sup>96</sup> As is the case with other international human rights legal instruments, it represents “soft” law and does not have any sanction or other means to force states to comply with these laws. Other than “public shaming,” there are no mechanisms to punish those that do not comply and compel state parties to do so. As evident from the discussion above, the three states that signed but did not ratify (Belgium, Greece, and Luxemburg) are expected to ratify in the future. All but one EU state (France) signed the Convention and signaled that they agree with the basic premise and principles of the treaty, which demonstrates a high degree of isomorphism in minority protection norms and law among the EU member states.

This study assumes that the European minority protection discourse and regime is nested within the powerful global discourse and regime of human rights. In fact, the different human rights documents at the UN, EU, and other European institutions not only draw on one another, but also cross-reference and reaffirm one another. For example, the CSCE Copenhagen Document of 1990 reaffirms the relationship of its work to other international human rights mechanisms and, in particular, to the UN human rights treaties and encourages its member states to accede to them by stating:

considering the important contribution of international instruments in the field of human rights to the rule of law at a national level, the participating States reaffirm that they will consider acceding to the International Covenant on Civil and Political Rights, the International Covenant on

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<sup>96</sup> Council of Europe, *Ratification of the Framework Convention for the Protection of National Minorities by the member states of the Council of Europe* (12 June 2006), <http://assembly.coe.int/Documents/WorkingDocs/Doc06/EDOC10961.pdf>, page 5.

Economic, Social and Cultural Rights and other relevant international instruments, if they have not yet done so.<sup>97</sup>

Human rights and a minority protection system, along with legal obligations imposed on states, puts the states under pressure to foster the advancement of minorities within their societies by requiring the establishment of institutions, laws, and development of policies, and demonstration of compliance with minority protection laws and norms.

There is much evidence that with a few exceptions states comply and adopt the required laws, policies, and campaigns. States also submit periodic reports to the monitoring mechanisms and generally support and “speak” the language of human rights. However, despite “isomorphism” in human rights law adoption compliance, there is evidence that the obligations are not interpreted and applied uniformly by all EU member states. While admittedly, some of the differences can be attributed to flexibility and vagueness of some minority protection documents, in other cases the interpretations are conscious attempts of governments to circumvent the laws and international obligations.

The remaining part of this study examines and accounts for national differences in compliance. A number of scholars have previously drawn attention to the importance of taking account of particular histories, cultural references, and historical events and traumas to account for how states react to “global scripts” such as the human rights discourse.<sup>98</sup> In the case of minorities, the size and type of minority populations and the history of state-minority relations may also play a role in how states interpret the laws

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<sup>97</sup> Conference on the Human Dimension of the CSCE, Document of The Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, available at:

[http://www.osce.org/documents/odihr/1990/06/13992\\_en.pdf](http://www.osce.org/documents/odihr/1990/06/13992_en.pdf), accessed on 5/10/10, paragraphs 5-20, p. 5.

<sup>98</sup> See for example: Joachim J. Savelsberg and Ryan D. King, Institutionalizing Collective Memories of Hate: Law and Law Enforcement in Germany and the United States, *The American Journal of Sociology*, Vol. 111, No. 2 (Sep., 2005), pp. 579-616; Marion Fourcade and Sarah Babb. 2002. “The Rebirth of the Liberal Creed: Paths to Neoliberalism in Four Countries.” *American Journal of Sociology* 108(9): 533-579; and Frank Dobbin. 1994 *Forging Industrial Policy: The United States, Britain, and France in the Railway Age*. New York: Cambridge University Press.

and deal with these populations. The next chapter compares minority protection in all 27 EU member states using the same criteria. It is followed by a detailed analysis of the cases of Sweden and Poland to account for some of these differences.

## **CHAPTER 4: ALL EU STATES: QUANTITATIVE ANALYSIS**

This chapter discusses the results of statistical analysis of all 27 EU member states and the findings that demonstrate a wide variation of minority protection and interpretation of minority obligations among the EU member states. It examines how different countries fall into different categories and how Poland and Sweden fit into the analysis of all EU member states.

### **OLS Multiple Regression Results**

In this part of the study, countries were ranked on five measures of minority protection (see Table 1), and each of the countries was assigned a score ranging from 0-5 (See Table 2). Subsequently, OLS multiple regression was run using all variables. This was done to test four hypotheses about what causes increase in minority rights protection that assumed 1) the increasing emphasis on minority rights in intergovernmental organizations such as the EU; 2) the occurrence of major transitions, such as the ending of communism and the beginning of democracy; 3) the predominance of national over immigrant minorities; and 4) the welfare state status of the country.

**Table 5: OLS Regression results of predictors of minority protection policies 2008**

<u>Independent Variables</u>	B – Coefficient	Standard Error
Length of EU membership old vs. new	1.70	1.07
Major Transition	-.45	.76
National vs. Immigrant Minority	.73	.58
Welfare State vs. non-welfare state	2.80*	1.06

N=27

\*p<.05

The results of the OLS multiple regression (see Table 5) are not significant for EU membership, major transition, and national vs. immigrant minority as indicated by the value of the coefficient. The results are significant for the welfare state vs. non-welfare state independent variable ( $p=0.015$ ).

### **Discussion**

The negative effect of political opportunities indicates that states with political opportunities are less likely to have good minority protection, which is contrary to the hypothesis. The positive effect of national vs. immigrant minority suggests that states

that have mostly national minorities are more likely to have good minority protection, which is consistent with the hypothesis. The positive effect of the welfare status of a country indicates that welfare states are more likely to have good minority protection, which is consistent with the hypothesis. For the purpose of the analysis, all Western European countries were coded as welfare states and non-western countries were coded as non-welfare states. The result then suggests that western European countries have better minority protections than eastern and southern European countries. The sample of 27 is small and thus problematic; it may account for these results. However, the results and some inconsistencies with the hypotheses may suggest that the data needs further analysis as it may be that there are other factors that impact minority protections and need to be controlled. While it was expected that the EU has the greatest effect on increasing minority protection, regression results are not significant as indicated by the value of the coefficient. The negative effect of political opportunities implies states with political opportunities are less likely to have good minority protection contrary to the hypothesis.

The ranking of all EU member states shows that scores of older EU member states range from 5-0: the high of 5 (Finland and Italy), 4 (Belgium, Germany, Spain, and Sweden), 3 (Netherlands, Denmark, Ireland), 2 (France, UK), 1 (Austria, Cyprus, Luxemburg, Portugal), the low of 0 (Greece). The majority of the older EU members scored in the middle range of 3-4. France, UK and Greece joined the EU before 2004 and have relatively low levels of protection (2, 2, and 0, respectively). Germany, Finland, and Sweden also joined the EU before 2004, yet have minority protections commensurate with newer members (4, 5, and 4). Among the newer members of the EU, a few have

high levels of minority protections, such as Estonia and Bulgaria (4 and 3 respectively). The results demonstrate the level of minority protection that does not seem to be related primarily to the length of EU membership. Thus, even though the EU only requires minority protections for those members that have joined since 2004, several of the older members (including Finland, Italy, Sweden, and Germany) have increased their levels of minority protection as well, and many of the newer EU members do not have a high level of minority protection. It does not seem that length of time in the EU is a major factor in predicting the level of minority protection.

None of the states with political opportunities got the highest score of 5. The states with political opportunities ranged from the high of 4 (Estonia), 3 (Bulgaria, Slovakia), 2 (Czech Republic, Latvia, Romania), 1 (Poland, Slovenia, Lithuania) to 0 (Hungary). The average score for countries with political opportunities was 2. Many of the countries without political opportunities have higher levels of minority protections. Countries such as Finland, Italy, and Germany did not have political opportunities, yet they have higher minority protections than countries that have experienced major political events (5, 5, and 4, respectively). It does not seem that the existence of political opportunities is a major factor in predicting the level of minority protection.

States with mostly national minorities scored low compared to states with mostly immigrant minorities. Estonia, Bulgaria, and Slovakia were the only states among the group with mostly national minorities that received relatively high minority protection scores (4, 3 and 3, respectively). Most states with national minorities received the score ranging from 0 to 2 (Hungary, Lithuania, Slovenia, Poland, Czech Republic, Latvia, and

Romania). It does not seem that the predominance of national over immigrant minorities is a major factor in predicting the level of minority protection.

Welfare states such as Finland, Germany or Sweden received higher scores than non-welfare states (5, 4, and 4, respectively). Most post-communist non-welfare countries such as Bulgaria, Czech Republic and Poland generally ranked lower than the older EU states (3 or less). However, some of the welfare member states, such as France or Austria, also rank low in minority protection (2 and 1, respectively). On the other hand, a newer member Estonia ranks high (4). Overall, it does not seem that the welfare state status is a major factor in predicting the level of minority protection.

The countries that have not ratified the Framework Convention range from the low level of protection in Greece (0) and Luxemburg (1) to medium level of protection in France (2) and a relatively high level of protection in Belgium (4). Sweden has a relatively high level of protection (4), and Poland a low level of minority protection (1).

Overall, the results demonstrate a considerable variation among the EU member states and warrant closer examination. In order to get a more nuanced picture and understanding of factors that may play a role in the level of minority protection in EU members, the following two chapters discuss the cases of Sweden and Poland along the main dimensions examined in this study. An overview of some key historical events that have impacted each country's national identity and culture and a brief discussion of features of minority groups is followed by a discussion of the development of a minority protection framework and its critical review. Traditional approaches to ethnic and national minorities in a historical perspective are discussed and evaluated to the extent to

which the approach has changed or remained the same given the European level framework for minority protection. The discussion addresses similarities in law on the protection of minorities, and highlights some differences in how these legal obligations have been interpreted and implemented in each case. Finally, the chapter discusses societal attitudes toward minority issues comparatively by using European-level surveys.

## CHAPTER 5: CASE STUDY 1: SWEDEN

### Introduction

Based on the review of laws passed for minorities, Sweden seems to have a perfect system of minority protection. Sweden ratified all major international instruments of minority protection and adopted an extensive legal national framework for minorities. Thus, on paper, the country seems to have an excellent framework for minority protection. The COE's Advisory Committee on the Framework Convention for the Protection of National Minorities (FCPNM) wrote in its most recent 2006 report on Sweden that "Minority protection is well developed in Sweden. Over the last years, Sweden has taken a number of valuable measures to advance the protection of national minorities."<sup>99</sup> According to an analysis of Sweden's legal framework for minorities by Dominik Zimmermann, "the most promising part of the new legislation on minorities is that it is part of an overall strategy/policy for the national minorities."<sup>100</sup>

However, on closer examination, there are several fundamental weaknesses in the Swedish system. According to Zimmermann, for example, the legal framework's effectiveness is far from certain. He states that "on the implementation stage it still

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<sup>99</sup> Council of Europe, *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Sweden*, adopted on 8 November 2007. Retrieved on 1/21/11.

([http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp#Sweden](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Sweden)), page 1.

<sup>100</sup> Dominik Zimmermann, "Better Protection of National Minorities and Minority Languages in Sweden?", *International Law Observer* (online), 16 February 2010, available at: <http://internationallawobserver.eu/2010/02/16/better-protection-of-national-minorities-and-minority-languages-in-sweden/>, accessed 1/10/11.

remains questionable (...) if the legislative changes will achieve the desired effects.”<sup>101</sup>

The COE also has questioned the effectiveness of the legal framework in its most recent comment on Sweden’s compliance with obligations under the Framework Convention by concluding that “the development of minority policies and legislation has been complicated by such factors as frequent shifts in institutional responsibilities, limited commitment by certain local authorities as well as lack of adequate data on national minorities.”<sup>102</sup>

Scholars point to a variety of obstacles to an effective implementation of Sweden’s impressive laws. While Zimmermann claims that the laws themselves are flawed, at least compared to other countries in the region (Norway and Finland), Harald Runblom points to “systemic” problems, in particular historical and cultural reasons that limit the effectiveness of the legal framework. Taras discusses the legacy of “whole of Sweden strategy” that began in the 1980s and involved resettlement of immigrants to avoid “metropolitan concentration” and “promote integration.” These policies were aimed at immigrant groups that were viewed as not easily “blending” into the Swedish society, such as refugees from Ethiopia and Somalia (Taras 2009: 144); however, they were viewed as racist by some scholars because they prevented immigrants from deciding about their place of residence (Taras 2009: 144). Hansen and Weaver (2003), also draw attention to Swedish sense of national identity and “fears of losing the Scandinavian

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<sup>101</sup> Dominik Zimmermann, “Better Protection of National Minorities and Minority Languages in Sweden?”, *International Law Observer* (online), 16 February 2010, available at: <http://internationallawobserver.eu/2010/02/16/better-protection-of-national-minorities-and-minority-languages-in-sweden/>, accessed 1/10/11.

<sup>102</sup> Council of Europe, *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Sweden*, adopted on 8 November 2007.

welfare state” (xi) as the sources of Sweden’s resistance to implement the EU cultural and social project. National identity and the concept of the *folk* (“the people”) continue to have “structuring influence on the present construction of ‘Europe’ and in which the debates have unfolded” (Hansen & Weaver 2003: xii). Others have also discussed the roots of this racist culture by explaining that they are “founded on constructions of sociocultural risk.”(Taras 2009: 24). According to Bo Petersson, in Sweden “notions of risk and threat co-construct an imagined ‘normal’ state of affairs that should be defended from perceived ills—whether it be a ‘normal or ‘healthy body at risk from disease or a ‘healthy’ and ‘prosperous’ nation endangered by outsiders or purportedly devious insiders” (quoted in Taras 2009: 144).

Other scholars draw attention to similar issues and the sense of threat and crisis felt by the Swedish government and society that stems from Sweden’s need to confront increasing ethnic heterogeneity. This sense of crisis, for example, has forced the Swedish society to confront and rethink the myth of ethnic homogeneity that has endured for a long time. Schall (2001), for example, examines the changes in the political discourse surrounding the welfare state, immigration, and national belonging in Sweden. She focuses on the political discourse of the Social Democratic Party (SAP), which actively and successfully promoted the idea ‘of a cultural hegemony that makes Swedishness synonymous with social democratic “values” (Schall 2011: 2). In particular, according to Schall, SAP was involved in the promotion and policing of an ethnic definition of nation (Schall 2011: 2). According to Schall, even though the political discourse concerning migration was undergoing changes in the course of the 20<sup>th</sup> century, the concept of the

Swedish nation remained the same and has been fairly exclusive over time. This was only reinforced by the influx of immigrants in the early 1990s. Schall writes:

In 1991-1994, a large number of refugees were let in, and formally/ legally made into full members rather quickly. However, in the cultural-symbolic dimension (...) the renewed emphasis on ethnic difference, immigrants' 'outsiderness' (including welfare dependence) and the construction of refugees as a 'problem' served as a *restrictive* strategy (Schall 2011: 179).

The study shows that the limited concept of Swedish identity continues to have an effect in contemporary Sweden and influences the minority protection legislation and policy.

The next few sections discuss the key events in Swedish history and the main features of minority groups in Sweden in order to establish the cultural framework and context for minority protection, trace the development of the minority laws, and discuss the existing protections for different minority groups in Sweden. Subsequently, the obstacles to effective minority protection in Sweden are discussed critically. In discussing the challenges, the focus is on two major issues that affect the minority protection framework in Sweden: first, that the older assimilation system has not been adapted to minority protection, and second, that not all minorities are protected due to a narrow definition of "national minority." Then, the societal attitudes and anti-immigrant incidents in Sweden, in the context of the Swedish political discourse and government's policy toward minorities, are addressed. The final section discusses the difficulty of assessing the Swedish framework for the protection of minorities and the role of the established culture and tradition in shaping Swedish approach.

## **Overview of Sweden's History and National Identity Formation**

Sweden's national identity formed through some key events in its history and through its reactions to events such as a union with Norway and its dissolution, the experience of massive emigration to the United States, its attitude of neutrality, dominance of Social Democrats in its politics, as well as sudden and rapid influx of immigrants in the past few decades. Sweden has been a constitutional monarchy since 1809, and it was an agricultural country until the late 19<sup>th</sup> century. It underwent a rapid growth and changed from an underdeveloped country in late 1800s to a prosperous and internationally respected one in the course of the 20<sup>th</sup> century. In 1814-1905, Sweden and Norway formed a "personal union" under the Sweden's monarch, following the 1814 invasion by Sweden. While Norway enjoyed considerable autonomy within the union, since the late 1800s, the tensions between Sweden and Norway began to increase as a result of Norway's independence aspirations. While the Norwegians called for a separate status, Swedish conservatives continued to insist on the maintenance of the union. According to historian Franklin Scott, "the consequence of the conflict was a heightening of nationalistic sentiment" in both countries (Scott 1965: 311). Eventually, the union was peacefully resolved in 1905.

Sweden has a long tradition of neutrality at times of war and abstaining from entering military alliances. The country remained neutral during World War II. The neutrality policy kept Sweden out of the EU until 1995, but the country was one of the most active participants in both the League of Nations and the United Nations from their inception.

Until the post-World War II period, Sweden was a country of emigrants; by late 19<sup>th</sup> century, one-fifth of its population left to find work mostly in the United States.<sup>103</sup> The departure of a large number of Swedes led to controversies and public campaigns against emigration and exposed national attitudes toward immigrants. Scott describes the types of arguments that were used to deter Swedes from leaving the country including the condemnation of “dangerous working conditions and unhealthy climate in the United States to claims that emigration was a violation of the 4<sup>th</sup> Commandment (Scott 1965: 312). The campaigns were at least in part successful and many of the emigrants eventually returned to Sweden. The anti-emigrant discourse, however, also revealed the underlying racism in Sweden. In a debate in Riksdag in 1907, there were arguments made about the “necessity of keeping the Swedish blood pure” (Scott 1965: 334). In the course of the debate, the politicians made unfavorable comparisons between laborers from Poland and the Baltic area, and returnees of Swedish “race” from America (Scott 1965: 334).

During World War II, Sweden became a refuge for Danes and Norwegians fleeing from Germany (Runblom 1994: 629). After World War II, immigrants started arriving to Sweden in greater numbers and, initially, with the purpose of finding work. During the two world wars, Sweden had a restricted immigration policy towards non-Nordic citizens and the interwar period; the public discourse included a slogan that “Sweden is for the Swedes” (Runblom 1994: 628-629). Also during the interwar period, Sweden experienced the development of a small fascist movement that attracted 30,000 followers.

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<sup>103</sup> European Monitoring Centre on Racism and Xenophobia. “Migrants, Minorities, and Employment in Sweden: Exclusion, Discrimination and Anti-Discrimination.” Available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/239-SW.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/239-SW.pdf). Accessed 9/1/12.

According to some scholars, even if the movement was small, it had a considerable impact on the political history of the country (Berggren 2002: 417; Scott 1965: 333) and was a reflection Sweden's underlying concept of a nation as "pure" and homogenous.

The postwar approaches to immigration depended on economic cycles and were more liberal in times of fast growth. At the time of economic downturn in the mid-1960s, immigration policies became more restrictive. Traditionally, Sweden's society and government have expressed the attitude that immigrants and minorities should assimilate to Sweden's culture and society (Runblom 1994: 628-629), and until the mid-1960s, the government continued the assimilationist policy by implementing programs to encourage it. According to some scholars, as a result of these expectations reinforced by government programs, no lasting immigrant culture developed in Sweden. For example, Jewish immigrants who arrived in Sweden in the late 18<sup>th</sup> century were gradually assimilated (Runblom 1994: 631-632). As recently as the 1980s, the government officially promoted the "whole of Sweden strategy" that required immigrants to settle in specific areas. Some local communities were compensated for allowing immigrants (often refugees) to settle in their areas (Rosenberg 1995: 214). The official goal of the policy was to avoid immigrant concentration in urban areas and promote their "integration" into the Swedish society (Taras 2009: 143-144), but it put limits on the freedom of movement and led to the concentration of immigrants in some areas.

Between 1917-1920, Social Democratic became the dominant political force in Sweden. Its presence in politics contributed to the creation of a set of distinct policy-making structures that led to the establishment of an institutionalized welfare state

following World War II (Tsarouhas 2008: 118-119). According to some scholars, Sweden's attempt to adopt minority and pluralist policies occurred against the background and in the tradition of Swedish welfare policy. The immigrant and minority policies were directly influenced by the views of the central Swedish trade union Landsorganisationen (LO) (Rosenberg 1995: 213). The policies included the principles of comprehensiveness (provision of welfare services to everyone), social entitlement (individual's right to social services), and universalism (extended to the whole population) (Runblom 1994: 634-635). These principles emphasized individual rights as opposed to group needs that would be more appropriate in the case of immigrant groups.

Scholars claim that despite the shift in the official discourse from assimilation to integration and multiculturalism, the benevolence of the official ideology of tolerance masks the longstanding vision of Sweden as a homogenous nation. This vision is reflected in a restrictive and controlling policy, and also attitude and reluctance toward immigrants and minorities.

### **Sweden's Ethnic and Linguistic Minorities**

Despite its image of a homogenous society, Sweden is home to five ethnic, cultural, and linguistic minorities that have resided in the country for several centuries and many groups of newer immigrants who migrated in waves at different times following World War II until present. Of the older Swedish ethnic minorities, the Sámi (previously referred to as "Lapps") have resided in Sweden the longest, arriving before the country became a nation. The Roma arrived to Sweden in the 16<sup>th</sup> century and the

Jews in the 17<sup>th</sup>. The presence of Finns is due to the fact that Finland was a part of Sweden for seven hundred years. Only five groups, Sámi, Swedish Finns, Tornedalers, Roma and Jews, are officially recognized as national minorities by the Swedish government. Of the many other minority groups that have immigrated to Sweden in the 20<sup>th</sup> century, the largest groups include the Finns (born outside Sweden), Yugoslavs, Bosnians, Iranians, Norwegians, Poles, Danes, Iraqis, Germans, and Turks.<sup>104</sup>

The Swedish government does not collect data on ethnic minorities, so there are not reliable data on the actual size of the minority population. However, estimates of national minority populations were prepared in connection with the 1997 government inquiry on Swedish ratification of the Framework Convention and the European Charter for Regional or Minority Languages. According to these statistics, the Swedish Finns group was estimated at 450,000, the Tornedalers at 50,000, and Jews at 25,000. The number of Roma was estimated at 20,000, and the number of Travelers, many of whom consider themselves kin to the Roma, at 20,000. The Sámi Parliament provided the statistics regarding the Sámi population and put the population at 20,000.<sup>105</sup> As of 2010, there were approximately 1,300,000 immigrants in Sweden, and almost 60 percent of that number held Swedish citizenship.<sup>106</sup>

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<sup>104</sup> Council of Europe, *Report Submitted by Sweden Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities* (ACFC/SR(2001)003 on 8 June 2001, p. 44, [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Sweden_en.pdf), accessed on 6 July 2009.

<sup>105</sup> United Nations. *International Convention on the Elimination of all Forms of Racial Discrimination. Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden* (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 4.

<sup>106</sup> Statistics Sweden; *Summary of Population Statistics 1960-2010*. Retrieved from: [http://www.scb.se/Pages/TableAndChart\\_\\_\\_\\_26041.aspx](http://www.scb.se/Pages/TableAndChart____26041.aspx)

The following is a discussion of the five officially recognized minorities and the more recent immigrant groups. Each section focuses on the main features and the identity of the groups, the relationship of the group to the Swedish state, and additional issues that have been presented in the context of the Swedish society.

## **Sámi**

The Sámi are an indigenous people who live in the northern parts of the present Norway, Sweden, Finland and the Kola Peninsula in Russia. They mostly live in the traditional areas of settlement from Idre in Dalarna to Kiruna in Norrbotten. Approximately 2,500 of those Sámi who live in this area are occupied with reindeer husbandry. Many Sámi are also resident in the coastal areas in northern and central Sweden and in the Stockholm area. The main features of the Sámi culture are the Sámi language, the reindeer industry, Sámi handicrafts, the traditional costume, and chant and food culture. Traditionally, the Sámi also had a separate religion. The modern Sámi cultural life also includes Sámi theatre, art and literature. The Sámi are represented by a 31-member Sámi-elected administrative authority called the Sámi Parliament, but the Sámi are not represented in the national parliament. The Sámi parliament acts as an advisory body to the government and has decision-making powers in matters related to Sámi culture, language, and schools. Parliament and government regulations govern its operations. Longstanding tensions between Sámi and the government over land and

natural resources persist, as do tensions between Sámi and private landowners over reindeer grazing rights.<sup>107</sup>

An important element of the Sámi identity is the Sámi language. Sámi is a Finno-Ugric language with several varieties: North Sámi, Lule Sámi and South Sámi. Another central basis for the identity of the Sámi is their status as an indigenous people. The Riksdag confirmed this in 1977, when it was concluded that the Sámi are an indigenous people in Sweden, and that as such they have a special status.

The Sámi have over the years organized themselves in different ways. In ancient times, there was among the Sámi the *siida* system, an own organization within the framework of which, among other things, common decisions were made and law administered. In contemporary times, there have been other forms of organizations that vary from Sámi villages to various Sámi associations and Sámi parties. There are several Sámi national organizations. Within the Church of Sweden, there is a Church of Sweden Sámi Council.<sup>108</sup>

The Sámi have been involved in a number of legal disputes over land with non-Sámi landowners, but no Sámi villages have been sued since 1998. A more recent major dispute concerning traditional rights to reindeer pasture near Umeå was resolved, and the district dismissed the suit by property owners. In this case, the court determined that the

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<sup>107</sup> United States Department of State, Bureau of Democracy, Human Rights, and Labor. 2008 Human Rights Report: Sweden. 25 February 2009, available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119107.htm>, accessed on 10/30/ 2009.

<sup>108</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. *Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden* (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 15-16.

Sámi villages had traditional rights to the land that was subject to the dispute.<sup>109</sup>

The Swedish government recognizes the Sámi as a national minority and has taken steps since the 2000s to implement policies to give greater recognition to this group and promote and protect its cultural and ethnic identity. This lends support to the argument that the government has undertaken activities under its minority protection framework and in accordance with European legal and informal norms.

### **Swedish Finns**

The Finnish language is at the center of the identity of the Swedish Finns. Finnish has been spoken in Sweden for a long time because for nearly 600 years (until 1809) Sweden and Finland constituted one nation. During that period, the Finnish populations were highly mobile: while Finnish-speaking citizens resided in the western part (now Sweden) where Swedish dominated, Swedish-speaking citizens resided in the eastern part (now Finland) where Finnish dominated. The first Finnish parish was founded in Stockholm in 1533. The Finnish parish is a non-territorial parish within the Swedish Church.<sup>110</sup>

The Finnish language stopped being used in the Finnmark area during the 19th century and the first half of the 20th century. However, Finnish continued to be spoken in Stockholm together with the regions around the Mälars Valley where newly-arrived citizens from the eastern half of the Realm moved due to war during the 1720s and

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<sup>109</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. *Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden* (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 15-16.

<sup>110</sup> Ibid.

around the year 1808. During the period from the turn of the century until the Second World War, the majority of Finnish-speaking people continued to reside in the city and county of Stockholm and also in Norrbotten.<sup>111</sup>

Swedish Finns differ from the majority population in Sweden, both by language and by culture. There is a great interest on the part of Swedish Finns to preserve their language and their cultural distinctiveness in Sweden. About half of the total population of 450,000 first and second generation Swedish Finns use Finnish. Of the current Swedish Finnish population, the majority moved to Sweden after World War II. Since the late 1950s, the National Association of Finns in Sweden that formed in 1957 has been actively involved in the promotion of the Finnish language among the Swedish Finns.<sup>112</sup>

As in the case of the Sámi, the Swedish government has recognized the Swedish Finns as an official national minority and the group falls under the protection of minority laws and policies. Some Finns, however, have immigrated in more recent times.

### **Tornedalers**

The Tornedalers distinguish themselves from the Swedish majority population mainly by their language. Tornedalers reside in several areas, including the municipalities of Haparanda, Övertorneå and Pajala and also in parts of the municipalities of Kiruna and Gällivare. A Finnish-speaking settlement probably existed in the area around the Torne River already before the Middle Ages. At that time, the Tornedalers' settlement was a

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<sup>111</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. *Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden* (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 15-16.

<sup>112</sup> Ibid.

meeting and trading center which made the area a multi-linguistic region. From the Middle Ages, Finnish dominated among the peasantry in Tornedalen. The Tornedalers on both sides of the border, which is formed by the Könkämä, Muonio and Torne Rivers, have preserved both their language and their cultural heritage until present. The Tornedalers' language, which has previously often been referred to as Tornedal- Finnish, is now called Meänkieli ("our language"). The characteristic feature of Meänkieli is that, among other things, a number of Swedish words have been assimilated into the vocabulary.<sup>113</sup> A number of organizations have worked to promote and preserve the language, including the Swedish Tornedalian Association – *Tornionlaaksolaiset* (STR-T) founded in 1981.<sup>114</sup> Meänkieli has existed since 1993 as an obligatory teaching subject for grades 1-9. The Tornedaler theater was established, as well as literature published in the language. In addition, efforts have been made since the 1980s to promote tourism and commercial activities, which are seen as contributing to the preservation of the Tornedalers' cultural heritage.<sup>115</sup>

The Tornedalers were also recognized as a national minority in Sweden and have enjoyed special protections that some other minorities do not.

## **Roma**

The first Roma came to Sweden during the 16th century. Traditionally, both the secular and church authorities in Sweden attempted to expel the Roma and later there

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<sup>113</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. *Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden* (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 15-16.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

were efforts at compulsory assimilation. The Roma who came to Sweden during the 16th, 17<sup>th</sup>, and 18th centuries primarily lived in the eastern half of the Realm (now Finland). During the second half of the 19th century and into the 20th century, a second migration wave of Roma came to Sweden via Russia. The Roma were often nomadic, but in the past century, the Roma and the travelers became permanently settled in a number of different areas of the country.<sup>116</sup>

The Roma have their own language, Romani Chib, their own culture and own traditions that differ from those of the majority population. Romani Chib comprises a number of different varieties (Finnish Romani, Kelderash, Lovari, Tjurari, Sinto, Arli, Bugurji, Gurbet, and Swedish Romani).<sup>117</sup>

The Roma population as elsewhere is not homogenous but comprises different groups that originally emigrated from different countries. Although the Roma in Sweden belong to various “tribes” with various traditions and with various varieties of Romani Chib, they often state that they are and feel that they are a cohesive people. The traditions of the Roma have not always been accepted by the surrounding society, leaving many Roma to feel that they are discriminated against. Examples of this are the many complaints the Ombudsman against Ethnic Discrimination receives from Roma who have been denied access to public premises or treated less favorably than the majority

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<sup>116</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. *Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden* (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 15-16.

<sup>117</sup> Ibid.

population in various ways.<sup>118</sup>

Through various Roma organizations, the Roma seek to protect their culture and their traditions. At the beginning of 1973, the Nordic Gypsy Council was formed and became an umbrella organization for some fifteen various Roma associations in Sweden and the Nordic countries. The organization changed its name to the Roma National Union (in Swedish: Romernas Riksförbund, RR) in 1999.<sup>119</sup>

The Roma are also recognized by the Swedish government as one of the national minorities and, as will be discussed later, programs and policies have been implemented by Sweden to fulfill its obligations of minority protection with respect to this group.

## **Jews**

The first Jews came to Sweden at the end of the 17th century. In 1775, Jews could settle in Sweden without having to be christened and were allowed to form a Jewish community in Stockholm with the right to establish burial places, build a synagogue and bring in a Rabbi.

Since then, periodically new groups of Jews have come to Sweden often as a result of the persecution of Jewish populations in various parts of Europe. Many Jews came to Sweden at the turn of the century, victims of pogroms of tsarist Russia. In 1860-1914, approximately 4,000 Jews came to Sweden from North Eastern Europe. The majority was strictly orthodox in the practice of their religion and spoke Yiddish.

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<sup>118</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. *Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden* (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 15-16.

<sup>119</sup> Ibid.

In 1933-1941, approximately 2,000 Jews received entry permits to come to Sweden. In mid-1945, more than 10,000 Jews came to Sweden with the assistance of the Red Cross. In late 1940s, a group of Polish Jews immigrated to Sweden due to anti-Semitism in Poland. Hungarian Jews also arrived in mid-1950s, fleeing the Soviet invasion of Hungary. A further wave of Polish Jews came to Sweden between 1968-1970 as a consequence of anti-Semitism, and in the 1990s, groups also arrived from the former Soviet Union.<sup>120</sup> Currently, the majority of the Jewish population lives in Stockholm, Gothenburg, and Malmö. In addition to these cities, small Jewish communities exist in Borås, Västerås, Helsingborg, Lund and Norrköping.<sup>121</sup>

Jews in Sweden adhere to Judaism and cultivate their own culture, languages, and traditions. Yiddish was spoken by Jews who first came to Sweden, but it was not until the end of the 19th century before the next group of Yiddish-speaking people came to Sweden. With the influx of refugees after World War II, Yiddish experienced a revival. The Jewish population in Sweden has for the most part preserved its religion, traditions, and languages. Even Jews, who do not to live an orthodox life, participate in Shabbas services, celebrate Jewish weekends, and observe Jewish dietary laws.<sup>122</sup>

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<sup>120</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. *Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden* (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 15-16.

<sup>121</sup> Council of Europe, *Report Submitted by Sweden Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities* (ACFC/SR(2001)003 on 8 June 2001, p. 39-43, [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Sweden_en.pdf), accessed on 6 July 2009.

<sup>122</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. *Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden* (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 15-16.

The Jewish population has been recognized as a national minority by the Swedish government and is one of the five groups that falls under the system of national minority protection. However, while some Jews have resided in Sweden for centuries, there are also newer Jewish immigrants (mainly from the former Soviet Union) who are in many ways more similar to the more recent minority groups than the older established Jewish population.

### **Other Minority Groups and Immigrants**

In addition to the five “national minority” groups discussed above, Sweden is home to many other minority groups who arrived in the country throughout the 20<sup>th</sup> century and prior. In terms of the size of immigrant population, Sweden is about “three times above the European average” (Bengtsson, Lundh & Kirk 2005: 15), and among its neighbors, only Denmark has a higher proportion of immigrant to non-immigrant population.

In the aftermath of the World War II, there was an influx of Jewish refugees, and of Danes and Norwegians, Finns, refugees from the Baltic States (Lithuania, Latvia and Estonia) (Schall 2011: 70-72). In 1950s and 1960s, Sweden experienced a spike in labor migration. As in other prosperous western European countries in the postwar period, Sweden accepted foreign migrants as temporary laborers, but was not as willing to provide them access to citizenship and resulting civil and political rights (Leitner 1995). Initially, many of these immigrants were still of Scandinavian descent (especially Finnish), but Germans and increasingly Southern Europeans (Greeks and Yugoslavs) also arrived in large numbers (Schall 2011: 90). In response to these new arrivals and

pressures from labor unions, the Swedish government adopted new restrictive labor immigration regulations in 1968 explicitly in order to limit labor immigration from non-Nordic countries (Bengtsson, Lundh & Kirk 2005: 21-22).

Subsequently, Czechoslovakian refugees arrived in 1968 and Chilean refugees arrived following the 1973's military coup (Schall 2011: 98). In the late 1980s and early 1990s, Sweden and other western European nations experienced a rapid and unprecedented influx of refugees. Sweden "accepted more refugees per capita than anywhere else in Western Europe at this time" (Schall 2011: 129). This influx was also significant in a different way; unlike the case with the previous waves of immigration, these immigrants were "increasingly non-European, non-white and/or non-Christian" (Schall 2011: 137). They included immigrants from the Middle East and former Yugoslavia. The largest groups from the Middle East came from Iran and Iraq, and many were granted asylum on humanitarian grounds (without the recognition as UN Convention refugees).<sup>123</sup> The refugees who started arriving in the early 1990s came from the former Soviet Union and former Yugoslavia (Bosnia-Herzegovina, Croatia, Macedonia and Kosovo). Refugees who came after 1990s were admitted in accordance with the 1951 Geneva Convention.<sup>124</sup> Immigrants have continued to arrive to Sweden through the 2000s, including Iraqi, Afghani, and Somali refugees.<sup>125</sup>

As a result, Sweden's immigrant (foreign-born) population increased by 1 million

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<sup>123</sup> Westin, Charles (June 2006). *Sweden: Restrictive Immigration Policy and Multiculturalism*. Retrieved from <http://www.migrationinformation.org/Profiles/display.cfm?ID=406>

<sup>124</sup> Ibid.

<sup>125</sup> Minority Rights Group International. *Current state of minorities and indigenous peoples*, available at: <http://www.minorityrights.org/?query=sweden&lid=458&go=>

since the 1960s: from nearly 300,000 in 1960 to more than 1,300,000 in 2010.<sup>126</sup> In 1960, the immigrants constituted only 4 percent of the Swedish population, but in 2010 that number stood at 14 percent.<sup>127</sup> Currently, Sweden is a country of ethnic and cultural diversity, where about one-fifth of the inhabitants was born in another country or has parents who were born abroad (Bengtsson, Lundh & Kirk 2005: 15). According to Bengtsson, Lundh and Kirk (2005), immigrants find themselves with limited opportunities and at a disadvantage in the regular labor market despite the official Swedish rhetoric that claims to “integrate the immigrants” and give them similar opportunities that native Swedes enjoy (15). They find that the immigrants experience higher unemployment and a lower standard of living than the natives as a result of “preferential discrimination” that negatively affect non-native Swedes in the Swedish labor market (Bengtsson, Lundh & Kirk 2005: 39-40).

Most significantly, the ethnic groups which have immigrated to Sweden in the past few decades are not regarded as national minorities as they do not satisfy the criteria for national minorities established by the government that emphasizes, among other things, a “long historic bond with Sweden” as its standard for inclusion.<sup>128</sup> As discussed above, this approach creates an inconsistency because the overall Jewish and Finnish populations comprise those who have resided in Sweden for generations (and fall under the “long historic bond” argument) and others who have immigrated in the past several

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<sup>126</sup> Statistics Sweden, *Summary of Population Statistics 1960-2010*. Retrieved from: [http://www.scb.se/Pages/TableAndChart\\_26041.aspx](http://www.scb.se/Pages/TableAndChart_26041.aspx)

<sup>127</sup> Ibid.

<sup>128</sup> Council of Europe, *Report Submitted by Sweden Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities* (ACFC/SR(2001)003 on 8 June 2001, p. 9, [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Sweden_en.pdf), accessed on 7/6/ 2009.

decades (and presumably lack such a historic bond). And yet, the Jewish and Finnish populations as a whole are protected by minority laws.

### **Sweden's Legal Framework for Minorities and Minority Policies**

Sweden has ratified all major United Nations, Council of Europe, and International Labor Organization conventions and protocols. In some cases, reservations and exceptions have been entered by Sweden (see Appendix B).<sup>129</sup> Following the ratification of the Council of Europe's Framework Convention and the Charter for Regional and Minority Languages, Sweden adopted laws and policies required by these and other international instruments of minority protection. Prior to the ratifications and until late 1990s, Sweden lacked a comprehensive minority policy (Åkermark 2001). Currently, anti-discrimination laws and provisions for minority protections can be found in the Swedish Constitution, as well as in many pieces of legislation. Some of the Swedish minority legislation protects all citizens. Specifically, while anti-discrimination legislation protects everyone individually and not as part of particular ethnic, cultural, or linguistic group, other pieces of legislation apply only to the five minority groups that the government considers to be "national minorities."

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<sup>129</sup> The Swedish Government Human Rights Website, Conventions Ratified by Sweden. Available at: [http://www.manskligarattigheter.gov.se/extra/pod/?id=4&module\\_instance=2&action=pod\\_show](http://www.manskligarattigheter.gov.se/extra/pod/?id=4&module_instance=2&action=pod_show), accessed on 11/1/2009.

## Anti-Discrimination Law

The Swedish Constitution prohibits “discrimination of persons on grounds of gender, color, national or ethnic origin, linguistic or religious affiliation, functional disability, sexual orientation, age or other circumstance affecting the private person.”<sup>130</sup>

In the late 1990s and early 2000s, Sweden adopted several anti-discrimination laws (some of which are no longer in effect as will be addressed in the following sections). One of them, the Measures to Counteract Discrimination in Working Life Act (1999:130) was enacted in 1990 to address “discrimination on grounds of ethnic affiliation, religion or other belief.” In order to implement this policy, an Integration Board, a government agency within the Ministry of Integration and Gender Equality, was also set up at that time. The Integration Board conducted studies of incidents of ethnic discrimination in the labor market. The Board monitored attitudes, experiences, and knowledge about ethnic discrimination and racism through the “Integration Barometer” survey.<sup>131</sup> As a result of this work, the Board published two reports in 2006: *Racism and Xenophobia in Sweden* and *Experiences of Ethnic Discrimination among Foreign-born Individuals in Sweden 2005*. It closed in 2007 after it fulfilled the goals for which it was established.

In 2002, Sweden enacted The Equal Treatment of Students in Higher Education Act (2001:1286). The law addressed discrimination on grounds of gender, ethnic

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<sup>130</sup> Sveriges Riksdag, Swedish Constitution, *Instrument of Government, chapter 1, section 2, paragraph 4*, available at: <http://www.riksdagen.se/en/Documents-and-laws/Laws/The-Constitution/>, accessed 11/11/2009.

<sup>131</sup> United Nations. *International Convention on the Elimination of all Forms of Racial Discrimination. Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden* (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 25.

affiliation, religion or other belief, sexual orientation or disability. The 2003 law, The Prohibition of Discrimination Act (2003:307) addressed discrimination on grounds of gender, ethnic affiliation, religion or other belief, sexual orientation, or disability. This law applied to the following: labor-market-policy programs; membership in trade unions and employers' organizations; access to goods, services, housing, social services, social insurance, unemployment insurance and health care; and medical services.

The 2006 law, The Act Prohibiting Discrimination and Other Degrading Treatment of Children and School Students (2006:67), prohibited discrimination on grounds of gender, ethnic affiliation, religion or other belief, sexual orientation, and disability. The law applied to all activities regulated by the Education Act (1985:1100), including preschool programs, school-age childcare, compulsory and upper secondary school, and municipal adult education.

The most recent anti-discrimination law came into force in January 2009. The new Discrimination Act includes protections against the discrimination on the basis of ethnic origin. The 2009 law replaced the following seven other anti-discrimination laws that also included protections for members of ethnic minorities: the Equal Opportunities Act (Swedish Code of Statutes 1991:433); the Act on Measures against Discrimination in Working Life on Grounds of Ethnic Origin, Religion or Other Religious Faith (Swedish Code of Statutes 1999:130); the Prohibition of Discrimination in Working Life on Grounds of Disability Act (Swedish Code of Statutes 1999:132); the Prohibition of Discrimination in Working Life on Grounds of Sexual Orientation Act (Swedish Code of Statutes 1999:133); the Equal Treatment of Students at Universities Act (Swedish Code

of Statutes 2001:1286); the Prohibition of Discrimination Act (Swedish Code of Statutes 2003:307); and the Act Prohibiting Discriminatory and Other Degrading Treatment of Children and School Students (Swedish Code of Statutes 2006:67).<sup>132</sup>

The new law prohibits discrimination based on ethnic origin and religion. The new Act contains prohibitions of discrimination that apply to: working life, educational activities, labor market policy activities and employment; services not under public contract; starting or running a business; professional recognition; membership of certain organizations; goods, services and housing; meetings and public events; health and medical care; social services; social insurance; unemployment insurance; financial support for studies; national military service and civilian service; and public employment.<sup>133</sup>

On its official website, the government asserts that “effective, comprehensive anti-discrimination legislation is necessary to enable us in Sweden to combat actions that directly or indirectly violate the principle of the equal worth of all people.”<sup>134</sup> The Office of the Equality Ombudsman was also set up to oversee compliance with the act.

This Equality Ombudsman replaced four previous functions of anti-discrimination ombudsmen, namely the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination because of Sexual Orientation. The government also set up an agency, the

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<sup>132</sup> Government Offices of Sweden, *Ministry of Integration and Gender Equality (January 2009): Fact Sheet: New Anti-Discrimination Legislation and a New Agency, the Equality Ombudsman*. Available at: <http://www.sweden.gov.se/content/1/c6/11/80/18/884944c1.pdf>

<sup>133</sup> Ibid.

<sup>134</sup> *The Swedish Government's Human Rights Website*, “Sweden’s New Anti-Discrimination Act ” at: [http://www.manskligarattigheter.gov.se/extra/pod/?id=85&module\\_instance=2&action=pod\\_show&navid=85](http://www.manskligarattigheter.gov.se/extra/pod/?id=85&module_instance=2&action=pod_show&navid=85) , accessed on 10/1/ 2009.

Board against Discrimination, to make decisions about “financial penalties and appeals against decisions on financial penalty orders”<sup>135</sup> in cases of discrimination. This agency also replaces previous agencies: the Equal Opportunities Commission and the former Board against Discrimination. According to the government website information, the new Equality Ombudsman was better equipped to deal with those who did not comply with the anti-discrimination act, including the ability to apply for financial penalties.<sup>136</sup> In such cases, the Ombudsman office could apply to the Board against Discrimination to apply such penalties to actors such as employers and education providers. Reasons for such penalties include the refusal to provide information about circumstances of activities which are covered by the anti-discrimination law. The Ombudsman also has the right to inquire about the qualification of the individuals who were “selected for a job interview, appointed to a post or admitted to an educational program.”<sup>137</sup>

According to a 2011 report submitted for a review by the Framework Convention by the government, the Ombudsman received a number of cases regarding discrimination against the Roma, especially in employment and housing. For example, in 2009, the Equality Ombudsman received more than 30 reports of discrimination against the Roma. According to the official report, “some form of redress has been successfully achieved in

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<sup>135</sup> Government Offices of Sweden, *Ministry of Integration and Gender Equality (January 2009): Fact Sheet: New Anti-Discrimination Legislation and a New Agency, the Equality Ombudsman*. Available at: <http://www.sweden.gov.se/content/1/c6/11/80/18/884944c1.pdf>

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

seven cases.”<sup>138</sup> However, the same report admits that “the precise number of reports of discrimination belong to national minorities is difficult to gauge.”<sup>139</sup>

Another activity that was undertaken under this law is the appointment of a chair of the Board who was charged with investigating “the effects of the provisions on active measures in anti-discrimination legislation.”<sup>140</sup> According to the government information, the goal of its anti-discrimination mechanisms is to find out “how requirements for active measures can be made clear and linked to effective sanctions.”<sup>141</sup>

Anti-discrimination provisions can also be found in the Swedish Penal Code that provides any person “who in a statement or other communication which is disseminated, threatens or expresses contempt for an ethnic group or other such group of persons by making allusion to race, color, national or ethnic origin or religious creed, shall be convicted of agitation against an ethnic group”<sup>142</sup>

Another provision of the Penal Code that makes ethnic discrimination punishable concerns unlawful discrimination in labor relations. In accordance with its provisions, a businessman who in the conduct of his business discriminates against a person on the ground of his race, skin color, national or ethnic origin, or religious creed in that he fails to deal with that person under the terms and conditions normally applied by the businessman in the course of his business with other persons, shall be convicted of unlawful discrimination and sentenced to a fine or to imprisonment for a maximum

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<sup>138</sup> Council of Europe, *Sweden's report (June 2011)*, Available at [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_SR\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Sweden_en.pdf)

<sup>139</sup> Ibid.

<sup>140</sup> Government Offices of Sweden, *Ministry of Integration and Gender Equality (January 2009): Fact Sheet: New Anti-Discrimination Legislation and a New Agency, the Equality Ombudsman*. Available at: <http://www.sweden.gov.se/content/1/c6/11/80/18/884944c1.pdf>

<sup>141</sup> Ibid.

<sup>142</sup> Sweden's Penal Code. Chapter 16, section 8.

period of one year. This also applies to a person employed in such a business or who is otherwise acting on behalf of the businessman, and to a person employed in public service or who has a public duty, or to an organizer of a public assembly or gathering and to any assistant of such an organizer if they discriminate in the same manner by refusing access to the public assembly or gathering.<sup>143</sup>

Furthermore, insulting conduct in the form of accusations or insulting epithets or other “outrageous” conduct is also punishable. The penalty is a fine or, if the offense is grave, imprisonment for not more than six months. Insulting a person with allusion to ethnic origin is an offence subject to public prosecution.<sup>144</sup> Protection against racist actions is also provided for in chapter 16, section 5 of the Penal Code concerning incitement to rebellion.<sup>145</sup>

Chapter 16, section 8, of the Penal Code regarding agitation against a national or ethnic group prohibits public dissemination of racist statements or other expressions of racist attitudes or beliefs. Dissemination through an organization or similar group is also punishable under law, as is dissemination within the organization or the group. In 2003, a provision was added that prescribes a special penalty for the most serious crimes of agitation against a national or ethnic group. This provision rules that the penalty in such cases is imprisonment for six months to four years. The provision applies to extensive

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<sup>143</sup> Sweden’s Penal Code. Chapter 16, section 9.

<sup>144</sup> Sweden’s Penal Code, chapter 5, section 3,

<sup>145</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. Reports Submitted by States Parties under Article 9 of the Convention: Twelfth Periodic Reports of States Parties Due in 1995/Addendum/Sweden (CERD/C/280/Add.4; 20 November 1996), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 8-9.

dissemination of racist material, such as racial propaganda activities by a racist organization.<sup>146</sup>

According to chapter 29, section 2, paragraph 7 of the Penal Code, it shall be considered an aggravating circumstance when assessing penal value if the motive of a crime was to aggrieve a person, ethnic group, or some other similar group of people by reason of race, color, national or ethnic origin, religious belief, sexual orientation, or other similar circumstance. The provision is applicable to all categories of crimes.<sup>147</sup>

The crime of agitation against a national or ethnic group is included in the list of offences that may be punishable in constitutionally protected media. Penal provisions protecting ethnic minorities apply even if the offence is committed in a medium protected by the Constitution, such as a newspaper or television.<sup>148</sup>

The Act on Responsibility for Electronic Bulletin Boards (1998:112) contains provisions aimed at combating agitation against national or ethnic groups. The provision on leading youth astray in chapter 16, section 12, of the Penal Code counteracts the spread of racist propaganda.<sup>149</sup>

In addition to enacting new laws, in the early 2000s, Sweden undertook and funded a host of programs and anti-discrimination campaigns across the country by county administrative boards. Those were particularly aimed at Islamophobia and anti-

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<sup>146</sup> Ibid.

<sup>147</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 5.

<sup>148</sup> Ibid., p. 17.

<sup>149</sup> Ibid., p. 5.

Semitism, two phenomena that were identified as the most severe in combating racially-motivated discrimination.<sup>150</sup>

### **Minority Protection Legislation**

Part of the Swedish minority policy applies only to the *five* cultural minorities that are considered to be “national minorities” based on a long historical bond with Sweden. The development of Swedish minority protection legislation coincides with the preparation for and aftermath of the ratification by Sweden of the Framework Convention. The development of the law is in accordance with the expectations of the world policy literature. Policy on national minorities is based on the government bill called National Minorities in Sweden (Government Bill 1998/99:143) and two Council of Europe conventions: the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages (Minority Languages Charter). The Swedish government ratified both the conventions in 2000.<sup>151</sup> The policy on national minority protection began to be implemented right after the ratifications. In 2000, the government set up an inter-ministerial working group to raise awareness of national minorities and work to increase the impact of minority policies made up of civil servants from various ministries. Members of this group were civil servants from the

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<sup>150</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, pp. 12-14.

<sup>151</sup> *The Swedish Government's Human Rights Website*, “National Minorities” at: [http://www.manskligarattigheter.gov.se/extra/pod/?id=55&module\\_instance=2&action=pod\\_show](http://www.manskligarattigheter.gov.se/extra/pod/?id=55&module_instance=2&action=pod_show), accessed on October 1, 2009.

ministries of Justice, Foreign Affairs, Health and Social Affairs, Education, Research and Culture and Agriculture, Food and Consumer Affairs.<sup>152</sup>

In January 2010, the government adopted a new minority law, an Act on National Minorities and National Minority Languages (Swedish Code of Statutes 2009:724). The act replaced the prior legislation on the right to use Sámi, Finnish and Meänkieli (Swedish Code of Statutes 1999:1175, 1999:1176). It also amended The Sámi Parliament Act (No. 1992:1433) and the Social Services Act (Swedish Code of Statutes 2001:453).

According to the government website, the new Act on National Minorities was adopted to fulfill “Sweden’s international obligations.”<sup>153</sup> Some of the significant changes compared to the previous law on minorities, including implementation of some minority rights in the entire territory of Sweden as opposed to “only in certain regions like the previous legislation.”<sup>154</sup> The new law obligates the government to inform the groups about their rights under the new law. Another change from the previous law is the protection of the minorities and the promotion of minority languages. According to the government’s website, “the authorities are to promote the national minorities’ opportunities to preserve and develop their culture in Sweden, as well as children’s possibilities to develop a cultural identity and their minority language.”<sup>155</sup>

There is evidence that the Swedish government has undertaken some efforts to implement the law. The government started awareness information campaigns about the

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<sup>152</sup> Council of Europe, *Second Report Submitted by Sweden Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities*, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_SR\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_Sweden_en.pdf), accessed on 6/24/09, p. 5.

<sup>153</sup> Sweden’s Government, Ministry for Integration and Gender Equality. *Minority Rights are Strengthened (Fact Sheet)*. Available at: <http://www.regeringen.se/content/1/c6/13/67/58/19668cda.pdf>

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

Sámi people in 2001. The Swedish government submitted a bill on greater Sámi influence in early 2006. The bill proposed designation of the Sámi Parliament as the central administrative agency responsible for reindeer husbandry and the transfer of a number of administrative tasks from county administrative boards and the Board of Agriculture to the Sámi Parliament. The Sámi Parliament was in charge of the awareness campaigns, and the government supported its work financially. For example, the Sámi Parliament established an information center aimed at government agencies, NGOs, the media, and the general public. The Swedish government also appointed the so-called “Boundary Commission” in 2002 in the Sámi territories. One of the Commissions activities, a study of hunting and fishing rights in the reindeer breeding area, was conducted in 2006 and the resulting report and recommendations (SOU 2005:116) were submitted to the government.

The government singles out Sámi issues and labels them “cross-sectorial” on its official website.<sup>156</sup> According to the government, Sámi’s issues have been the subject of the work of several ministries, including the Ministry of Rural Affairs as the coordinating ministry. According to the website, the goal of the government has been to “together with the Sámi, to design a policy based on mutual respect and increased participation of Sámi in society.”<sup>157</sup> The Swedish government

After the establishment of the Sámi Parliament in 1993, work with Sámi affairs has dealt with transferring tasks from other government agencies to the Sámi Parliament in areas where this is natural and reasonable. The goal is to increase

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<sup>156</sup>Government Offices of Sweden website, *Sami – Sami Policy*. Available at: <http://www.sweden.gov.se/sb/d/2184/a/66267>

<sup>157</sup> Ibid.

Sámi influence over issues of major importance to the pursuit of Sámi industries and culture.<sup>158</sup>

The Swedish government has implemented a number of programs for the Roma who face discrimination in many different spheres of daily life, including housing and employment. The efforts include the establishment of the Council for Roma Issues in 2002 as an advisory body to the government. The Council has worked to implement several initiatives to improve the situation of the Roma in the Swedish society, including instructing the National Agency for Education to perform an in-depth study of the situation of Roma students in Swedish schools. The project to combat discrimination against the Roma was completed in 2004. The resulting report recommended actions to continue the effort towards eliminating discrimination. The Agency, thereafter, was given a continued mandate and special funds by the government to work with this issue.

The working group of Roma women was set up in 2002 and held regional seminars to provide opportunities for networking and discussions of the situation of Roma women and girls in Sweden in relation to education and employment. A delegation for Roma issues was established within the group in September 2006. The delegation's mandate is to advance the efforts to improve the Roma's situation in Sweden. It has been instructed to study the situation of the Roma and submit recommendations towards improving their living conditions. The delegation is also involved in promoting projects and programs aimed at improving the overall situation of the Roma.<sup>159</sup>

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<sup>158</sup> Government Offices of Sweden website, *Sami – Sami Policy*. Available at: <http://www.sweden.gov.se/sb/d/2184/a/66267>

<sup>159</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. *Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden* (CERD/C/SWE/18/7 May 2007), Available at:

Sweden also adopted legislation governing the use of minority languages. In 1999, in preparation of the ratification of the Council of Europe's Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, the Riksdag reaffirmed the recognition of Sweden's national minorities and their languages, vowing to support to keep the minority languages (Sámi, Finnish, Meänkieli (Tornedal Finnish), Romany Chib and Yiddish) alive. According to the government, Sámi, Finnish and Meänkieli have historical, geographical bases that warrant more extensive measures of support.<sup>160</sup> The Riksdag's decision provided individuals the right to use Sámi, Finnish and Meänkieli in interactions with courts and administrative authorities with activities in areas where the languages have traditionally been used and are still used. Furthermore, it gave right to these groups to receive pre-school care and elderly care, fully or partly, in these languages.<sup>161</sup>

According to the Swedish government data, in 2005-2006, nearly 13,000 students were entitled to schooling in one of the national minority languages. The national minorities entitled to native language schooling constituted about one percent of the total student population. Those languages were: Finnish (9,807 students), Romany (Kaale, Lovari - 1,281 students), Tornedal Finnish (1,089), Sámi (595), and Yiddish (29).<sup>162</sup>

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<http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 15.

<sup>160</sup> Sveriges Riksdag (Swedish Parliament). *Recognition of National Minorities in Sweden (KU6)*. 2 December 2009. Available at: [http://www.riksdagen.se/templates/R\\_PageExtended\\_12577.aspx](http://www.riksdagen.se/templates/R_PageExtended_12577.aspx), accessed on 11/2/2009.

<sup>161</sup> Ibid.

<sup>162</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 4.

According to the government-provided statistics, the other minorities had the opportunity to receive schooling in their native languages. Among Sweden's other ethnic minorities, the total number of students entitled to schooling in their native languages in the 2005-2006 school year was 147,500, or 14.8 percent of all other minority students. The most common mother tongues that the schooling was provided was in was Arabic, Bosnian, Croatian, Serbian, Finnish, Spanish, Albanian, English, Farsi, and Turkish.<sup>163</sup>

The examination of the timing of the adoption of the legal framework for the more established vs. newer Sweden's minorities points to the influence of the international factors as opposed to domestic factors in giving impetus to the adoption of these laws. Chapter 1 reviewed several theoretical frameworks that may be useful in the analysis of the minority protection law and policy among the EU member states. In Sweden's case, social movements' literature is not applicable because Sweden has not experienced social mobilization for minorities, and there is no evidence of demands put on the government by some minority groups that would result in better protections for those groups and political events that created political opportunities.

Political opportunity literature does not account for the Swedish situation either because major political events that could give rise to political opportunities or threats are absent from recent Swedish history. Moreover, there is little evidence of any kind of focused mobilization among the five protected minority groups. For example, although the Sámi have filed legal cases against the Swedish state over land on a number of occasions, there is no evidence that this has led to better overall protection for the Sámi and resulted in an extension of protection to the other four minority groups.

Although it is possible that the Swedish welfare provisions simply result in better social security protections to everyone, this does not seem to account for the new approach to minorities in Sweden. Moreover, although Sweden enjoys the welfare state status of a country that is prosperous, democratic, and protective of providing social security to citizens, this does not prevent minority groups and their supporters from voicing complaints about unequal access to resources. Complaints include concerns about discrimination in a variety of spheres, including the access and equality of welfare protections for minority groups, access to employment, housing and also other concerns over cultural and language rights. The examination of these laws and their timing demonstrates that Sweden is attempting to fulfill international obligations by passing these laws and adopting minority policy. In Sweden's case, world polity arguments better account for the status of minority protection than do arguments based on domestic processes and conditions.

When measured against other EU member countries, Sweden compares favorably on a number of minority protection measures. For example, on the five criteria for minority rights outlined in chapter 5, Sweden scores a high four in total. In chapter 5, all member states were compared to one another using five minority protection indicators: minority representation in Congress, official language, financial support for cultural activities, financial support to improve societal integration, and implementation of anti-discrimination law.

On *minority representation in Congress*, Sweden scored low as the available information indicates that Sweden did not have two or more ethnic or racial minority

representatives who specifically represented the interests of minority populations in the 2000s.<sup>164</sup>

Sweden scored high on the indicator measuring the status of *minority languages*. Sweden does not have any official language and the *de facto* official language is Swedish. In the past decade, however, Sweden adopted legislation governing and supporting the use of some minority languages.

Sweden scored high on *financial support for cultural activities* and *financial support* to improve societal integration, as well as implementation of anti-discrimination law as there is evidence that the government has provided resources in these areas. According to a 2007 COE report, “Sweden provides substantial support for national minorities’ cultural initiatives.”<sup>165</sup> The same report also commended Sweden on the implementation of anti-discrimination law: “It appears that attention of the Ombudsman against Ethnic Discrimination and other key actors has helped to tackle discriminatory practices in some areas. This includes the area of employment and access to entertainment establishments.”<sup>166</sup>

Sweden has made an effort to establish itself as a country that is attentive to multiculturalism and adopted a detailed legal framework to live up to this image and comply with international obligations. However, a number of scholars, NGOs and international organizations have pointed to some systemic issues and cultural factors that

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<sup>164</sup> Keith B. Richburg, “Europe’s Minority Politicians in Short Supply.” *The Washington Post*. Sunday, April 24, 2005; Page A14, available at: <http://www.washingtonpost.com/wp-dyn/articles/A12396-2005Apr23.html>, accessed on 1/11/11.

<sup>165</sup> Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Sweden, adopted on 8 November 2007, accessed on 1/21/11. Available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp#Sweden](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Sweden), page 5.

<sup>166</sup> *Ibid.*

have continued to pose a challenge to this aspiration. While the rush to adopt the minority law is consistent with the prediction of the neoinstitutional theory, there is evidence that the law implementation is not a straightforward proposition and has been made more difficult by the prevailing cultural norms and values. The following section addresses the limits of an analysis that focuses on law and policy that is on the books alone. It also examines some of the criticism that has been directed at Sweden and highlight the cultural factors that affect this seemingly high level of minority protection in Sweden.

### **Critical Evaluation of the Legislative Framework for Minorities**

As discussed above, Sweden now has an impressive list of ratifications of major international treaties that deal with societal discrimination and minority protection, including all major United Nations, Council of Europe, and International Labor Organization conventions and protocols (see Appendix B).<sup>167</sup> In particular, following its ratification of the Council of Europe's Framework Convention and the Charter for Regional and Minority Languages, Sweden adopted laws and policies required by these and other international instruments of minority protection. Some basic indicators of minority protection also indicate that Sweden is making good efforts on minority protection.

Currently, provisions for minority protections can be found in the Swedish Constitution and in many pieces of legislation. Although based on the law on the books, Sweden looks almost perfect, there are two major problems with its minority protection

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<sup>167</sup> The Swedish Government Human Rights Website, Conventions Ratified by Sweden. Available at: [http://www.manskligarattigheter.gov.se/extra/pod/?id=4&module\\_instance=2&action=pod\\_show](http://www.manskligarattigheter.gov.se/extra/pod/?id=4&module_instance=2&action=pod_show), accessed on 11/1/2009.

regime that put into question the reach and effectiveness of the framework. The system of protection is new and was adopted in response to international obligations. Prior to the ratifications, and until the late 1990s, Sweden lacked a comprehensive minority policy.<sup>168</sup>

Below some criticisms that have been directed at Sweden are discussed. Then, Sweden's practice and tradition of assimilation and exclusive concept of "Swedishness," as well as a narrow definition of what constitutes a national minority that limits the legal protections to five groups only are the two major factors that undermine the legal protections, are addressed.<sup>169</sup>

### **Criticism**

Sweden's definition of minority groups, approach to minorities, and flaws in the minority protection system have been criticized by the Framework Convention review mechanism and a variety of NGOs, both minorities themselves, and their advocates.

For example, the 2002 and 2007 opinions on the implementation of the Framework Convention, criticized Sweden for: implementing frequent changes in institutional responsibilities, lack of data on national minorities, problems in making minority language teaching available, and the difficulties with using minority languages in contacts with local administration.<sup>170</sup> In particular, according to observers and reviews of Sweden by international, both European and UN committees, despite fairly

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<sup>169</sup>Dominik Zimmermann, "Better Protection of National Minorities and Minority Languages in Sweden?", *International Law Observer* (online), 16 February 2010, available at: <http://internationallawobserver.eu/2010/02/16/better-protection-of-national-minorities-and-minority-languages-in-sweden/>, accessed 1/10/11.

<sup>170</sup>Dominik Zimmermann, "Better Protection of National Minorities and Minority Languages in Sweden?", *International Law Observer* (online), 16 February 2010, available at: <http://internationallawobserver.eu/2010/02/16/better-protection-of-national-minorities-and-minority-languages-in-sweden/>, accessed 1/10/11.

comprehensive legislative framework for minorities, the laws concerning the use of minority languages have been lagging in Sweden. With respect to Sámi language rights, Sweden was compared unfavorably with other Scandinavian countries (Finland and Norway) with a similar population of the Sámi.<sup>171</sup>

The COE urged the Swedish government to take measures to support minority language media and cultural initiatives of national minorities by ensuring that the eligibility criteria of the related subsidy systems take into account the specific concerns of national minorities.<sup>172</sup>

The Swedish government has in the past acknowledged some challenges in the implementation of the language policy. The government commissioned a study that was conducted in the early 2000s which found that there was a lack of awareness and information concerning the use of minority languages in dealings with administrative authorities and courts that made it difficult or impossible for individuals to use their minority languages.<sup>173</sup>

According to various reports by the COE, there are also issues concerning some minority groups that lack legal protection in areas for only that specific group. For example, according to the COE, the law is still not clear on the indigenous Sámi land rights, which affects traditional Sámi reindeer herding in northern Sweden. The resulting

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<sup>171</sup> Ibid.

<sup>172</sup> *Council of Europe*, Committee of Ministers, Resolution CM/ResCMN(2008)4 on the Implementation of the Framework Convention for the Protection of National Minorities by Sweden, Adopted by the Committee of Ministers on 11 June 2008 at the 1029th meeting of the Ministers' Deputies, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Sweden_en.pdf), accessed on 6/30/09.

<sup>173</sup> *Council of Europe*, Second Report Submitted by Sweden Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, received on 13 July 2006, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_SR\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_SR_Sweden_en.pdf), accessed on 6/24/09, p. 5.

legal disputes in the pasts have resulted in serious financial burdens for some Sámi villages where the role of Sámi leadership and parliament has not been developed in areas other than the reindeer industry.<sup>174</sup>

The government has also come under criticism for the lack of reliable statistics concerning ethnic background of citizens. Such statistics are not included in official statistical data because Sweden does not keep official data on people's ethnic origins other than citizenship and the country of birth. Under the Swedish Personal Data Act (1998:204), processing personal data that identify race, ethnic origin, or religious belief is prohibited.<sup>175</sup> The official reason that the government provides is that the "methods do not exist for the computation of ethnic belonging that are both ethically acceptable and scientifically sound."<sup>176</sup> The government, however, makes estimates that are based on evaluations by researchers, government authorities, and the minorities themselves.<sup>177</sup> Despite the availability of some data, this approach of the Swedish government to the collection of data on its ethnic minorities has been criticized by a number of international institutions. The COE, however, has cited the lack of collection of official statistics

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<sup>174</sup> Council of Europe, Report Submitted by Sweden Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (ACFC/SR(2001)003 on 8 June 2001, p. 9, [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Sweden_en.pdf), accessed on 7/6/2009.

<sup>175</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden (CERD/C/SWE/18/7 May 2007), available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 4.

<sup>176</sup> Ibid.

<sup>177</sup> Council of Europe, *Report Submitted by Sweden Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities* (ACFC/SR(2001)003 on 8 June 2001, p. 9, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Sweden_en.pdf), accessed on 7/6/2009.

problematic and an obstacle to “formulation, implementation, evaluation and improvement of minority policies.”<sup>178</sup>

Scholars and nongovernmental organizations (NGOs) have reported that there are some serious issues that the Swedish government is not addressing with respect to immigrants. For example, there is a tendency toward segregation in schools and housing, increasing income gap, and signs of open hostility, as well as unemployment (Runblom 1994: 625; Taras 2009). The government was also criticized for “not doing enough” to address, prosecute, and combat the continuing instances of intolerance, including Islamophobia and anti-Semitism.

### **Assimilation**

One of the problems and obstacles of effective minority protection in Sweden is the Swedish assimilation system and tradition. The country provides much support for learning the Swedish language and culture, but not as much support for maintaining an independent cultural identity other than in the case of the five Swedish minorities. Sweden has a long tradition of its official emphasis on an exclusive concept of the Swedish nation that emphasizes its homogeneity. Even if the influx of non-European and non-white immigrants has created a sort of an “identity crisis” in Sweden (Schall 2011), the old thinking about national identity persists in Sweden and its official discourse.

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<sup>178</sup> *Council of Europe, Committee of Ministers, Resolution CM/ResCMN(2008)4 on the Implementation of the Framework Convention for the Protection of National Minorities by Sweden*, Adopted by the Committee of Ministers on 11 June 2008 at the 1029th meeting of the Ministers' Deputies, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Sweden_en.pdf), accessed on 6/30/09.

This principle of the Swedish official approach and policy is very well-illustrated by the attitude of the current Minister for Integration and Gender Equality, Nyamko Sabuni. Sabuni immigrated to Sweden from Congo with her family as a teenager, and yet she is known to downplay her African heritage and is quoted as saying: "I don't reflect, really, on my background (...) I speak Swedish. I act Swedish. I don't see myself as an immigrant or a minority. I want to see myself as a young Swedish woman with kids, who's involved in politics."<sup>179</sup>

Sweden has a long history with the assimilation policy, and the relatively new policy of pluralism and multiculturalism stands in sharp contrast to this long Swedish historical tradition. Historically, immigrants to Sweden were expected to adapt to the dominant Swedish culture and customs. For example, Jewish immigrants who arrived in Sweden in the late 18<sup>th</sup> century were gradually assimilated and Jewish traditions survived mainly as a result of continuing Jewish immigration (Runblom 1994: 631-632). Diversity is a recent phenomenon in Sweden and until World War II the country was ethnically very homogenous. According to the 1930 census, only one percent of the population was of "foreign stock," which included the Sámi and Finns who had been living in Sweden for more than 500 years.

The official approach toward minorities needs to be also seen through the official rhetoric as well as restrictive immigration and citizenship laws. For example, in the interwar period, the official discourse included a slogan that "Sweden is for the Swedes" (Runblom 1994: 628-629). Traditionally, Sweden's society and government have

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<sup>179</sup> Keith B. Richburg, "Europe's Minority Politicians in Short Supply." *The Washington Post*. Sunday, April 24, 2005; Page A14, available at: <http://www.washingtonpost.com/wp-dyn/articles/A12396-2005Apr23.html>, accessed on 1/11/11.

expressed the attitude that immigrants and minorities should assimilate to Sweden's culture and society (Runblom 1994: 628-629). Until the mid-1960s, the government continued the assimilationist policy by implementing programs to help the new immigrants and ease their entry into the society, through language training and other programs. According to some scholars, there was too much emphasis on assimilation and not enough on the respect for and protection of ethnic identity of the immigrants (Runblom 1994: 630). In the 1980s, the government promoted the "whole of Sweden strategy" that required immigrants to settle in specific areas. The official goal of the policy was to avoid an immigrant concentration in urban areas and promote their "integration" into the Swedish society (Taras 2009: 143-144). According to some scholars, the official government's rhetoric and ideology that has emphasized tolerance and multiculturalism is at odds with the policies and the "centralized, restrictive, and controlling attitude toward immigration" (Rosenberg 1995: 214). In the post-World War II period and into the 1960s, even the groups that are now protected by the Swedish laws, such as the Sámi, Finns and Tornedalers, were pressured to give up their language and cultural identity as a part of an effort to assimilate into the Swedish society. For example, many school children in the areas inhabited by the Tornedalers were prohibited to speak their own ethnic language, and libraries financially supported by the government were not allowed to provide literature in native languages. The government also established special schools for the Sámi in the 1940s, where the Sámi language was substituted by Swedish.<sup>180</sup>

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<sup>180</sup> Dominik Zimmermann, "Better Protection of National Minorities and Minority Languages in Sweden?", *International Law Observer* (online), 16 February 2010, available at:

Scholars claim that this approach is not surprising given that Sweden, unlike Canada or the United States, is not traditionally multicultural and multiethnic. Furthermore, unlike another Scandinavian Finland, for example, its identity is based on the existence of just one linguistic group. Prior to the recent laws adopted in response to international pressures and obligations, the state expected minorities to assimilate and had no experience in legislation and policy that aimed at the promotion and protection of cultural minorities.

However, according to some scholars, the general orientation in the public policy and its strong “centralist tendencies” (historically based on crown and church) continue to affect the minority discourse in Sweden. One of them is the principle and practice of uniformity in education and its programs. Since Sweden was never a colonial power, it does not have relations with decolonized areas that provide for the experience and practice of diversity, as in the case of France. Among European nations, Sweden has also been religiously uniform in contrast to the Netherlands for example (Runblom 1994: 632-633; Rosenberg 1995; Taras 2009).

The change from a homogenous to a multicultural society in Sweden was relatively sudden and started in the 1970s. Initially, however, this did not pose a problem as the majority of the immigrants came from ethnically similar European backgrounds and most came from Christian traditions. The transformation of the society also started at a time of economic prosperity and the model of cultural pluralism was implemented according to the Swedish welfare state principles. In that model, policies result from a

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<http://internationallawobserver.eu/2010/02/16/better-protection-of-national-minorities-and-minority-languages-in-sweden/>, accessed 1/10/11.

broad political compromise between left and right parties. Policies for minorities were initially accepted by all parties, but the approach changed since 1991 due to the cost of the programs. For example, the reception of refugees in 1980s was characterized by an all-Sweden strategy and uniform effort instead of private activities and non-governmental efforts, which created a financial burden for the state as the number of refugees exceeded the expectations (Runblom 1994: 633-636; Rosenberg 1995).

Some criticism from not only scholars but also international organizations such as the UN has also been directed at the way the newer immigrants were treated as individuals as opposed to understanding the needs of a group, family, kin, or congregation that played a strong role among some of the newer immigrant groups.

By some accounts, international pressures over time contributed to the changing attitudes and policy to some extent. One such pressure came from Finland's government which was concerned about the draining of the Finnish population that immigrated to Sweden in search of work. Finland's demands led to the launching of the Swedish home language reform and immigrants were granted cultural rights. The 1974 Swedish Instrument of Government (Regeringsformen) guarantees support for linguistic, religious, and cultural groups that wish to maintain their culture, which led to the introduction of some programs, such as support for publications in minority languages, language instruction in public schools, and the right to participate in municipal level elections (Runblom 1994: 630-631).

Currently, the European framework and regime for the protection of national minorities puts pressures on the Swedish state to recognize and protect separate minority

cultures and languages. However, the challenge is that the new European framework of minority protection emphasizes an element that has been foreign to the Swedish cultural and political discourse: the attitude that immigrants and ethnic minorities should have the right to cultivate and preserve their own culture (Runblom 1994: 629-630).

Thus, despite the adoption of laws and policy for minority protection, the government of Sweden has yet again acted in accordance with the prevailing cultural norm and assimilationist tradition in trying to re-emphasize the primacy of the Swedish language and culture. In recent years, while adopting the minority protection framework, the government also adopted policy that protects the status of Swedish over minority languages.

Sweden formally has no official language, but Swedish is the *de facto* official language. In 2005, the Parliament reasserted the policy that the Swedish language “is to be the main language of Sweden and should be comprehensive enough to be used for all aspects of public life.”<sup>181</sup> The Parliament also called for the official Swedish to “be refined, but simple and easy to understand.” The government explained this effort to reassert the dominant status of the Swedish language by stating that everyone “should be entitled to have and use their language: to develop and acquire the Swedish language, to develop and use their own mother tongue and their own minority language and to be given the opportunity learn foreign languages.”<sup>182</sup>

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<sup>181</sup> Sveriges Riksdag (Swedish Parliament) official website. New Language Policy for Multilingual Sweden (KrU4). 7 December 2005. Available at:

[http://www.riksdagen.se/templates/R\\_PageExtended\\_7803.aspx](http://www.riksdagen.se/templates/R_PageExtended_7803.aspx), accessed 11/7/2009.

<sup>182</sup> Sveriges Riksdag (Swedish Parliament) official website. New Language Policy for Multilingual Sweden (KrU4). 7 December 2005. Available at:

[http://www.riksdagen.se/templates/R\\_PageExtended\\_7803.aspx](http://www.riksdagen.se/templates/R_PageExtended_7803.aspx), accessed 11/7/2009.

The government also put into place a new language planning organization in 2006 consisting of the Institute for Dialectology, Onomastics and Folklore Research (SOFI) and the Swedish Language Council, the Finnish Language Council in Sweden and the Plain Language Group in the Government Offices. Government concern over the status of Swedish vis-à-vis other languages used in Sweden is expressed in the government's statement:

Special efforts will be devoted to schools in deprived areas with the emphasis on mother tongue teaching and the teaching of Swedish as a second language. Reading amongst children and young people who do not have Swedish as their first language is to be encouraged and Swedish instruction for immigrants is to be reformed.<sup>183</sup>

While the concern that immigrants learn Swedish is not necessarily a discriminative approach, the timing of the law raises the possibility that it was motivated by the need to reassert Swedish identity and the dominance of Swedish in the context of the adoption of minority language legislation with increasing pressures on the state to adopt a multiculturalist framework.

### **Limited Number of Minorities**

Another serious problem that puts into question the effectiveness of the Swedish framework for minority protection is the way that Sweden determines who constitutes a minority. In general, terminology referring to "minorities" is not settled in European countries and Sweden, like Poland, has its own definition of what constitutes a "minority." In Sweden, the term "national minority" has a very specific meaning and

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<sup>183</sup> Ibid.

legal consequences.<sup>184</sup> The Swedish Government and the Parliament (Riksdag) officially acknowledge the existence of only *five* national minority groups and assert that their minority policy decisions have to do with only these five.<sup>185</sup> Here is how the Swedish government explains the special protections afforded to the five ethnic, linguistic and/or cultural minorities:

Swedish minority policy covers all five of Sweden's national minorities. Common to these minority groups is that they have lived in Sweden for a long period and that they are groups with a distinct affinity. They also have their own religious, language or cultural affiliation and a will to retain their identity.<sup>186</sup>

However, in addition to the well-established minority groups, Sweden is inhabited by other non-Nordic ethnic, cultural, and religious minorities as a variety of newer minority groups migrated into the country following World War II and are also well established in Sweden. These other newer ethnic groups who have immigrated to Sweden are not regarded as national minorities. The largest groups of residents born outside Sweden are Yugoslavians, Bosnians, Iranians, Norwegians, Poles, Danes, Iraqis, Germans, and Turks.<sup>187</sup> None of these groups is considered a national minority under Swedish law as none of these satisfies the criteria for national minorities established by the government.<sup>188</sup>

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<sup>184</sup> Some countries, such as Poland, make a distinction between ethnic and national minorities. The definitions of the term “national minorities” varies.

<sup>185</sup> Government Offices of Sweden. National Minorities. Official website of the Government of Sweden, available at: <http://www.sweden.gov.se/sb/d/2188/a/19444>, accessed on 10/24/2009.

<sup>186</sup> Government Offices of Sweden, *National Minorities*. Available at: <http://www.regeringen.se/sb/d/2184/a/19444>

<sup>187</sup> Council of Europe, *Report Submitted by Sweden Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities* (ACFC/SR(2001)003 on 8 June 2001, p. 44, [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Sweden_en.pdf), accessed on 7/6/2009.

<sup>188</sup> *Ibid*, p. 9.

What also makes the status of the many minorities problematic is the official discourse; the newer minorities that reside in Sweden are often referred to as “immigrants” even if they were born in Sweden and are children of parents who migrated. In the Swedish discourse, “immigrant” does not refer to a process of migration but to persons who are not of Nordic descent. The government in the past used the term “second-generation immigrant” in reference to children born of parents who immigrated to Sweden. As a result of criticisms that this may have discriminatory consequences, authorities now avoid the term “immigrant” and use “persons of migrant origin” in official communications.<sup>189</sup>

Likewise, Swedish citizenship law is restrictive and based on the *jus sanguinis* principle, meaning that citizenship is acquired at birth if either of the parents are Swedish citizens.<sup>190</sup> Since 2001, however, Sweden has accepted dual citizenship, and there has been some discussion of the possibility of complementing the *jus sanguinis* principle with the *jus soli* principle (meaning that those born within the territory may also be granted Swedish citizenship).<sup>191</sup>

Although foreign citizens may obtain permanent residence permits (called PUTs), these residents do not have an absolute right to live and work in Sweden, and, as is the case in other European countries (some countries, such as New Zealand allow permanent

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<sup>189</sup> Migration Information Resource. *Country Profiles. Sweden: Restrictive Immigration Policy and Multiculturalism* (June 2006), available at:

<http://www.migrationinformation.org/USFocus/display.cfm?ID=406>, accessed 12/6/09.

<sup>190</sup> Act on Swedish Citizenship Unofficial translation of: Lag om svenskt medborgarskap Swedish Code of Statutes: SFS 2001:82 (With amendments up to and including SFS 2006:222)

<http://www.sweden.gov.se/content/1/c6/10/57/28/3ddfc07b.pdf>

<sup>191</sup> Migration Information Resource. *Country Profiles. Sweden: Restrictive Immigration Policy and Multiculturalism* (June 2006), available at:

<http://www.migrationinformation.org/USFocus/display.cfm?ID=406>, accessed 12/6/09.

residents to vote), only Swedish citizens are entitled to vote in the Riksdag elections. This, however, is also true of many countries with long immigration histories, such as the U.S. The permanent residents cannot be elected to the Parliament (Riksdag), and they are barred from certain jobs, such as police officers, career officers in the Swedish Armed Forces, and some safety service officers that can only be filled by Swedish citizens.<sup>192</sup>

Overall, Swedish immigration law is considered to be exceptionally restrictive, and its asylum policy incompatible with some obligations stemming from UN Conventions in some cases. In recent years, its asylum policy has come under harsh criticism from a number of refugee advocates, including the Red Cross, Save the Children, and the Swedish Church.<sup>193</sup>

In sum, a close examination of the government's approach to minority issues reveals that the assimilationist tradition that continues to have effect in the Swedish society and a specific concept of Swedishness are the main cultural factors that question the multicultural image that Sweden is attempting to establish by adopting an elaborate legal framework for minorities. The following section discusses societal attitudes toward minorities and instances of discrimination.

### **Societal Attitudes**

Overall, international surveys and studies indicate that Swedes are tolerant of minorities. According to a report by the COE's Committee of Ministers, "a large majority of the Swedish population considers that persons belonging to ethnic minorities enrich

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<sup>192</sup> Government Offices of Sweden website, Swedish Citizenship, available at <http://www.sweden.gov.se/sb/d/2188/a/19449>, accessed on 12/1/09.

<sup>193</sup> Westin, Charles (June 2006). *Sweden: Restrictive Immigration Policy and Multiculturalism*. Available at: <http://www.migrationinformation.org/Profiles/display.cfm?ID=406>

their society and encourage firmer measures to combat discrimination”... and “Swedish society is increasingly self-critical with regard to xenophobic attitudes.”<sup>194</sup>

Nonetheless, despite Sweden’s self-image and international image of a tolerant country that is respectful of minorities and immigrants and treats them well, some authors point out that the relations between immigrants and the majority populations are far from perfect. According to Runblom, there is a tendency toward a “new class” society in Sweden and the non-European minorities form the largely unemployed underclass (Iranians, Bosnians and others). For example, there is a tendency toward segregation in schools and housing, an increasing income gap, and signs of open hostility, as well as unemployment (Runblom 1994: 625). This seeming contradiction between the survey results and the reports of hostility may be due to the fact that while the Swedes have generally accepted the prevailing EU norms of non-discrimination and tolerance, they have a more difficult time in dealing with situations by which they are affected personally.

However, the UN Committee on Civil and Political Rights concluded in a 2009 report that “intolerance towards minority groups – which may manifest itself in such forms as discrimination, harassment, insults, threats and physical violence – constitutes a serious social problem.”<sup>195</sup> Societal hostility manifests itself in frequent and, by some accounts, increasing incidents of xenophobia. For example, in 2008, the Ombudsman for

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<sup>194</sup> *Council of Europe*, Committee of Ministers, Resolution CM/ResCMN(2008)4 on the Implementation of the Framework Convention for the Protection of National Minorities by Sweden, Adopted by the Committee of Ministers on 11 June 2008 at the 1029th meeting of the Ministers' Deputies, available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_CM\\_Res\\_Sweden\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_CM_Res_Sweden_en.pdf), accessed on 6/30/09.

<sup>195</sup> United Nations, Committee on Civil and Political Rights, *Consideration Of Reports Submitted By States Parties Under Article 40 Of The Covenant Concluding Observations of the Human Rights Committee: Sweden* (7 May 2009).

Ethnic Discrimination received 737 reports (813 in 2007). Police routinely receive reports of xenophobic crimes, some of which are related to neo-Nazi/white power ideology. Official Swedish estimates report the number of active neo-Nazis, or white supremacists, at approximately 1,500. Neo-Nazi groups operate legally, but courts have held that it is illegal to wear xenophobic symbols or racist paraphernalia or to display signs and banners with inflammatory symbols at rallies, since the law prohibits incitement of hatred against ethnic groups. According to reports, the National Socialist Front Party, perpetrates numerous acts involving violence and harassment aimed at immigrants and minorities. The media have reported an increase in Nazi-related threats and harassment at schools against both teachers and pupils with immigrant backgrounds.<sup>196</sup>

The 2005 summary report of Sweden's National Council for Crime Prevention reported that the overall number of reported xenophobic hate crimes had remained relatively constant since 2000. There were 2,272 crimes reported in 2005, of which half involved assault, unlawful threat or persecution.<sup>197</sup> In 2007, there were 118 reported cases of anti-Semitic crimes, according to the Swedish National Council for Crime Prevention and twenty-one of the reported cases resulted in convictions. Overall, the Agency reported 3,700 hate crimes in 2007, an increase of 9 percent from 2006.<sup>198</sup> In 2008, there were also several reports of anti-Semitic and anti-Islamic discrimination and "civil

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<sup>196</sup> United States Department of State, Bureau of Democracy, Human Rights, and Labor. 2008 Human Rights Report: Sweden. 25 February 2009, available at:

<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119107.htm>, accessed on 10/30/2009.

<sup>197</sup> United Nations. International Convention on the Elimination of all Forms of Racial Discrimination. Reports Submitted by States Parties under Article 9 of the Convention: Eighteenth Periodic Reports of States Parties Due in 2008/Addendum/Sweden (CERD/C/SWE/18/7 May 2007), available at:

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/416/18/PDF/G0741618.pdf?OpenElement>, accessed on 11/1/2009, p. 7.

<sup>198</sup> Ibid.

disturbances.”<sup>199</sup>

During 2008, the media reported that individuals associated with the openly Nazi organization National Socialist Front Party committed numerous discriminatory acts involving violence and harassment aimed at immigrants and minorities. The reports included cases of assault and hate speech, unauthorized demonstrations, illegal distribution of posters, illegal possession of weapons, and disorderly conduct. In April of 2008, a 20-year-old woman was awarded damages of 24,000 SEK (more than \$3,000) for discrimination. She had been asked by a bus driver to get off the bus for wearing a veil. In August of 2008, a fire at a mosque in the city of Stromsund was determined by the police to be an act of arson and a hate crime. Similar findings are reported by UN human rights treaty bodies and EU agencies.

Some scholars tie this incidence of racist attitudes or even rise in negative attitudes and violence against minorities to “the elite framing of the immigration discourse” and “defining the new minorities as unbearable burdens” in many Western nations such as Sweden (Pettigrew 1998: 99). The Swedish members of the European Network against Racism also reported that immigrants originally from the Middle East and Africa are subject to greater levels of racism and discrimination by authorities.<sup>200</sup>

In recent years, Amnesty International criticized Sweden for a low level of protection given to asylum-seekers from Iraq. In a 2009 country, Amnesty International (AI) cited the UN Committee against Torture (CAT) which raised concerns about the

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<sup>199</sup> United States Department of State, Bureau of Democracy, Human Rights, and Labor. *2008 Human Rights Report: Sweden*. 25 February 2009, available at: <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119107.htm>, accessed on 10/30/2009.

<sup>200</sup> Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2010*, available at: <http://www.minorityrights.org/?query=sweden&lid=458&go=>

practice of Swedish authorities to keep asylum-seekers in detention before deportation without any time-limits set by law.<sup>201</sup>

Reportedly, Roma immigrants also face unfair treatment and deportations. In 2009, Minority Rights Group International (MRG) raised concerns about the practice of Swedish authorities to force Roma to return to Kosovo where they face continuous discrimination and violation of their human rights. MRG warned, that

Sweden should ensure that before it returns Kosovo Roma, circumstances are created which allow them to live in dignity and without discrimination, and no-one should ever be returned to a situation where they face persecution. Although Roma under special protection may be offered some return assistance if they 'agree' to return, most are placed on planes without any aid and dropped at the airport in Kosovo without any support in terms of housing, employment or healthcare.<sup>202</sup>

While immigrants are not always directly the target of official anti-immigrant discourse, the assimilationist tradition, discussion of immigrants in terms of “burden on resources,” and limits put on citizenship rights of immigrants as discussed above may be contributing factors to the overall societal attitudes. At their extremes, these attitudes manifest themselves in instances of nationalism/xenophobia that occur and are documented on a regular basis. According to sociologist Thomas F. Pettigrew, there is a link between the official discourse and legal approaches concerning new minorities, such as resistance to granting citizenship to new immigrants that creates a context in which “efficacious remediation of discrimination is extremely difficult” and creates a political climate that encourages anti-immigrant and minority prejudice, discrimination, and violence (Pettigrew 1998: 99). Another scholar who works on migration issues, Charles

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<sup>201</sup> Ibid.

<sup>202</sup> Ibid.

Westin, criticized Sweden for its “self-image as a European nation-state, which is not compatible with the multicultural image Sweden is trying to establish.”<sup>203</sup> Westin also draws attention to the role of political debates and discourse that attempts to appease “anti-immigrant opinion,” but actually helps fuel anti-immigrant and anti-minority sentiments.<sup>204</sup>

Sweden seems to fulfill the expectations of neoinstitutional theory to the extent as there is evidence that the government has adopted a legal framework and policies for minorities in response to EU and other European-level requirements and expectations as did other EU member states thus lending support to the proposition that legal and policy convergence is occurring to a certain extent. Nonetheless, this does not tell the whole story of Sweden’s minority approach; there are a number of issues and inequalities within the system that are masked by the seemingly robust legal apparatus for minorities.

A closer look at the Sweden’s minority framework demonstrates that some of its shortcomings are not only a matter of inadequate implementation but the problem may be more “systemic.” While Sweden has been considered an international promoter of progressive state policy and human rights, the dominant social norms and Sweden’s national policy overall have emphasized an exclusive and ethnically homogenous concept of nation. As one scholar wrote in a book about Swedish racism:

In hidden or less apparent forms, as well as in blatantly open forms, racisms are currently flourishing even in Sweden, a country long stereotyped by Western intellectuals and progressives as a paradise of social enlightenment, as an international champion of social justice, as the very model of solidarity and

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<sup>203</sup> Westin, Charles (June 2006). *Sweden: Restrictive Immigration Policy and Multiculturalism*. Retrieved from <http://www.migrationinformation.org/Profiles/display.cfm?ID=406>

<sup>204</sup> Ibid.

equality, as the world's capital of good intentions and civilized behavior toward others (Pred 2000: 6).

It then may be that the shortcomings in Sweden's efforts to implement minority protections are not at all surprising despite the country's international profile. . Despite some evidence that the society is tolerant and supportive of minorities, even Sweden's EU membership is not a straightforward proposition long after the accession. According to the 2000 Eurobarometer, Sweden had the highest number of citizens of any country claiming that EU membership "was a bad thing" (Hansen & Weaver 2003: 1) demonstrating the society's reluctance to integration and Europeanization. Some of the reluctance can be attributed to the fear of losing welfare state benefits as part of the EU. It is true that many socioeconomic problems such as unemployment, poor housing, and crime have been blamed on the presence of ethnic and cultural minorities and the growing numbers of refugees and asylum-seekers (Pred 2000: 7) Nonetheless, the issues run deeper than this new phenomenon of arrival of immigrants and are due in part to the promotion of a certain idea of the nation. For example, just prior to the 1994 referendum on EU membership, the state sponsored a number of museum exhibits around the country titled "The Swedish History." According to Allan Pred, the objective of the highly publicized event was "remythologizing the past so as to reinvent the national ideals with which all were to identify" which emphasized a common national identity (Pred 2000: 29). Sweden and Sweden's cultural identity and the resulting public and political discourse explain why despite the seeming perfection of its framework of minority protection laws, Sweden's system is flawed.

On the one hand, the assimilation tradition continues to influence approaches to minorities and, on the other, the application of minority protection laws is compromised by the fact that it is limited to a very small number of Sweden's ethnic and cultural minorities. While Sweden has adopted minority protections to fulfill its international obligations, it has not only made them laws of limited applicability, but did so in a way not to threaten the prevailing national identity.

The Sweden case demonstrates that the major source for variation in minority protection among EU member states is its historical cultural and national identity and tradition that shapes the country's law and policy beyond formal compliance with international minority protection norms and laws. Culture and tradition explains this variation better than political opportunity and social movement activity, the predominance of national over immigrant minorities, or welfare state status.

The case of Sweden also highlights the challenges that states face in reforming its approach to social issues. While Sweden's specific context and tradition and *how* it shaped its implementation of minority policy is unique, it is possible that similar processes have occurred in other EU countries that have similarly experienced increased mobility across their borders and have been subject to increased Europeanization. While the findings concerning Sweden may be generalizable to other similar countries, in order to fully understand and explain shortcomings and limitations of minority protection frameworks in specific countries, it is necessary to study how these laws have been implemented in a particular cultural-national contexts and how the prevailing tradition

and culture plays out continuing to shape national approaches and limit the effectiveness of universal legal frameworks for minorities.

## CHAPTER 6: CASE STUDY 2: POLAND

### Introduction

Poland seems to meet all the requirements of minority protection on paper, but it fails to achieve that in practice due to historical reasons and the prevailing culture. The legacies of the Holocaust and communism, as well as earlier history have impacted the country's approaches to minority issues. The majority of Polish Jews perished in the Nazi German death camps, many of which were located in German-occupied Poland. Over the years, Poles have sometimes been accused of anti-Semitism and even seen as complicit in the crimes perpetrated by the Nazis (Friedrich 2005). In the post-World War II era from the mid-1940s until 1989, the successive communist governments in Poland did not acknowledge the country's ethnic diversity and considered all citizens to be Polish nationals. Ethnic minorities, discrimination, and racism are thus new topics in the public and political discourse in Poland, and the country is relatively new to the issue of minority protection.

A review of laws implemented for minorities in Poland suggests that Poland currently has a comprehensive legal system of minority protection. Poland ratified all major international instruments of minority protection (see Appendix C) and adopted a comprehensive legal national framework for minority protection (see Table 6).

COE's Advisory Committee on the Framework Convention for the Protection of National Minorities wrote in its most recent 2009 report on Poland that

A number of positive steps have been taken ... such as the adoption of the Act on National and Ethnic Minorities and on Regional Language and the

setting up of the Government structure for combating discrimination. National minorities continue to enjoy a high level of protection and relations between national minorities and the majority are characterized by a climate of mutual understanding and tolerance.<sup>205</sup>

European level surveys also reveal that Polish society at large is generally supportive of ethnic minorities and protection, and it is not different from Sweden and other EU societies in that respect. As in Sweden's case, however, the actual practice and implementation of the laws and policies by the government remains problematic. This has also come to the attention of the COE. The report cited above concludes that "[T]here remain, however, shortcomings in the implementation of the Framework Convention."<sup>206</sup> The report points to the increase of racially-motivated incidents in the past few years and to a number of other issues in minority protection that have not been effectively addressed by the government, especially at the local level, such as the right to use languages other than Polish, societal marginalization, and difficulties of some minorities to find work and housing.<sup>207</sup>

Furthermore, a closer look at both minority protection frameworks reveals that governments of Poland and Sweden interpret and implement the international obligations and law differently. In Sweden, prior to the adoption of the new European framework, there existed an older system of minority protection that emphasized assimilation that continues to have its effect to this day. In Poland, on the other hand, there existed no

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<sup>205</sup> Council of Europe, *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Poland*,

adopted on 20 March 2009. Accessed 2/15/11, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp#Poland](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Poland), p. 2.

<sup>206</sup> *Ibid.*, p. 2.

<sup>207</sup> *Ibid.*, p. 2.

system of minority protection. In addition to the lack of a pre-existing framework, Poland has a small number of minorities in proportion to the general population. In the case of Poland, the adoption of the EU and European level framework represents a top-down approach, as a response to international obligations, and especially Poland's membership in the EU and European institutions. These two countries then exemplify two different approaches to minority protection that are heavily influenced by the national culture and tradition.

This chapter starts from a discussion of defining moments in Poland's history and Poland's main minority groups. Next, it examines the development of minority laws and discusses the existing protections for minority groups in Poland. It explains that the fairly elaborate legal framework for minorities was established despite Poland's lack of experience in addressing discrimination and minority rights, and despite its small number of minorities in response to international developments on minority protection and the country's international obligations. It then analyzes the framework critically and discusses the obstacles to effective minority protection in Poland. In addressing the challenges, it addresses criticisms that have been directed at the government's efforts at implementation of the laws and policies.

Later, it presents the results of European values surveys that demonstrate that the Polish society is largely tolerant and supportive of minorities, and compares the results for Poland with results for Sweden. It also reviews societal attitudes and instances of racist incidents in Poland in light of the Polish political discourse and policy toward minorities. It discusses the remaining difficulties in assessing Poland's framework for the

protection of minorities and the role of the established culture and tradition in influencing the Polish approach. Finally, the implications of these findings for the process of European integration and social policy convergence are discussed.

### **Overview of Poland's History and National Identity Formation**

Polish culture and national identity formed as a result of some key defining periods and events in Poland's history, including Poland's lack of autonomy for more than 100 years, the Holocaust, and the communist period. In the late 18<sup>th</sup> century, the country lost independence and was partitioned between Prussia, Austria and Russia. At the turn of the 20<sup>th</sup> century, Poland still did not exist as an independent state, and the idea of autonomy and promises of independence appeared only when warring armies needed help from the Poles during World War I. Poland gained independence after 123 years in 1918 after the treaty of Versailles (14). After a brief independence during the inter-war period (1918-1939), Poland again lost independence during World War II, following the invasion by Germany and the Soviet Union (1939-1941). Following an invasion of the Soviet Union by Germany in 1941, Poland remained under German occupation until the end of the war (1945). After World War II, Poland fell under communism until 1989.

For most of its history, Poland was a multiethnic state and the occupying countries exploited the rivalries between various ethnic groups. During the time that Poland was partitioned between Russia, Austria, and Prussia from the end of 18<sup>th</sup> until early 20<sup>th</sup> century, the occupying authorities took advantage of rivalries among different groups and often fostered conflict. For example, in the Austrian part where the main

ethnic groups were Poles and Ukrainians, the Austrian authorities would grant concessions to one or the other, and make that a bargaining tool to serve their own interests (Fijalkowski 2010: 13).

At the time of the discussion over the future of Poland and other nations in central and eastern Europe, and reestablishment and creation of new countries in the aftermath of World War II at Versailles, public and political discourse in Europe favored the creation of ethnically homogenous states (15). However, in Poland (and elsewhere) the task was impossible because “minorities were widespread” (15). The existence of many minorities in border areas of proposed country slowed negotiations over its territory and resulted in disputes with Germans, for example, since the resolution gave Poland areas inhabited with over 2 million of Germans (17). According to historian Agata Fijalkowski,

the problem of minorities and nationalities was one of the main sources of tensions in CEE during the pre-war period, as none of the newly created states had borders which corresponded to the notion of ‘uni-nationality.’ (15)

This resulted in tensions over different visions of the nation. In Poland (as in other nations in the region) national administrations were charged with the task of unifying administrations of foreign powers. The public and political discourse was pervaded by the objective of fostering nation-state, which also affected approaches to economic life (15). According to Fijalkowski (2010), this intermingling of political and economic objectives radicalized Polish nationalism and resulted in an authoritarian form of government in the interwar period (15).

There were two visions of Poland that were articulated in the public and political discourse. The first conservative conception favored the reestablishment of the borders of

the former Polish-Lithuanian Republic of 1772 (including parts of Latvia, Belorussia and western Ukraine), and another envisioned a federation of countries in which Poland would have a leading role (14). The former was promoted by the National Democratic Party which appealed to society's emotions and also used scientific arguments to promote an exclusive notion of the "nation." Poland regained independence in 1918, which was internationally recognized with the 1918 Treaty of Versailles, and it regained most of its pre-partition territory. Interwar Poland was a multiethnic and multireligious state with the largest groups being Poles, Ukrainians, Belorussians, Germans and Jews. In 1921, slightly more than 30 percent of the population was comprised of non-Poles (26). The numbers of minorities were sizeable on a world's scale. For example, at 380,000, the Jewish population of Poland's capital was the second-largest in the world after New York and the largest in Europe.

In the course of discussions at Versailles and during the interwar period, the right-wing National Democratic Party and its anti-minority and racist program gained influence in the Polish society. The Party attacked "foreigners, namely Russians, and minority groups such as Jews, whom they condemned as a foreign element in Polish society that, owing to the circumstances of the economic crisis, competed with the Polish lower class" (24). Anti-Semitism enjoyed support of various sectors of the Polish society, but was met with some opposition from the left-wing political program of General Josef Pilsudski and some intellectuals who openly opposed anti-Semitic and anti-minority political platforms (25).

The 1919 Treaty of Versailles required the newly created states to sign a treaty for the protection of minorities, which would give those minorities the right to send complaints to the League of Nations. Poland's government signed this treaty reluctantly because the government "resented the obligations towards national minorities" especially because Germany was not required to do the same with respect to its considerable Polish population (21). Poland adopted a Polish Minority Treaty, which was, according to scholars flawed and the "was the result of the strong Jewish lobby, created to protect the Jewish population in the new Polish state" (29). Other than the Jewish minority, other groups were not given much consideration. The treaty, however, was never effective or fully implemented, and the approaches to minorities were impacted by nationalist discourse promoted by right-wing politicians and, in some cases, supported by some Catholic Church clergy (especially in 1933-39). By 1930s, tolerant policies toward minority groups began to dissipate (31-32).

Following the attack by Germans and Russians in September 1939, Poland again lost its independence. After German attack on the Soviet Union (1941), Poland fell under the German occupation. German occupation meant that all Polish cultural and educational institutions were closed and Poles were not permitted to speak Polish or move freely around the country. Any attempts to act in opposition to these policies and aid others (especially Jews) risked death. Under the threat of death, Poles were not allowed to help the Jews (Fijalkowski 2010: 58). Both Jews and Roma (Gypsies) were targeted for extermination along with a few other groups.

While Sweden has become increasingly ethnically diverse since World War II, Poland underwent a dramatic change in the opposite direction during the same period. Before World War II, national minorities accounted for one-third of the population of Poland. As a result of the post-World War II changes in the ethnic composition of the Polish society, Poland became a “uninational” country after 1945, an idea that enjoyed support of the Polish state (Łodzinski 2009: 558-449). Currently, national minorities account for less than one percent of Poland’s population as a result of the extermination of entire groups during the Holocaust particularly Jews and Roma), territorial changes after 1945, and displacements and relocations of the population.<sup>208</sup> The majority of the Jewish population perished in the Holocaust, and much of the remaining Jewish population was subject to anti-Semitic political purges and was forced to leave the country by 1968. (Zaborowska 2004: 99-100). According to Magdalena Zaborowska (2004), the postwar Polish government engaged in the “deliberate silencing of the memory of the Holocaust and of the Jewish contributions to the country” (100).

Relocations included the repatriation of about 4.5 million Poles from the territory of the USSR in 1945-1958, displacement of the Germans (more than 3 million) until the end of 1949, and deportation of 0.5 million of Ukrainians to the USSR. In addition, 160,000 Ukrainians in Poland were deported from the south-eastern part to the north-western part of Poland during the so-called “Vistula Action” in 1947 (Łodzinski 1999). Since the successive communist governments in Poland did not acknowledge the

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<sup>208</sup> *Council of Europe*, Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, dated 10 July 2002, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/1\\_first\\_cycle/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/1_first_cycle/PDF_1st_SR_Poland_en.pdf), accessed on 1/10/2010, p. 5.

country's ethnic diversity and considered all citizens to be Polish nationals, the issue of ethnic minorities, discrimination, and racism are thus relatively new topics for the public discourse in Poland. Currently, an overall small number of minorities makes Poland one of the most homogenous countries in the world.

### **Poland's Ethnic and Linguistic Minorities**

Despite their small percentage in the general population, Poland is inhabited by numerous national minorities. Some of these groups have resided in the country for centuries and others arrived in the more recent past, including immigrants who arrived following the end of the Cold War from countries of the former Soviet Union and other regions, including Asia.

At the individual and community levels, however, since the fall of communism, ethnicity has seen a revival as Poles look for their roots and participate in a variety of ethnic cultural events. This interest and revival is also demonstrated by the results of the most recent national census in 2002 when many of the 38 million Polish citizens declared their ethnicity. According to the 2002 census, there are 13 national and ethnic minorities, whose population totals 253,273 persons (see Table 6). That constitutes 0.7 percent of the country's total population of nearly 38.5 million although the estimates are slightly higher.<sup>209</sup> Even though immigration into Poland is not a widespread phenomenon, there

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<sup>209</sup> *Council of Europe*, Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities ACFC/SR/II(2007)006, dated 8 November 2007, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), accessed on 2/7/2010, p. 9.

are also small immigrant communities, including Armenians, Ukrainians, and others (Iglicka 1998), and a few new ethnic groups, such as the Vietnamese (Iglicka 2005).

**Table 6: Ethnic and national minorities in Poland**

<b>National or Ethnic Minority</b>	<b>Declared Affiliation with a National or Ethnic Minority</b>	<b>Voivodships with the Highest Population of the Minority</b>
Belarusians	47,640	Podlaskie (46,041)
Czechs	386	Lodzkie (111), Slaskie (61)
Karaims	43	Mazowieckie (21), Dolnoslaskie (11)
Lithuanians	5,639	Podlaskie (5,097)
Lemkos	5,850	Dolnoslaskie (3,082), Malopolskie (1,580), Lubuskie (784)
Germans	147,094	Opolskie (104,399), Slaskie (30,531), Warminsko-Mazurskie (4,311)
Armenians	262	Mazowieckie (73), Wielkopolskie (26), Slaskie (23)
The Roma	12,731	Malopolskie (1,678), Mazowieckie (1,291), Lodzkie (1,018)
Russians	3,244	Mazowieckie (614), Podlaskie (511)
Slovaks	1,710	Malopolskie (1,572)
Tartars	447	Podlaskie (319)
Ukrainians	27,172	Warminsko-Mazurskie (11,881), Zachodniopomorskie (3,703), Podkarpackie (2,984), Pomorskie (2,831)
Jews	1,055	Mazowieckie (397), Dolnoslaskie (204)
<b>Total:</b>	253,273	-

**Source:** Central Statistical Office. 2002 National Population and Housing Census.

However, some estimates put the percentage of minorities at 5 percent of the general population (Łodzinski 2009: 560). The higher estimates are typically given by leaders of national associations, and the lower estimates result from the census and are usually supplied by local authorities. While it is possible that the lower census percentage was due to the reluctance or even fear of minorities to declare their ethnic

identification, even if the higher estimates are correct, this would mean that Poland is ethnically very homogenous.

Despite the low percentage of minorities in the Polish society, there are 13 officially recognized ethnic, cultural and/or linguistic minority groups in Poland. The groups differ in size and the level of activity. The largest minorities are: Germans (147,094), Belarusians (47,640), Ukrainians (27, 172), and the Roma (12,731).<sup>210</sup> In the past, Poland made a distinction between national and ethnic minorities, and recognizing Belarusians, Czechs, Lithuanians, Germans, Armenians, Russians, Slovaks, Ukrainians and Jews as national minorities, and the Karaim, the Lemko, the Roma and the Tartars as ethnic minorities. Currently, all of these groups are considered national minorities because of the terminology used in the Framework Convention, in which the term “national minorities” includes both national and ethnic minorities.<sup>211</sup> The following is a discussion of Poland’s national and ethnic minorities, the majority of which are officially recognized as such under the Polish law. The first four groups (Germans, Ukrainians, Belarusians, and the Roma) are the most numerous of the minorities.

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<sup>210</sup> *Council of Europe*, Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities ACFC/SR/II(2007)006, dated 8 November 2007, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), accessed on 2/7/2010, pp. 13-14.

<sup>211</sup> *Ibid.*, p. 5.

## **Germans**

Germans are the largest of Poland's national minorities. Estimates put the German population at about 300,000 to 500,000, which is significantly higher than the census number. They reside mainly in the Opolskie Voivodship, Silesian Voivodship, Lower Silesian Voivodship, Warmia and Mazury Voivodship and Cuiavian and Pomeranian Voivodship. Representatives of the German authority put the estimates even higher, at 600,000.<sup>212</sup> Members of the German minority are mostly Catholics, but some belong to the Evangelical Augsburg Church. In some municipalities of the Opolskie Voivodship, Germans form the majority of the population and play an important role in self-government authorities. Representatives of the German minority have also sat in the Polish Parliament at different times since 1991. In the 2002 census, 204 573 people declared that they spoke German at home.

Most Germans are descendants of the German population which constituted the majority in these areas, from which 8.5 million Germans were expelled after World War II. During 1945 to 1989, Germans were not allowed to use and teach German language, and any signs of the language were eliminated from the public space. The existence of the minority was also denied.<sup>213</sup>

Germans in Poland have a number of cultural and political associations under the umbrella of the Union of German Social and Cultural Associations in Poland. In addition, there are several organization of the German minority that operate outside the Union

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<sup>212</sup> Council of Europe, European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5), available at: [http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 5.

<sup>213</sup> Ibid., p. 5.

including the following organizations: Association of German Minority of Olsztyn, Silesian Self-government Association, Eichendorff Institute, and Association of Authors and Artists of the German minority in Poland based in Bytom. There are also a number of cultural (music and art) events, including the Diocesan and Regional Harvest Home at the Mount Saint Anna, Artistic Summer of National Minorities in Olsztyn, and Review of Folk Bands and Orchestras of the German Minority in Leśnica. A number of weekly, monthly, and quarterly publications come out, including Schlesisches Wochenblatt, Hoffnung, and Masurische Storchenpost.<sup>214</sup>

### **Ukrainians**

Ukrainians number about 25,000 to 30,000 people. Ukrainian leaders put the number at about 200,000.<sup>215</sup> Many become Polish citizens as a result of the 1947 Operation Vistula carried out by the communist government. The Ukrainians inhabiting the area of south-western Poland were displaced to the area of northern and western Poland. Some Ukrainians avoided displacement from native areas, and some were allowed to return in 1956 while other communities still reside in the Carpathian Voivodship and Małopolskie Voivodship.

Otherwise, the Ukrainians are not concentrated in any particular area of Poland which has made its community activities difficult in some cases. The highest numbers reside in the Warmia and Mazury Voivodship, West Pomeranian Voivodship, Lower

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<sup>214</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

<sup>215</sup> Council of Europe, *European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5)*, available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 6.

Silesian Voivodship, Lubelskie Voivodship and Podlaskie Voivodship. Majority of the Ukrainians in Poland are members of the Byzantine Ukrainian Catholic Church, and some are members of the Polish Autocephalic Orthodox Church. The Ukrainian language has an old traditional presence on the territories of the present Lesser Poland, Lublin, Podlaskie and Subcarpathia voivodships. In the 2002 census, 22,698 people stated that they used the Ukrainian language at home.<sup>216</sup>

Ukrainians have been active in local and regional politics in some areas, mainly in the Warmia and Mazury Voivodship. Main organizations of Ukrainians include Association of the Ukrainians in Poland, Association of the Ukrainians of the Podlasie region, Ukrainian Teachers' Society in Poland, Political Prisoners of the Stalin Regime, and the Ukrainian Culture Foundation. They also publish several magazines, such as *Nasze Słowo* and *Nad Buhom i Narwoju*. Main cultural events of the Ukrainian minority include the Festival of the Ukrainian culture in Sopot, Days of the Ukrainian culture, and Youth Fair in Gdańsk.<sup>217</sup>

## **Belarussians**

Belarussians number about 200,000 to 300,000 people, and most live in the territory of the Podlaskie Voivodship. The Belarussian language has been spoken in Poland since the 14<sup>th</sup> century and is currently mainly used in the southeastern area of the

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<sup>216</sup> Council of Europe, European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5), available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 6.

<sup>217</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

Podlaskie Voivodship.<sup>218</sup> An overwhelming majority of Belarussians belong to the Polish Autocephalic Orthodox Church. In the areas where they reside, they play an important role in regional and local authorities, including self-government authorities, and have formed the majority in councils of some counties and municipalities. Representatives of Belarussians have also been Members of the Polish Parliament.<sup>219</sup>

Belarussians have a number of cultural and political organizations, including Belarussian Social and Cultural Society, Belarussian Association in the Republic of Poland, a political party Belarussian Democratic Union and Belarussian Youth Union. They publish a number of popular and literary magazines and hold a number of music and culture festivals, especially in the Bialystok area.<sup>220</sup>

## **Roma**

The Romany (referred to as “Gypies” in the past) is an ethnic minority estimated at 20,000 to 30,000 people. The Roma were targeted for extermination by the Nazi, and many died in the Holocaust. The Roma Holocaust is referred to as “Porajmos.” It is difficult to estimate the Roma population prior to World War II. The Roma have been notoriously difficult to count as they have in the past avoided cooperation with state officials. If they were included the 1931 census, they were typically listed with the local Christian population. However, some estimates are available and according to Łukasz

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<sup>218</sup> Council of Europe, European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5), available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 5.

<sup>219</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

<sup>220</sup> Ibid.

Kwadrans quoted in Dudra & Nitschke (2010: 238, table 1), in the period 1919 - 1939 the number of Roma in Poland stood at 30,000 and 50,000.<sup>221</sup>

The four groups of the Roma residing in Poland are Polish Romany [Polska Roma], Kelderasze, Lowarzy and Carpathian Gypsies (Bergitka Roma). Majority of the Polish Roma live in large municipal areas including Warsaw, Poznań, Wrocław, Łódź and Gdańsk. There is also a community of the Bergitka Roma that live in the mountainous regions of the Małopolskie Voivodship (between Nowy Sącz and Nowy Targ) and in the cities of the Upper Silesian region and in Nowa Huta (near Cracow). The Romani language has been spoken in Poland since the 15<sup>th</sup> century.<sup>222</sup> In the 1950s, many Roma were employed in that region, especially in the steel industry. Majority of Roma are Roman Catholics, and some are members of the Church of the Holy Spirit while others belong to the Jehovah Witnesses Group. Romani has been traditionally present on the Polish territory since the 15th century, especially in the Lesser Poland voivodship. In the 2002 census, 15,788 people stated that they used Romani at home.<sup>223</sup>

The Roma have a number of cultural and political organizations, including the Central Council of the Romany, Association of the Romany in Poland, Association of the Romany National Minority, Roma Union in Włocławek, Cultural Center of the Romany and Social and Cultural Centre of Gypsies in the Republic of Poland in Kędzierzyn-Koźle. The major publications of this minority include the monthly magazine Rrom po Drom, Dialog, and Pheniben.

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<sup>221</sup> I am thankful to Professor Sławomir Łodzinski for providing this reference.

<sup>222</sup> Council of Europe, European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5), available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 6.

<sup>223</sup> Ibid., p. 5.

Major cultural events include the International Meetings of Gypsy Music Bands in Gorzów Wielkopolski, International Festival of Songs and Culture of the Romany in Ciechocinek, and the International Camp in Commemoration of the Romany.<sup>224</sup>

In addition to the most numerous minorities, other large and/or active minority groups include Jews, Lithuanians, Russians, and the less numerous groups include Czechs, Slovaks, Karaites, Lemks, Armenians, Kashubians, and Tartars.

### **Jews**

Jews are a national minority about 8,000 to 10,000 people who are dispersed throughout Poland but reside mainly in large municipal areas. According to the 1931 census (the last one before World War II), there were 2,733,000 Jews in Poland (Sugar and Treadgold 2002: 131). The Jewish population is estimated to have increased to about 3 million by 1939. In 1931, the Jewish population comprised 8.6 percent of the entire Polish population of 31,916,000, and as a result of the Holocaust, it was almost completely destroyed.

Jews are the followers of Judaism. Jews in Poland speak Yiddish and Hebrew. Yiddish has been spoken in Poland for centuries, but in the 2002 census, only 36 people stated that they used Yiddish at home. According to the census, 207 people used Hebrew at home. However, as Hebrew has been mostly used in liturgy, it might be that the language that they referred to was Ivrit.<sup>225</sup>

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<sup>224</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

<sup>225</sup> Council of Europe, *European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5)*, available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 5.

Among the main social and cultural organizations are the Social and Cultural Society of Jews in Poland, Association of the Children of Holocaust in Poland, Jewish Historical Institute Association, Polish Union of Jewish Students, and Federation of Jewish Organizations, and Union of Jewish Religious Communes in the Republic of Poland. Major publications of the Jewish community include *Dos Jidisze Wort* and *Midrasz*. The Jewish community organizes some major events including the Festival of the Jewish Culture in Cracow, March of the Living in Oświęcim, Shoah Victims Remembrance Day, and the Anniversary of the Warsaw Ghetto Uprising.<sup>226</sup>

### **Lithuanians**

Lithuanians number approximately 20,000 to 25,000 people. Lithuanian leaders put the number slightly higher, at 30,000.<sup>227</sup> Most reside in the Podlaskie Voivodship. In the Puńsk municipality, they account for more than 80 percent of the population and thus have been active in the local authorities. The majority of Polish Lithuanians belong to the Roman Catholic Church. Lithuanian has been spoken in the northern part of the current Podlaskie Voivodship, and according to the 2002 census, 5,838 people used the Lithuanian language at home. The Lithuanian minority mostly has its presence in the Sejny district, and especially in one municipality of Puńsk/Punskas.<sup>228</sup>

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<sup>226</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

<sup>227</sup> Council of Europe, *European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5)*, available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 6.

<sup>228</sup> Council of Europe, *European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5)*, available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 6.

Main organizations include the Lithuanian Community in Poland and the Association of Lithuanians in Poland. A few cultural festivals are organized every year. The Lithuanians also publish several magazines including *Ausra* and *Ausrele*.<sup>229</sup>

### **Czechs**

Czechs, a national minority of approximately 3,000 people, inhabit the region of the Kłodzko Valley, Lubelszczyzna, and the town of Żelów (near Piotrków Trybunalski). The Czechs living in Poland are traditionally members of the Evangelic Church. The Czech language has been spoken in Poland since the 16th century by religious refugees arriving in Poland at that time. According to the 2002 census, 1,482 spoke the language at home.<sup>230</sup> The Czechs have their national organization, the Czech Club at the Slovak Association in Poland (representatives of the Czech minority being its members).<sup>231</sup>

### **Karaites**

Karaites are an ethnic minority of Turkish origin of approximately 200 people. Karaites are dispersed throughout Poland. They have for the most part lost their language and are identified mainly by the Karaite religion that has its roots in Judaism and Islam. Karaim used to be spoken in several areas of former eastern Poland (Halich, Lutsk, Lviv, Trakai). It was also spoken since the 19<sup>th</sup> century by Karaite merchants, civil servants,

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<sup>229</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

<sup>230</sup> Council of Europe, *European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5)*, available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 5.

<sup>231</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

and students who migrated to Warsaw. Yet, while nobody declared the use of the Karaim language in the 2002 census, there is some evidence that a very small group of 5 members of this community continue to speak Karaim.<sup>232</sup> The minority has its own organization, the Karaite Religious Association.<sup>233</sup>

## **Lemks**

Lemks is an ethnic minority of 60,000 to 70,000 people. In the past, they resided primarily in the so-called Łemszczyzna (Land of the Lemks), the Lower Beskid Mountains, and part of the Sądecki Beskid Mountains. As a result of the 1947 Operation Vistula, the Lemks were displaced, and now the majority reside in the Warmia and Mazury , Lubuskie, West Pomeranian, and Lower Silesian Voivodships. This action by the Polish government was publicly condemned by the Polish Parliament in 1990.

Some Lemks avoided displacement; others were allowed to return in 1956 to their native areas. While some Lemks claim a belonging to the Ukrainian nation, others consider themselves to be a separate national minority. Lemko is a Slavic language that has been spoken since the Middle Ages, and 5,627 people stated in the 2002 census that they used the language at home.<sup>234</sup>

The Lemk organizations include the Union of Lemks (supporting member of the Association of Ukrainians in Poland), The Association of Lemks, and the Association

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<sup>232</sup> [http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 5.

<sup>233</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

<sup>234</sup> Council of Europe, *European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5)*, available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 6.

Ruska Burska. They have several publications including Biesiada, Zahoroda, and Watra magazines.<sup>235</sup>

### **Armenians**

Armenians are a national minority of approximately 5,000 to 8,000 people, living all over Poland, mainly in the Lower Silesian region and in Cracow. Armenians have resided in Poland since the 19<sup>th</sup> century and some moved to Poland in the second half of the 20<sup>th</sup> century.<sup>236</sup> According to the 2002 Census, 321 people use Armenian at home and 261 declared Armenian national minority status. Most belong to the Armenia or Latin Catholicism and do not speak Armenian. However, there is some evidence that the Armenian community has expressed interest in reviving the language. Main organizations are Armenian Cultural Society and the J. Teodorowicz Association of Armenians in Poland. They also publish the Bulletin of the Armenian Cultural Society. A major cultural event is the Polish national Meetings of the Armenian communities in Cracow.<sup>237</sup>

### **Kashubians**

According to the Kashub community representative, there are about 250,000 Kashub speakers in Poland, although only 52,665 people declared they use it at home in the 2002 census. Kashub is a Slavic language, and has an old traditional presence on the

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<sup>235</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

<sup>236</sup> Council of Europe, *European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5)*, available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 4.

<sup>237</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

territory of the present Pomerania voivodship. Yet, the Kashubians are not recognized as an ethnic minority under Polish law. The language is considered to be a regional language.<sup>238</sup>

## **Russians**

Russians are a national minority numbering about 10,000 to 15,000 who reside mostly in the cities of Białystok, Gdańsk, Cracow, Łódź, Warsaw, in the Suwalszczyzna region, and Mazury. Russians in Poland are mostly members of the Greek Orthodox Church. A minority belong to the Old Believers represented since 1983 by the Supreme Council of Old Believer, a group that was established in the second half of the 17th century as a result of scission in the Russian Orthodox Church after the ecumenical council of 1654. The Russian language has been traditionally present in Poland since the arrival of Old Believers in the 18<sup>th</sup> century. In the 2002 census, 15,299 people stated that they used the Russian language at home, but only 3,244 claimed Russian national minority status.<sup>239</sup>

Main organizations include the Russian Cultural and Educational Association in Białystok and the Association of the Russian Community in Warsaw. The main cultural event is the Days of the Russian Culture in Białystok.<sup>240</sup>

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<sup>238</sup> Council of Europe, European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5), available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 5.

<sup>239</sup> Council of Europe, European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5), available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 6.

<sup>240</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

## **Slovaks**

The Slovaks are a national minority of 10,000 to 20,000 people, traditionally inhabiting the area of Spisz and Orawa (Małopolskie Voivodship). Most are Roman Catholics. According to the results of the 2002 census, 794 people used the Slovak language at home.<sup>241</sup>

They have its own organization called the Association of Slovaks in Poland and publish *Zivot*, a monthly magazine. There are also cultural events such as Days of the Slovak Culture in Jabłonka Orawska, the Review of Countryman's Wind Bands, and the Review of Folk Bands in Krempachy.<sup>242</sup>

## **Tartars**

Tartars are an ethnic minority of approximately 5,000 people who live in their native Tartar colonies in Białostoczyzna region (Bohoniki and Kruszyniany) and in some other areas of Poland as well. The Tartars have lost their native language but continue practicing their religion, Islam. However, in the 2002 census, 9 people stated that they used the Tartar language at home.<sup>243</sup>

Main organizations are the Association of the Polish Tartars in the Republic of Poland. Major publications include the Yearly Magazine of the Polish Tartars, the Tartar

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<sup>241</sup> Council of Europe, European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5), available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 6.

<sup>242</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

<sup>243</sup> Council of Europe, European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5), available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 6.

Life, and Almannah Millet. They also organize the annual Summer Academy of the Knowledge about the Polish Tartars event.<sup>244</sup>

The ethnic groups discussed above enjoy the status of national ethnic groups and are covered by the minority protection laws. The following group has not been recognized as a minority under the Polish law.

### **Silesians**

The Silesians are a special group among Poland's minorities because their status as an ethnic minority has not been granted and settled in the Polish law. They have strived for the recognition as an ethnic minority and the recognition of the Silesian language as a regional language (Łodzinski 2009: 566). The Silesian language is spoken in the Silesian Voivodship by about 56,000 people.<sup>245</sup> The Polish Parliament organized conferences regarding the future and status of the language in 2008. Some of the issues that needed to be resolved concern the establishment of spelling rules for the Silesian language that would bring the language closer to gaining the status of a regional language. The Association "Pro Loquela Silesiana" has been the main organization involved in the maintenance and advancement of the language.<sup>246</sup> The language has been the subject of controversy because while some linguists consider it to be a separate

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<sup>244</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf)

<sup>245</sup> Pustulka, A., Rocznik, A., Adamus, R., Smolorz, M.(2008, June 20). "Slaski wsrod jezykow Swiata," *Dziennik Zachodni*. <http://katowice.naszemiasto.pl/archiwum/1718184,slaski-wsrod-jezykow-swiata,id,t.html>

<sup>246</sup> Ibid.

language, others consider it a dialect of Polish.<sup>247</sup> As of 2012, a parliamentary initiative to amend the Act on National and Ethnic Minorities and on the Regional Language to recognize the Silesians was pending.<sup>248</sup>

## **Immigrants**

According to Krystyna Iglicka, who writes extensively on European and Poland's migrants, "Although Poland is still a country of emigration, it has recently experienced an inflow of asylum seekers, movement of transit migrants and permanent immigration both from the East and the West" (Iglicka 2005: 4). According to the Central Statistical Office of Poland in 1989-2002, 85,000 people moved (or returned) to Poland. Out of that number, 14,500 became Polish permanent residents.<sup>249</sup> These migrants came primarily from Germany, USA, Ukraine, Italy, Canada, UK, and France. In addition to this number, during the same period, according to Polish Ministry of Economy and Labor, 100,000-500,000 foreigners were working illegally each year in Poland. The majority of those were from the former Soviet Union. Most of them worked in construction, forestry, fruit farming (men) or were employed as seamstresses, housekeepers, nurses for the elderly, and babysitters (women) (Iglicka 2005: 7). Poland also experienced the arrival of some asylum seekers. For example, in 2003-2004, 11,500 people applied for a refugee status and majority of them were Chechens (Iglicka 2005: 8).

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<sup>247</sup> "Jezykozawcy o gwarze slaskiej." Gazeta.pl Wiadomosci. Retrieved from <http://wiadomosci.gazeta.pl/wiadomosci/1,114873,3603383.html>

<sup>248</sup> Council of Europe, European Charter for Regional or Minority Languages, Application of the Charter in Poland (ECRML 2011/ 5), available at: [http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), pp. 6-7.

<sup>249</sup> Central Statistical Office, Main directions of emigration and immigrations in years 1966-2008. Accessed 1/15/12, <[http://www.stat.gov.pl/gus/5840\\_8408\\_ENG\\_HTML.htm](http://www.stat.gov.pl/gus/5840_8408_ENG_HTML.htm)>

Some of these new immigrants join already existing minority communities (such as the Armenians and Ukrainians), and others are ethnic groups that are completely new to Poland (the Chinese and Vietnamese). According to Iglicka, these new immigrants rarely become involved in the activities of political parties or socio-cultural associations. This is in part because these groups are too new and underrepresented to create their own organization. However, Iglicka points out that the lack of public debate on immigration also contributes to this lack of activism and involvement. At the same time, according to her, this may be a beginning of a process of new ethnic diversity and also the creation of new ethnic consciousness (Iglicka 2005: 4-5).

As will be discussed in the following sections, although the immigrants do not have the same rights as Polish citizens of minority backgrounds, they do enjoy some protection under the Polish law.

### **Status of Minorities Compared to the Non-Minority Population**

An examination of the main indicators of socioeconomic status of each of these groups demonstrates that apart from the Roma minority, the minority groups are on average as or more “successful” than non-minority Poles. For example, the education level among the minority members is higher than the national average.<sup>250</sup> Half of all Roma, on the other hand, do not complete primary education compared to 3.64 percent of other Polish citizens. Likewise, for all minorities except for the Roma minority, the

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<sup>250</sup> *Council of Europe*, Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities ACFC/SR/II(2007)006, dated 8 November 2007, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), accessed on 2/7/2010, p. 9.

unemployment rate is lower than the national average. During the 2002 Census, 11.37 percent of respondents declared to be unemployed, but among the Roma respondents, the unemployment stood disproportionately high at 30.98 percent. Among other minority respondents, the rate varied and ranged from the low 2.86 percent for the Karaims to the high of 11.34 percent for the Tartars, but did not exceed 8 percent for the other minority groups.<sup>251</sup>

The marginalized status of the Roma in Poland, as demonstrated by these indicators, is similar to the situation of this group in other countries of Central and Eastern Europe. Some argue that Roma have been “racialized” in these societies as studies indicate that non-Roma tend to define the Roma by negative social characteristics, such as poverty and low education, as opposed to other ethnic groups that are identified by ethnicity or language (Ahmed, Feliciano & Emigh 2007).

The most politically and culturally active minority groups also happen to be the largest ones: the Germans, the Belarusians, the Ukrainians, and the Lithuanians (the 4<sup>th</sup> or 5<sup>th</sup> largest depending on the estimate). Prior to the fall of communism, and during the initial Solidarity era that ended with the imposition of the martial law in the early 1980s, Poland’s minorities started to become increasingly active, including in politics. At the time of the loosening of central controls and the loss of the grip that the communist party had on society, a minority organization that had social and cultural character was transformed into a political entity. Only with the end of communism, however, could the political opportunity be translated into involvement in Polish politics. Following the election of the Solidarity coalition in 1989, the Ukrainian and the Belarusian minority

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<sup>251</sup> Ibid., p. 14.

members gained seats in the parliament (Sejm) in the election of June 1989 (Bugajski 1995: 365).

In addition, democratic changes in Poland's political system after 1989 led to the opportunity for national minorities to get involved in public life on the local and national level. Activism and associational life among the German minority continued to increase and while the first socio-cultural organization formed in 1989, by 1996 there were some sixty German organizations in Poland (Wlodek, Byrnes & Iankova 1997: 94).

Minority representatives have been active in national and local politics with a varying degree of success. Electoral committees created by the constituents, who are members of registered organizations of national minorities, are exempted from the requirement to exceed the five percent electoral threshold according to the Election Ordinance to the Sejm (lower chamber of the Parliament) and to the Senate of the Republic of Poland. Generally, political parties must exceed the five percent electoral threshold and coalitions must exceed the eight percent threshold.<sup>252</sup> Despite these exemptions, not all of the minorities set up electoral committees of their own, but they often run on lists of other electoral committees. German, Ukrainian, and Belarusian candidates have been elected to the Polish Parliament at different times. As a result of the 2005 parliamentary election, two Sejm seats were held by representatives of the German minority from the German election list and one representative of the Belarusian minority from the list of the Democratic Left Alliance (SLD). The Ukrainian minority has had a

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<sup>252</sup> *Council of Europe*, Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, dated 10 July 2002, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/1\\_first\\_cycle/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/1_first_cycle/PDF_1st_SR_Poland_en.pdf), accessed on 1/10/2010, p. 5.

difficult time running candidates because its members are dispersed.<sup>253</sup> In the aftermath of the October 2007 election, one German representative had been elected to the Sejm and none to the Senate.<sup>254</sup>

It is useful to consider whether the larger and more active groups have enjoyed advantages in the process of law and policy-making. According to social movements explanations, activism and ability of a group to take advantage of political opportunities would result in differences in protections among the different ethnic groups. For example, it might result in better legal protections, larger financial allocations, and other forms of support for the group. It is difficult to link activism and political engagement of the different groups with their status in Polish law and policy. Incidentally, one group that has been the recipient of most programs targeted as a specific group is the Roma (see Table 7). The Roma traditionally have not been as active at the national level as other minority groups, and they are also the most disadvantaged group. Their status in Poland is similar to that in other European societies where the Roma reside. Since the early 2000s, EU institutions have singled out the Roma for special attention because of expressed concern about the especially difficult position of the Roma within practically every society. Some of this attention was motivated by concerns about Roma migration. In post-1989 Eastern and Central Europe, the Roma had been hit especially hard by the end of communism when the safety net that they had particularly depended on was taken away and the countries began restructuring their social services and economies. As a result, by the late 1990s, to improve their socioeconomic position and to escape

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<sup>253</sup> Ibid., p. 88.

<sup>254</sup> Minority Rights Group International. *Poland*, available at: <http://www.minorityrights.org/1861/poland/poland-overview.html>, accessed on 1/18/10.

discrimination, many Eastern European Roma migrated and filed asylum claims in various countries of western Europe. According to estimates, between 1997 and 2005, approximately 12,000 to 15,000 Roma left Eastern Europe for Norway, the United Kingdom, and other countries. In the UK in particular, media reports of Roma immigration have caused fear that the country's social services would be strained by this influx (Tanner 2005).

Since the mid-1990s, international non-governmental organizations have lobbied various European institutions on the Roma's behalf. The European Roma Rights Center (ERRC) in particular led these efforts and continues to be the main organization working on behalf of the Roma. ERRC was established in 1996, and since then, it has been active in increasing attention given to the plight of the Roma in Eastern and Central Europe. ERRC focused its efforts on raising awareness of discrimination of the Roma at the level of the EU institution. For example, the organization wrote a significant 2004 EU policy document titled "Roma in an Enlarged European Union." The report was published by the Directorate General of Employment and Social Affairs of the European Commission.<sup>255</sup> ERRC has also brought attention to Roma issues during the 2001 Conference against Racism in Durban, South Africa, and in the work of the United Nations Committee on the Elimination of Racial Discrimination.<sup>256</sup>

These factors and efforts contributed to the EU recognition that the Roma was the one European ethnic group that needed special support, because of its marginalized position. In addition to poor socioeconomic indicators in practically every society, the

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<sup>255</sup> European Roma Rights Centre official website at [http://www.errc.org/About\\_index.php](http://www.errc.org/About_index.php), accessed on 3/4/10.

<sup>256</sup> Ibid.

Roma were unlike any other ethnic groups, such as the Ukrainians, Germans or other groups within Poland that could lend support to and defend their interests.

Thus, the increased attention to Roma issues within Poland is mainly due to international Roma advocacy and efforts within the EU, not activism of Roma organizations within Poland. This lends support to the ideas that national level activism is not primarily responsible for the somewhat privileged position of the minority in law and policy, but that an international level discourse and norms shape national level legislation and politics.

In the next section, I discuss the context and circumstances of the adoption of the legal framework for minorities in Poland that indicates that the laws were adopted in a top-down fashion and in the absence of prior legal framework for minorities.

### **Poland's Legal Framework for Minorities and Minority Policies**

Like Sweden, Poland now has an impressive list of ratification of major international treaties that deal with societal discrimination and minority protection, including all major United Nations, COE, and International Labor Organization conventions and protocols (see Appendix C).

At the national level, since 1989, Poland adopted a number of laws and implemented policies for minorities (see Table 7). A review of the timeline of the adoption of minority protections in Poland demonstrates that prior to 1989, there was no attention given to minority issues and there existed no framework for ethnic minorities.

In 1989, the policy shift was signaled by two events. In August 1989, the Sejm appointed the Committee on National and Ethnic Minorities. In September 1989, Poland's Prime

Minister Tadeusz Mazowiecki declared to the Sejm that Poland was also “a motherland of national minorities.”<sup>257</sup> These events marked the first time in post-war Poland that minority issues were considered to be significant in state policy.

As a result of the post-World War II changes in the ethnic composition of the Polish society, Poland became a “uninational” country after 1945, an idea that enjoyed support of the Polish state (Łodzinski 2009: 558-449). Since then, prior to 1989, policy regarding minorities was not institutionalized. The very term “national minority” was not mentioned in the constitution and legal system, although the more general term “nationality” was used. State policy regarding minorities varied depending on the group (Łodzinski 2009: 559). There was no public debate on the topic of minorities during that period.

In 1989, the Polish government immediately recognized the existence of national minorities within its borders. According to Łodzinski, all the parties within the Polish parliament during its 10<sup>th</sup> session in June 1989 expressed the opinion that the special needs of minority communities should be addressed (Wojcik 2001: 258-262 cited in Łodzinski 2009). At that time, there was an understanding that ‘attitudes toward “strangers” was one of the conditions of acceptance of pluralism in the development of liberal democracy in Poland’ (Łodzinski 2009: 562).

The first attempts to legally guarantee the protection of national minorities occurred between 1990-1994 in the form of bilateral treaties with Germany and Lithuania which contained provisions for national minorities residing in Poland’s territory

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<sup>257</sup> Cited in Slawomir Łodzinski, *The Protection of National Minorities in Poland* (September 1999), Helsinki Foundation for Human Rights, available at [http://www.cilevics.eu/minelres/reports/poland/poland\\_NGO.htm](http://www.cilevics.eu/minelres/reports/poland/poland_NGO.htm), accessed 1/5/12.

(Łodzinski 2009: 563). However, although these early attempts to recognize and address minority issues took place in 1989 and in the early 1990s, it was not until the early 2000s, when Poland was making efforts to fulfill EU accession criteria that the government adopted a comprehensive legal framework, designed policy, and implement programs for minorities (see Table 7).

**Table 7: Major events in minority protection in Poland, 1980-2010**

<b>Year</b>	<b>Event</b>
1919	Polish Minority Treaty as a result of the Treaty of Versailles (never implemented)
<b>Prior to 1989</b>	<i>No framework for minorities – “minority issues” under the Interior Ministry</i>
1989	Parliamentary Commission for National and Ethnic Minorities, the Task Force for National Minorities
July 1992	Extraordinary Commission for Electoral Affairs formulates an electoral law exempting minority parties from the need to acquire 5 percent of the vote
<b>2000</b>	Ratification of the Framework Convention for the Protection of National Minorities
2001	Division for Protection of Rights of Foreigner and National Minorities
2001	Pilot Governmental Program for the Roma Community in the Malopolskie Voivodship (2001-2003)
2002	Development Strategy of the Education of the Lithuanian Minority in Poland
2001-2006	Community Action Program to Combat Discrimination
2002-2007	Campaign For Diversity. Against Discrimination.
19 August 2003	Program for the Roma Community in Poland (2004-2013)
2003-2004	Project PHARE PL 2002/000-605-01-02 Strengthening Anti-Discrimination Policies
May 2004	Poland’s Accession to the European Union
1 June 2004	Act on the Promotion of Employment and Labor Market Institution (ban on discrimination on grounds of ethnic origin)
2004	National Program to Counteract Racial Discrimination, Xenophobia and Related Intolerance
2004-2006	Community Initiative EQUAL for Poland (co-financed with the EU)
6 January 2005	Act on National and Ethnic Minorities and Regional Language
December 2006	Development Strategy of the Education of the German Minority in Poland
12 February 2009	Ratification of 1992 European Charter for Regional or Minority Languages

The 2002 census marked the first time since the end of World War II that citizens were asked questions about identity. It included two questions: “What is your nationality?” and “What language do you usually speak at home?” (Łodzinski 2009: 560).

Table 7 shows that since 2000 Poland adopted a number of laws and implemented programs for its ethnic minorities. The Table also demonstrates that prior to the period and process of the EU accession (May 2004), Poland lacked any minority protection framework. It also had a very small minority population; despite the existence of at least thirteen different ethnic groups within its borders based on the numbers alone, Poland is one of the most ethnically homogenous countries in the world: less than one percent of the population belongs to ethnic minorities. In the post-World War II era from the mid-1940s until 1989, the successive communist governments in Poland not only did not acknowledge but deemphasized the country’s ethnic diversity and considered all citizens to be Polish nationals. The topics of ethnic minorities, discrimination, and racism, therefore, are all relatively new in the public discourse in Poland. The adoption of minority protections can be explained by explicit conditions placed on Poland in the process of EU accession, which occurred in May 2004. The treatment and protections for minorities were an important condition of the accession process (the so-called “Copenhagen” or political criteria for accession). The efforts to adopt new laws and create new structures for minority protection were put in place in response to conditions imposed on the government by the EU accession process, which was part of the effort to show that Poland is ready to become a part of Europe.

## **Anti-Discrimination and Minority Protection Legislation**

In Poland's law, there is no sharp distinction between the fulfillment of "negative" (principle of equality and non-discrimination) and "positive" state obligations (guaranteeing the right to cultural development, including language and customs). Article 35 of the Constitution (2 April 1997) provides that: "1. The Republic of Poland ensures Polish citizens belonging to national and ethnic minorities the freedom of maintain and develop their own language, to maintain customs and traditions, and to develop their own culture."<sup>258</sup> The term "national minority" used in the text of the Constitution refers to those minorities which identify themselves with the nations that have their own corresponding states, and the term "ethnic minority" refers to stateless minorities (Łodzinski 1999). The provisions of that article uphold also an individualized approach to the protection of minorities by using a phrase "Polish citizens belonging to national or ethnic minorities," which is consistent with the currently existing international standards.

The protection of minority rights prescribed by Article 35 goes beyond the general principles of equality and non-discrimination of citizens contained in the previous communist Constitution of 1952. In contrast to the "negative" prohibition of discrimination that is commonly contained in constitutions, this provision expresses state commitment to ensuring that minorities have the right to maintain and develop their own culture and gives them the right to both establish organizations and participate in decision-making aimed at maintaining their own culture and religion (Łodzinski 1999).

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<sup>258</sup> The Constitution of the Republic of Poland (April 2, 1997), available at: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

Other provisions of the new Constitution also relate, directly or indirectly, to the protection of minority rights. Article 27 addresses linguistic rights and also applies to minority protection. According to Article 27, “Polish shall be the official language in the Republic of Poland. This provision shall not infringe upon national minority rights resulting from ratified international agreements.”<sup>259</sup> Article 13 forbids political organizations aiming at incitement of racial or national hatred. Article 25 introduces equality of rights of churches and other religious organizations. Article 53 ensures freedom of faith and religion. Article 54 ensures the freedom to express opinions, to acquire and to disseminate information. Article 57 provides an opportunity of peaceful assembly and Article 58 the freedom of association. Article 60 provides that Polish citizens have the right of access to the public service based on the principle of equality. Article 32 confirms everyone's equality before the law and prohibition against discrimination. Article 9 deals with Poland's commitment to respect international law binding upon it. Article 87 (1) provides that the sources of universally binding law of Poland include, *inter alia*, ratified international agreements (this relates to unilateral and bilateral treaties ratified by Poland and concerning the protection of human rights, including the protection of minorities) (Łodzinski 1999).

Although Poland’s Constitution restricts the protection of minority rights to persons possessing Polish citizenship, it also provides separate protection of the rights of foreigners in article 56. According to Article 56(1), foreigners have the right of asylum in Poland, and according to Article 56(2):

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<sup>259</sup> Ibid.

Foreigners who, in the Republic of Poland, seek protection from persecution, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party.<sup>260</sup>

This “citizen's clause” is in conformity with the standards of minority protection established within the European framework (OSCE, the COE).

In addition to the Polish Constitution, which contains many provisions for minority protection, the *Polish Act on National and Ethnic Minorities and Regional Language* is the main legal instrument of minority protection in Poland. It is clear that the principles of the Framework Convention for the Protection of National Minorities lay behind the provisions of the Polish Act. In some instances, provisions of the *Convention* are quoted directly. For example, the paragraphs in Article 4 (4) of the *Act on National and Ethnic Minorities and Regional Language* “persons belonging to a minority may enjoy the rights and freedoms stemming from the principles set forth in this Act, both individually as well as together with other members of the minority,” is paraphrase from Article 3 (2) of the *Convention*, which reads: “Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present FCPNM individually as well as in community with others.”<sup>261</sup>

Prior to 1989, the end of communism in Poland, “minority issues” fell under the area of responsibility of the Interior Ministry, but there existed no legal framework and practically no initiatives for minority protection. In 1989, minority issues became the responsibility of the Ministry of Culture. One of the first efforts by the Ministry of

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<sup>260</sup> The Constitution of the Republic of Poland (April 2, 1997). Retrieved from <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

<sup>261</sup> Council of Europe, *Framework Convention for the Protection of National Minorities* (Strasbourg, 2/1/1995), Art 3(2), available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>, accessed on 2/20/2010.

Culture Task Force for National Minorities is described as the study and analysis of “problem topics, consultations and meetings with the minority circles, and interventions.”<sup>262</sup> This designation indicates an effort to understand a new issue in society, a phenomenon that did not receive much attention previously.

Subsequently, until 2000, any issues related to the protection of the rights of national and ethnic minorities (including foreigners) became the focus of the Commissioner for Civil Rights Protection. According to an official government report, the Independent Division for Protection of Rights of Foreigner and National Minorities was established in 2001, and currently minority issues are handled by the Group for Public Administration, Health and Foreigners’ Rights Protection.<sup>263</sup>

In the 1990s, Poland signed treaties on “friendly relations and neighborly cooperation” with Lithuania, Ukraine, Belarus, Russian Federation, Czech and Slovak Federal Republics, and Germany. This was significant for minority issues because they also regulated affairs concerning minority populations of the neighboring countries residing on the borders with these countries. Specifically, the 1995 treaty addressed the

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<sup>262</sup> Council of Europe, *Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities* ACFC/SR/II(2007)006, dated 8 November 2007, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), accessed on 2/7/2010, pp. 97-98.

<sup>263</sup> *Council of Europe, Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities* ACFC/SR/II(2007)006, dated 8 November 2007, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), accessed on 2/7/2010, p. 98.

territories inhabited by Belarusian, Ukrainian and Tatar minorities, and the 1997 treaty dealt with the relations in areas inhabited by the Lithuanian and Belarusian minorities.<sup>264</sup>

In a contrast to the 1990s and earlier period, since 2001 Poland has undertaken a number of national anti-discrimination campaigns, including the training of judges, lawyers, and representatives of nongovernmental organizations. Poland also commissioned the publication of *Counteracting Discrimination in Poland – How to Defend your Rights*, and *Counteracting Discrimination in Poland –Legal and Institutional Aspects*. For example, a campaign called *Developing the Attitude of Tolerance Toward Diversity* was conducted and aimed at students, employers, and others. The campaign organized activities such as workshops and presentations, as well as an art competition to design an anti-discrimination poster.<sup>265</sup>

Poland also collaborated with the EU and other individual European governments, such as Spain, Belgium, Finland and others in some anti-discrimination programs and efforts. For example, in 2004-2006, it was involved in a (space eliminated) *Euroequality – Promotion of Anti-Discrimination Institutions 2004-2006* project aimed at the strengthening of the government and non-government institutions in efforts to counteract ethnic and racial discrimination. In 2003-2004, with the funding from the EU, Poland

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<sup>264</sup> Council of Europe, *Report Submitted by Poland Pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities (10 July 2002)*, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_1st\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Poland_en.pdf), p. 47.

<sup>265</sup> *Council of Europe*, Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities ACFC/SR/II(2007)006, dated 8 November 2007, available at:

[http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), accessed on 2/7/2010, p. 53.

implemented the pre-accession PHARE PL project under the title of *Strengthening Anti-Discrimination Policies*.

The adoption of the *Act on National and Ethnic Minorities and Regional Language* (Journal of Laws No 17, item 141, as amended) in 2005 was a major event that strengthened legal protections for minorities in Poland and brought the country in step with the EU requirements. Prior to the adoption of the law, the Polish government had its particular definition of what constitutes a minority. It made a distinction between “national” and “ethnic” minorities. The following minorities were recognized as national minorities: Belarusians, Czechs, Lithuanians, Germans, Armenians, Russians, Slovaks, Ukrainians, and Jews. The Karaim, the Lemko, the Roma, and the Tartars are recognized as ethnic minorities.<sup>266</sup> The Kashubian language was recognized as a “regional language” under the Act (Łodzinski 2009: 566), which resolved and confirmed the legal status of the Kashubian community. With the adoption of the Act, the term “national and ethnic minorities” was made equivalent to the term “national minorities” as used in the *Framework Convention for the Protection of National Minorities*.<sup>267</sup>

The Framework Convention formed the basis of the Polish Act, and principles included in the *Convention* lay behind the provisions of the Act. In some instances, provisions of the *Convention* were quoted directly. For example, the paragraphs in Article 4 (4) of the *Act on National and Ethnic Minorities and Regional Language*

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<sup>266</sup> *Council of Europe*, Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities ACFC/SR/II(2007)006, dated 8 November 2007, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), accessed on 2/7/2010, pp. 7-8.

<sup>267</sup> *Ibid.*, p. 8

“persons belonging to a minority may enjoy the rights and freedoms stemming from the principles set forth in this Act, both individually as well as together with other members of the minority,” is a direct quote from Article 3 (2) of the *Convention*, which reads: “Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.”<sup>268</sup> The differences in the wording of these two documents may be due to the use of different translations.

With the adoption of the *Act on National and Ethnic Minorities and Regional Language*, all of the Framework Convention principles were incorporated into the Polish legislation. The Act also defined institutions and officials responsible for minority protection. For example, until 2005 responsibilities with regard to the minorities were dispersed (e.g. the Minister of Culture was responsible for culture issues, the Minister of National Education was responsible for education issues, the Minister of Interior and Administration was responsible for the programs for Roma minority). The Act consolidated competence with regard to the minorities: the role of the leading body and, at the same time, the competence of the Minister of Culture and National Heritage with regard to the culture of minorities were assigned to the Minister of Interior and Administration.<sup>269</sup> Joint Commission of Government on National and Ethnic Minorities

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<sup>268</sup> Council of Europe, *Framework Convention for the Protection of National Minorities* (Strasbourg, 2/1/1995), Art 3(2), available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm> , accessed on 2/20/2010.

<sup>269</sup> *Council of Europe*, Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities ACFC/SR/II(2007)006, dated 8 November 2007, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), p. 95.

took over the tasks of the Group for National and Ethnic Minorities Issues.<sup>270</sup> Among different EU countries, the responsibility for minority affairs is located in a variety of ministries. In Sweden, for example, the Ministry of Integration and Gender Equality is responsible for minority rights.<sup>271</sup>

Since 2011, the Administration and Economic Law Team at the Office of the Civil Rights Ombudsperson is in charge of minority issues and received complaints that are submitted to the Ombudsperson. This office is also in charge of the monitoring of the observance of minority rights, including field research of the status of minority communities in public administration (Łodzinski 2011: 37).

Provisions for minority protection were included in other legal instruments, such as a variety of new labor regulations. For example in 2004, the ban on discrimination including discrimination based on ethnic origin was incorporated into the *Act on the Promotion of Employment and Labor Market Institutions*.<sup>272</sup> The Labor Code was also revised and the Article 18 3a (1) of the Labor Code stipulates that employees shall be treated equally in regards to the establishment and termination of employment relationships, conditions of employment, promotion, and access to training in order to raise occupational qualifications, particularly regardless of sex, age, disability, race, religion, nationality, political views, trade union membership, ethnic origin, religious convictions, sexual orientation or due to employment for a definite or an indefinite period

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<sup>270</sup> Ibid., p. 97.

<sup>271</sup> Sweden's Government official website at: <http://www.sweden.gov.se/sb/d/8366>, accessed on 8/5/10.

<sup>272</sup> *Council of Europe*, Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities ACFC/SR/II(2007)006, dated 8 November 2007, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), p. 42.

or on full-time or part-time basis.

Poland also took initiatives that reached beyond the European institutions and requirements. In effort to follow up on commitments made at the 2001 World Conference against Racism and to implement its Action Plan, the government introduced the *National Program to Counteract Racial Discrimination, Xenophobia and Related Intolerance* in 2004. The Program was implemented in years 2004 – 2009, and involved various ministries, central bodies of government administration, central public institutions, the Commissioner for Civil Rights Protection, public media, and government administration in voivodships (administrative division in Poland or provinces), with cooperation with NGOs.

Aside from the national laws and programs relevant to all national and ethnic minorities in Poland since 2001 and through the 2000s, Poland implemented several local pilot programs and campaigns aimed at the promotion and protection of various ethnic and national groups, especially the Roma, Lithuanians, and Germans (see Table 7).

The timing of the adoption of the legal framework for minorities in Poland suggests that international factors rather than domestic factors played a dominant role in these efforts. These included the attempt by Poland to: establish itself as a country attentive to minority issues, fulfill obligations stemming from the membership in international organizations, and fulfill explicit criteria of the process of EU accession, which concluded in membership in May 2004.

Chapter 1 considered several theoretical frameworks that were considered helpful in examining the minority protection laws and policies among EU member countries. In

Poland's case, there is little evidence that the adoption of the framework was due to factors other than EU membership and obligations resulting from this membership. While Poland experienced a major political event in its recent history (a transition from communism to democracy), and this may have provided opportunities for groups to assert identities and demand special cultural, social, and political rights, there is no evidence of demands put on the government by specific minority groups that would result in better protections for those groups.

There is some evidence that minority groups have become more active in the cultural arena with the end of communism and that members of those groups have asserted their ethnic identity. For example, this interest and revival is demonstrated by the results of the most recent national census in 2002 when many of the 38 million Polish citizens took advantage of the possibility to declare their ethnicity (see Table 6).

Some scholars, such as Michael Fleming, have argued that some ethnic groups in Poland have used strategies of "empowerment" and have tried to raise their "stock of (political) capital" in the post-communist period. In particular, he mentions Jewish and German minorities in Poland who have been particularly successful in asserting identities and mobilizing (Fleming 2002). While this may be the case, there is little evidence that minority protection in Poland are due to social movement activity or the ability of groups to take advantage of political opportunities created by the demise of communism. In fact, the Jewish or German minorities are not the ones that enjoy the most protection in Poland, but the Roma are. The Roma, incidentally, is the most disadvantaged and not the best organized or active of all ethnic groups. Thus, there is no evidence that this major

political event has given rise to political opportunities that were seized by minority groups to push for new laws and increased protection. Instead, the adoption of these laws coincides with Poland's accession to the EU and becoming party to other European level institutions that have imposed membership conditions and obligations.

Another possibility that I have explored is the welfare status of a country, and how this may influence the level of minority protections. Poland, however, is not a welfare state. At best, it has been referred to as a "limited welfare state," one in which there are some, but quite limited social protections for citizens. According to scholar Hilde Weiss, in its post-communist period, Poland has been faced with "overcoming the consequences of an increasingly limited welfare state," and these problems continue and result in inadequate social protections (Weiss 2003: 378). Therefore, the adoption of minority protection cannot be explained by the existence of generous social protections for all citizens of which this framework would be an extension, as this is not the case in Poland. Instead, EU membership and Poland's response to the norms stemming from the European minority regime rather than any tradition of social welfare provides a stronger explanation of the country's adoption of a minority protection framework.

When measured against other EU member countries on several indicators of minority protection (minority representation in Congress, official language, financial support for cultural activities, financial support to improve societal integration, and implementation of anti-discrimination law), Poland scored a low 1 in total.

On minority representation in Congress, Poland scored low as the available information indicates that Poland did not consistently have substantial minority

representation, and representatives who specifically represented the interests of minority populations in the 2000s.<sup>273</sup>

Poland scored low on the indicator measuring the status of minority languages. Polish is the only official language of Poland. Although some regional languages do enjoy the status of “supportive languages” in administrative matters, the language rights have not been enforced and have not always been granted to the largest minority groups. Languages of the largest minority groups (i.e. Germans and Ukrainians, as well as the Silesian language) might enjoy the official status, but they do not. For example, according to the 2009 COE report: “In spite of the substantial number of persons declaring in the last census their Silesian nationality and speaking the Silesian language at home, the authorities (...) have not considered the matter (...) and have not entered into dialogue with the persons concerned.”<sup>274</sup>

Poland scored low on financial support for cultural activities and financial support to improve societal integration. According to the findings of COE, although the funding and support for minority cultures has increased over the past years, efforts in this area should be strengthened and procedures improved to “allow small organizations to compete effectively for grants.”<sup>275</sup>

The country scored high on the implementation of anti-discrimination law based on evidence that the government has provided resources and made efforts to implement

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<sup>273</sup> Keith B. Richburg, “Europe’s Minority Politicians in Short Supply.” *The Washington Post*. Sunday, April 24, 2005; Page A14, available at: <http://www.washingtonpost.com/wp-dyn/articles/A12396-2005Apr23.html>, accessed 1/11/11.

<sup>274</sup> Council of Europe, *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Poland*, adopted on 20 March 2009. Retrieved on 2/15/11. ([http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp#Poland](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Poland)), p. 41.

<sup>275</sup> *Ibid.*, p. 6.

the anti-discrimination law. Programs and initiatives to implement the anti-discrimination law have included funding to improve societal integration of minorities and a comprehensive *Community Action Program to Combat Discrimination* implemented from 2001-2006. Under this program, Poland launched a number of national anti-discrimination campaigns targeted at a variety of social groups, including training of judges, lawyers, and representatives of nongovernmental organizations. The government commissioned the publication of *Counteracting Discrimination in Poland – How to Defend your Rights*, and *Counteracting Discrimination in Poland –Legal and Institutional Aspects*. Another campaign called *Developing the Attitude of Tolerance toward Diversity* was aimed at students and employers. Some of the many activities in this area included workshops and presentations, and an art competition to design an anti-discrimination poster.<sup>276</sup>

Based on ratifications of relevant international documents and the adoption of laws and policy on minorities, it is clear that Poland has made considerable efforts to demonstrate that the country is attentive to minorities and considers minority protection an important policy area. Despite the low percentage of minorities within its population, minority provisions were incorporated into its 1997 constitution and in a number of other legal instruments. Poland's Act on National and Ethnic Minorities became the main legal instrument of minority protection. It not only incorporated all of the provisions of the

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<sup>276</sup> *Council of Europe*, Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities ACFC/SR/II(2007)006, dated 8 November 2007, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), accessed on 2/7/2010, p. 53.

FCPNM, but in some cases quoted the Convention's language directly to ensure that it fulfilled the ratification that incorporated all of the provisions of the Framework Convention, even containing the Convention's language in a number of places.

Nonetheless, Poland's lack of experience with minorities, their low number in the general population, and the top-down way in which legislative adoption has posed a challenge to effective implementation. The next section addresses some criticisms directed at Poland that focus on the cultural factors affecting the high level of protection indicated by the legal framework.

### **Critical Evaluation of the Legislative Framework for Minorities**

As discussed in the previous section, Poland now has a long list of ratifications of major international treaties. Similarly to Sweden, Poland has adopted a number of laws and policies required by the two major instruments of minority protection in Europe: the Framework Convention and the European Charter for Regional or Minority Languages. Unlike in the case of Sweden, basic indicators of minority protection point to some shortcomings in the implementation of the laws. Below I discuss criticisms that have been directed at Poland.

### **Implementation of Laws**

Poland was also criticized for its reluctance to ratify the Framework Convention. Although it was signed in 1995, it was ratified only four years later in 1999. Poland was slow to adopt the Act for the Protection of Minorities, and only did so in 2005. The delay was partly due to political and legal controversy that it created. According to Łodzinski,

while the constitutional protections of minorities, as well as “legal guarantees with respect to education, radio and television, electoral law .... raised no major political or social controversies, the special minority protection bill did” (Łodzinski 2009: 566; Łodzinski 2005: 145-156), and some questioned whether the law was needed.

Furthermore, even though in Poland’s case all minority groups are covered by laws, according to scholars, there are exceptions and groups that do not enjoy the full legal protection. Significantly, the way the laws apply is not consistent with the past practice and categorizations. According to Łodzinski, some groups who had been recognized as minorities prior to the adoption of these laws and since the 1950s (such as Greeks and Macedonians), are not treated as such under the new laws. Another problem concerns the Silesians who are not recognized as a separate national minority and whose status has been subject to not only legal but also political controversy. For example, the government has not recognized the existence of the Association of Silesian Nation (Łodzinski 1999). The Silesians have struggled to be considered an ethnic minority or for the recognition of the Silesian language as a regional language (Łodzinski 2009: 566). These issues support the idea that the minority protection legislation was adopted in the top-down fashion and in response to international obligations rather than taking into account the particular situation and nuances concerning minorities in Poland regardless of the past recognition of those groups.

In 2011, Poland was also criticized by the Committee of Experts on the European Charter for Regional and Minority Languages for a variety of issues with the

implementation of the minority protection laws with respect to minority languages.<sup>277</sup> For example, despite legal guarantees of education in minority languages, the authorities did not provide updated textbooks and did not create educational opportunities for minority language teachers, thus limiting the effectiveness and meaning of these laws.<sup>278</sup> The laws were to be applied uniformly, and according to this report, Poland has failed to take into account the “situation of each language” and the fact that some of the languages are spoken by a sizeable population and others by only small groups or individuals.<sup>279</sup> Some of the laws were too “ambitious” and impossible to implement because of this lack of concern in adopting laws irrespective of the situation of particular languages.

Poland was also criticized for the lack of reliable data on the speakers of minority languages. The Committee of Experts cited some evidence that pointed to irregularities in conducting the 2002 census with respect to the questions about national affiliation and language use. This may have underestimated the actual number of minority language speakers. The lack of reliable data is problematic and affects “the allocation of funding, broadcasting time, and the use of regional or minority languages in relation with administrative authorities.”<sup>280</sup> According to the report by the Committee of Experts, representatives of some minority communities claim that despite seemingly robust legal “minority protections,” the authorities continued to perceive and apply laws including the Act on National and Ethnic Minorities “mainly from the angle of antidiscrimination and

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<sup>277</sup> Council of Europe, *European Charter for Regional or Minority Languages, Application of the Charter in Poland* (ECRML 2011/ 5), available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf).

<sup>278</sup> *Ibid.*, p. 117.

<sup>279</sup> Council of Europe, *European Charter for Regional or Minority Languages, Application of the Charter in Poland* (ECRML 2011/ 5), available at:

[http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1\\_en.pdf](http://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/PolandECRML1_en.pdf), p. 117.

<sup>280</sup> *Ibid.*, pp. 9-10.

less as an obligation to take proactive and positive measures to promote regional or minority languages.”<sup>281</sup>

Another challenge seems to exist in how the law is used to counteract and fight the instances of racism. According to COE reports, the Polish government has failed to take “adequate measures to combat racist incidents.”<sup>282</sup> The COE Advisory Committee of the Framework Convention also found in 2009 that despite the existence of anti-discrimination provisions in the Polish law, “no court cases have been initiated thus far based on the provisions of the new anti-discrimination legislation.”<sup>283</sup> In addition, according to the COE report, national minorities continue to experience obstacles and challenges especially at the local level, which make them “unable to exercise their rights” despite the existence of laws.<sup>284</sup>

### **Political Discourse**

In addition to the difficulty with applying laws that lack considerations that would account for differences among different minority communities, some point out that the political discourse also limits the effectiveness of minority laws. Some criticism has been directed at the general level of political discourse that is seen as an obstacle to combating discrimination. In the political arena, according to some scholars, “exclusive ethnic nationalism” remained a propaganda tool in the 2000s, for some political parties (populist

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<sup>281</sup> Ibid., p. 8.

<sup>282</sup> Council of Europe, *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Poland, adopted on 20 March 2009*. Retrieved on 2/15/11.

([http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp#Poland](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Poland)), page 2.

<sup>283</sup> Council of Europe, *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Poland, adopted on 20 March 2009*. Accessed on 2/15/11, available at:

[http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp#Poland](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Poland), p. 40.

<sup>284</sup> Ibid.

parties on the right) and thus was present in the political discourse (Přibáň 2004). Unlike other post-communist countries, such as countries of the former Yugoslavia or the former Soviet Union, Poland did not experience ethnic tension or violence in the aftermath of the democratic transition. Nonetheless, some authors argue that the official discourse, with the support from the influential Roman Catholic Church, has continued to promote the “nation as the basic principle of cultural ordering” (Hann 1998: 841-842).

The 2009 COE report also criticized the government of Poland for a variety of other issues which make the implementation of laws and policies for minorities ineffective, including insufficient financial support for cultural projects and institutions, lack of support for greater presence of minorities in local radio and TV programming, and “lack of adequate political representation” of minorities.<sup>285</sup>

The above discussion demonstrates that even though Poland adopted a comprehensive legal framework for minority protection, the laws do not take into account the diversity of minority groups and their different needs. The Polish laws were adopted in the absence of a prior legal framework for minorities in the tradition of minority protection. The government’s approach to minority issues reveals this lack of experience with addressing minority protection that does not only affect the implementation but also renders the laws meaningless in some cases. The contrast that exists in Poland between the formal legal framework for minorities and a number of unresolved challenges to their implementation indicates that the laws were adopted in a top-down fashion and in order to fulfill international obligations, but without a thorough understanding of minority protection principles and requirements. In effect, Poland continues to be both culturally

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<sup>285</sup> Ibid., p. 41.

and numerically a country that is ethnically homogenous, in which minority protection laws are difficult or in some cases impossible to implement.

### **Societal Attitudes**

Poland, unlike Sweden, has not been perceived as a country friendly toward minorities since at least World War II. The reasons for this are complex and in part due to the fact that the majority of Polish Jews perished in the Nazi German death camps, many of which were located in Nazi-occupied Poland. Over the years, Poles have sometimes been accused of anti-Semitism and even seen as complicit in the crimes perpetrated by the Nazis (Friedrich 2005). Scholars sometimes cite anti-integration attitudes that emerged in Poland (and other central European societies) in the process of EU accession in the early 2000s, including ‘concerns over religious identity, land acquisition by “foreigners,” and state borders.’ (Taras 2009: 25) And yet, in its report to the COE, Poland’s government states that

the Republic of Poland has been a stronghold of religious and national tolerance in Europe for centuries. Thus, Poland has hosted such minorities as the Tartar minority, the Jewish minority, the Armenian minority, the Karaim minority or the Roma minority which fled from persecutions in other countries to find their home in Poland for many centuries.<sup>286</sup>

This official pronouncement is an attempt to counter any perceptions that Poland is not progressive on minority issues by reference to traditions and examples of tolerance,

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<sup>286</sup> *Council of Europe, Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities ACFC/SR/II(2007)006, dated 8 November 2007, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), accessed on 2/7/2010, p. 39.*

but it is also based in the historical record going back to the XI-XVII centuries when Poland was by all accounts one of the most tolerant countries in Europe and a magnet for persecuted ethnic and religious groups, including the Jews.

European-level surveys show that Poles are generally supportive of minorities and minority protection measures. Although these attitudes are largely the result of a “theoretical” understanding and not the actual experience with minorities and minority issues, they indicate that Poles may have “internalized” some of the European ideas and norms of minority protection. Due to the low percentage of minorities within the Polish population, Poles generally do not have much contact or experience with ethnic minorities. According to the 2002 census (discussed above), minority groups constitute only 0.7 percent of the country’s total population of nearly 38.5 million. Some argue that the actual number is as high as 5 percent, but this still makes Poland a rather homogenous country.<sup>287</sup>

Currently, there are also small immigrant communities, including Armenians, Ukrainians (Iglicka 1998), including a few new ethnic groups, such as the Vietnamese (Iglicka 2005). In some cases, individuals from minority backgrounds gain prominence and make an impression on the society and receive acclaim despite otherwise xenophobic attitudes, such as the case of Emmanuel Olisadebe. Olisadebe is a Nigerian soccer player who played for a Polish soccer club and was given Polish citizenship in the late 1990s.

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<sup>287</sup> *Council of Europe, Second Report Submitted by Poland Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities ACFC/SR/II(2007)006, dated 8 November 2007, available at: [http://www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_%28monitoring%29/2\\_monitoring\\_mechanism/3\\_state\\_reports\\_and\\_unmik\\_kosovo\\_report/2\\_second\\_cycle/PDF\\_2nd\\_SR\\_Poland\\_en.pdf](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_%28monitoring%29/2_monitoring_mechanism/3_state_reports_and_unmik_kosovo_report/2_second_cycle/PDF_2nd_SR_Poland_en.pdf), accessed on 2/7/2010, p. 9.*

Representatives of the new ethnic groups, such as Olisadebe, are often featured in the press and popular magazines. According to Taras, for example, “Olisadebe’s image could at one time be found on everything from mobile phone advertisements to pizza shop sweepstakes” (Taras 2009: 230). Arguably, these individuals and groups contribute to Poland’s diversity and new ethnic consciousness and tolerance. At the same time, they enjoy limited legal protections and do not have strong organizational structures that would make it possible for them to influence public policy in any significant way. According to researchers working on issues of the new immigrants in Poland, there is generally no public debate about the status and problems of these groups (Iglicka 2005).

Despite this context, European-level surveys on attitudes toward ethnic and other minorities commissioned by European institutions in the past few years suggest that Polish society is no different than other EU members in its approach to minority groups and individuals; in some cases, it compares favorably on the level of tolerance. According to the results of a 2008 Special Eurobarometer 296 survey on “Discrimination in the European Union: Perceptions, Experiences and Attitudes,” about eleven percent of Polish respondents have felt discriminated against within the past year, which is less than in Sweden where eighteen percent of respondents reported such experiences.<sup>288</sup>

According to the survey, only 19 percent of Poles reported that they witnessed discrimination based on ethnicity within the past year; 46 percent of Swedish respondents witnessed such discrimination.<sup>289</sup> This is not necessarily an indicator of the actual number

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<sup>288</sup> European Commission, *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes (July 2008)*, available at [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_296\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf), accessed on 3/1/2010, p. 14.

<sup>289</sup> Ibid.

of discriminatory acts, but maybe the result of greater awareness and the higher percentage of minorities in the general population. Overall, only 28 percent of respondents thought that ethnic discrimination was widespread in Poland while on average 62 percent of all EU respondents thought it was widespread. In Sweden this number stood at 76 percent and was one of the highest in the EU.<sup>290</sup> Poles, at 4 percent, had one of the lowest percentages of respondents who witnessed discrimination based on ethnicity within the past 12 months. By comparison, 24 percent of Swedes reported witnessing a similar incident.<sup>291</sup> Some of the differences in responses clearly relate to the proportion of minorities to the general population and visibility of ethnic minorities within society. It may also be due to a greater sensitivity of Swedish citizens to such incidents.

When asked whether they would feel comfortable having a person from different ethnic origin as neighbor, Poland and Sweden had a similar score (ranging from 1-10, 1 representing “totally comfortable” and 10 representing “very uncomfortable”) at 9.1 which was higher than the EU average of 8.1.<sup>292</sup> Both countries also recorded highest positive responses when asked whether they would be comfortable having a person of minority ethnic background in the highest elected political office (Poland at 7.4 and Sweden at 8.1, compared to the EU average at 6.4).<sup>293</sup> Both countries also placed very

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<sup>290</sup> European Commission, *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes (July 2008)*, available at [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_296\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf), accessed on 3/1/2010, p. 35.

<sup>291</sup> Ibid., p. 40.

<sup>292</sup> Ibid., p. 41.

<sup>293</sup> Ibid., p. 42.

high compared to other countries when asked about the comfort of having a person of Roma origin as a neighbor (Poland at 7.5 and Sweden at 7.1).<sup>294</sup>

These measures of societal attitudes offer only a glimpse into the Polish society's view of minorities, but the results indicate that Poles are generally aware of ethnic discrimination and seem to be supportive of ethnic minorities, in some cases more so than in Sweden and other EU countries. The responses may indicate that Poles have been exposed to the minority protection norms through the official public discourse and the media and have to some extent internalized the European discourse and norms that emphasize the need for tolerance toward and protection of minorities. This would indicate that the government's efforts and programs to increase the exposure of minority issues and integrate them into the society have been successful in increasing societal awareness to some degree.

But yet another possible explanation, or at least a contributing factor, may also be that since the majority of Poles have very little interaction with minorities, many of these issues are somewhat abstract to them, which might make it easier to have positive attitudes and principles. Some studies, however, suggest that in some cases the more homogenous societies have the most negative attitudes toward other ethnic groups. For example, in one study of the former Yugoslavia, the most homogenous Yugoslav republics had the most negative attitudes toward other ethnicities, and those that were more ethnically diverse embraced an inclusive "Yugoslav" identity and demonstrated greater tolerance of diversity (Sekulic, Massey, and Hodson 1994). Thus, the results of this survey may indicate that the more inclusive attitudes and norms of tolerance toward

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<sup>294</sup> Ibid., p. 44.

diversity are indeed taking hold in the Polish society. Another contributing factor to the Poles' perception of minority groups can be the relatively low unemployment rate among most minorities and high socio-economic status of most of the groups.

Despite these indicators of attitudes, according to reports by racism-monitoring organizations and European-monitoring mechanisms, reactions of dislike, instances of xenophobia, and discrimination occur on a fairly regular basis and are directed at persons of non-Polish background.<sup>295</sup> According to European-monitoring mechanisms, minority groups, and scholars, despite the quite impressive legal framework, the implementation of the minority protection system in combating the instances of racism and discrimination is not effective in Poland.

Since the mid-2000s, there was an increase in racist and anti-Semitic incidents. There is some evidence that such cases are referred to the Ombudsperson. For example, in 2010 and first part of 2011 alone, the office of the Poland's Civil Rights Ombudsperson received about 30 cases in reference to minorities for investigation (Łodzinski 2011: 37). While it is possible that an increase of racist incidents could be simply the result of increased sensitivity to these types of events and offenses, both at the societal level and at the police and public prosecutor's office,<sup>296</sup> the occurrence of racist incidents demonstrates that the anti-minority sentiments and attitudes still pervade in the

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<sup>295</sup> European Network Against Racism, *Responding to Racism in Poland*, available at: [http://cms.horus.be/files/99935/MediaArchive/pdf/Poland\\_EN.pdf](http://cms.horus.be/files/99935/MediaArchive/pdf/Poland_EN.pdf), accessed 1/15/2010.

<sup>296</sup> Council of Europe, *Advisory Committee on the Framework Convention for the Protection of National Minorities*, Comments of the Government of Poland on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities (September 2009, received on 7 December 2009), [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_2nd\\_Com\\_Poland\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_2nd_Com_Poland_en.pdf), accessed on 2/26/2010, paragraph 6 on p. 2

Polish society. The reports also indicate that the government's effort to combat such attitudes and incidents have not been effective.

Human Rights Watch (HRW) report states that “discrimination based on race, gender, and sexual identity remained serious problems.”<sup>297</sup> Among the materials cited by HRW was the June 2010 report by the COE's European Commission against Racism and Intolerance (ECRI), which reported on Poland's “failure to adequately address discrimination against Roma and non-citizens in education, housing, employment, and health.”<sup>298</sup> HRW also mentioned that the European Commission referred Poland to the EU Court of Justice in May for failing to implement the EU directive on race equality.<sup>299</sup>

The Eurobarometer survey results also signal that the Polish society at large considers the government's efforts at combating discrimination and minority protection inadequate and are critical of governmental effort in this area. Eurobarometer respondents were also asked whether enough effort was being made in combating discrimination and both Poland and Sweden were among the countries with the lowest proportions of those who thought that enough was done (30 and 31 percent, respectively).<sup>300</sup> Although it is possible that this score means something different in Sweden and Poland (in Sweden it may indicate the sensitivity of society to minority issues and in Poland it may indicate that Poles support such efforts because they do not interact with minorities, and it is a largely abstract proposition to them), the similarities in

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<sup>297</sup> Human Rights Watch (2011). *World Report 2011: European Union* ( Events of 2010.) Available at: <http://www.hrw.org/world-report-2011/european-union>

<sup>298</sup> Ibid.

<sup>299</sup> Ibid.

<sup>300</sup> European Commission, *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes (July 2008)*, available at [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_296\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf), accessed on 3/1/2010, p. 20.

response are noteworthy. Likewise, fifty-two percent of Poles supported measures to monitor the workforce with the view to evaluate the participation of ethnic minorities (at 50 percent in Sweden).<sup>301</sup> The results suggest that the Polish society at large is aware and critical of the government's efforts to implement a minority protection system in Poland.

These examples indicate that the provisions remain “on paper” only and are often not used in practice to deal with actual instances of racial and ethnic discrimination,<sup>302</sup> and they demonstrate the ineffectiveness of the government's efforts to monitor and eliminate such cases.

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<sup>301</sup> European Commission, *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes (July 2008)*, available at [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_296\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_296_en.pdf), accessed on 3/1/2010, p. 31.

<sup>302</sup> Council of Europe, *Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Poland, adopted on 20 March 2009*. Available at: [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/Table\\_en.asp#Poland](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#Poland)  
Accessed on 2/15/11, p. 13.

## CONCLUSION

The EU seems to be an excellent case for the neoinstitutional theory because it is an institutional network of states bound by treaties and aiming at harmonizing in many policy areas. Neoinstitutionalism would expect this to result in isomorphism on the national level. On the formal level, the institutional theory seems to hold to some degree in the two cases explore in this study. Poland and Sweden ratified the major European documents since the early 2000s, adopted a number of laws, and set up governmental mechanisms responsible for minority protection.

However, despite this formal similarity, there are significant differences in how these laws are interpreted and implemented in both countries due to historical and cultural reasons specific to each of these countries.

In the case of Poland, complex history of state relations with minorities, the legacy of the Holocaust, and the government's efforts to overcome the perception that the government and society are not minorities-friendly affected the adoption of inclusive minority laws and policies. At the same time, as a result of the absence of a prior framework for minorities and the small percentage of minorities in the general population, this occurred in a top-down fashion. In Poland, these top-down processes have not only created some peculiarities and inconsistencies in law and policy, but have also led to a less effective implementation of the legal framework for minorities which is not a good fit for the actual situation.

In the case of Sweden, a country that is considered to be a model on a variety of social issues, despite this international perception, an attempt to preserve national identity and the continuing tradition of assimilation has led to a non-inclusive minority policy. Sweden limits minority protection to five recognized historical minority groups and does not include newer immigrant groups. Moreover, the aim of Swedish minority policy is assimilation into the majority population rather than the recognition of the cultural and ethnically specific differences of minority groups. In Sweden, these pre-existing structures and approaches have affected the implementation of the new framework and reduced its effectiveness.

These two cases indicate that there are at least two major patterns of how states interpret and implement international obligations. In both cases, there is formal compliance and adoption of international legal instruments. However, Sweden is an older EU member and a welfare state that resists the new approach to minority protection due to its traditional approach of assimilation. Poland represents the newer EU member states that lack a tradition of minority protection and thus implement the new framework in a top-down fashion. In Poland, elaborate laws have been adopted despite the relative lack of minorities within its borders. In both cases, the minority protection systems are flawed and insufficient; as a result, they have not led to a meaningful implementation of minority protection laws.

Both cases demonstrate that cultural and national identity along with tradition continues to affect minority protection and accounts for differences in minority protection in EU societies. Culture influences the law and policy beyond formal compliance with

international minority protection norms and laws. Culture, national identity, and tradition explain this variation better than political opportunity and social movement activity, predominance of national over immigrant minorities, or welfare state status.

The other theoretical explanations considered in this study provide partial but insufficient explanations of these cases. There is some evidence that different groups in both countries have mobilized politically and sought to take advantage of political opportunities in various ways. For example, in some cases, national groups have mobilized transnational networks to increase access and seek empowerment in order to modify the structure of political opportunity at the national level (Keck & Sikkink 1998; Jasiewicz 2010). Nonetheless, the study does not find a direct link between activism by different ethnic and national groups and the level of protection for these groups on the national level.

The welfare status of the country also explains to some degree the approach that government will take to create minority protection. For example, welfare corporatist countries such as Sweden have a basic level of social security that is extended to all groups irrespective of ethnicity. This, however, does not mean that there are no inequalities written into the system, and it may be that such inequalities come into a sharper focus in a country that is expected to have a high level of overall social support and protection. Most importantly, such an older framework may be too rigid and difficult to modify when faced with new norms and international obligations leading to the inequalities. Thus, by itself, the welfare status of the country is not sufficient to analyze and explain the status and variation in the level of minority protection.

Likewise, the cases of Poland and Sweden provide evidence that an effort to protect national identity becomes both implicit and explicit in the process of the adoption and implementation of minority protection frameworks. By itself, however, these do not account for variation and explain the differences in minority protection. Thus, while all these theoretical frameworks provide contributory explanations, by themselves that are not sufficient to explain the research questions identified in this study. Neoinstitutional frameworks provide a more complete account of the variation in the levels of minority protection among EU member states.

This study contributes to the understanding of how norms and legal frameworks are constructed and diffused in institutional environments and societies. In particular, this study contributes to the strand of neoinstitutionalism recognizing that the processes of isomorphism and variation may occur simultaneously in some organizational environments. While it recognizes a degree of homogeneity, it also underlines the importance of examining cases beyond the formal compliance to give fuller understanding of the factors that influence law, policies, and norms when introduced at the national level. This type of neoinstitutional theorizing identifies culture as an important analytical element and factor that accounts for variation and is a significant source of modification of such larger organizational principles, norms, and laws. It also explains variation where one would expect to see greater similarity or convergence.

This project highlights the importance of an examination of both similar and different cases to uncover practices and question the effectiveness of legal solutions. In the case of minority protection, it finds that the adoption of a comprehensive legislative

framework is not evidence of a high level of minority protection. In fact, the adoption of an impressive legal framework may mask the limitations of the minority protection system in a given society. It is then informative to look at policy implementation and investigate other society-level factors in order to provide a more complete explanation of the framework.

The study draws attention to some specific points that can be examined in trying to evaluate systems of minority protection, such as how inclusive or exclusive the actual policy is and which groups are covered by the minority protection laws. For example, the case of Sweden demonstrates that even countries that have an impressive number of laws for minorities may in fact contain a rather exclusive policy that severely limits who is protected by these laws. It also draws attention to the issues in accessibility; despite the existence of the laws on the books, individuals and groups may not be able to use these laws to seek redress due to a variety of cultural factors and for a variety of practical reasons. For example, in the case of Poland, there is evidence that the minority protection laws have remained on the books to some degree and have not been used to pursue specific cases of discrimination due to the lack of awareness in society that such laws are available.

This study has some limitations that should be addressed in future research on minority protection in the EU. The quantitative analysis focuses on measuring formal compliance and does not address policy implementation. In a future study, more variables could be added including those that would measure implementation of minority protection and not only the fulfillment of legal and political obligations. Furthermore,

logistic regression is not an ideal method to use when there is only a small number of cases available. In such cases another method might be better suited. For example, Qualitative Comparative Analysis (QCA) can be used to analyze a small number of cases. QCA allows for an intensive and integrative analysis of cases of which there is a limited number and only 27 in the case of the EU. The method uses the Boolean methods of logical comparison which present each case as a combination of causal and outcome conditions. It resolves the problem of a small number of cases by maximizing the number of comparisons and meaningful causal inferences that can be made (Ragin 1987, 2008) and would be appropriate in this case.

The case studies may have included a more systematic tracing of the historical differences in nation building and citizenship to give a better sense of each country's distinctive histories of nation building and national identity as these are only addressed briefly. For example, an imperial or colonial history of a country should be given more attention. The status of a country as former imperial-colonial (e.g., Sweden) or a colonized country (e.g., Poland) may account for differences in the situation of the minorities. Such an analysis should also be done with the attention to the contestation by minority group. Relations with neighboring countries, in cases where they share the same ethnic group can be explored in more depth. Lastly, efforts to lobby European institutions to include minority-specific provisions into the international law could have also been researched to see whether minority groups have decided to forgo the efforts to influence the policies of national state directly and have attempted to mobilize on the international level. One way to study the impact of minority groups would be an analysis of how

policy outcomes relate to group efforts at different phases of the implementation process. For example, one could examine the behavior and the content of groups' demands once they gain "regular access to political institutions" (Burstein 1995: 143).

Future research on the subject of minority protection might investigate a larger number of cases, including similar ones. More work can be done to explain anomalous cases, such as France or Luxembourg, that do not comply with the minority protection regime at all. Another avenue for future research might be expanding the number of case studies to other non-EU members (both EU candidate states and non-candidate states) to investigate whether the international minority protection norms and laws diffuse beyond the EU. In particular, it would be interesting to see whether there are countries that comply with the norms of minority protection and have an effective system despite the absence of formal ties to international organizations and in the absence of formal ratification of international instruments on minority protection. It would also be interesting to trace and examine the changes in policy over time to understand the trajectory of such phenomena. It is possible that the importance of a national culture lessens over time and the convergence in both law and policy among the EU member states will occur at some later point.

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## APPENDIX A: LIST OF ACRONYMS

CERD	COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION
CESCR	COMMITTEE ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS
CSCE	CONFERENCE FOR SECURITY AND COOPERATION IN EUROPE
COE	COUNCIL OF EUROPE
EU	EUROPEAN UNION
FCPNM	FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES
NGO	NONGOVERNMENTAL ORGANIZATION
OLS	ORDINARY LEAST SQUARES
OSCE	ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE
QCA	QUALITATIVE COMPARATIVE ANALYSIS
TEC	TREATY ESTABLISHING THE EUROPEAN COMMUNITY
TEU	TREATY ON EUROPEAN UNION
UN	UNITED NATIONS

**APPENDIX B: CONVENTIONS RATIFIED BY SWEDEN (AS OF OCTOBER 2012)**

**UN**

9 December 1948  
Convention on the Prevention and Punishment of the Crime of Genocide

28 July 1951  
Convention relating to the Status of Refugees

7 March 1965  
Convention on the Elimination of All Forms of Racial Discrimination

16 December 1966  
International Covenant on Economic, Social and Cultural Rights

16 December 1966  
International Covenant on Civil and Political Rights

16 December 1966  
Optional Protocol to the International Covenant on Civil and Political Rights

21 January 1967  
Protocol relating to the Status of Refugees

18 December 1979  
Convention on the Elimination of All Forms of Discrimination against Women

10 December 1984  
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

20 November 1989  
Convention on the Rights of the Child

15 December 1989  
Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty

17 July 1998  
Rome Statute of the International Criminal Court

6 October 1999  
Optional Protocol to the Convention on the Elimination of all forms of Discrimination  
against Women

25 May 2000  
Optional Protocol to the Convention on the Rights of the Child on the Involvement of  
Children in Armed Conflict

30 March 2007  
Convention on the Rights of Persons with Disabilities and Optional Protocol to the  
Convention on the Rights of Persons with Disabilities

### **Council of Europe**

4 November 1950  
European Convention for the Protection of Human Rights and Fundamental Freedoms

20 March 1952  
Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental  
Freedoms, securing certain rights and freedoms other than those already included in the  
Convention

18 October 1961  
European Social Charter

16 September 1963  
Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental  
Freedoms, securing certain rights and freedoms other than those already included in the  
Convention and in the First Protocol thereto

28 April 1983  
Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental  
Freedoms concerning the abolition of death penalty

22 November 1984  
Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental  
Freedoms

26 November 1987  
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment

or Punishment

5 May 1988

Additional Protocol to the European Social Charter

21 October 1991

Protocol amending the European Social Charter (not in force)

5 November 1992

European Charter for Regional or Minority Languages

4 November 1993

Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

4 November 1993

Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

1 February 1995

Framework Convention for the Protection of National Minorities

9 November 1995

Additional Protocol to the European Social Charter Providing for a System of Collective Complaints

3 May 1996

European Social Charter (revised)

3 May 2002

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances

## **ILO**

The International Labour Organization has adopted 185 conventions until now, many of which are related to Human Rights. Sweden is presently bound through ratification to apply 76 ILO conventions, amongst others the following eight Conventions on Fundamental Principles at Work:

28 June 1930

Convention on Forced Labor (No. 29)

9 July 1948

Convention concerning Freedom of Association and Protection of the Right to Organise (No. 87)

1 July 1949

Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98)

29 June 1951

Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100)

25 June 1957

Convention concerning the Abolition of Forced Labour (No. 105)

25 June 1958

Convention concerning Discrimination in respect of Employment and Occupation (No. 111)

26 June 1973

Convention concerning Minimum Age for Admission to Employment (No. 138)

17 June 1999

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)

**Source:** The Swedish Government's Human Rights Website. Conventions Ratified by Sweden (as of July 2009), Available at:

[http://www.manskligarattigheter.gov.se/extra/pod/?id=4&module\\_instance=2&action=pod\\_show](http://www.manskligarattigheter.gov.se/extra/pod/?id=4&module_instance=2&action=pod_show)

**APPENDIX C: MAJOR TREATIES RATIFIED BY POLAND (AS OF OCTOBER 2012)**

**UN**

1950

Convention on the Prevention and Punishment of the Crime of Genocide

1991

Convention relating to the Status of Refugees

1968

Convention on the Elimination of All Forms of Racial Discrimination

1977

International Covenant on Economic, Social and Cultural Rights

1977

International Covenant on Civil and Political Rights

1980

Convention on the Elimination of All Forms of Discrimination against Women

1989

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1991

Convention on the Rights of the Child

2001

Rome Statute of the International Criminal Court

## **Council of Europe**

1993

European Convention for the Protection of Human Rights and Fundamental Freedoms

1994

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

2009

European Charter for Regional or Minority Languages

2000

Framework Convention for the Protection of National Minorities

## **ILO**

The International Labor Organization has adopted nearly 200 conventions, many of which are related to human rights. Poland has ratified 90 ILO Convention and 81 are in force, including the following fundamental conventions:

1958

Forced Labor Convention (No. 29)

1957

Freedom of Association and Protection of the Right to Organize Convention (No. 87)

Right to Organize and Collective Bargaining Convention (No. 98)

1954

Equal Remuneration Convention (No. 100)

1958

Abolition of Forced Labor Convention (No. 105)

1961

Discrimination (Employment and Occupation) Convention (No. 111)

1978

Convention concerning Minimum Age for Admission to Employment (No. 138)

2002

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)

**Sources:** University of Minnesota Human Rights Library: Ratification of International Human Rights Treaties – Poland at <http://www1.umn.edu/humanrts/research/ratification-poland.html>; United Nations Treaty Collection – Status of Treaties at <http://treaties.un.org/pages/ParticipationStatus.aspx>; International Labor Organization – Ratifications for Poland at [http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:3782167399093235::NO:11200:P11200\\_COUNTRY\\_ID:102809](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:3782167399093235::NO:11200:P11200_COUNTRY_ID:102809).