

Majority-Minority Relations in the Ukraine

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Abstract

Majority–minority relations in Ukraine, as in any other country, are a complex phenomenon. What differentiates the Ukrainian case from many old polities and from some recently established ones is that the identities of both majority and minority groups probably have been settled to a much lesser degree than is usually the case in Europe. The process of defining what it means to be a majority or a minority group in Ukraine goes along with all the other identity-related processes that a newly independent country has to face. The fact that the identity of both majority and minority is still ‘in the making’ has numerous implications for how the Ukrainian state positions itself with regard to various international standards and mechanisms of minority protection and how international bodies—both intergovernmental and nongovernmental—approach the issue of Ukraine’s adherence to these standards and mechanisms.

This article begins with a short discussion on efforts to define ‘majority’ and the effect that these efforts have on the position of a group that hesitantly came to occupy the status of the country’s largest minority group, namely, ethnic Russians. It then structures the subsequent presentation by identifying and analysing the most salient issues related to the general aspects of relations between Ukraine’s majority and minority groups. The article also examines the extent to which these issues have been addressed, or have the potential to be addressed, through the framework of the international regime for minority governance that is currently under construction at the European level.

As recent studies on EU accession conditionality have shown, there is substantial variation in how conditionality on minority matters was applied to individual candidate states in the last wave of EU enlargement and in how these candidate states approached the question of their obligations towards their national minorities.¹ This experience, as well as the lack of short-term prospects for Ukraine to acquire the status of an accession candidate, suggests that the country’s engagement in various aspects of an international regime of minority governance will proceed on principles of voluntary cooperation rather than strict conditionality.

Substantive issue areas discussed in this paper have, over the years of Ukraine’s independence, acquired a high degree of salience in public discourse. They were highlighted further during the course, and in the aftermath, of the dramatic November–December 2004 events, commonly referred to as the ‘Orange Revolution’. A substantial increase in the degree of political pluralism and civic

¹ G.J. Kelley, *Ethnic Politics in Europe: The Power of Norms and Incentives* (Princeton University Press, Princeton, 2004); G. Sasse, “Minority Rights and EU Enlargement: Normative Overstretch or Effective Conditionality?”, in: G.N. Toggenburg (ed.), *Minority Protection and the Enlarged European Union: The Way Forward*, (Local Government and Public Service Reform Initiative, Open Society Institute, Budapest, 2004), 59–84.

activism are among the main undisputed achievements of the Orange Revolution.² This increase could not avoid having a direct bearing on public discussion of majority–minority relations. Informed by this discussion, this chapter concerns itself with the following issues: the administrative-territorial structure of the state and issues of federalism, the effective participation of minorities in public life, language use and language policy, and problems of indigenous status and non-recognition.

As in many other countries in the post-Soviet space, security concerns—defined here in terms of preoccupation with the issues of sovereignty, internal stability, and territorial integrity—have been a very important factor in government decision making on minority-related issues. Although not always articulated explicitly, the fear of separatism, secession, country breakdown and disintegration has shaped the state’s perception of minority issues. Throughout the chapter, efforts are made to illustrate how security-based concerns have shaped policies in specific minority-related areas. It is also argued that the desecuritization of some minority problems by the Ukrainian state can be achieved fully only after the process of Ukraine’s integration into the Euro-Atlantic structures (NATO and the EU), is on a firm footing. In other words, Ukraine’s full incorporation into the multi-layered international regime of minority protection might come as a result rather than as a precondition of its integration into the Euro-Atlantic structures.

I. CONTESTED DEFINITIONS OF MAJORITY

While 67.5% of respondents in the 2001 national census, and more than 60%, on average, in independently conducted annual representative surveys, routinely chose to state that their native language was Ukrainian,³ it was still impossible to see a movie dubbed in Ukrainian in the theatre or to find more than a few Ukrainian-language periodicals on a newspaper stand or

² V. Stepanenko, “How Ukrainians View Their Orange Revolution: Public Opinion and the National Peculiarities of Citizenry Political Activities”, 13 *Demokratyzatsiya* (2005), 595–616.

³ For discussion of census questionnaire and interpretation of responses see D. Arel, “Interpreting Nationality and Language in the 2001 Ukrainian Census”, 18 *Post-Soviet Affairs*: (2002), 213–249; and G. Uehling, “The First Independent Ukrainian Census in Crimea: Myths, Miscoding and Missed Opportunities”, 27 *Ethnic and Racial Studies* (2004), 149–170. Results of the annual surveys can be found in N. Panina, *Ukrains'ke suspil'stvo 1994-2005: sotsiologichnyi monitorynh* [Ukrainian Society 1994–2005: Sociological Monitoring] (Sophia, Kiev, 2005).

Ukrainian-language books in a bookshop.⁴ These examples explain some of the frustrations articulated by a number of Ukrainian language rights activists regarding the cultural environment of the ethnic Ukrainian group, a numerical majority in the country.⁵ These activists advocated policies aimed at language revival and pointed to the plentiful evidence of historical discrimination against the Ukrainian language. They cited studies that had meticulously documented a large number of legislative and administrative restrictions and bans on the use of the Ukrainian language in one or another sphere of public life in the Russian empire throughout the pre-1917 period, a set of Soviet-era policies aimed at Russification of educational and governmental institutions,⁶ and the social consequences of these policies in terms of limiting the upward mobility of ethnic Ukrainians.⁷

Efforts to revive the Ukrainian language are only one aspect of the continuing struggle over competing definitions of what constitutes a majority in Ukraine. The core of this struggle centres over the content of the ethnic identity of the majority group. As we now better understand, successful national identity projects have been based primarily on a combination of civic and ethnic components.⁸ Although the distinction between civic and ethnic components increasingly has been questioned,⁹ it provides a useful heuristic device for various analytical purposes. While what is conventionally described as the civic component of

⁴ The share of Ukrainian-language books is estimated to vary between 10% and 25%. See O. Kuts, *Language Policy in the Ukrainian State-Building Process* (Kharkiv National University, Kharkiv, 2004); and “Editorial: Braty za yazyk, *Day*, 29 January 2005: at 15. A discussion of the causes and consequences of the weak presence of the Ukrainian language in the media in general and its almost entire absence from the movie distribution industry may be found at ‘Telekrytyka’, a leading Ukrainian website on issues of electronic mass media. See, for example, R. Horbyk, “Kina ne bude z 1 veresnia? [No Movies After September 1st?]”, *Telekrytyka*, 26 January 2006.

Available at <http://www.telekritika.kiev.ua/articles/128/0/6543/>.

⁵ The 2001 census gives the following details on the ethnic composition of Ukraine: 37.5 million Ukrainians (77.8%); and 8.3 million Russians (17.3%). The distribution of other ethnic groups was as follows: Belorussians, Moldovans, Crimean Tatars, Bulgarians, Hungarians, Romanians, Poles and Jews number between 100,000–300,000 each; Armenians, Greeks, Tatars, Roma, Azerbaijanis, Georgians, Germans and Gagauzians between 30,000–100,000 each; and Estonians, Kurds, Karaims, Komi-Permiars, Kyrgyz and others less than 30,000 each. For these figures, see the web site of the State Statistics Committee of Ukraine, at <http://www.ukrcensus.gov.ua>.

⁶ I. Dziuba, *Internationalism or Russification? A Study in the Soviet Nationalities Problem* [ed. by M. Davies; translated from the Ukrainian] (Weidenfeld and Nicolson, London, 1968). On the ambiguities of Russification see A. Kappeler, “The Ambiguities of Russification”, 5 *Kritika* (2004), 291–297.

⁷ B. Kravchenko, *Social Change and Consciousness in Twentieth Century Ukraine* (Macmillan Press, London, 1985).

⁸ I draw here largely on the works of Stephen Shulman and Tars Kuzio. See, for example, S. Shulman, “The Contours of Civic and Ethnic National Identification in Ukraine”, 56 *Europe-Asia Studies* (2004), 35–56; and T. Kuzio, “The Myth of the Civic State: a Critical Survey of Hans Kohn’s Framework for Understanding Nationalism”, 25 *Ethnic and Racial Studies* (2002), 20–39.

⁹ See R. Brubaker, “The Manichean Myth: Rethinking the Distinction between ‘Civic’ and ‘Ethnic’ Nationalism.” in: H. Kriesi *et al.* (eds.), *Nation and National Identity: The European Experience in Perspective* (Ruegger, Chur, 1999). Reprinted as Chapter 6, “‘Civic’ and ‘Ethnic’ Nationalism in R. Brubaker, *Ethnicity Without Groups* (Harvard University Press, Cambridge, MA, 2004), 132–146.

identity is less controversial in the context of the ethnic Ukrainian majority group—there is general consensus in Ukraine with regard to issues of statehood, citizenship, political institutions and the practices of a new state—much less agreement exists as to the content of the ethnic component.

The variation in current attitudes towards the content of the ethnic Ukrainian identity could be summarized usefully through the construction of Weberian-like ideal types representing the key alternative options. Shulman defines two major competing conceptions of the Ukrainian ethnic identity: the ethnic Ukrainian and Eastern Slavic conceptions.¹⁰ The unifying features of the ethnic Ukrainian identity are the Ukrainian language and culture. Its core beliefs include preference for Ukrainian language, culture, history and symbols. This type of identity frequently is associated in the literature with concepts such as indigenism, colonialism and Russification. However, the term ‘ethnic Ukrainian identity’ is criticized frequently by some leading Ukrainian intellectuals who see it as emphasizing the exclusiveness of this type of identity. They dispute the importance of the indigenous component and stress instead the inclusive character of ‘Ukrainianness’, which, from their perspective, requires only the acceptance of a need for affirmative actions to support Ukrainian culture (thus, implicitly recognizing the relevance of two other concepts mentioned above: colonialism and Russification).¹¹

The Eastern Slavic identity envisions the majority group as based on ‘Slavic unity’ and jointly constituted by two primary ethnic groups, languages and cultures that are reproduced in Ukraine: Ukrainian and Russian. Ukrainian and Russian history and culture are basically similar. The Russian culture and language are seen both as ‘rooted’ in Ukraine and as an inseparable ingredient of the Eastern Slavic cultural whole. While the primary candidate for occupying the position of ‘other’ in the ethnic Ukrainian reference system is Russia, for the Eastern Slavic identity holders that ‘other’ is Europe.

¹⁰ Shulman, “The Contours of Civic”, *supra* n. 8. The original argument was based on applying the two alternative conceptualizations of ethnic identity to both Ukrainian and Russian ethnic groups.

¹¹ The author’s notes from the discussion on the presentation by M. Ryabchuk, “Cultural Wars and Rival Identities: Ukraine as a Post-Soviet Ideological Battleground”, Lecture at Columbia University, March 27 2006.

While the ethnic Ukrainian identity has long been conceptualized in Western scholarship as exclusionary, the perception of this identity recently has become more complex.¹² This is due in large part to the unexpected but empirically strong link between the ethnic Ukrainian identity and the push for democracy in Ukraine. Even opponents of the revolution acknowledge the critical role that ethnic Ukrainian mobilization played in the Orange Revolution events.¹³ The latter events were not the only case where that mobilization was important. During the first mass protests against the increasingly authoritarian Kuchma regime in March 2001, the leaders and core groups of the opposition movement came from the ranks or drew heavily on the support of those who can be described as ethnic Ukrainian nationalists. A highly symbolic place in the resistance mythology of that period is occupied by the stories of police raids during which the Ukrainian speaking youth groups were identified and arrested on the streets solely on the grounds of their speaking Ukrainian.¹⁴

However, the ability to generate a democratization agenda has not led so far to a considerable increase in the civilizational attractiveness of Europe-oriented Ukrainian ethnocultural identity among members of the ethnic Ukrainian group who share the East Slavic orientation. Although changes in voting patterns in several regions of central Ukraine during the 2004 presidential elections were taken by some as evidence of the increased reach of the ethnic Ukrainian appeal, more data is needed to corroborate this claim. At the same time, there is less uncertainty about the fact that the presidential elections and their aftermath increased the salience of ethnic, linguistic and regional differences in the country, and brought the concerns about national unity to the forefront of political debates.

For ethnic Russians, the majority of whom reside in the eastern and southern regions that voted overwhelmingly against Yushchenko, the 2004 presidential elections became another important step in the realization of the changed status of their ethnic group in post-Soviet Ukraine. The dissolution of the Soviet Union brought a dramatic change in the position of ethnic Russians across all of the former Soviet republics.¹⁵ Their acceptance of minority

¹² See on this D. Arel, "The 'Orange Revolution': Analysis and Implications of the 2004 Presidential Election in Ukraine", Third Annual Stasiuk-Cambridge Lecture, Cambridge University, 25 February 2005.

¹³ M. Pogrebinski, *Orange Revolution: Versions, Chronicle, Documents* (Evropa, Moscow, 2005).

¹⁴ Павло Солодько "9 березня 2001 року: спогади і прогнози від ініціаторів "України без Кучми"" 09.03.2006 <http://www.pravda.com.ua/news/2006/3/9/39560.htm>

¹⁵ P. Kolstoe, *Russians in the Former Soviet Republics* (Hurst, London, 1995); J. Chinn and R.J. Kaiser, *Russians as the New Minority: Ethnicity and Nationalism in the Soviet Successor States* (Westview, Boulder, CO, 1996);

status proved to be an especially lengthy and controversial process in Ukraine. The size of the group, its influence, long-standing residence and strong beliefs in Ukraine being a part of Russia's civilizational space led in the past, and continues to lead, many representatives of this group to refuse to accept minority status and to claim to be an integral part of a majority group that they describe as being constituted jointly by the Ukrainians and Russians.

The regular questioning of the legitimacy of Ukraine's independence or territorial integrity by some organizations and prominent individual members of the Russian minority has contributed to the continued securitization of the Russian minority question in Ukraine. Instances such as the November 2004 threats to separate from Ukraine and to join Russia, which were articulated by the ethnic Russian governor and council speaker from two eastern regions of Ukraine,¹⁶ or the January 2006 performance in front of the TV cameras by the international youth organization *Proryv*, which is allegedly financed from the budget of the Russian Federation,¹⁷ during which Crimea was symbolically separated from Ukraine, contributed to the perpetuation of distrust between the central government and Russian minority organizations. Ukraine's Euro-Atlantic integration, which is in itself a highly divisive issue in Ukraine, is seen by many of its proponents as, among other things, a kind of insurance against the risks of country disintegration due to the persistence of separatist claims.

While the radicalism of individual community members or organizations cannot be easily countered, the process of acceptance of minority status by the majority of the ethnic Russian community could be facilitated by a set of legislative and policy signals aimed at the further strengthening of the system of legal guarantees of minority rights at the national level. Recent efforts to revise the 1992 law on national minorities and to achieve progress in finalizing a comprehensive document on ethnopolitical development, as well as to ensure the adequate implementation of the provisions of the Framework Convention for the Protection of National Minorities, which Ukraine ratified in 1998, constitute important steps in this direction.¹⁸ It is even more important to find a compromise on the politically charged issue of a special status

D.D. Laitin, *Identity in Formation. The Russian Speaking Populations in the Near Abroad* (Cornell University Press, Ithaca, NY, 1998).

¹⁶ T. Kuzio, "Ukrainian Authorities File Criminal Charges of Separatism", 2 *Eurasia Daily Monitor* (2005), 24 June.

¹⁷ Володимир Гринів, "Луценко проти кримського сепаратизму," *Український вибір*, 24.01.06, <http://uv.ukranews.com/cgi-bin/r6/print.pl>

¹⁸ For an assessment of Ukraine's progress in the implementation of the Framework Convention see Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFCNM), 2002 Opinion on Ukraine, ACFC/INF/OP/I(2002)010, 27/11/2002 (hereafter, "2002 Opinion on Ukraine").

for the Russian language. Ukraine's ratification of the European Charter for Regional and Minority Languages, which came into force at the beginning of 2006, presents new ground for the continuation of domestic dialogue on this issue. The successful completion of these steps is essential for improving the dynamics of majority–minority relations and achieving progress in building a political nation, which is a task that continues to constitute a major challenge for the young Ukrainian state.

II. ADMINISTRATIVE-TERRITORIAL REFORM, ISSUES OF FEDERALISM AND DECENTRALIZATION

Ukraine's constitutional framework of a centralized unitary state with one autonomous region has been the subject of many debates throughout the post-communist period. With respect to minority issues, the following three aspects of these debates are of particular importance: the issue of decentralization, the potential benefits of a federal design for accommodating regional differences, and the status of the Autonomous Republic of Crimea and the region's performance in terms of ensuring interethnic accord and political stability.

A. Decentralization

Analysts of ethnic relations in Ukraine have long argued about multiple problems that the excessive centralization of the Ukrainian state has created for minorities. Central government programmes aimed at addressing specific minority issues are designed and implemented without sufficient input from local self-government bodies and without a strong belief on the part of the local communities that they are the ones that the programmes are intended to benefit. Bodies of local self-government lack both competencies and resources to come up with their own initiatives to support minorities' cultural and educational activities. The distribution of powers between local state administrations and self-government bodies also remains ambiguous and contradictory.¹⁹

¹⁹ V. Stepanenko, "A State to Build, A Nation to Form: Ethno-Policy in Ukraine", in: A.-M. Biro and P. Kovacs (eds.), *Diversity in Action: Local Public Management of Multi-Ethnic Communities in Central and Eastern Europe* (Local Government and Public Service Reform Initiative, Open Society Institute, Budapest, 2001), 309–346.

Such a state of affairs is partly a legacy of the communist period with its bureaucratized and centralized public administration. The state apparatus was a major obstacle on the way to public administration and local self-government reform. The unwillingness to decentralize also was informed by expectations that such a policy would intensify destructive centrifugal tendencies in a polity that was only recently established and whose regional differences were strong and well articulated. As the discussion in the following section will show, recent thinking about the effects of decentralization on state unity has evolved along different lines, allows for a more constructive approach to the problem of decentralization to gain prominence at the top level of the state apparatus.

Territorially concentrated minorities are likely to benefit greatly if comprehensive local government reform takes place in Ukraine. The analysts suggest that a greater degree of self-governance would allow highly concentrated minority groups, such as Hungarians in the Berehivsky district of Trans-Carpathia, Romanians in rural Bukovyna, and Bulgarians and Gagauzians in the Odessa region to address their specific needs in a more satisfactory manner.²⁰ Some of these groups—as well as the Crimean Tatars—have made in the past, or continue to make, demands of territorial autonomy. Given the cautious stance of the international community on the issue of territorial autonomy,²¹ these demands did not receive substantial support on the national and international levels and might become less of an issue—with the exception of the special case of the Crimean Tatars—if a comprehensive decentralization reform were to take place in Ukraine.

A legislative bill amending constitutional provisions on self-government, one critical ingredient of such a reform, was passed in its final reading by the outgoing parliament in the last few months of its legislative term, which expired in March 2006.²² The bill, which is part of a comprehensive deal on constitutional reform agreed by the rival political camps during the Orange Revolution events in December 2004, enhances the constitutional prerogatives of local self-government and opens doors to amend other legislative documents—such as the

²⁰ *Ibid.*

²¹ P. Thornberry and M.A.M. Estébanez, *Minority Rights in Europe* (Council of Europe Publishing, Strasbourg, 2004).

²² At <http://www.rol.org.ua/eng/article.cfm?deid=13>.

budgetary code, laws on local self-government and local state administration—and to radically change the existing practices of local self-government in Ukraine.

B. Debates on Federalism

Ukraine's regional diversity has been a matter of much political discussion since the breakdown of the Soviet Union. Different regional identities, which are based on the distinct politico-economic, cultural and linguistic experiences of being a part of different states,²³ provide for a rich mix of traditions that create both opportunities and challenges for the elite of a newly independent state. The key question of the state-building process—how the constitutional framework can best serve both the accommodation of regional differences and assurance of the country's unity—has solicited many responses.

Federalism was one of the proposed answers articulated by very different political forces. In the early 1990s, unlikely companions, such as national democrats whose electoral stronghold was in western Ukraine and a number of parties based in eastern Ukraine who claimed to be liberal in their orientation, supported, although not at exactly the same time or with the same intensity, the idea of a federal arrangement for Ukraine. Federalism was also seen as a long-term goal for Ukraine by representatives of some minority groups who, like the Romanian activists from Bukovyna, argued that territorial autonomy for compactly settled minorities could be a stepping stone to such an arrangement.²⁴

The Ukrainian elite's political views on federalism, however, evolved substantially in the course of addressing practical issues of state building in the early and mid-1990s. Centrifugal tendencies in the eastern Ukraine, as well as separatist claims in Crimea and Transcarpathia

²³ Those include: The Polish-Lithuanian Commonwealth, the Russian Empire, the Ottoman Empire, the Austro-Hungarian Empire, Poland, Czechoslovakia, Hungary, Romania and the Soviet Union.

²⁴ K. Wolczuk, "Catching up with 'Europe'?: Constitutional Debates on the Territorial-Administrative Model in Independent Ukraine", 12 *Regional and Federal Studies* (2002), 65–88; A detailed review of the Ukrainian literature on this topic can be found in T. Kuzio, "Center-Periphery Relations in Ukraine: Regionalism, Federalism and National Integration", in: J. Rose and J. Traut (eds.), *Federalism and Decentralization: Perspective for the Transformation Process in Eastern and Central Europe* (George C. Marshall European Centre for Security Studies, Lit Verlag, Münster, 2001), 329–347; G. Sasse, "The New Ukraine: A State of Regions", J. Hughes and G. Sasse (eds.), *Ethnicity and Territory in the Former Soviet Union: Regions in Conflict* (Frank Cass, London, 2002), 69–101.

exacerbated by the economic crisis of the early 1990s, made the political elite wary of the idea of a federal state. The constitutional bargaining process—dominated by the president, whose power maximization instincts did not favour the idea of a federal arrangement—rather led to the adoption of the 1996 constitution, which established a unitary model of government with one autonomy unit (the Crimea) in Ukraine.

Throughout the period that followed, the federalist idea received little public attention. For example, Kuzio's analysis of the election manifestos of the 30 political parties and blocs that took part in the 1998 parliamentary election did not identify a single programme advocating federalism. The survey results for that period also indicate a low level of support for the federalism idea at the mass level.²⁵

This situation changed dramatically as a result of the 2004–2006 electoral cycle in Ukraine. The main change was the emergence of a powerful political organization, the 'Party of Regions', whose programme contains, as one of its cornerstones, a promise of federalization reform. This party, currently led by Viktor Yanukovych, Yushchenko's rival in the dramatic 2004 presidential elections, relies on essentially the same electorate that supported Yanukovych in the presidential elections. The party received more than 35% of parliamentary seats in the March 2006 elections and gained a similar share of seats after new elections were called in September 2007. It set a new precedent for a pro-federalism political party to gain such legislative weight in the Ukrainian parliament.

The strategy that the party adopts in the wake of the most recent parliamentary will determine whether the federalism plans remain on the country's political agenda. The main politically articulated alternative to the federalization plan is the idea of a decentralized unitary state, whose main proponents sit in the headquarters of the pro-Yushchenko 'Our Ukraine' party. Decentralization is envisioned as being coupled with redrafting administrative-territorial borders but without changing the unitary nature of the state. The essence of reforms proposed by the pro-presidential forces is to decentralize powers and strengthen local self-government

²⁵ Kuzio, "Center-Periphery Relations", *supra* n. 24; H.A. Miller, F.T. Klobucar and W. Reisinger "Establishing Representation: Mass and Elite Political Attitudes in Ukraine", in: S.L. Wolchik and V.A. Zviglianich (eds.), *Ukraine. The Search for a National Identity* (Rowman and Littlefield Publishers, Lanham, MD, 2000), 213–235.

on the municipal and district levels and to redraft administrative-territorial borders in order to improve the ability of self-government bodies to address the needs of communities.²⁶

The idea of redrafting administrative-territorial bodies, which can have significant implications for the situation of minority groups, has proved to be a very controversial issue and the initial attempts in 2005 to gain public support for this particular aspect of the government plan failed. The main opposition force's fierce attacks on the reform plans were conditioned by the perception that territorial redrafting would have a strong impact on their ability to control the political process in stronghold areas of their political support, the eastern regions of the country. The overall opposition to government plans was also strengthened by the fact that the government reform programme avoided concentrating powers at the regional levels, something that many regional elites were interested to see, as well as what the federalism alternative is likely to offer.

The pro-presidential camp criticizes federalism plans on a number of grounds. Federalism is seen as enhancing the potential to consolidate and politically entrench regional differences, which is something that many in the pro-presidential camp believe has not yet happened. Federalism is also seen as having the potential to increase antagonism between different regions of the country and to complicate the prospects of achieving success in the continuing process of constructing national political identity in Ukraine, which is a process that the central elite continues to perceive as one of central importance. Given the weakness of state institutions and the legal system, federalization might also facilitate the capturing of regional-level state institutions by special interests—that is, by the dominant politico-economic groups in the region.

Opponents of federalism also point to the inability of the Donetsk-based elite, the main driving force behind the federalization agenda, to secure the adequate implementation of democratic norms and human rights in their region. The Donetsk region in the eastern part of Ukraine, which is the most populous region of the country and the largest regional contributor to the gross national product, used to come frequently to national attention due to the region's

²⁶ For a presentation of the government plans in 2005 by Yuschenko's close associate and the main architect of the administrative-territorial reforms Roman Bezsmertny, see <http://www.niss.gov.ua/Table/Adminref/002.htm>. The presentation is based on a detailed analysis of the situation in some of the Ukrainian administrative-territorial units and also draws on the Polish and French experiences of reform.

dismal record of securing the implementation of principles of political pluralism and free market economics. The region also became a main source of academic studies on state capture and neo-patrimonial practices in post-Soviet Ukraine.²⁷

Since neither the pro-presidential nor the opposition camp currently controls a share of seats in the new parliament that will be sufficiently large to allow the full-scale implementation of their vision of reform, the current administrative-territorial organization of the state is likely to be maintained for the near future and to be subjected to comprehensive decentralization tests rather than to a radical redrafting of administrative-territorial borders.

C. *The Crimean Autonomy Experiment*

As the only region where the majority of the population belongs to an ethnic minority, Crimea was expected to receive special treatment in the framework of the Ukrainian state. Ethnicity became politicized in the region around the time the Soviet Union collapsed due to a large number of factors. These included, among others, a social make-up peculiarly shaped by the Soviet period and the ideological outlook of Crimea's ethnic Russian majority, competing 'ownership' claims on the symbolic and politico-economic situation on the Crimean peninsula on the part of Crimean Tatars returning from their long period of exile and the inability of the new Ukrainian state to address adequately the acute economic crises of the early 1990s.

A long and protracted process of bargaining and negotiation between the central and regional elites, which some authors consider to have been as important to conflict prevention as the eventual institutional outcomes it generated,²⁸ led to the entrenchment of autonomy provisions in the 1996 Ukrainian Constitution and to the institutionalization of the relationship between the centre and the autonomy. The adoption of the 1998 Crimean Constitution, which helped to clarify certain aspects of this relationship but left some others ambiguously or controversially

²⁷ K. Zimmer, "The Captured Region: Actors and Institutions in the Ukrainian Donbass", in: M. Tatur (ed.), *The Making of Regions in Post-Socialist Europe—The Impact of Culture, Economic Structure and Institutions*, Vol. II (VS Verlag für Sozialwissenschaften, Wiesbaden, 2004), 231–347.

²⁸ G. Sasse, "Conflict Prevention in a Transition State: the Crimean Issue in Post-Soviet Ukraine", 8 *Nationalism and Ethnic Politics* (2002), 1-26. A detailed chronology of events in Crimea during the first half of the 1990s is available in M. Drohobycky (ed.), *Crimea: Dynamics, Challenges and Prospects* (Rowman and Littlefield Publishers, Lanham, MD, 1995).

stipulated, further underscored the fact of Crimea's integration into Ukraine's legal and political space.

There is general agreement in the literature on post-Soviet Ukraine that granting territorial autonomy status to Crimea played a positive role in averting a potential ethno-territorial conflict in Ukraine. The willingness of the central Ukrainian elites to seek compromise as well as the failure of the most radical secessionist forces in Crimea to sustain mass political mobilization and fully to engage Yeltsin's Russia in the dispute over the peninsula played a crucial role in achieving such an outcome. The efforts of international organizations also contributed to the success in avoiding large-scale confrontation and violence. Their involvement in preventing conflict was manifested most pointedly in the 'quiet diplomacy' of the office of the OSCE High Commissioner on National Minorities (HCNM) and the OSCE's long-term Mission to Ukraine whose work, especially during the turbulent years surrounding the election of the first and only president of the Crimean autonomous region, helped to reduce the tensions.²⁹

There is much less certainty both in academic and policy-making communities about the ability of the current institutional arrangement to ensure both long-term stability between the Crimean autonomy and the centre as well as interethnic peace and accord inside the region. The problems of both Crimean separatism and interethnic tensions inside the region might temporarily have become less acute after the adoption of the 1996 and 1998 constitutional documents and the realignment of political forces inside the autonomy but these problems keep recurring as the process of post-communist transformation in Ukraine continues to advance.

There was only relatively weak support by the official leadership of the Crimean autonomy for the secessionist rhetoric advanced by some representatives of local self-government from the eastern regions of Ukraine during the dramatic stand-off at the time of the 2004

²⁹ V. Kulyk, "Revisiting a Success Story: Implementation of the Recommendations of the OSCE High Commissioner on National Minorities to Ukraine, 1994–2001", in: W. Zellner, R. Oberschmidt and C. Neukirch (eds.), *Comparative Case Studies on the Effectiveness of the OSCE High Commissioner on National Minorities*. CORE Working Paper Series, Working Paper 6, Hamburg, 2002, available at: http://www.core-hamburg.de/documents/32_CORE_Working_Paper_6.pdf; K. Buscher, "The Missions to the Republic of Moldova and Ukraine: A Double-Entry Balance Sheet", in: IFSH (ed.), *OSCE Yearbook 1999* (Institute for Peace Research and Security Policy, Hamburg, 1999): 195–210; W. Kemp, *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities* (Kluwer Law, The Hague, 2001).

presidential elections. This has been taken by some to be an indication that the autonomous region's elites are satisfied with the constitutional deal that they managed to secure during the 1996–1998 period. Status insecurity caused by the centralized nature of the government, the argument goes, caused regional elites from the eastern regions to mobilize during the Orange Revolution events while the Crimean elites, which are protected by the autonomy status of the region, felt much less threatened and thus lacked reasons to mobilize.

What this argument fails to take into account is the internal dynamic of regional political competition. There is abundant evidence that the logic of ethnic outbidding continues to dominate the political process in the region. In order to attract popular support, parties oriented towards the ethnic Russian majority compete in trying to appear most supportive of ethnic claims, which causes an inevitable spiral toward conflict with other ethnic groups in the region—primarily with the Crimean Tatars—and complicates relations with the national centre.

How the prominence of radical political and civic organizations can affect existing patterns of relations between the national autonomy and the centre is illustrated by the summer 2005 dispute over the opening of a Ukrainian-language school in one of the villages in Crimea. The decision to make Ukrainian the language of instruction in the newly built school led a number of pro-Russian organizations to coordinate rallies and demonstrations aimed at preventing the opening of the school. The issues involved in the case resonated strongly across Ukraine and the case was widely perceived as unfair due to the fact that there are currently 619 Russian language schools in Crimea and only 11 and 6 schools where the language of instruction is Crimean Tatar and Ukrainian, respectively. National newspapers also cited the 2001 census statistics, according to which the share of Crimean Tatars and Ukrainians in the total population of the peninsula is about 12% and 24% (about 10% of the population cited Ukrainian as their native language).³⁰

The autonomy's inability to address adequately the plight of Crimean Tatars has been, however, the main failure of the autonomy in the area of ethnic relations to date.³¹ The numerous problems relating to the integration of Crimean Tatars, who have been returning to

³⁰ See, for example, M. Kasianenko, "Language Wars", 147 *Den'* (2005), 16 August.

³¹ N. Belitser, "Crimean Autonomy: Positive and Negative Aspects in Terms of Ethnic Conflict", Paper presented at the International Conference on Regional Autonomy of Ethnic Minorities, Uppsala University, 12–17 June 2003.

the peninsula after many decades of Soviet deportation, have multiple causes located at different levels of the Ukrainian government. These problems range from dismal housing conditions and land ownership disputes to a lack of support for cultural and educational institutions. In attempting to deal with the challenges faced by the Crimean Tatar population, significant resources have already been invested both by the Ukrainian government and by the international community, whose humanitarian presence in the region has been represented primarily through the UN and Council of Europe institutions. However, addressing the problems of Crimean Tatars on the level of the Crimean autonomy has often proved to be highly controversial.

There has been no consensus within the dominant Russian segment of the Crimean population and among the peninsula's population at large about the moral and political responsibility of the central and autonomy governments in Ukraine to ensure the proper social and economic conditions for the Crimean Tatars' return. Russian political and community organizations, as well as some main political parties, such as the Crimean Republican Organization of the Communist Party of Ukraine, whose strong support in the region is not based predominantly on ethnic forms of appeal, campaigned repeatedly against what they portrayed as "exclusionary and unwarranted privileges for one ethnic group".³² By this they meant various forms of affirmative actions intended to address the problems of the Crimean Tatar community.

The internal dynamic in the Crimean Tatar community has also, however, contributed to the tense character of interethnic relations and to the ability of radical Russian political organizations to mobilize support on ethnic grounds. *Mejlis*, the main representative body of the Crimean Tatars, has long maintained the creation of ethno-territorial autonomy in Crimea as its key programmatic goal, feeding a sense of insecurity and resentment among the rest of population on the peninsula.³³ Crimean Tatar leaders also opted to focus their organizational efforts on strengthening *Mejlis*, which continues to be seen by the majority on the peninsula as an attempt to create representative structures that are parallel to the official Crimean parliament and lower level self-government bodies. Concentrating their efforts on the

³² See the speech by Sergei Tsekov, the head of the 'Russian Community of Crimea', which is one of the most influential Russian organizations on the peninsula, at the August 2005 Livadia roundtable on ethnic policy published in *Krymskaya Pravda*, N 153, 19 August 2005.

³³ Yushchenko's appeal to discard this claim.

construction of ethnically defined political structures and discouraging group members from pursuing political careers through mainstream political parties was perceived by the Crimean Tatar leaders as an optimal strategy for meeting the needs of the Crimean Tatars as a group.³⁴ This strategy, which might be considered a rational response to the largely unfriendly environment the Crimean Tatars faced upon their return to the peninsula, has now nevertheless become part of a vicious circle of suspicion and mutual distrust between the ethnic communities in Crimea.

III. MINORITIES' PARTICIPATION IN DECISION MAKING

The issue of effective participation of minorities in public life has become one of the focal points of current international discussion regarding optimal methods for organizing majority–minority relations.³⁵ While the issues of self-governance and territorial autonomy that were touched upon in the previous section could be considered as one dimension of such participation,³⁶ the inclusion and integration of minorities into institutions responsible for the governance of the state as a whole, as opposed to creating special institutions for minority self-governance, constitutes another important dimension. The latter includes forms of minority participation in public life such as special arrangements for minority representation in electoral and party systems at the central, regional and local levels of government, in advisory and consultative bodies.

A. Electoral and Party Systems

The Lund Recommendations, a key recent document addressing the issue of minority participation, considers the establishment of political parties based on ‘communal identities’

³⁴ Crimean Tatars have traditionally appeared in the structures and on the electoral lists of the *Rukh* party, one of Ukraine’s oldest national democratic parties. They participate in various types of *Rukh* political activity as *Mejlis* representatives rather than in their individual capacity. *Mejlis*’ long term alliance with the *Rukh* party is partly a result of the need for *Mejlis* to gain political representation at the national level. Their alliance has been also made possible by their programmatic similarities on a large set of issues related to the Soviet past.

³⁵ See Special Issue. “The Lund Recommendations on the Effective Participation of National Minorities in Public Life-Five Years After and More Years Ahead”, 12 *International Journal on Minority and Group Rights* (2005).

³⁶ See “The Lund Recommendations on the Effective Participation of National Minorities in Public Life and Explanatory Note”, at www.osce.org/documents/hcnm/1999/09/2698_en.pdf.

to be one of the legitimate forms of inclusion of minorities into the political process. While acknowledging ethnic parties as one form of organizing politics, the document abstains from wholeheartedly endorsing it. Such a cautious approach, although characteristic of most of the provisions in the Lund Recommendations, in this particular case probably reflects the controversy that the issue of ethnic political parties causes in political science literature. Many in the political science discipline argue that party politics should be structured along ideological rather than ethnic lines, implying that broadly-based parties should represent a whole range of interests, including those of persons belonging to national minorities.³⁷

Ukraine opted for party registration requirements that do not prohibit minority-based political parties but are very demanding in terms of securing a wide regional distribution of the support base. To establish a political party, Article 10 of the 2001 Law on Political Parties requires that 10,000 signatures be collected in no less than two-thirds of the regions of Ukraine. The law further specifies that these signatures should be collected in no less than two-thirds of the districts of these regions. Among the few political parties established by ethnic minorities, the Russian minority parties have been the most prominent. Their electoral performance, however, historically has proven rather poor, which reflects a stable pattern of ethnic Russians' voting for mainstream political parties but is also a function of the high degree of fragmentation among political parties appealing to the ethnic Russians.

The Ukrainian electoral legislation has proven much less restrictive than the legislation of some other post-Soviet republics that faced similar challenges of political transformation while aspiring to reintegrate into Europe. Ukraine, which opted for a zero-option citizenship law at the start of its transition, granted the right to vote to the vast majority of its residents.³⁸ Unlike some Baltic republics, it also abstained from introducing strict linguistic requirements to stand for office. The Venice Commission review of the Ukrainian electoral legislation also mentions that the territorial concentration of minorities was taken into account in the drawing of constituency boundaries.³⁹

³⁷ For debates on this issue, see, for example, D. Horowitz, "Constitutional Design: Proposals versus Processes", in: A. Reynolds (ed.). *The Architecture of Democracy. Constitutional Design, Conflict Management and Democracy* (Oxford University Press, Oxford, 2002); and A. Lijphart, "The Wave of Power-Sharing", in: *ibid.*

³⁸ The situation of returning Crimean Tatars was much more complicated. In this respect see Kulyk, "Revisiting a Success Story", *supra* n. 29.

³⁹ European Commission for Democracy Through Law, "Electoral Law and National Minorities", Strasbourg, 25 January 2000.

The success of the ideological structuring of party competition is, however, far from certain in Ukraine. Introduction of a proportional representation system for the 2006 parliamentary elections instead of a mixed electoral system (which was used in the 1998 and 2002 elections) is likely to contribute to the further regionalization of the party system. The fortunes of the main political parties in Ukraine are much more dependent on parties' ability to cater to regionally concentrated voters than on their success in advancing political programmes based on universal ideologies. Similar to ethnic parties, regional parties can be conceptualized as particularistic parties.⁴⁰ While ideological political competition presupposes that party contestation is based on alternative conceptions of public good or alternative ways of achieving desirable collective outcomes, party competition structured along regional lines does not require the articulation of programmatic messages that are universal in their appeal.

B. Special Arrangements for Minority Representation at Different Levels of Government

While international experience suggests that there are numerous mechanisms for ensuring minority representation at the central, regional and local levels of government, very few of those mechanisms have been tried in Ukraine. This is due in part to the fact that the country's largest minority, the Russians, have enjoyed a higher social status in Ukraine since imperial times and because there is very little reason to believe that they suffer from under-representation in the government structures of post-communist Ukraine. For smaller ethnic minorities, however, the problem of under-representation in government institutions has existed from the very start of Ukraine's post-communist transition.

This problem became especially acute for the Crimean Tatars and other ethnic groups who returned to Ukraine following their deportation in the Soviet period. A brief experiment with using quotas for representation of deported people in the regional parliament of Crimea took place in the middle of the 1990s. The amendment to the electoral law for the 1994 elections to the Crimean parliament reserved fourteen seats for representatives of the Crimean Tatars and one seat each for the other former forcibly displaced people—ethnic Armenians, Bulgarians,

⁴⁰ H. Kitschelt, "Linkages Between Citizens and Politicians in Democratic Polities", 22 *Comparative Political Studies* (2000), 845–879.

Greeks and Germans.⁴¹ This quota system was in place only for one parliamentary term and was abandoned entirely for the subsequent regional elections due to the lack of support for the quota principle from the national parliament, where representatives of the Crimean Russian majority were able to construct situational coalitions of centrist and leftist factions to oppose any calls for quotas in draft electoral laws for the subsequent Crimean elections. The majoritarian electoral formula used in the 1998 regional elections did not allow a single Crimean Tatar representative to become a member of the 100 seat regional assembly. The situation in regard to representation in the regional assembly improved after the 2002 regional election, in which seven Crimean Tatars were able to win elections in single member districts.⁴²

No attempts to secure a guaranteed representation of Crimean Tatars or other minorities on the local councils or in the various structures of executive government have found support among national or regional lawmakers. The available data on Crimean Tatars' employment in the government suggests a continuing pattern of under-representation. By the end of the 1990s the share of Crimean Tatars in the staff of the Crimean regional government, individual ministries and departments, and local executive committees did not exceed, with the exception of the Crimean Committee for Nationalities and Deportees and local inter-ethnic relations sections, 1.5–3%.⁴³ While the situation has been slowly improving in recent years, the Crimean Tatars' representation in structures of the executive government remains well below their 12% share in the general population in Crimea.

C. Advisory and Consultative Bodies

One recent account of the activity of the Office of the HCNM suggests that minority participation in advisory or consultative bodies sometimes might be more effective than

⁴¹ A. Wilson, "Politics In and Around Crimea: A Difficult Homecoming", in: E. Allworth (ed.), *The Tatars of Crimea: Return to the Homeland: Studies and Documents* (Duke University Press, London, 1998).

⁴² N. Belitser, "'Indigenous Status' for the Crimean Tatars in Ukraine: A History of a Political Debate", Paper prepared for the ESRC funded Project "'Fuzzy Statehood' and European Integration in Central and Eastern Europe", University of Birmingham, UK, 2002. Available at www.iccrimea.org.

⁴³ Ukrainian Center for Independent Political Research, "The Punished People: Crimean Tatars and Prospects for Integration into the Ukrainian Society", *5 Ethnic Policy Herald* (1999), 17 May. Available at www.ucipr.kiev.ua; E. Chubarov, "The Review of Problems of Inequality and Discrimination in Ukraine, The Autonomous Republic of Crimea", Centre of Information and Documentation of Crimean Tatars (2003). Available at [www.cidct.org.ua/en/studii/3-4\(2003\)/4.html](http://www.cidct.org.ua/en/studii/3-4(2003)/4.html).

representation in parliament or other legislative structures.⁴⁴ Such bodies can provide minorities with an opportunity to have a direct input into the policy-making process on issues of minority concern, provided that these bodies are representative, adequately funded and regularly consulted by the authorities. Experiences similar to those cited in the abovementioned study compel one to pay close attention to the roles played by the advisory bodies.

Ukraine has a very developed infrastructure of formal advisory bodies on minority-related issues. According to the 1992 Law on National Minorities, advisory bodies composed of members of national minorities can be founded at local councils on a voluntary basis. A network of such bodies has been established in areas with substantial proportions of national minorities. The Council of Representatives of the all-Ukrainian Civil Organizations of National Minorities operates under the State Committee on Ethnic and Migration Affairs, which is the central executive authority in the sphere of inter-ethnic relations. A special Council of Representatives of the Crimean Tatar People was also established in 1999 by President Kuchma to address the specific concerns of Crimean Tatars.⁴⁵

To date, the effectiveness of these consultative bodies has not become the subject of a systematic investigation. Fragmented pieces of evidence, however, suggest that these bodies have not become particularly influential in Ukraine. One source, for example, reported that neither of the two main councils mentioned above held any official session in 2005.⁴⁶ This might very well reflect the low level of priority attributed to minority-related issues by the new Ukrainian authorities, which face numerous challenges across a wide range of policy issues.

IV. LANGUAGE USE AND LINGUISTIC POLICY

⁴⁴ S. Holt, "The Lund Recommendations in the Activities of the HCNM" 12 *International Journal on Minority and Group Rights* (2005), 168-189.

⁴⁵ See Kulyk, "Revisiting a Success Story", *supra* n. 29.

⁴⁶ Ukrainian Center for Independent Political Research, "National Ethnic Policy in 2005: Failings and Successes", 1 *Ethnic Policy Herald* (2005).

Each major ethnic group in Ukraine, including the ethnic Ukrainian majority, voices concerns about the status or situation with regard to the use of their language.⁴⁷ Debates on the status of the Russian language, however, have been the most politically salient linguistic issue throughout the post-communist period. One indicator of its salience is the frequency with which each issue is raised in the Ukrainian parliament. The head of the parliamentary committee on culture, for example, claimed in the early 2006 that the majority of the eighteen different draft laws that were under consideration in the committee dealt with the problem of the status of the Russian language.⁴⁸

The 1996 Constitution, similar to the 1989 Ukrainian Soviet Socialist Republic language law, which continues to regulate the issue of language use in the independent Ukraine, accords Ukrainian the status of ‘state’ language. The constitution also “guarantees the free development, use and protection of Russian and of other languages of national minorities of Ukraine”.⁴⁹ This relegation of Russian to the status of minority language and the practical implications of such a constitutional formulation is what causes the resentment of Russian language rights activists. Their arguments, based on appeals to notions of human rights and liberal values, are well articulated and widely disseminated in Ukraine, as are the arguments of their opponents.⁵⁰

The defenders of the constitutional status quo on the issue of languages see the privileged status of the Ukrainian language as a form of positive discrimination or a sort of affirmative action aimed at strengthening and revitalizing a language that was historically discriminated

⁴⁷ For a recent detailed discussion of language issues in Ukraine see V. Kulyk, “Constructing Common Sense: Language and Ethnicity in Ukrainian Public Discourse”, 29 *Ethnic and Racial Studies* (2006), 281–314; and Stepanenko, V. “Identities and Language Politics in Ukraine: The Challenges of Nation-State Building”, in F. Daftary and F. Grin (eds.) *Nation-Building, Ethnicity and Language Politics in Transition Countries* (Local Government and Public Service Reform Initiative, Open Society Institute, Budapest, 2003), 107–137; Arel, “Interpreting Nationality and Language”, *supra* n. 3; Kulyk. “Revisiting a Success Story”, *supra* n. 29; J.G. Janmaat, *Nation-Building in Post-Soviet Ukraine. Educational Policy and the Response of the Russian-Speaking Population* (Royal Dutch Geographical Society, Universiteit van Amsterdam, Amsterdam, 2000). For an earlier treatment of this topic, see D. Arel, “Ukraine: The Temptation of the Nationalizing State”, in: V. Tismaneanu (ed.), *Political Culture and Civil Society in the Former Soviet Union* (M.E. Sharpe, Armonk, NY, 1995).

⁴⁸ Editorial. “Ющенко попросили застосувати проти Януковича й Вітренко всі способи впливу”. www.ПРАВДА.com.ua. 04.03.2006

⁴⁹ Article 10 of the Constitution of Ukraine.

⁵⁰ For a detailed list of key arguments used by the two sides see Stepanenko. “Identities and Language Politics”. *Supra* n. 47.

against.⁵¹ Granting a similar status to Russian, in their view, will undermine efforts to rehabilitate the Ukrainian language and will further strengthen its key competitor, which has already acquired communicative dominance⁵² as a result of the historical persistence of policies aimed at the linguistic assimilation of Ukrainians.

A. *Language Use*

The data on regional and socio-linguistic characteristics and on patterns of language use in Ukraine have been examined and studied extensively. Leaving aside problems with the quality and interpretation of the data,⁵³ there are many general features of the language situation in Ukraine that remain relatively uncontested. In terms of geographical distribution, the Ukrainian language is predominant in the western part of the country and in rural areas across most of the country, whereas Russian is prevalent in cities outside the western part and in the southeastern part of the country. The majority of the country's population is bilingual in Ukrainian and Russian—with a much higher proportion of the bilinguals among Ukrainian-speaking ethnic Ukrainians than among Russian-speaking ethnic Ukrainians and ethnic minorities.

In terms of language use, regular surveys conducted by the Institute of Sociology of the National Academy of Science provide data that allow some observations to be made about continuity and changes in linguistic practices or, as some scholarship suggests, in preferences over linguistic choices.⁵⁴ One frequently asked question concerns the so-called “native” language. Responses to this question are provided in Table 1.

⁵¹ See, for example, an interview with Olexander Maiboroda, the head of the Department of Ethnopolitics at the Institute of Political and Ethnonational Studies, National Academy of Science, published in 140 *Ukraina Moloda*, (2005), 2 May.

⁵² On the issue of the communicative dominance of the Russian language see L. Masenko, *Language and Politics* (Soniashnyk, Kiev, 1999).

⁵³ See, in particular, Janmaat, *Nation-Building in Post-Soviet Ukraine*, *supra* n. 47; Stepanenko, “Identities and Language Politics”, *supra* n. 47; and Arel, “Interpreting Nationality and Language”, *supra* n. 3.

⁵⁴ Arel, “Interpreting Nationality and Language”, *supra* n. 3.; Uehling, “The First Independent Ukrainian Census”, *supra* n. 3.

Table 1. What is your native language?												
	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Ukrainian (%)	62.3	59.4	62.5	62.4	61.9	61	63.8	59.9	63.9	58.9	61.1	64.3
Russian (%)	34.7	37.8	36.1	35.1	36.5	36.1	35.1	38.1	34.5	38.1	35.7	34.1
Other (%)	2.6	2.7	1.4	2.5	1.5	2.9	1.2	1.8	1.5	1.5	1.8	1.5
Ukrainian and Russian (%)	–	–	–	–	–	–	–	–	–	1.3	1.4	–
No answer (%)	0.4	0.0	0.0	0.0	0.1	0.0	0.0	0.1	0.1	0.1	0.1	0.0

Source: N.Panina, *Ukrains'ke suspil'stvo 1994-2005: sotsiologichnyi monitorynh* [Ukrainian Society 1994-2005: Sociological Monitoring] (Sophia, Kiev, 2005).

The responses to this question vary over a rather narrow range. The only data that yields itself to the suggestion of a trend is responses to an option about the native language other than Ukrainian or Russian. These suggest that there is a decline in the share of people whose native language is something other than the two major languages in Ukraine. With respect to these two languages, the latest polls registered a slight increase in the share of people who claim Ukrainian as their native language and a decline in the share of people who identify themselves as native Russian speakers. The shares of native Ukrainian speakers and native Russian speakers were, respectively, at their record high and record low in 2005. The table also indicates that the share of people who claimed both Ukrainian and Russian as their native language (the question was asked only in 2003 and 2004) was very low.

Another question that is asked in the survey concerns the language used predominantly in family communication. Responses are documented in Table 2.

Table 2. Which language do you predominately use at home?												
	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Mainly Ukrainian (%)	36.7	31.9	36.9	38.2	37.6	36.3	39.1	36.9	38.2	38.1	38.4	41.8
Mainly Russian (%)	32.4	32.8	33.1	34.5	33.4	33.6	36.0	36.7	33.2	36.0	34.3	36.4
Both Ukrainian and Russian (%)	29.4	34.5	29.6	26.8	28.4	29.0	24.8	25.8	28.0	25.2	26.3	21.6
Other (%)	0.7	0.9	0.4	0.6	0.5	1.1	0.2	0.6	0.5	0.7	0.9	0.2
No answer (%)	0.8	0.0	0.0	0.0	0.1	0.0	0.0	0.1	0.1	0.1	0.1	0.0

Source: N.Panina, *Ukrains'ke suspil'stvo 1994-2005: sotsiologichnyi monitorynh* [Ukrainian Society 1994-2005: Sociological Monitoring] (Sophia, Kiev, 2005).

The table suggests that, while the situation with regard to the use of languages in the private sphere is relatively stable, there has been a discernible rise in the number of persons that use predominantly Ukrainian and predominantly Russian in the family setting. The number of respondents in the latter category peaked in 2001 while the number of those in the former peaked in 2005. The increase in membership of both groups over the entire period analysed could be attributed in large part to the decline in the number of people who stated that they used both languages depending on the circumstances.⁵⁵ The number of those who claimed to use other languages was well below 1% for most of the period and the annual fluctuations reported in the table do not allow one to make judgments about a long-term decline or increase in the usage of other languages in a private setting.

The fact that the number of persons that claimed to use predominantly Ukrainian peaked in 2005 and the number of persons that claimed to predominantly use Russian also increased to its second highest level recorded in the annual surveys might be a product of the increased salience of identity-related issues in the course and the aftermath of the Orange Revolution events. It is well established in the literature that language is an important marker of identity

⁵⁵ Anthropological or socio-linguistic research might be required to shed some light into what respondents actually mean when they claim to use both languages at home depending on the situation. Choosing this option might again reflect the preferences or normative beliefs of respondents rather than the actual practices of their family communication.

in Ukraine and its symbolic significance might have grown both for Ukrainian speakers and for Russian speakers in the politically polarized setting of the 2004 presidential elections.

A similar pattern, although less pronounced and longitudinally inconsistent, characterized the respondents' answers to another question on language-related matters in 2005. The Institute of Sociology's annual survey asked respondents whether they supported granting the Russian language an official status. The respondents' answers in 2005 were distributed as follows: 34.4% (as compared to 34.1% on average for the entire 1994–2005 period) were against, 16.8% (18% on average) stated that it was difficult to say, 48.6% (47.7%) answered yes, and 0.1% (0.2%) did not answer. Since the question did not include an explanation of what the “official” status means and the questionnaire did not contain any other direct questions about language status it is not possible to estimate the level of public support for other more precisely formulated measures of state support for the Russian language that could be envisioned. The available data indicates only that slightly less than half of the population consistently supported granting Russian some sort of official recognition.

Overall, all the survey results cited above point to the fact that no dramatic changes in the patterns of language use or in linguistic preferences has taken place during the post-communist period, which is not counterintuitive given the shortness of the time span analysed and the fact that linguistic attitudes and preferences are among the most constant personality traits. Linguistic policy is an area where short-term fluctuations could more easily occur and where many political battles take place.

B. Linguistic Policy

The rehabilitation and revitalization of the Ukrainian language has been a major, albeit highly controversial, focus of state linguistic policies throughout the post-communist period. The 1989 Law on Languages, which declared Ukrainian the state language, provided an important impetus for such policies. The special status of Ukrainian was reiterated in the 1996 Constitution and confirmed in the 1999 ruling of the Constitutional Court, the highest court in the land.⁵⁶ A number of other legal documents, including laws on broadcasting, education,

⁵⁶ For a detailed discussion of these legal documents see Stepanenko, “Identities and Language Politics”, *supra* n. 47.

advertisement, self-government and judicial administration, as well as rules and norms adopted by such regulatory agencies as the State Committee for Television and Radio Broadcasting and the National Television and Broadcasting Council also shape the legal framework in which Ukrainian and other languages defined as minority languages function in Ukraine.

Attempts to revitalize Ukrainian have not proven particularly controversial with smaller ethnic minority groups whose linguistic practices were only marginally affected by them. As Stepanenko notes, ethnic minorities with a high level of cultural and linguistic autonomy, such as the Hungarians, Romanians and Poles, were not threatened by the new state's policies, which were aimed primarily at the de-Russification of Ukraine's public sphere. Among the ethnocultural communities that did have problems with the new policies and voiced protests or concerns about them, however, were ethnic Russians, primarily, as well as the highly Russified minorities such as the Belorussians, Jews and, very importantly, the Russian-speaking ethnic Ukrainians.⁵⁷

The salience of the linguistic de-Russification issue has been raised routinely during national election campaigns. Various political forces competing to position themselves as the representatives of the Russian-speaking population have run their electoral campaigns throughout the postcommunist period on the slogans of granting the status of second state language to Russian. Albeit to a lesser extent, the same issue has also been an important mobilizing factor for political parties appealing to Ukrainian speakers and advocating state support for the Ukrainian language during the early 1990s. As has been frequently noted by analysts of Ukrainian affairs, political attention to the issue of the Russian language status usually has waned after the elections although the issue continues to remain on the public discourse agenda.

Hesitant implementation of the ambitious agenda for the revitalization of the Ukrainian language and the conscious decision on the part of state institutions not to enforce some of the legal and administrative regulations on language use in the public domain are among the main factors explaining the lack of sustainability in collective political actions aimed at the emancipation of the legal status of the Russian language. These factors played a major role in

⁵⁷ *Ibid.*

reducing political tensions and defining the actual (as opposed to formal) language regimes across various public spheres, including mass media and education.

The chosen approach towards implementation of the programme of revitalization of the Ukrainian language, as well as a complex interplay of economic factors favouring Russian-language media products have contributed to the fact that the Russian language continues to dominate the mass media, although there is substantial regional and segmental variation in the extent of this domination. One recent academic study cites figures according to which the proportion of newspapers and magazines printed in the Ukrainian language in 2000 was, respectively, 35% and 12%. The share of Ukrainian-language TV programmes was 18% and the share of Ukrainian-language books on the Ukrainian market was 10%.⁵⁸ Another source reports that, in 2001, Ukrainian-language newspapers and books occupied 20% and 25% of the market, respectively. The share of Ukrainian in TV and radio broadcasting was about 10%.⁵⁹ Overall, there was a public acknowledgment on the part of the authorities that the use of the Ukrainian language in various media segments by the end of Kuchma's ten-year presidency had diminished even by comparison to the early 1990s.⁶⁰

Given the private ownership of the main electronic and printing media outlets in Ukraine, various regulatory mechanisms have constituted the main tool of government intervention in the sphere of mass media. In order to respond to the voices that consider the existing situation to be highly discriminatory against Ukrainian speakers, a number of measures were adopted by the government during the second term of Kuchma's presidency. Most prominently, these included the short-lived attempts during the 2000–2001 period to enforce existing regulations that required newspapers produced in Russia and circulated in Ukraine to abide by their registration documents, which obliged the newspapers to publish material in Ukrainian, open offices in Ukraine and use more of the Ukrainian language in their editions sold in Ukraine.⁶¹ During the same time period, efforts were made to ensure compliance of Ukrainian TV and radio with the 1993 Law on Broadcasting, which required the broadcasters to produce at least 50% of their output domestically and to use the Ukrainian language for at least 75% of their

⁵⁸ Kuts, *Language Policy*, *supra* n. 4.

⁵⁹ Editorial, "Braty za yazyk", *supra* n. 4

⁶⁰ Vice Prime Minister Dmytro Tabachnyk's speech at the public hearings on the draft law "On the Development and Use of Languages in Ukraine", 5 December 2005. Available at http://www.kmu.gov.ua/control/uk/publish/article?art_id=3646619&cat_id=38176.

⁶¹ K. Kuzio, "Status of Russian Language Again Threatens Ukrainian-Russian Relations", *RFE/RL Newswire* 5(6), Part II, 10 January 2001.

broadcasting time in nation-wide broadcasts (the law stipulates that broadcasting in the individual regions can be conducted in the languages of minorities that compactly reside in these regions).

These attempts to enforce existing legislation were associated largely with the officials responsible for humanities issues in the cabinet led by Yushchenko. Many of these officials lost their positions after Yushchenko's dismissal from the prime ministerial post in 2001. The Council for Language Policy, a consultative body on linguistic policy issues to the president, also ceased its activity after Yushchenko's dismissal. Interest in these enforcement issues reappeared during discussions over the draft Law on Advertising in 2003 and after the decision by the National Television and Broadcasting Council to review compliance with the Law on Broadcasting in 2004. However, the latter decision was later postponed due to widespread criticism of the measure, including from Kuchma himself.⁶²

Thus, at the end of the Kuchma period, the linguistic balance in the mass media was similar to that in evidence at the start of his presidency. However, the continuing dominance of the Russian language was not as uniform as at the beginning of his term. For example, the share of Ukrainian-language advertisements after the passage of the restrictive 2003 Law on Advertising, which required all advertisements to be issued in Ukrainian, had increased sharply. At the same time, the less restrictive provisions on the national content and language use of the 1993 broadcasting law continued to be largely ignored. For example, a five-week monitoring of the musical content of the 17 largest commercial radio stations by the National Television and Broadcasting Council in September of 2005 revealed that the share of Ukrainian language music in these radio stations' musical programs was, on average, less than 10%.⁶³

While this might suggest that the first year of Yushchenko's presidency produced little change in linguistic policy in the media sphere, there are, however, important new developments that might prove to have lasting consequences for the patterns of language use in the media. The key actors behind these developments are the regulatory agencies in the media sector and, in

⁶² S. Shulman, "Ukrainian Nation-Building Under Kuchma", 52 *Problems of Post Communism* (2005), 32–48.

⁶³ Author's calculation based on National Television and Broadcasting Council. *The 2005 Final Report of the National Television and Broadcasting Council*. Kiev. January 2006. Available at <http://www.nradatvr.kiev.ua/index.htm>.

particular, the National Television and Broadcasting Council. Having learned from previous unsuccessful attempts to enforce the laws, the Council adopted a much more open and inclusive dialogue with the media broadcasters, trying to respond to many of their concerns and, at the same time, to achieve a higher degree of voluntary compliance with the existing legal framework. The signing of a memorandum with the leading broadcasting agencies on joint efforts to create a national informational space was one of the important manifestations of the new approach. Among other things, the memorandum envisions a gradual transition to full compliance with the language content norms and the joint development of monitoring criteria.⁶⁴

Besides pursuing the goals of fostering societal integration in Ukraine, the emphasis on the creation of a national information space has, to a significant degree, reflected a new level of awareness of vulnerabilities that unregulated media access can create for the country's political process. In this sense, the regulatory agencies were responding to political authorities' interest in regulating, among other things, the access to the Ukrainian market of state-controlled Russian media, whose approach to covering developments in Ukraine is considered by many politically engaged and neutral media analysts in Ukraine to be hostile and manipulative. If this emphasis is maintained, it will provide more opportunities for the use of Ukrainian in the media.

Linguistic policies in the sphere of education evolved along substantially different lines from those in mass media. The state moved quite fast during the first post-communist decade in changing the language of instruction from Russian to Ukrainian at various levels of education. The official statistics covering, for example, the second half of the decade stated that, during 1995–2001, the number of students studying in Ukrainian has increased from 51% to 76.3% and in Russian had dropped from 49% to 23.6%. The change was most rapid in central Ukraine but affected also, to a varying degree, the eastern and southern regions. The share of students studying in Russian in individual eastern and southern regions in 2001 was, for example, 99.4% in Crimea, 76.4% in the Donetsk region, 50.6% in the Luhansk region and 33.2% in the Odesa region.⁶⁵

⁶⁴ The text of the memorandum is available at <http://www.nradatvr.kiev.ua/memorandum.htm>.

⁶⁵ Ukraine Ministry of Education data cited in “The System of Education in Ukraine: The State and Prospects of Development”, 4 *National Security and Defence* (2002).

Government decisions about the choice of Russian or Ukrainian language instruction in individual regions were based on the 1989 census data on ethnic composition and native language and not inherited from the Soviet period patterns of linguistic use in educational institutions. This policy drew, and continues to draw, major opposition from Russian-language rights activists, who accuse authorities of forcing Ukrainian language instruction on Russian-speaking students and pupils.⁶⁶ The issue has also become a matter of concern for the HCNM, who continues to be actively engaged in discussions related to minority protection standards in Ukraine.⁶⁷

Outside of the small circles of Russian-language rights activists and politicians from marginal pro-Russian parties, there were relatively low levels of mobilization on the issue of school and university instruction during the Kuchma period. Partly, this can be explained by the similarity between the languages, which eased the transition from one language to another. It was also due, in part, to the way changes were enacted. The change was very often limited only to a switch in label: the school was officially proclaimed to be Ukrainian but the bulk of teaching continued to be conducted in Russian. In-depth studies of behavioural patterns in the Ukrainian educational system provide multiple examples of these practices, which, of course, cast serious doubts on the validity of any government-produced data on the language of instruction.⁶⁸

An increase in the overall level of civic activism after the Orange Revolution has been reflected in a higher degree of mobilization on the issue of Russian language rights, including education-related topics. One of presidential candidate Yushchenko's explicit pledges aimed at alleviating fears of his alleged 'nationalism' during the 2004 presidential campaign—that his government would not shut down a single Russian school—has so far been kept by successive post-Orange cabinets. Yet this recent mobilization reflects the existence of sentiments opposed to what is perceived as the continuing Ukrainization of the educational system, even if this Ukrainization has proceeded along only largely formalistic lines, particularly in the eastern and southern regions of the country.

⁶⁶ Interestingly enough, as Shulman notices, the introduction of radically different content in education materials, especially in the courses on history that directly deal with the interpretation of the Russian role in the Ukrainian history, did not cause much opposition. See Shulman, "Ukrainian Nation-Building", *supra* n. 62.

⁶⁷ See, for example, The Letter of The OSCE High Commissioner on National Minorities to Ukraine's Minister of Foreign Relations of 12 January 2001.

⁶⁸ Janmaat, *Nation-building in Post-Soviet Ukraine*, *supra* n. 47.

The main claim of this mobilization—to official recognition and formalize the special status of the Russian language in Ukraine—extends beyond the situation in the educational sphere and relates to the functioning of the public administration, court system and cultural institutions. Expectations of the introduction of a Ukrainian-only policy in court proceedings became the latest topic of discussion about the use of Russian in various public spheres.⁶⁹

An important change from the Kuchma period is the emergence of a well-organized and well-financed vehicle for articulating and sustaining these demands: the Party of Regions, a major political party in the Ukrainian party system. For the first time, a non-communist party that enjoys a broad-based, albeit regionally confined, support, which has made this party the winner of the largest share of votes in the 2006 and 2007 parliamentary races, has embraced officially the issue of Russian language rights as a major element in its electoral platform. While this issue has been prominent in all the recent presidential campaigns in Ukraine, the previous parliamentary campaigns tended to be defined less by the positions taken by the major non-communist political parties on the status of the Russian language.

The problem of the status of the Russian language is likely to remain on the agenda in the wake of the 2007 parliamentary elections and will require compromises from both sides in the debates on this issue. The difficulty in finding such a compromise is reflected in the long and tortured process of ratification by Ukraine of the European Charter for Regional and Minority Languages.⁷⁰ The content of such a compromise actually might be suggested by the events that started recently to take place in regions of eastern and southern Ukraine, where city and regional councils passed or contemplated passing decisions about granting the Russian language the status of a regional language.⁷¹ By recognizing these decisions through some form of legal entrenchment of the rights of linguistic (rather than ethnic) groups and by not challenging these decisions through the court system, the central government authorities might alleviate some of the existing tensions. Such recognition could also put the central government policy of revitalizing the Ukrainian language on a stronger footing. As this chapter's analysis of the available data on the use of the Ukrainian language—particularly in

⁶⁹ Вячеслав САВЧЕНКО. “Без права на правосудие.” Крымская правда. N157 (23776) 27.08.2005.

⁷⁰ Володимир ВАСИЛЕНКО ЯКІ МОВИ В УКРАЇНІ ПОТРЕБУЮТЬ ОСОБЛИВОГО ЗАХИСТУ № 10 (589) Субота. 18 - 24 Березня 2006 року. <http://www.zn.kiev.ua>.

⁷¹ Kharkiv's city council passed this decision in early March 2006. The earlier precedents include 2000 and 2003 decisions of Zaporizhia's city council. Ленур Юнусов, Мария Спалек Что можно Харькову, то нельзя Крыму “Коммерсант”, 09.03.2006.

broadcasting, media and publishing—suggests, there are strong justifications for such a policy to exist. The acknowledgement of the need for affirmative action with regard to the Ukrainian language, and the acceptance of specific policy initiatives undertaken to meet this need, is a step that the Russian-speaking community and its political leaders have to be willing to take in order to arrive at such a compromise.

V. PROBLEMS OF NON-RECOGNITION AND INDIGENOUS STATUS

An additional complexity in majority–minority relations in Ukraine is introduced by the continued existence of tensions on issues of non-recognition and indigenous status. Here, these terms are used to define two distinct challenges faced by Ukrainian society. The first concerns the problem of recognition of Rusyns, a territorially concentrated group of east Slavic people whose leaders make claims of cultural distinctiveness and oppose the Ukrainian state’s policy of categorizing them as ethnic Ukrainians.⁷² The second refers to the demands of Crimean Tatars and some smaller ethnic groups to secure the passage of laws that will grant them the status of an indigenous people.⁷³

Unlike other countries of the Carpathian basin, where Rusyns have been recognized at least from the time of disintegration of the communist bloc, Ukraine continues to refuse to grant a separate ethnic status to this group.⁷⁴ The official government position is that Rusyns are a sub-ethnic group of the Ukrainian ethnos. In a November 2004 interview, one of the key government officials dealing with minority issues stated that she does not envision any change in governmental policy on this issue despite considerable pressure from international

⁷² On the history of the Rusyns see, for example, the writings of Paul Magocsi, the leading scholar on the Rusyn question. P.R. Magocsi and I.I. Pop, *Encyclopedia of Rusyn History and Culture* (University of Toronto Press, Toronto, 2002); and Magocsi, P.R. (1999.) *Of the Making of Nationalities There is No End* (East European Monographs, Boulder, CO, 1999). On the Rusyn question in the post-communist Ukraine see Arel. “Interpreting Nationality and Language”. *Supra* n. 3; J. Batt, “Transcarpathia: Peripheral Region at the “Centre of Europe”, Working Paper 27/01, The ESRC “One Europe or Several?” Programme, Sussex European Institute, 2001; T. Trier, “Inter-Ethnic Relations in Transcarpathian Ukraine”, *ECMI Report* No. 4 (European Centre for Minority Issues, Flensburg, 1999), available at: http://www.ecmi.de/download/report_4.pdf.

⁷³ Belitser, ““Indigenous Status” for the Crimean Tatars ”, *supra* n. 42.

⁷⁴ Rusyns are recognized in Slovakia, Poland, Romania and Hungary, as well as in other countries where Rusyn diaspora groups are found. Rusyn activists claim that the largest share of Rusyn people reside in the Transcarpathian region of Ukraine.

organizations and Rusyn groups both in Ukraine and in neighbouring countries where Rusyns are recognized.⁷⁵

The preoccupation with maintaining territorial integrity, which is one of the traditional security priorities of a state, is one important factor in explaining the Ukrainian authorities' approach towards dealing with the Rusyn question. Rusyn autonomy demands are often perceived by the Ukrainian officials as concealed successionism. The unwillingness of the Ukrainian academic and cultural elite to accept Rusyns' claims of cultural distinctiveness is another such factor.⁷⁶ Yet the lack of progress in addressing the Rusyn issue also has a great deal to do with attitudes amongst the potential members of the Rusyn community.

One of the important debates in the academic literature on the Rusyn issue concerns the question of how broad-based the recent revival in Rusyn identity actually is.⁷⁷ Scholars disagree about whether this revival is based on genuine popular support for claims articulated by Rusyn activists or whether it is confined to a small group of cultural figures and would-be ethnic political entrepreneurs. If a basic test of graduation into a separate ethnic group is whether elites are capable of mobilizing a broad-based support for claims made in the name of this group, then there is little evidence that Rusyns have yet passed this test. Even in the aftermath of the Orange Revolution, when the public atmosphere became especially conducive to the articulation of various types of collective claims and active participation in the political process, so far very little has happened outside of narrow intellectual circles in the potential Rusyn community.⁷⁸

Although the effects of the efforts of the Ukrainian state aimed at weakening the Rusyn elite's ability to communicate its message should not be underestimated, some scholars also point to the specific legacy of confusion, doubt and fatalism among the Rusyns in relation to the

⁷⁵ The author's interview with Tetiana Pylypenko, director of the Department of Nationalities State Committee of Ukraine for Nationalities and Minorities. 1 November 2004, Kiev.

⁷⁶ On the discussion of official academic attitudes in Ukraine, see Arel. "Interpreting Nationality and Language". *Supra* n. 3.

⁷⁷ H. Lane, "Rusyns and Ukrainians Yesterday, Today, and Tomorrow: The Limitations of National History", 29 *Nationalities Papers* (2004), 689–696.

⁷⁸ One notable event was the introduction into the Ukrainian parliament of a resolution on Rusyn recognition by the ethnic Hungarian MP from Transcarpathia Istvan Gaidos in November 2005. The lack of public attention to this matter underscores the lack of activism on the part of the proponents of the Rusyn cause. See Editorial, "Национальність "русин" признают наконец официально?", 19 November 2005, available at <http://www.ua-reporter.com/news/14429>.

question of their identity. This legacy, which is a product of the extraordinary complexities of the history of the region, undermines the Rusyns' will and ability to assert themselves collectively as an ethnic community.⁷⁹ The evolution of Rusyn identity continues to be a fascinating research topic for scholars interested in studying the impact of cultural activities and cultural groups on the process of identity formation, the effects and limits of cultural assimilation and the implications of political democratization on the articulation of identity claims.⁸⁰

It is difficult to judge the level of grassroots support for Rusyn identity claims in Transcarpathia. In the lifetime of a single generation, the region has been under the rule of many states. Some local scholars argue that the local population learned to withhold information about their ethnic identity and it is difficult to produce reliable figures about Rusyn identification in Transcarpathia with traditional survey methods. While Rusyn activists claim that more than 850,000 people use the Rusyn language in interpersonal communication in the Transcarpathian *oblast*,⁸¹ these scholars estimate that around 10% of the population in the region, which amounts to slightly more than 120,000 people, might have a stable Rusyn ethnic identification.⁸² Since Rusyns are not recognized as an ethnic group, the 2001 Ukrainian census did not provide an option for individuals to identify themselves as Rusyns. The published census for nationalities within Ukraine as a whole thus contained no figures for Rusyns. The only published data appeared in the 2003 Transcarpathian statistical bulletin, in which 10, 090 Rusyns were listed as an ethnographic (not ethnic) group. In Magocsi's interpretation, when asked the question about their *nationality*, these persons answered Rusyn. The statistical authorities later placed the data about Rusyns under the category "distinct ethnographic groups of the Ukrainian ethnos."⁸³

⁷⁹ Batt, "Transcarpathia: Peripheral Region", *supra* n. 72.

⁸⁰ The impact that the historical writings and other academic activities of the main scholar of Rusyn identity Paul R. Magocsi has had on the articulation of ethnic claims and on the activities of Rusyn organizations has also become the subject of a number of studies. See, for example, M.F. Ziac, "Professors and Politics: The Role of Paul Robert Magocsi in the Modern Carpatho-Rusyn Revival", 35 *East European Quarterly* (2001), 213–233; and C.M. Hann, "Intellectuals, Ethnic Groups and Nations: Two Late-twentieth-century cases", in: S. Perival (ed.), *Notions of Nationalism* (Central European University Press, Budapest, 1995), 106–129.

⁸¹ See "Appeal to Parliamentary Assembly of the Council of Europe on the Problem of Official Recognition of the Subcarpathian Rusyns". Regional Parliament of Subcarpathian Rusyns/Regional Society of Subcarpathian Rusyns, 15 May 2004. Original in Russian at

http://www.karpatorusyns.org/more.php?id=123_0_1_0

⁸² The author's interview with sociologist Alexander Pelin, Uzhgorod State University, 8 November 2004.

⁸³ Personal correspondence with professor Paul R. Magocsi, December 2006.

In some respects, the problem of Rusyn recognition represents an interesting moral dilemma for the ethnic Ukrainian majority. The Rusyns are in a situation that the ethnic Ukrainians faced themselves a century ago when the Russian imperial state denied their claims for cultural distinctiveness. This moral dilemma, however, has not been actualized in contemporary Ukraine. The lack of grassroots mobilization on the part of Rusyns themselves is probably the main factor in explaining why the Rusyn issue has not become a moral issue (conceptualized in terms of the need to recognize the cultural aspirations of a distinct group) for Ukrainian society at large, but instead has continued to be defined largely in terms of the security concern it is perceived as presenting for the Ukrainian state.

Unlike the issue of recognition for Rusyns, there are no difficulties in finding a sizable and mobilized constituency for claims of indigenous status.⁸⁴ Crimean Tatar leaders, who preside over a well-organized and vocal ethnic community, have been the main force advocating the granting of an indigenous status to their people as well as, potentially, to Karaims and Krymchaks, which are the two other autochthonous groups of Crimea. The position of indigenous status advocates in Ukraine evolved by taking into account provisions and definitions found in the Convention Concerning Indigenous and Tribal Peoples in Independent Countries.⁸⁵ According to one leading analyst of this topic, the Ukrainian version of ‘indigenusness’ proceeded from the notion that indigenous people constitute a type of minority that differ from other national minorities because its members have neither a kin-state nor another territory on which they had been permitted to form and develop as an ethnos.⁸⁶

Receiving the status of indigenous people is seen by Crimean Tatars as the basis for resolution of the various types of problems they face, such as representation in legislative and executive bodies at different levels of government, legalization of their ethnic representative institutions, land rights, and language and education issues. Crimean Tatar leaders, as well as various Ukrainian civil society organizations that support the Crimean Tatars’ claims, have tried a number of strategies to secure the political and subsequent legal endorsement of indigenous

⁸⁴ One can think of the somewhat unexpected link between issues of non-recognition and indigenous status in the Ukrainian case by contemplating the potential for recognized Rusyns to claim indigenous status along with the current claimants of this status: the Crimean Tatars, Karaims, and Krymchaks.

⁸⁵ International Labour Organization (ILO) Convention 169, 1989. The Convention that came into force in 1991 has not been ratified by Ukraine.

⁸⁶ Belitser, “‘Indigenous Status’ for the Crimean Tatars”, *supra* n. 42.

status claims. Although the 1992 Law on National Minorities did not contain any mention of indigenous groups, the first draft of a ‘Concept of Ethno-Politics’, which was envisioned as a major legal document defining principles for the ethnopolitical development of Ukraine, by 1993 had introduced the distinction between minority and indigenous groups. However, neither of the subsequent drafts of this document, including the one that was discussed by civil society and government representatives in February 2005, succeeded in gaining legislative support.⁸⁷ As Belitser notes, the effort put into these drafts, nevertheless contributed to the introduction of the concept of indigenous people in the 1996 Ukrainian constitution.⁸⁸

Largely in parallel to the efforts to draft a comprehensive law on ethnopolitical development, Crimean Tatar rights activists have developed legislative proposals focusing on the issues specific to the Crimean Tatar community. Neither of two key legislative initiatives in this respect—drafts on the status of the Crimean Tatar people and on the rights of deported persons—has become law, although numerous attempts to secure their passage were undertaken.⁸⁹ The repeated failures in attempts to pass these laws and some other related legislative provisions have frustrated the Crimean Tatars, who see these failures as evidence of the lack of solidarity and support for their concerns on the part of national deputies. Nevertheless, the Crimean Tatars continue to regard the national level legislative body as the most appropriate forum for addressing their concerns; Crimean autonomy institutions are perceived as weak and sometimes even as hostile to the Crimean Tatars’ cause.⁹⁰

To date, the Crimean Tatar’s quest for a comprehensive program of affirmative action has received a mixed response in Ukraine. While much has been done by the state authorities and international community to address the socio-economic issues of the Crimean Tatars’ reintegration in Crimea, little has been accomplished in terms of accommodating their key legal and political demands. These demands have proven to be controversial both at the national level, as the fate of the abovementioned legal bills indicate, as well as in the international arena, where key institutions such as the Council of Europe and the OSCE have

⁸⁷ For a description of the latest initiatives in this respect see the project on ‘Conceptual Principles of National Ethnic Policy: Practice and Theory.’ <http://www.ucipr.kiev.ua>.

⁸⁸ Belitser, “‘Indigenous Status’ for the Crimean Tatars”, *supra* n. 42.

⁸⁹ A compromise-based version of the law “About the Restoration of Rights of Persons Deported on the Basis of Nationality” was adopted by the parliament in June 2004. The president, however, subsequently vetoed this law.

⁹⁰ The authors’ interview with Rafat Chubarov, member of the Ukrainian Parliament and deputy head of the Crimean Tatar organization *Majlis*, Kiev. 4 November 2004.

tended to avoid explicit endorsement of indigenous status claims.⁹¹ At the domestic level, this situation has been complicated further by the permanent campaign on the part of the Communist party and some pro-Russian political parties and civil organizations to discredit the Crimean Tatar's movement. Yet achieving progress on many of the Crimean Tatars' key concerns regarding their status will require compromises and modification of the positions of both the majority and the Crimean Tatar minority. Given the Crimean Tatars' interest in engaging and appealing to European institutions on the topic of indigenous rights, finding ways to accommodate claims of a special status for the Crimean Tatars might represent an important test for the emerging European regime of minority protection.

VI. CONCLUSION

Majority–minority relations in Ukraine face many challenges. As this chapter has demonstrated, these challenges have multiple sources and are rooted both in the country's pre-independence history and complex post-communist transition. Neither the identity of the majority group nor the acceptance of a new status by the largest minority group has been settled. Debates continue to centre on the very basic principles of state organization, including issues such as what territorial and administrative structures should be put in place to accommodate very substantial regional differences. Decentralization holds the promise of improving the situation of minorities but the implementation of decentralization plans is still in the early stages. Linguistic issues remain a major source of contention with very significant implications for the national political process. The deepening of the democratization process in the aftermath of the Orange Revolution has heightened the expectations of different segments of society that their multiple and diverse concerns will be addressed and resolved promptly by the new Ukrainian authorities.

All this has a somewhat unsettling effect on efforts to foster interethnic cooperation and accord. At the same time, it also provides an opportunity to advance majority–minority dialogue in order to achieve some shared understanding on what measures should be undertaken to address both the ethnic Ukrainians' concerns about the status of their long-

⁹¹ See more on this in Belitser, ““Indigenous Status” for the Crimean Tatars”, *supra* n. 42

suppressed cultural identity and national minorities' fears of exclusion and discrimination in areas as diverse as participation and representation in government, education and language use. This domestic dialogue is likely to be more successful if Ukraine manages to sustain its current course on deeper integration in various European structures and if its EU partners take substantive efforts to accommodate the country's European aspirations.

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Political Participation and Interest Articulation of Roma in Romania

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Abstract

By examining processes of political participation and ethnic mobilisation, this article assesses how Roma create organising structures of representation which they use to articulate their shared interests. The utilitarian nature of the democratic system necessarily excludes the voice of minorities who must create their own representation structures to ensure their voice is heard. This article analyses the ability of the Romani community in Romania to articulate interests and assesses the legitimacy of their organising structures of representation. This article starts from the observation that Roma constitute a sizeable minority group in Romania yet they remain under-represented in public life. Following a brief outline of how representation relates to legitimacy, the analysis proceeds in two steps: Firstly, the shared interests of Roma in Romania are determined; secondly, the role and purpose of the three organising structures of representation (elites, ethnic political parties, and civil society organizations) are assessed. The respective legitimacy of these organising structures of representation is analysed in turn.

Introduction

Romania houses a vibrant Romani¹ community which has seized the opportunity to develop organising structures of representation since the collapse of communism.² The state too has responded to the needs and interests of Roma who make up at least 3% of the Romanian population.³ The case study of Romania presents some interesting legislative innovations which are unique to this state and impact directly on how Roma mobilise and organise themselves politically, and articulate their interests through organising structures of representation. These include a guaranteed seat in parliament for all national minorities as well as the ability of minority non-governmental organisations (NGOs) to secure parliamentary representation. Despite mobilisation efforts and the creation of organising structures of representation, Roma remain woefully under-represented in political life (Roma

¹ *Roma* is a noun and refers to the plurality of the members of this minority, that is, the group as a whole. *Romani* refers to the language spoken by this group and is also used as an adjective to describe an ethnic identification. A *Rom* is an individual member of the Roma minority (A. Mirga and N. Gheorghe, *The Roma in the Twenty-First Century* (Project on Ethnic Relations, Princeton, 1997), 3.

² The transition process has its social dimension, part of which is to ensure that the politically determined social structure is based on “non-discrimination and equal opportunity” (D. Light and D. Phinnemore, *Post Communist Romania: Coming to Terms with Transition* (Palgrave, Basingstoke, 2001), 2). The equal opportunity referred to here includes access to political structures guaranteed by law for all citizens.

³ According to the last census figures in 2002, there are 555,250 Roma present in Romania which signifies approximately 3% of the population. Unofficial estimates from international organisations and NGOs put the figure between 1-2 million Roma in Romania (meaning between 5-10% of the population of Romania approximately).

have one Deputy out of 314 in the Chamber of Deputies- the lower house of the bicameral national parliament- despite a population between 3-10%). Clearly the right to vote has thus far not translated into adequate representation of Roma in the national assembly. This investigation asks ‘who speaks for Roma in Romania?’ and in doing so advances understandings into *how* Roma organise themselves in public life. Analytically this paper seeks to advance understandings of the complex relationship between identity, interests and organising structures of representation with regard to minorities, and empirically it details the case of Romani political participation in Romania.

The literature on the Romani community in Romania has been largely silent on issues of political participation and representation with a few notable exceptions⁴, and often cite the Romani community’s sub-standard access to social provisions⁵. There have been several attempts to define who Roma actually are in the European political context⁶, as well as in Romania specifically through a historical perspective⁷. Furthermore, Roma rights theorists often provide emotive evidence when detailing Roma ‘problems’⁸ and more recently there has been a concerted move towards understanding the political participation of Roma⁹. The

⁴ L. Fosztó and M.V. Anăstăsoaie, "Romania: representations, public bodies and political projects", in W. Guy (ed.) *Between Past and Future. The Roma of Central and Eastern Europe* (University of Hertfordshire Press, Hatfield, 2001) ; A. Bleahu and V. Frunzaru, "The Political Participation of Roma in Romania" (Romani CRISS, Bucharest, Unpubl. manuscript, 2005).

⁵ I. Zoon, *On the Margins. Roma and Public Services in Romania, Bulgaria, and Macedonia* (Open Society Institute, New York, 2001) ; M. Ionescu and S. Cace, *Public Policies for Roma. Evolution and Perspectives* (Editura Expert, National Agency for Roma, Bucharest, 2006).

⁶ A. Fraser, *The Gypsies: Peoples of Europe* (Blackwell, Oxford, 1995) ; I. Fonseca, *Bury Me Standing: The Gypsies and Their Journey* (Vintage, New York, 1996) ; T. Acton (ed.), *Gypsy Politics and Traveller Identity* (University of Hertfordshire Press, Hatfield, 1997) ; D. Tong (ed.), *Gypsies: An Interdisciplinary Reader* (Garland, New York, 1998) ; I. Hancock, *We are the Romani people = Ames am e Rromane d'zene* (University of Hertfordshire Press, Hatfield, 2002).

⁷ D. Crowe, "The Gypsies of Romania since 1990", 27 *Nationalities Papers* (1999), 57-67.

⁸ A. Mirga and N. Gheorghe, *The Roma in the Twenty-First Century* (Project on Ethnic relations, Princeton, 1997) ; A. Revenga, D. Ringold and W. Tracy, *Poverty and Ethnicity: A Cross-Country Study of Roma Poverty in Central Europe* (World Bank, Washington, D.C., 2002) ; D. Ringold, M.A. Orenstein and E. Wilkens, *Roma in an Expanding Europe: Breaking the Poverty Cycle* (International Bank for Reconstruction and Development, Washington, D.C., 2003) ; I. Pogány, "Legal, Social and Economic Challenges Facing the Roma of Central and Eastern Europe", *Queen's Papers on Europeanisation* (2004).

⁹ M. Kovats, "Problems of Intellectual and Political Accountability in Respect of Emerging European Roma Policy", 2 *Journal on Ethnopolitics and Minority Issues in Europe* (2001), 1-10, Available at: <http://ecmi.de/jemie/download/Focus11-2001KovatsComment.pdf>, Accessed 8 December 2007 ; P. Vermeersch, "Advocacy Networks and Romani Politics in Central and Eastern Europe", 2 *Journal on Ethnopolitics and Minority Issues in Europe* (2001), 1-22, Available at: <http://ecmi.de/jemie/download/Focus11-2001Vermeersch.pdf>, Accessed 8 December 2007 ; Z. Barany, "Romani Electoral Politics and Behaviour", 2 *Journal on Ethnopolitics and Minority Issues in Europe* (2001), 1-13, Available at: <http://ecmi.de/jemie/download/Focus11-2001Barany.pdf>, Accessed 8 December 2007 ; J. Fox, "Patterns of Discrimination, Grievances and Political Activity Among Europe's Roma : A Cross-Sectional Analysis", 2 *Journal on Ethnopolitics and Minority Issues in Europe* (2001), 1-25, Available at: <http://ecmi.de/jemie/download/Focus11-2001Fox.pdf>, Accessed 8

political mobilisation of Roma is the most obvious response to the current situation of exclusion from democratic political processes¹⁰. Ethnic mobilisation has taken place in the past and has resulted in the establishment of organising structures of representation through which Roma can articulate their interests. However, mobilisation is not enough to overcome the numerous political problems that Roma are confronted with. It is by asking questions such as “who speaks for Roma?” that more informative research on modes of political participation has taken place, yet there have been no successful attempts to determine who legitimately represents Roma in Romania, nor who claims to.

At first glance it can appear somewhat difficult to determine who or what represents a minority community such as Roma because there are so few mechanisms for establishing what a minority community actually needs. Phillips argues that when a society is ordered in a hierarchical fashion (as most are), then those groups which have been silenced or marginalised or oppressed will seek to enhance their representation¹¹. This does not necessarily have to result in legally-recognised and publicly-financed forms of self-government which is the case for national and ethnic minorities in Hungary. An alternative response is to create organising structures of representation which act as a mechanism for consultation and group organisation¹². This stalagmite mobilisation from below gives a voice to disenfranchised groups and helps ensure that the interests of Roma are taken into account in decision-making and policy-making processes. The consequences of such a conviction impacts on how one conceptualises the purpose of the political system. In this case it is one which is concerned with the capacity to engage in public activity and articulate interests, not necessarily to control the decision-making process. This is what Phillips terms “the politics of presence”¹³. Roma constitute what Lively describes as a “permanently excluded minority”¹⁴; therefore organising structures of representation are important because they articulate what the Romani community wants and needs (that is, their interests and preferences). Representation can take a variety of forms in organising structures of representation including

December 2007 ; I. Klímova, "Romani political representation in Central Europe. An historical survey", 12 *Romani Studies* 5th Series (2002) ; E. Sobotka, "The Limits of the State: Political Participation and Representation of Roma in the Czech Republic, Hungary, Poland and Slovakia", 2 *Journal on Ethnopolitics and Minority Issues in Europe* (2001), 1-23, Available at: <http://ecmi.de/jemie/download/Focus11-2001Sobotka.pdf>, Accessed 8 December 2007; P. Vermeersch, *The Romani Movement : Minority Politics and Ethnic Mobilization in Contemporary Central Europe* (Berghahn, New York, 2006).

¹⁰ Z. Barany, "Ethnic Mobilization and the State: The East European Roma", 21 *Ethnic and Racial Studies* (1998), 308-327.

¹¹ A. Phillips, *Democracy and Difference* (Polity Press, Cambridge, 1993), 95.

¹² I.M. Young, *Justice and the Politics of Difference* (Princeton University Press, Princeton, 1990).

¹³ A. Phillips, *The Politics of Presence* (Clarendon Press, Oxford, 1995).

¹⁴ J. Lively, *Democracy* (Blackwell, Oxford, 1975), 26.

elites, ethnic political parties and civil society organisations, however in each structure it is the representation and articulation of interests¹⁵ which is the primary concern.

Young argues that a democratic public “should provide mechanisms for the effective recognition and representation of the distinct voices and perspectives of those of its constituent groups that are oppressed and disadvantaged”¹⁶. The capacity or opportunity to engage in politics and have a say is important in and of itself. Representation is not always about the end result in terms of tangible benefits, net gains, or leverage over the decision making process. Equating representation with power as readily as Beetham is mistaken; he assumes that all those who are in positions of representing “subordinates”¹⁷ have been vested with the authority to make decisions on behalf of these subordinates. However, not all representation is ‘power’, as the Romanian case will show. Moreover, Beetham has little to say about minorities (non-dominant communities possessing a common identity) within the subordinate, and how these minorities ensure their voice is heard. According to Beetham, power over subordinates, that is, all those not in positions of representation (therefore the majority of society), is “justified as it is claimed it enables the collective purposes or general interests of the society as a whole to be realised”¹⁸. Furthermore, Beetham argues that “legitimacy requires the demonstration of a common interest which unites”¹⁹ The primary focus of most democratic states is on the general interest which means that the interests of the minority are given no credence or are simply suppressed. The interests of the majority do not easily map with those of Roma in Romania because of the pronounced discrimination, poverty and marginalisation which the Romani community endures.

The legitimacy of group representation depends on some mechanism for establishing the interests of the community. Essentially, there are two mechanisms. Firstly, an “implausible essentialism”²⁰ sees shared experience as enough of a guarantee of shared interests and maintains that all Roma think and act in the same way. When a political movement sees itself as based on shared ideals and goals (such as combating racism, securing civil rights, achieving sexual equality), then commitment to these goals seems the only legitimate qualification for membership and this ontological focus “generated a more identity-based

¹⁵ See H.F. Pitkin, *The Concept of Representation* (University of California Press, Berkeley, 1972) and A.H. Birch, *Representation* (Pall Mall, London, 1971) on the substance of representation.

¹⁶ I.M. Young, *Justice and the Politics of Difference* (Princeton University Press, Princeton, 1990), 184.

¹⁷ D. Beetham, *The Legitimation of Power* (Macmillan, Basingstoke, 1991), 101.

¹⁸ D. Beetham, *The Legitimation of Power* (Macmillan, Basingstoke, 1991), 46.

¹⁹ D. Beetham, *The Legitimation of Power* (Macmillan, Basingstoke, 1991), 59.

²⁰ A. Phillips, *The Politics of Presence* (Clarendon Press, Oxford, 1995), 25.

politics which stressed the self-organization of those most directly oppressed”²¹ Indeed, anthropologists have argued that “in the absence economic enfranchisement and greater involvement in political decision-making, attempts to change societal discrimination became focused on ‘culture’ at the level of discourse and representation”²². The second mechanism to establish the interests of a community is through the organisation of some sufficiently representative segment to establish group opinions and goals. This mechanism challenges existing exclusions and opens up opportunities for different issues or concerns to be developed²³. Whilst the first mechanism appears unrealistic and reductive, the second offers the possibility of analysing organising structures of representation in context.

This paper begins by briefly outlining the interests of Roma in Romania (section I). Section II examines the role of elites in representing Roma and articulating their interests. In Romania, a representation system exists whereby all ethnic minorities are guaranteed one seat in parliament for an elite to occupy due to their recognition as a national minority by the state.²⁴ An analysis of political parties founded on claims of common ethnicity is detailed in section III before the role of civil society organisations as a means to articulate the interests of Roma is uncovered in section IV. Finally, section V provides the conclusion which summarises how Roma engage in political participation in Romania and the impact of this on legitimate representation.

I. Romani Interests in Romania

It is necessary to identify the shared interests²⁵ of Roma in Romania before the legitimacy of organising structures of representation can be assessed. It is important that the interests discussed here are not exhaustive, but several key shared interests appear to have more prominence than others when a variety of discourses are analysed, that is, certain shared interests and general themes can be identified. Crucially these shared interests are constructed by the Romani community with reference to their ethnic group identity which means that, in

²¹ A. Phillips, *The Politics of Presence* (Clarendon Press, Oxford, 1995), 9.

²² J. K. Cowan, M.-B. Dembour and R.A. Wilson, "Introduction", in J.K. Cowan, M.-B. Dembour and R.A. Wilson (eds.), *Culture and Rights: Anthropological Perspectives* (Cambridge University Press, Cambridge, 2001), 2.

²³ A. Phillips, *The Politics of Presence* (Clarendon Press, Oxford, 1995), 55.

²⁴ Constitution of Romania (revised) (2003): Art. 62 (2) maintains “Organisations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in parliament, have the right to one Deputy seat each, under the terms of the electoral law. Citizens of a national minority are entitled to be represented by one organization only.” Full text in English available at: <http://www.legislationline.org/upload/legislations/72/cf/e3b89dda11209ec032c71c1a36a7.htm>. (Accessed 8 December 2007).

²⁵ This paper is not concerned with subjectively held interests as these cannot be articulated by organising structures of representation.

the case of Roma, their identity and interests are insoluble as one informs the other. This article employs a broad understanding of representation in order to accommodate the diversity of Roma representation in Romania, that is, elected and non-elected, as well as individuals and organisations. The idea that group identities are defined by some essential set of common attributes is not convincing as most people have multiple group identifications (gender, ethnicity, nationality etc). Roma do possess shared interests which are, by and large, held by all Roma in Romania. This is possible because the interests of Roma are directly connected to their experience as a vilified group. For example, the discrimination which is targeted at Roma by the majority of society results in many Roma being unable to secure employment. Of course, it is important to avoid such “implausible essentialism”²⁶ because minority ethnic communities may have a strong sense of themselves as a distinct social/ethnic group but this can coincide with an “equally strong sense of division over policy goals”²⁷ The key point here is that shared interests do not exist *a priori* and then the Romani community attach themselves parasitically to these interests, rather these interests are intersubjectively constructed and articulated through organising structures of representation.

The main shared interests of Roma are education, health, employment, and social affairs including housing and political participation. These interests have been determined by examining the publications and activities of Roma NGOs, interviews with prominent Roma elites and activists, document analysis of research institutes, programmes of international organisations and international donors, and domestic policy, for example, the National Strategy for the Improvement in the Situation of the Roma (hereafter the ‘National Strategy’). The ‘National Strategy’ was adopted in 2001 and is a detailed programme which addresses the condition of Roma, incorporating measures at the central, provincial and local government levels. The ‘National Strategy’ was elaborated with the help of the Working Group of Roma Associations whose consultations with the Government began in 1998. Political participation is low at local and national level in terms of voter turnout and civic advocacy, and can be partly explained by low levels of education and high levels of poverty.²⁸ One of the most important aspects of the ‘National Strategy’ is its focus on the political participation of Roma. The Romani community do not have a clearly-defined representative class, that is, actors who

²⁶ A. Phillips, *The Politics of Presence* (Clarendon Press, Oxford, 1995), 25.

²⁷ A. Phillips, *The Politics of Presence* (Clarendon Press, Oxford, 1995), 145.

²⁸ For an insight into Romani voting patterns see J. Fox, "Patterns of Discrimination, Grievances and Political Activity Among Europe's Roma: A Cross-Sectional Analysis", 2 *Journal on Ethnopolitics and Minority Issues in Europe* (2001), 1-25, Available at: <http://ecmi.de/jemie/download/Focus11-2001Fox.pdf>, Accessed 8 December 2007.

know how to articulate their interests. A criticism which is raised by activists is that Roma lack a middle class or intellectual strata in society which will often vote, train others, and create new structures.²⁹ The Hungarian minority in Romania is effective because it has a representative class ready and able to engage in the structures of politics on its behalf.

These shared interests have one thing in common: access. It is access to education, housing, healthcare and the labour market which is of concern to Roma. One way to address the issue of access has been to provide for affirmative action and preferential treatment, for instance, guaranteeing university places for Romani students³⁰ However, access to public goods is hindered because of the poverty and racial discrimination which most Roma are disproportionately affected by³¹. Whilst reducing poverty levels in Romania is an interest of all Romanians more generally, it is a specific shared interest of the Romani community because Roma are disproportionately affected by poverty³² Social justice, marginalisation, and stigmatisation of Roma are key interests which need to be addressed as they can help break the vicious circle of poverty-exclusion-discrimination and elevate Roma's self-image. The National Council for Combating Discrimination (NCCD) was established in 2002 as part of the 'National Strategy' and is dedicated to eradicating all forms of discrimination and injustice. Whilst this institution was created for all citizens of Romania the bulk of cases brought before it are related to Roma.³³

The following three sections examine three organising structures of representation in order to acquire a more complete understanding of the political participation and representation of Roma in Romania. Each organising structure of representation articulates the shared interests of the Romani community although their respective strategies and functions are distinct. An organising structure of representation denotes an institutional platform which can take a variety of forms including elites, political parties and civil society organisations. As an

²⁹ Gelu Duminica, Executive Director of "Impreuna" Bucharest, Romania, 16 May 2006. Interview with author.

³⁰ G. Andreescu, *Ombudspersons for National Minorities Report on Minority Education* (RAXEN_CC National Focal Point, European Centre on Racism and Xenophobia, 2004), 15, Available at: <http://eumc.europa.eu/eumc/material/pub/RAXEN/4/edu/CC/EDU-Romania-final.pdf>, Accessed 8 December 2007 ; EU Monitoring and Advocacy Program [EUMAP], Open Society Institute, Education Support Program, Roma Participation Program, *Equal Access to Quality Education for Roma Monitoring Report* (EUMAP, Open Society Institute, Budapest, 2007), 368, Available at: <http://www.eumap.org/topics/minority/reports/roma/education>, Accessed 8 December 2007.

³¹ C. Berescu and M. Celac, *Housing and Extreme Poverty: The Case of Roma Communities* (Ion Mincu University Press, Bucharest, 2006).

³² European Roma Rights Centre [ERRC], "Extreme Poverty", *Roma Rights* (2002), 14, Available at: <http://www.errc.org/cikk.php?cikk=719>, Accessed 8 December 2007.

³³ Csaba Ferenc Asztalos, President, National Council for Combating Discrimination. Bucharest, Romania, 28 September 2005. Interview with author.

institutional platform it is part of the broader Roma social movement. These organising structures of representation are able to articulate the shared interests of the Romani community because they are constructed with reference to the ethnic group identity of Roma. Research on social movements has emphasised that group identities are produced and continually re-defined by the process of collective action³⁴. Brubaker has shown that the analytical focus should not be on the substance of the group (i.e. its 'groupness') but on the processes and interaction which create ethnic group identity³⁵, thus the role of activists, advocates, and institutions are of paramount importance.

II. Follow the Leader: Elite Representation of Roma

There are a number of elites who claim to be political representatives of Roma in Romania. These elites are considered in turn due to their respective prominence in political life. A political representative represents and articulates interests which a group of individuals share. Because minority ethnic communities are united by a common ethnic identification, they hold many of the same shared interests, though these will shift depending on the historical and cultural circumstances. It is more accurate to conceive of political representatives representing bundles of interests and affiliations rather than as spokespersons. Following Pitkin's useful definition of representation as "acting in the interests of the represented, in a manner responsive to them"³⁶ in an elected assembly the interests of the minority will always be suppressed by the interests of the majority. A universalistic approach to representation cannot accommodate difference and has led to calls for special political representation for minorities³⁷.

A necessary component of the democratic system is that elected representatives are capable of rising above the promotion of their own interests in order to articulate the shared interests of their constituents. If politics is more than balancing group pressures, the elected representative, insofar as (s)he is a policymaker, must act as rather more than a delegate. If an elected representative of Roma successfully articulates the interests of Roma then (s)he will be re-elected back into public office. Previous Deputies include: Gheorghe Răducanu 1992-1996; Mădălin Voicu 1996-2000; Nicolae Păun 2000-2004 and also 2004- present. Each of these Deputies relied on the constitutional provision to attain their seat, having failed to attain the 5% threshold. Furthermore, each Romani Deputy has come from the Roma Party (*Partida*

³⁴ D. della Porta and M. Diani, *Social Movements: An Introduction* (Blackwell, Oxford, 1999), 87.

³⁵ R. Brubaker, *Ethnicity Without Groups* (Harvard University Press, Cambridge, Mass., 2004).

³⁶ H.F. Pitkin, *The Concept of Representation* (University of California Press, Berkeley, 1972), 209.

³⁷ I.M. Young, *Justice and the Politics of Difference* (Princeton University Press, Princeton, 1990) ; W. Kymlicka, *Multicultural Citizenship. A Liberal Theory of Minority Rights* (Clarendon Press, Oxford, 1995).

Romilor) which changed its name to the Social Democrat Roma Party (prior to the 2004 elections), before settling on Roma Party Pro-Europe (from 2006). For the purposes of this article and to reduce confusion, this political association is referred to as the Roma Party Pro-Europe (RPPE).

Sometimes gaining access to representation means that a Rom must stand on the party lists of mainstream political parties. Adding a Rom on the party list is not going to win many votes from the majority of citizens due to the negative perception of Roma held by the majority of society, but can help secure the Roma vote in an area with a dense Romani demography.³⁸ These individual Romani parliamentarians find it extremely difficult and frustrating to make any sort of impact on the policy-making process, and also to articulate the interests of Roma as they are not sufficiently empowered. As Petrova explains “the typical phenomena is that if a Roma is elected they only serve one mandate because they failed to meet the very high expectations of their own supporters. That is why they cannot get a second mandate.”³⁹ It is this failure to articulate the interests of Roma which will impact directly on their time spent in public office.

The lack of legitimated political leaders is one of the most pertinent problems facing the Romani community at a local level⁴⁰. Roma require legitimate political leaders to speak on their behalf at all levels otherwise policy-makers cannot know the Romani community’s shared interests and tailor policy to suit their specific circumstances. The relative power and authority which traditional leaders exert over local Romani communities must be considered if we are to fully appreciate all organising structures of representation which claim to represent Roma. This provides an opportunity to sketch the cultural context in which specific representation structures have emerged. Whilst the *bulibaşa* is the informal leader of traditional Romani communities such as the *căldărari*, *argintari*, *spoitori*, *cortorari*, their status is usually dependent on charisma or wealth and is hereditary, which denotes an example of Weberian

³⁸ Placing a Rom on a mainstream party’s list has been widely recognised as a liability given widespread societal biases against Roma indeed as Barany points out “for mainstream parties one Romani vote means the loss of two others” (Z. Barany, "Romani Electoral Politics and Behaviour", 2 *Journal on Ethnopolitics and Minority Issues in Europe* (2001), 4, Available at: <http://ecmi.de/jemie/download/Focus11-2001Barany.pdf>, Accessed 8 December 2007. However many Roma advocates see this as a progressive and even desirable phenomenon as ethnic/identity politics is viewed as reinforcing societal partitions. Dan Oprescu, Bucharest, Romania, 27 September 2005. Interview with author.

³⁹ Dimitrina Petrova, Director of the European Roma Rights Centre (ERRC). Budapest, Hungary, 23 September 2005. Interview with author.

⁴⁰ A. Bleahu and V. Frunzaru, "The Political Participation of Roma in Romania" (Romani CRISS, Bucharest, Unpubl. manuscript, (2005).

legitimacy.⁴¹ At first sight, these potestary institutions appear to fall beyond the scope of reasoned political analysis and signifies a system of representation which predates liberal democracy, however *bulibaşa* become relevant because they can influence who the Romani electorate votes for in local and national elections.⁴² Whilst the *bulibaşa* is a localised phenomenon, there have been instances when certain individuals have proclaimed themselves to be ‘International King of the Roma’ or ‘The Emperor of all Roma Everywhere’. However even these leaders acknowledge that the authority of the *bulibaşa* is waning and some have attempted to legitimate themselves by accessing national political structures. For example, Florin Cioaba, ‘Roma King’ formed the Christian Centre of Roma in Romania, and ran in the 2000 national elections for the Chamber of Deputies securing 12,171 votes⁴³. Furthermore, Florin Cioaba is one of the four Romanian delegates to the recently established European Roma and Traveller Forum, a transnational organising structure of representation affiliated with the Council of Europe.

All national minorities in Romania (who are registered and members of the Council of National Minorities)⁴⁴ have the right to one representative in the Chamber of Deputies. Nicolae Păun, who is the President of the Roma Party Pro-Europe, is the sole Romani representative in the Chamber of Deputies and attained 56,076 votes in the 2004 elections. Mr. Păun is the President of the Romani political association which gained the most votes, however he attained his seat through the aforementioned constitutional provision. It is difficult to predict how and whether a minority parliamentarian can articulate the interests of Roma, even if (s)he can lay claim to some source of legitimacy by virtue of election.

At the governmental level, the National Agency for Roma (NAR) is charged with policy-making and its role is to consult government on a range of issues related to Roma. Mariea Ionescu is the President of the NAR and is a State Secretary, therefore a Deputy Minister. Whilst some commentators are sceptical as to its power and purpose, it is the one institution which can ensure that the voice of Roma is heard at the governmental level because it consults with the government on policies and decisions which affect the Romani community directly. Although Mariea Ionescu cut her teeth in the Romani NGO sector, and is therefore

⁴¹ Weber emphasised the subjective belief in legitimacy as legal/rational, traditional and charismatic authority (M. Weber, *Economy and Society: An Outline of Interpretive Sociology* (Bedminster Press, New York, 1968).

⁴² For insights into Romani voting patterns and specificities see Barany (2001) and Fox (2001), footnotes 38 and 28 in this paper.

⁴³ M. Ionescu and S. Cace, *Public Policies for Roma. Evolution and Perspectives* (Editura Expert, National Agency for Roma, Bucharest, 2006), 35.

⁴⁴ The Council of National Minorities was established by Government Decision No. 365 in July 2001.

well equipped to understand the interests of Roma due to her experience working at the grass roots level, the NAR simply does not have the resources or authority required to fulfil its functions adequately. If it is to be more than a token institution for Romani representation or a shop window for external observers then it must be given competences which reflect its elevated positioning from its previous incarnation as the National Office for the Roma. Furthermore, it is the institution itself which is of primary concern when dealing with representation as the NAR is more than the sum of its parts, therefore Mariea Ionescu's successor will have no more or less legitimate claim to representation than she does, providing the structure and capabilities of the NAR remain the same.

Summary

It is not the actual character or ability of the elite *per se*, rather it is the manner of their selection and the position they hold. But can an individual represent the Romani community? Nicolae Păun represents the 56,076 who voted for him, and does so legitimately but it is questionable whether he represents all Roma simply because they share a common ethnic identity. Indeed there have been accusations that the reserved seat in parliament guaranteed by the Constitution has a detrimental impact on Roma representation because it has the “potential to perpetrate the identification and division of candidates based on ethnicity and that such labels can result in differentiation and discrimination”⁴⁵. Furthermore, it is difficult to determine whether a representative of the Roma needs to be ethnically Romani or not. The fact that Nicolae Păun receives a substantial number of votes suggests that ethnicity is an important factor for Roma when electing their representatives however Roma do vote for other mainstream political candidates also as section three details.

III. Monopolising Ethnic Representation

First of all, there are no ethnic minority political parties in Romania though political NGOs do exist. The situation in Romania concerning the legal status and formulation of national minority organisations is complex. Whilst the organisations are technically NGOs, they are also permitted to run in elections to parliament to receive one of the seats set aside for national minorities. Under Romanian NGO law, only three persons are required to form an

⁴⁵ Organization for Security and Cooperation in Europe – Office for Democratic Institutions and Human Rights [OSCE-ODIHR], *Guidelines to Assist National Minority Participation in the Electoral Process* (OSCE-ODIHR, Warsaw, 2001), 29, Available at: http://www.osce.org/publications/odihr/2001/01/12347_129_en.pdf, Accessed 8 December 2007.

NGO⁴⁶ and there is no special certification procedure to ensure that a national minority organisation is actually constituted of that minority. This occurs not only because of the seats set aside in parliament for national minorities but also under Romania political party finance law the state distributes funds for any party/organisation that run in the election⁴⁷.

So, how is it possible for NGOs to have a political character? National minorities have an “extra right in order to rectify problems of representation”⁴⁸ therefore national minorities are accorded a seat in parliament which does not apply to other political parties. This does not mean that non-minority parties have fewer rights. Rather the democratic system dictates that the majority is always favoured therefore it is necessary to apply positive discrimination and give minorities a voice which would otherwise be drowned out. The fact that an NGO can be elected to the Chamber of Deputies is not considered to be an issue or even worthy of debate for minority politicians, academics and activists. The strength and utility of civil society comes from its independence as a public space which often assumes the form of an articulated system of decision-making, negotiation, and representation⁴⁹. In Romania there is no separation of the civil and political spheres of society when it comes to minority participation and representation. Indeed an NGO’s inability to remain detached from political life will impact on its claims to legitimacy, particularly since in Romania the RPPE receives state funding as a group represented in Parliament. This lack of autonomy and independence *vis-à-vis* the state impacts negatively on the credibility and legitimacy of the RPPE, as well as other national minority political NGOs.

After 1989 many political organisations were set up including: Democratic Roma Union; the Ethical Federation of the Roma; the Roma Party; and the Roma Union. But Romani political organisations routinely divided the Romani vote highlighting the heterogeneity of the Romani community. They split for a number of reasons including “mutual distain, suspicion, in

⁴⁶ Ordinance on Associations and Foundations (2000), Art. 4. #26/2000, O.G. #39. Full text available at: <http://www.legislationline.org/legislation.php?tid=2&lid=694>. Accessed 8 December 2007.

⁴⁷ D.C. Decker and A. McGarry, "Enhancing Minority Governance in Romania. The Romanian Draft Law on the Status of National Minorities: Issues of Definition, NGO Status, and Cultural Autonomy", European Centre for Minority Issues, ECMI Report #54, May 2005, 19, Available at: http://www.ecmi.de/download/Report_54.pdf. Accessed 8 December 2007.

⁴⁸ Attila Markó, Head of the Department for Inter-Ethnic Relations (DRI). Statement made at a European Centre for Minority Issues conference “Enhancing Minority Governance in Romania” in Sinai, Romania, March 2005.

⁴⁹ A. Melucci, "The New Social Movements Revisited", Paper presented at the 87th Annual Meeting of the American Sociological Association, August 20-24th, 1992, Pittsburgh, Pennsylvania, 10.

fighting and a marked inability to reach compromises”⁵⁰. It would seem logical that a single organisation which acts as the sole representative of Roma would increase cohesion in the community and increase its ability to articulate its interests because instead of hearing a cacophony of voices, policy-makers and decision-makers hear only one united and considered voice. A tension exists between the heterogeneity of the Romani community, on the one hand, and the coherence and unity of their interests on the other, and this tension is never fully resolved within organising structures of representation and their respective activities.

The Romanian Government’s partnership with a single political organisation, the RPPE, has raised concerns about marginalisation and exclusion of other organisations⁵¹. The ‘National Strategy’ created the position of local experts in Roma affairs who work within the Mayor’s office,⁵² but these experts have mainly been appointed on the proposals made by the RPPE, without regard to standard hiring procedures or taking into consideration proposals from other representatives of Romani civil society organisations. Another perceived problem is that many of these so-called Roma ‘experts’ are not ethnically Romani. Whilst it is debatable whether non-Roma can represent the Romani community, the issue here is that there exists an increasing pool of Romani graduates and activists ready and able to fill these positions yet if they are not affiliated with the RPPE, they may not be hired. The RPPE has come to be accepted as the sole (and authoritative) representative body for the highly diverse Romani population, failing to take into account the expertise and experience developed within other Romani NGOs.

Any objections that the Government is overly reliant on the RPPE have been routinely dismissed because there is no other political association which can claim its electoral legitimacy or demographic reach. This issue is compounded by the fact that those organisations which are represented in the Council of National Minorities (and therefore in the Chamber of Deputies) receive an annual stipend, as well as other facilities and resources. These funds help secure future electoral success and thus perpetuates the cycle of national (and therefore local) representation, by ensuring that the RPPE have the resources to launch

⁵⁰ Z. Barany, "Romani Electoral Politics and Behaviour", 2 *Journal on Ethnopolitics and Minority Issues in Europe* (2001), 3, Available at: <http://ecmi.de/jemie/download/Focus11-2001Barany.pdf>, Accessed 8 December 2007.

⁵¹ EU Monitoring and Advocacy Program [EUMAP], Open Society Institute, Monitoring the EU Accession Process: Protection of Minorities. *Minority Protection in Romania. An Assessment of the Strategy of the Government of Romania for Improving the Condition of Roma* (EUMAP, Open Society Institute, Budapest, 2002), 480, Available at: <http://www.eumap.org/reports/2002/minority>. Accessed 8 December 2007.

⁵² National Strategy for the Improvement in the Situation of the Roma, Chapter VIII, Point 4.

effective political campaigns. The Government legitimises its Roma policy (that is, its initiatives, decisions, strategies etc) by consulting with the RPPE but no other Romani political association is given credence which means that the Government only hears one Romani voice. Whilst the RPPE does not have a *carte blanche* to articulate whatever interests it sees fit, the interests it does articulate are highly dependent on the opinions of senior officials within this political association.

Factionalism and fragmentation are issues which all social movements must contend with at some stage or another⁵³ Whilst diversity of opinion is at the heart of all civic democracies, this issue is magnified with minorities due to their oft substandard positioning in society. When new associations are created, they fulfil a specific function, and they articulate shared interests of the community which they claim to represent. Tellingly most of the Romani political associations were created between 1990 and 1992 and since then the propensity to establish Romani political associations has dissipated. In the early 1990s, the Roma social movement was fragmented and various elites set up their own organisations: The Roma Party; The Democratic Alliance of Roma in Romania Party; Christian Democrat Party of Roma in Romania; Gypsy Party of Romania; Democratic Union of the Roma in Romania; General Union of Roma in Romania; and the Liberal Democratic Union of the Roma in Romania⁵⁴. This diversity of Romani political organisations is the result of different intra-ethnic communities and can be considered proof of democracy's pluralist ontology and its heterogeneous appropriateness.

Through each election, all political organisations representing the Romani community have accumulated less than 1.4% (this peak was in the 1996 elections) of the total national votes.⁵⁵ In 2004, two organisations ran in the elections for the Chamber of Deputies: the previous incarnation of the RPPE (which received 56,076 votes or 0.55% of the total votes cast nationally) and the Alliance for Roma Unity (which received 15,041 votes or 0.14% of the total votes cast nationally). In a political context where Roma compose at least 3% (and up to 10%) of the population, we can deduce that some Roma were either not voting or were transferring their vote to another party. Certainly many Roma are not able to vote as they lack the necessarily documentation such as identification cards, however there is increasing

⁵³ D. Mason, "Solidarity as a New Social Movement", 104 *Political Science Quarterly* (1989), 41-58.

⁵⁴ M. Ionescu and S. Cace, *Public Policies for Roma. Evolution and Perspectives* (Editura Expert, National Agency for Roma, Bucharest, 2006), 35-36.

⁵⁵ Calculations based on the official data of the Central Electoral Office. Available at: http://www.bec2004.ro/documente/Tvot_CD.pdf and the National Institute for Statistics. Available at: <http://www.insse.ro/Statistici/statistica%20electorala.htm>. Accessed 10 December 2007.

evidence that Roma are voting for mainstream political parties⁵⁶. The Romani electorate have always held an affinity with the Social Democrat Party (SDP) which employs political rhetoric such as ‘social assistance’ and ‘social inclusion’ which resonates with Romani voters. Furthermore, the SDP has openly courted the Roma vote. In 1999 and 2004 the SDP signed protocols with the RPPE in which it pledged to solve Roma’s social problems. This would suggest that a common ethnicity is not as crucial for Roma representation as it once was.

Summary

The Roma Party Pro-Europe is the dominant Romani political organisation in that it routinely gains the most votes at each national election, and it enjoys the privileged position of being Government’s only partner on Roma issues. However, its legitimacy is questionable as many Roma vote for other political parties, notably the Social Democrat Party. The Roma Party Pro-Europe’s ability to secure Romani votes come from the fact that it shares an ethnic identity with its constituents, not necessarily through its political aptitude or a well-defined manifesto. This organising structure of representation has managed to permeate all facets of public life including at the local level. And any challenge to its monopoly of Roma representation would have to contend with its guaranteed financial resources from Government as well as its firmly entrenched positioning at all levels of Romanian politics from the local to the *judete*, to the national level.

IV. Civil Society Organisations: Localised Legitimacy

There are approximately 200 NGOs in Romania which promote Roma rights and articulate the shared interests of Roma but most lack elemental resources and self-sustainability. This large number is a reflection of growing ethnic mobilisation in Romania as well as the Political Opportunity Structure⁵⁷ which enables an NGO to be constituted by three persons. Whilst these NGOs are not staffed entirely by Roma, they are by and large focused on the interests of the Romani community. These NGOs are active in a number of areas in a diverse range of projects which aim to improve Roma’s enjoyment of civil, social, political, economic and cultural

⁵⁶ A. Bleahu and V. Frunzaru, "The Political Participation of Roma in Romania" (Romani CRISS, Unpubl. manuscript, Bucharest, 2005).

⁵⁷ For a concise explanation of Political Opportunity Structure and its impact on agency see: P. Eisinger, "The Conditions of Protest Behavior in American Cities", *67 American Political Science Review* (1973), 11-68. ; M. Keck and K. Sikkink, "Transnational Advocacy Networks in the Movement Society", in D. Meyer and S. Tarrow (eds.), *The Social Movement Society: Contentious Politics for a New Millennium* (Rowman & Littlefield, Lanham, 1998); and applied to the transnational Roma movement see: P. Vermeersch, *The Romani Movement: Minority Politics and Ethnic Mobilization in Contemporary Central Europe* (Berghahn, New York, 2006).

rights. A fundamental law on registration exists⁵⁸ and it is the registration process which separates NGOs and political parties however in Romania an anomaly exists whereby an NGO can have a political character. This only applies to national minority NGOs. In other countries such as Hungary and the Czech Republic, the crucial point comes when a minority organisation must register its status that is, as a political party or other, and determines its precise form and function. A civil society organisation fulfils a very different function from that of a political party. Indeed the distinction between political party and NGO may be determined in how the duties and responsibilities of the organising structure of representation is taking place, and crucially what interests each organisation articulates. An organising structure of representation cannot represent an opinion (as that is subjective) but it can represent and articulate interests as these are aggregated bundles of opinions and affiliations which are intersubjectively constructed by communities. There are two main functions of a civil society organisation: a) to act as a check on state institutions; and b) to articulate shared interests. By fulfilling its two primary functions, an NGO articulates interests on behalf of a community through project implementation,⁵⁹ publications, and consultations with international and national bodies. NGOs often paint a more accurate (and less flattering) portrait of the actual situation of Roma than state institutions.

During communism the persistence of state paternalism meant that civil society was weak. After 1989, an old law, No. 21/1924, which had never been abolished, was reinforced and has become the legal frame for the newly emerging civil society. A few thousand non-governmental (non-profit) organisations have been created since.⁶⁰ The creation of NGOs after 1990 “aimed at offering educational support, expressing Roma culture and traditions, community and economic development, research and social interaction, combating the prejudices and stereotypes”⁶¹. The number, aptitude, and longevity of Romani NGOs were dependent on their capacity to secure funding and on the ability of leaders to guide their respective organisations. Research has shown how “the geographical spread and intra-ethnic heterogeneity supported the simultaneous establishment of the organisations in more regions of

⁵⁸ Law on Legal Persons (Associations and Foundations) (1924). Law No. 21/1924, O.G. Part I, No. 27.

⁵⁹ The value of NGOs in a society cannot be underestimated particularly for marginalised groups, not least because it is more difficult for an individual to effect change. In practical terms it is easier to apply for a grant for a project as an NGO.

⁶⁰ Constitution of Romania (1991): Art. 37 states “Citizens may freely associate into political parties, trade unions and other forms of association”.

⁶¹ Center for Documentation and Information on Minorities in Europe – Southeast Europe [CEDIME-SE], *Hungarians of Romania* (2001), 14, Available at: <http://www.greekhelsinki.gr/english/reports/CEDIME-Reports-in-Romania.html>, Accessed 8 December 2007.

the country⁶². Many NGOs were set up as a counterbalance to the frenzied political arena where Roma were increasingly marginalised in the early stages in the transition to democracy.

The interests articulated by Romani NGOs are diverse and often depend on the geographical and cultural context of their activity as some choose to focus on human rights abuse, others on access to health, and others still on education of Romani children. These agendas are often decided by the leader or director of an NGO, or the NGOs are set up to articulate a shared interest to increase awareness of the issue (for example Letiția Marks established the Roma Women's Association in Timișoara). The major national Romani NGOs in Romania, in terms of visibility and geographical spread, are 'Impreuna', *Aven Amentza* and Romani CRISS as they have the most reach in terms of demography and territory. These NGOs can and do articulate several interests at once, however these shared interests are not necessarily in competition with one another. This can be determined by examining the organisational structure of Romani CRISS: there is a health department, an education department, a human rights department and a social department dealing with identification cards.⁶³

There have been complaints relating to the appointment of Roma experts with the local governments. Some representatives from Romani NGOs have stated that the Government has a different vision regarding the implementation of the 'National Strategy' than their own, and have called for more effective collaboration with civil society in its implementation. Indeed "where public institutions fail, NGOs may have greater success"⁶⁴. NGOs may not have the power of decision but they are able to implement projects on a local level. It is here where the real importance of the NGO lies and its ability to represent and articulate interests is cultivated. Grassroots development helps establish a social network of actors committed to establishing cultural change for Roma, thus the cultural content of a social movement must be empirically grounded⁶⁵. Mushrooming Romani civil society organisations orientate their efforts towards articulating certain shared interests and building the capacity of Romani communities as they implement projects dealing with the issues of everyday life such as building confidence, fighting prejudice and discrimination, and expanding employment, education, housing and

⁶² A. Bleahu and V. Frunzaru, "The Political Participation of Roma in Romania" (Romani CRISS, Unpubl. manuscript, Bucharest, 2005), 8.

⁶³ My thanks to Cezara David of Romani CRISS for explaining the organisational infrastructure, Bucharest, Romania, 16 May 2006. Interview with author.

⁶⁴ EU Monitoring and Advocacy Program [EUMAP], Open Society Institute, Monitoring the EU Accession Process: Protection of Minorities. *Minority Protection in Romania. An Assessment of the Strategy of the Government of Romania for Improving the Conditions of Roma* (EUMAP, Open Society, Budapest 2002), 491. Available at: <http://www.eumap.org/reports/2002/minority>. Accessed 8 December 2007.

⁶⁵ C. McClurg Mueller, "Building Social Movement Theory", in A. Morris and C. McClurg Mueller (eds.), *Frontiers in Social Movement Theory* (Yale University Press, New Haven, 1992), 9-17.

healthcare. Whilst their respective contributions have been invaluable, the results are insufficient.

The lack of political participation is a concern but efforts are being made to rectify this problem most notably through Romani NGOs. The Romani NGO, '*Impreuna*' has become involved in a project to train 25 young Roma to become the next generation of political leaders. However this needs to be complimented by more concerted efforts at the grass roots level to engage and educate ordinary Roma about the importance of political participation.⁶⁶ On a more practical level, as many Roma lack identity cards, they are unable to vote which means that they are not full citizens. The major Romani NGOs are constantly juggling their activities and do not concentrate solely on one shared interest as this would be futile. Romani NGOs have quickly come to realise that shared interests are inter-related and therefore their activities should pursue a multi-pronged approach.

One of the most important roles of a Romani NGO is to implement projects on the ground, which can impact directly on the community. Of course an NGO, by its very nature, is not elected. Yet it certainly can be viewed as representing and articulating the interests of the Romani community legitimately. In the strictest sense this is not political representation, but it is the local community which empowers and legitimises an NGO by awarding their trust.⁶⁷ This signifies an 'output' or 'performance-based' legitimacy when NGOs implement projects which have an impact in local communities. Their legitimacy derives from the process of organising the local community and articulating its shared interests, and is not dependent on electoral results. Therefore legitimacy is more than an 'X' on a ballot sheet. In the case of Roma representation in Romania legitimacy is not attained or earned, nor can it be measured in a positivist sense. Crucially, legitimacy must be conferred on organising structures of representation by the Romani community itself. This is only possible through the establishment of relationships and localised social interaction.

Summary

⁶⁶ For an evaluation of all '*Impreuna*' projects targeting the Romani community in Romania see: '*Impreuna*' Agency for Community Development/United Nations Development Programme in Romania, *Evaluation of Programmes Targeting Roma Communities in Romania* (AMM Design, Cluj-Napoca, 2006).

⁶⁷ "Confidence" and "trust" were mentioned by both Gelu Duminița, Executive Director of '*Impreuna*' and Cezara David of Romani CRISS. Bucharest, Romania, 16 May 2006 (Both interviews). Interviews with author. Thus it is possible for legitimacy to be conferred on organising structures of representation if they are respected for the work that they do in the community, for the community.

Civil society organisations working on Romani issues began to propagate in the early 1990s. Only a few Romani NGOs chose to concentrate on human rights issues, such as access to justice, prevention of conflict and violence against Roma, and legal consultancy. Other Romani civil society organisations aim at bringing about changes in social life, strengthening the capacities of Romani communities, and implementing an array of local and national projects that address the civil, socio-economic and cultural interests of Roma. They are seen as legitimate representatives of Roma, even though they lack a democratic mandate, because they work closely with Roma at a local level. They therefore understand the main interests of the Romani community which they articulate through implementing projects, publishing reports, and consulting with state institutions on Roma-related issues. Their activities and projects are determined by the interests of the Romani community. In this sense NGOs are social partners whose existence and longevity are dependent on the mobilisation of the Romani community.

V. Conclusion

Ethnic mobilisation results in the creation of organising structures of representation such as elites, political parties, and civil society organisations, which explains how Roma make their voice heard. The poverty, marginalisation and discrimination which Roma experience result from the fact that they are ethnically Romani; therefore any mobilisation efforts have focused on the distinctive ethnic identity of Roma and the socio-economic and political problems they need to address. This has resulted in the formation of a multitude of organisations (both political and non-political) which claim to represent and articulate the multiple and shifting shared interests of the Romani community. Of course, organising structures of representation can be created by a top-down process, such as the National Agency for Roma, however due to the absence of mobilisation and direct interaction with Romani communities, these structures have tenuous claims to legitimacy.

In Romania the shared interests of Roma are directly connected to their ethnic identity, which means that they are insoluble as one informs the other. The main shared interests of Roma are education, health, employment, and social affairs including housing, and political participation. Roma are trapped in a vicious cycle of poverty-exclusion-discrimination which harms their self-perception, and exacerbates their capacity to address these shared interests. By and large, the Romani community is relatively uninterested in formal political processes but are learning that through political participation they can ensure their voice is heard. It is not necessary to have a direct impact on policy and decisions, but rather the articulation of interests itself is a purposeful and requisite value in any democratic society. Representation

and political participation is often not enough in itself, it needs to be supplemented by other measures (resources or specially allocated seats), but most importantly representation needs to be tacitly agreed to be legitimate for constituents or else the representation itself is a hollow structure. Legitimacy is a social construct, like interests or group identity, and is something which must be tacitly agreed upon in order to have meaning.

There exists no objective criteria or normative yardstick to measure the legitimacy of Roma representation, thus by assessing the actions of these organising structures of representation, relative legitimacy can be deduced. Elites such as Nicolae Păun and political parties such as the RPPE tend to rely on electoral legitimacy, whereas NGOs fall back on their proximity to the Romani communities to secure legitimacy. However all three organising structures of representation are embedded in a socio-political discourse with the Romani community reconstitutes which means that legitimacy is constantly being negotiated. Legitimacy is not a tangible artefact which can be attained rather Roma confer legitimacy on organising structures of representation therefore intersubjective interaction is crucial. By voting for elites and political parties and by engaging with civil society organisations in a localised context, legitimacy can be conferred on organising structures of representation. In many respects legitimacy comes from a practice where Roma create the discourse of legitimacy and reconstitute this structure through formal and informal political practices. The process of Romani mobilisation and the capacity of organising structures of representation to 'give voice' to the Romani community determine if an organising structure of representation is legitimate.

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The Stabilization and Association Process: An Engine of European Integration in Need of Tuning

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Abstract

The Stabilization and Association process (SAp) was created by the European Union in 1999 as its primary contribution to the Stability Pact for Southeast Europe, thus concluding a development that had started with the Royaumont process and continued with the Regional Approach, neither of which are discussed in this article. The purpose of this article is to look closer at the approach adopted in this process, at the effects it has had in the five countries of the Western Balkans, and, finally, to answer the question of whether the Sap is a strong enough instrument for ensuring political and economic stability in the region, with a closer examination of the situation of ethnic minorities.

INTRODUCTION

The rationale for the creation of this process was the recognition that the countries in the region referred to as the ‘Western Balkans’ (the former Yugoslavia plus Albania) needed a solid and realistic perspective in order to be motivated to carry out the vast number of reforms that the EU expected of them. This could only be the possible and conditional accession to the Union. Each of the countries in to the SAp¹ has the ultimate and expressed goal of joining the European Union. This goal has been acknowledged subsequently by several European Councils.²

The list of required reforms contained many elements of what is called ‘state building’, including rule of law reforms, the development of democratic and stable institutions, and moves towards market economy. EU instruments at their disposal for the achievement of these reforms included assistance programmes for post-conflict rehabilitation and stabilization, technical assistance programmes and programmes aiming at harmonizing legislation with the EU’s *acquis communautaire*. Another need identified by the European Union was the strengthening of bilateral relations between the countries of the region, in the belief that this would pave the way for greater political and economic stability and development. The third issue identified was the need of flexibility in the approach of the EU, in order to accommodate the specific needs of each country.

¹ The countries subject to the SAp are: Albania, Bosnia and Herzegovina, Croatia, (former Yugoslav Republic of) Macedonia, and Serbia and Montenegro. Croatia and Macedonia together with Turkey have entered the next phase of European rapprochement by receiving the status of candidate countries.

² Feira 2000, Copenhagen 2002, Brussels 2003 and Thessaloniki 2003.

Thus, the very idea of the Stability Pact for Southeast Europe was to be backed by an EU programme, which, at the same time, would establish the European Union as the driving force behind the process of regional integration and reform.

The process was envisaged as consisting of three phases: a preparatory phase would set the path of initially-needed reforms and prepare each country individually for the signing of the agreement; the second phase would be the actual negotiation of the agreement and its adoption; the third phase would see the implementation of the agreement by the respective countries, after which they would become fully associated with the European Union, being given the option of 'potential candidate' status.

The main financial instrument introduced to the region was the so-called Community Assistance for Reconstruction, Development and Stabilization (CARDS) programme, which allocated a sum of roughly €4.6 billion for the entire region from 2002–2006. The regional dimension was built into this programme, in order to underline one of the main goals of both the SAp and the Stability Pact for Southeast Europe: strong and genuine regional co-operation between the countries of the Western Balkans and the establishment of a common regional market.

The CARDS programme worked on the basis of a Regional Strategy Paper covering the period 2002–2006 and was complemented by a so-called Multi-annual Indicative Programme, of which the current version covers the period of 2005–2006. Its priority areas have been identified as: institution building, justice and home affairs, cross-border co-operation, private sector development and, finally, infrastructure development.

The EU summit in Zagreb in November 2000 gave the official stamp to this new policy and at the same time, initialled the Stabilization and Association Agreement (SAA) with the Republic of Macedonia.³

I. THE STABILIZATION AND ASSOCIATION PROCESS AND THE INDIVIDUAL AGREEMENTS

³ The text of the final document can be found at http://europa.eu.int/comm/external_relations/see/sum_11_00/statement.htm.

The region targeted by the SAp was seen primarily as a post-conflict region. While this was true to a large extent, the nature of the conflicts differed in the individual countries. The wars in the former Yugoslavia could hardly be compared to the implosion of the Albanian state in 1997. Moreover, Macedonia was free of conflict at the time of the conception and initialization of the SAp. Just as the nature of the conflicts that these countries have experienced differed, so too did the conditions in which they found themselves in the aftermath. Thus, the idea of having an individualized approach for each country is accorded a certain legitimacy.

One characteristic is common to four of the five countries when describing their situations: they are so-called ‘weak states’⁴; in other words, they are states in which ethnic, religious, linguistic or other tensions limit or decrease their ability to deliver the essential political goods, such as security; rule of law; medical and health care, education and infrastructure, a functioning monetary and banking system, a healthy business environment and functioning interaction with civil society.

An exception to the group of four is Bosnia and Herzegovina, where the international community is attempting to reconstruct a weak state from what was initially a failed and then a collapsed one. In this case, it is especially interesting to look at how the attractiveness of the SAp induced reforms.

There is another contributor of insecurity to the entire region: Kosovo. Any development relating to the question of the province’s future status influences the countries surrounding it in one way or another. The participation of Kosovo in the SAp is only partial, since it is not a sovereign country, and many questions regarding the feasibility of state building remain open.

The challenge for any strategy involving this kind of state is to avoid what Fukuyama called the “failure to unpack the different dimensions of stateness”, that is, to understand the intricate relationships between institutions and between groups or individuals and institutions, which are specific to every society, and to plan an intervention accordingly.⁵ However, the authors of the SAp claimed that the individual agreements were tailor-made and adapted to

⁴ An interesting attempt to define a scale ranging from strong to weak, failed and collapsed states can be found in R.I. Rotberg, “The Failure and Collapse of Nation-States: Breakdown, Prevention, and Repair”, in: R.I. Rotberg, (ed.), *When States Fail: Causes and Consequences* (Princeton University Press, Princeton, 2004), 1–45. For a discussion on the region see I. Krastev, “Bringing the State Up”, Paper for the Conference “Interethnic Relations in the Western Balkans: Problems, Instruments and Prospects for the Future”, Berlin, 12–13 September 2003.

⁵ F. Fukuyama, *State-building: Governance and World Order in the 21st Century* (Cornell University Press, New York, 2004).

the specific conditions in each of the five countries. It is helpful, therefore, to examine the situation in the individual countries in question.

A. *Albania*

The European Commission's Stabilization and Association Report on Albania for 2004 starts with the following statement:

Reform in Albania over the past twelve months has been limited. Despite some progress in specific areas, many of the recommendations included in the 2003 Stabilization and Association process (SAp) report have not been properly implemented.⁶

After repeated critical reports in previous years and attempts to address these through direct dialogue with the Albanian government, the lack of measurable progress, especially in the political field, caused frustration for the EU bodies involved in the SAp. The report underlined the lack of reforms in several areas, due to the political blockade in the country. Following a short period of optimism in 2002, when an agreement was reached between government and opposition to cooperate on issues of major strategic interest for the country, such as European integration and NATO accession, the general situation deteriorated rapidly thereafter. Internal fighting within the ruling Socialist Party and the re-emergence of Fatos Nano as party leader and prime minister provoked a return of the main opposition group, the Democratic Party, to a policy of obstruction, thus reverting to the pre-2002 situation, whereby confrontation between the two charismatic leaders dominated the political scene. This situation was detrimental to the implementation of actual policy and much needed reforms. The performance of the administration continued to raise doubts as to its ability to implement actual reform commitments made as part of the SAp.

The report acknowledged progress in economic growth and partially in monetary and financial policy-making and implementation. It raised doubts, however, about the medium-term sustainability of these reforms, given that the business environment is still marked by high levels of corruption, organized crime, money laundering and inefficient administration.

The report also acknowledged the Albanian government's verbal commitment to the implementation of reforms in view of the signing of an SAA, while at the same time stating that the government was falling behind in the implementation of those commitments.

⁶ European Commission, *Albania: Stabilization and Association Report 2004*, Commission Staff Working Paper, SEC(2004) 374/2 (European Union, Brussels, 2004), 1.

The European Commission Report, which contained a detailed set of data about a variety of aspects of Albanian public life, said nothing new in principle. Albania's extremely fragile starting position was known at the beginning of the process. The country was politically hijacked by a battle between the two major party leaders, who occupied the political landscape and left very little room for manoeuvre. This had been the case for the previous past ten years. In this environment, organized crime, corruption and other illicit activities were able to flourish. Furthermore, it was widely known that Albania did not have the capacity to solve these problems on its own, hence the variety of international actors active in the country.

The question to be answered is: what was the impact of the contribution of more than €180 million by the EU between 2000 and 2003, allocated through a variety of mechanisms? The European Commission report answered this question in part, using very restrained language:

In order for CARDS to be capable of efficiently supporting Albania in addressing its many challenges, it is vital that Albanian beneficiaries ensure adequate commitment throughout the project cycle, including provision of appropriate Albanian counterparts. It is also crucial that the beneficiaries have a genuine interest in, and motivation for, each project's successful implementation.⁷

If we take into consideration that, due to the internal political stalemate, the signing of the national CARDS strategy came almost one year after the funding was ready to be released by the EU, it becomes obvious that there was a gap between the verbal commitment made by the government and the reality of its implementation. Inefficiency was not the only problem. There was a genuine lack of interest in the wide variety of projects to be implemented. Albania's highly politicized environment meant that every actor sought to implement only those parts that made it look good on the domestic scene. Short-term interests prevailed over a medium-term or even long-term strategy and vision.

The merit of the SAp in Albania was certainly to be described as one major factor (along with the involvement of other actors like NATO, the United States and the Council of Europe) that prevented Albania from falling further behind the other countries in the region. However, beyond that progress was achieved only by applying heavy pressure—and it should be mentioned that the entire process has yet to assume a real form.

⁷ *Ibid*, 36.

B. *Bosnia and Herzegovina*

The European Commission published a feasibility study in November 2003, which analysed the situation in Bosnia and Herzegovina with the aim of finding out whether the country would be ready to enter the SAp. The study covered sixteen areas of priority reforms, in which progress would be needed should the country want to become eligible to start the negotiations leading to an SAA. This phase was preceded by the so-called ‘Road Map’ of 2000, in which eighteen reform areas were identified and which was “substantially completed” in 2002. The language used by the European Commission indicated that the principle of good will was applied and that there remained a lot of work still to be done. Entering the next phase was seen primarily as an incentive to the state of Bosnia and Herzegovina to continue down the path of reform. Stimulation driven by (regional) political considerations prevailed over the raw facts. This is another example of European policy-making disguised as accountability. There would be nothing wrong with saying that a country could not live up to expectations but that, in the interest of regional stability and further internal progress, assistance would continue.

The Commission’s annual Stabilization and Association report⁸ for 2004 on Bosnia and Herzegovina presented a rather dim picture: little progress in certain areas was juxtaposed with a vast number of insufficiencies, ranging from the weak structures of the central state and the ongoing conflict between the central state and the two entities, to the lack of medium- and long-term strategies for the creation of an investor-friendly climate and legal framework.

Based on the findings of this report and the progress made in the sixteen priority areas related to the Dayton Peace Accord (but also in other ones), such as full compliance with the decisions of the ICTY (International Criminal Tribunal for the former Yugoslavia), the European Commission concluded that Bosnia and Herzegovina had still not reached the level of state consolidation that would allow it to enter negotiations for an SAA. That this is still the case⁹ is a clear indicator of how much there was to do.

C. *Croatia*

Croatia managed to set an example that began a completely different development, uniting full implementation of the SAA with the application for candidate status. The

⁸ European Commission, *Bosnia and Herzegovina: Stabilization and Association Report 2004*, Commission Staff Working Paper, SEC(2004) 375 (European Union, Brussels, 2004).

⁹ This was still the case as of 16 March 2007. See the speech by Olli Rehn, the EU Commissioner for Enlargement, addressing the BiH State Parliament in Sarajevo on that date. Available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/152&format=HTML&aged=1&language=EN&guiLanguage=en>.

SAA with Croatia was signed in October 2001, following a rapid process of negotiation and implementation after the change of government in early 2000. While it has to be acknowledged that the country's starting position differed significantly from that of any other country in the region, the political signal of this decision was more than obvious.

While the SAA was still in the process of being ratified by the EU member states, an Interim Agreement was signed with Croatia in late 2001 that came into force in March 2002. The agreement focused mostly on trade and related measures, thus allowing Croatia gradually to enter the European market, while still profiting from the favourable conditions as stipulated in the SAp.

In February 2002, one year before the SAA was ratified and came into force, Croatia applied for full EU membership. What followed was a success story, beginning with the positive *avis* from the European Commission in April 2004 on opening accession negotiations, with Croatia receiving full candidate status in June 2004, and the Presidency of the European Council recommending the start of negotiations on 17 March 2005, provided there was full co-operation with the ICTY. Accession is expected to take place between 2008 and 2009. However, a black mark appeared when, in February 2005, the European Commission decided to postpone the start of negotiations due to insufficient co-operation with the ICTY. The negotiations finally began on 3 October 2005, following a change in the ICTY's opinion regarding Croatia's cooperation, which is now regarded as sufficient.

However, the situation in Croatia is not perfect. Deficiencies have been identified, particularly in relation to the question of refugee returns and their access to rights, especially property restitution. On the other hand, economic and financial factors are barely comparable with the other countries in the region and institutional consolidation has proceeded at a high pace, in spite of it having started at a much higher level. Solid lobbying combined with good marketing of political change did not go unnoticed by the EU member states. One should also take into account the relevance of the signal that an accession would send out to the neighbouring states, indicating that the EU is serious about the SAp and the other accession mechanisms. Whether this latest signal will have any effect remains to be seen. It is, however, true

that Macedonia entered a partnership with Croatia with regards to mutual assistance in the process of EU accession.

D. The Former Yugoslav Republic of) Macedonia

Macedonia was the first country to start with negotiations on the SAA and the first country to conclude and sign the Agreement in April 2001. The Agreement came into force in April 2004, after ratification by all EU member states. In March 2004, Macedonia applied for EU membership, following Croatia's example of not waiting for the SAA to come into force. After having completed and handed over the EU questionnaire in February 2005, Macedonia was granted candidate status at the European Council of December 2005.

Macedonian development was somewhat typical of the prevailing political drive behind the SAP. The early successes in negotiating the Agreement were related primarily to the country's positive role during the Kosovo crisis and to an attempt to stabilize the country as much as possible, given its immediate proximity to Kosovo and the fact that one quarter of its population is ethnic Albanian.

The armed uprising in early 2001 tied up most of the country's energy for most of that year and beyond. The signature of the SAA in April 2001 was indicative of yet another political gesture, aiming at stabilization of the country, rather than at the conclusion of a reform process in which merit was awarded.

Following the 2001 conflict, all international actors, including the EU, focused almost exclusively on the implementation of the Ohrid Framework Agreement.¹⁰ A major reform exercise began, redefining most of the country's legislation according to the principle of multi-ethnicity, while at the same time streamlining it with EU standards.

The country's Stabilization and Association report for 2004 acknowledged the reform efforts made but also stated that:

¹⁰ The agreement was signed in August 2001 and put an end to the armed conflict while redefining the country as a multi-ethnic state rather than a national one.

In many areas, the reform process is still in its infancy and will need further efforts to be converted into concrete changes and bring the expected benefits.¹¹

In a nutshell, the situation in Macedonia progressed considerably, if the absence of conflict was to be taken as a sign of stability. The political landscape changed, minority participation became not only reality but one of the driving political motives for reform. This was certainly true for the upcoming process of decentralization, which was to be a stepping-stone for political actors in country and also for Macedonia's progress toward EU accession.

Other areas mentioned in the report, in which reform was under way but where the efforts needed to be sustained, were the rule of law, good governance, transformation of the administration and of the security sector, and last—but definitely not least—the economic situation, where:

Notably, serious weaknesses in the functioning of the economy, business climate, competitiveness and enforcement of property rights, is increasingly a challenge for the country's successful transition.¹²

Finding itself in that situation, the Macedonian government made a bold decision to apply for full EU membership, overriding the process envisaged by the EU and imposing a position that demanded reaction from the EU. Although all actors were conscious that the largest part of the work was still to be done and that genuine ownership of the process had not been fully realized, Macedonia nevertheless was accorded candidate status in line with its calculations.

The reason behind such a solution was again political. It was believed that giving Macedonia the status of a candidate country would enhance regional stability and the internal coherence of the state at the same time. In the wake of security problems in Kosovo, resulting from the uncertain outcome of ongoing status negotiations, the loyalty of ethnic Albanians in Macedonia to their state will continue to be an important issue for improvement.

¹¹ European Commission, *Former Yugoslav Republic of Macedonia: Stabilization and Association Report 2004*, Commission Staff Working Paper, SEC(2004) 373(European Union, Brussels, 2004), 3.

¹² *Ibid.*

E. Serbia and Montenegro

The situation in Serbia and Montenegro with regards to the SAP was mixed. Delays in the reform process occurred on a regular basis due to incongruence in the relationship between institutions at the state and republic level. Some of these problems might have been alleviated through the adoption of the European Constitution, but this was rejected in referenda France and Holland. While there was progress in some areas, notably in relation to national minorities and regional co-operation, other areas of reform fell victim to institutional infighting and lack of clarity regarding competencies. Cooperation with the ICTY continues to be an issue, with the EU is demanding more progress.

In late 2003, the European Commission decided to initiate a feasibility study, which would assess the readiness of Serbia and Montenegro to enter negotiations on an SAA. The authorities of Serbia and Montenegro could not, however, agree on the modalities of the negotiation process and work on the study was halted in early 2004. The country report stated that:

There is a lack of strategic planning and consensus at the state level, which renders any assessment of the current position of Serbia and Montenegro and its prospects in the SAP difficult. The country's clear EU perspective in the context of the SAP has not yet become the determining framework of reference for many decision-makers both at state and republican level. This is further exacerbated by the continuing uncertainty over the future of the state. Moreover, in terms of substance, there is little co-ordination between the two parallel reform processes in Serbia and in Montenegro.¹³

Following EU shuttle diplomacy, which has become a pattern of—or almost a precondition to—dealings with Serbia and Montenegro, the government authorities and the EU emissaries agreed in October 2004 to a 'two track' approach, in which the EU was to discuss and negotiate issues of relevance on the republic level with the two

¹³ European Commission, *Serbia and Montenegro: Stabilization and Association Report 2004*. Commission Staff Working Paper, SEC(2004) 376 (European Union, Brussels, 2004), 30.

republics separately but to continue to discuss issues of state relevance with the state union authorities. Whether this approach has contributed to more co-operation between the republic governments or whether it reinforced tendencies to split the union into two independent states remains to be seen. As a result of this agreement to break the deadlock, the European Commission decided one week later to restart work on the feasibility study, which was completed in the spring of 2005. Following a decision of the European Council on 3 October, negotiations on the SAA began on 10 October 2005.

In the current situation of the state union of Serbia and Montenegro, the effect of the SAp is difficult to assess. While European integration remains the only alternative for the country, a series of fundamental internal problems will have to be solved sooner rather than later, not least the geographical and political shape of the country. Unless these issues are resolved, there is little prospect for far reaching reforms and the process of association and stabilization will not make progress. At the same time, the danger of Serbia and Montenegro falling behind in terms of regional development is a given, with all the predictable and unforeseen implications that this would have.

Apart from the state of the union, another problem for Serbia is Kosovo. The unresolved question of the province's future is forcing even the reform-oriented politicians in Serbia into a defensive position. For the future of Serbia and Montenegro, a solution to the Kosovo issue would be very helpful.

F. Kosovo

Kosovo's legal set-up, as part of Serbia and Montenegro but under the jurisdiction of UN Security Council Resolution 1244, puts the EU in the peculiar situation of being part of the governing structures (as one of the pillars of UNMIK) and a donor at the same time. Kosovo is part of the SAp through a special mechanism, the Stabilization and Association Process Tracking Mechanism (STM). Through this mechanism, Kosovo has access to the CARDS programme and thus to substantial financial assistance.

When it came to progress within the framework of the SAp, it was clear that the province was still far from any agreement. With an extremely volatile political situation, institutions that were in the course of being defined and an economy that

depended almost exclusively on assistance and remittances, it was clear that the province was at the beginning of the process of state building. The serious setback in security, especially for the minority population, resulting from the violent incidents in March 2004 and the following political crisis, in which the UN administration suffered a considerable loss of credibility and trust, contributed to the general confusion. It is expected that the responsibility for the administration of Kosovo will pass from the UN to the EU at some point in the future, thus placing the responsibility with the EU. More clarity on the issue was expected from the status negotiations, which began in late 2005, but the issue has yet to be resolved.

Kosovo is one of the rare examples of actual state building from scratch. Many mistakes made elsewhere—in particular in Bosnia and Herzegovina—have been repeated in Kosovo by the international community. The lack of a clear vision on the future of the province and its drive for immediate independence have contributed to a rise in tensions, and the indecisive way of making Kosovan authorities responsible for the creation and implementation of policy has perpetrated a situation of shifting responsibilities, to the detriment of the population.

The STM can be only one of many measures to be implemented in Kosovo. It may, however, ensure that a certain convergence with the countries in the region and the European Union is kept up.

II. THE THESSALONIKI AGENDA: EUROPEAN PARTNERSHIPS

As mentioned before, the countries that are subject to the SAp are all weak countries. Even if the process itself could be said to be setting the right parameters and the financial assistance utilized in a proper¹⁴ and timely manner, the capacity of the recipient states is rather limited. Delays were often caused by the inability of administrations to react to reforms that they were expected to implement. Short-term political interests prevail in a region in which a stable government tends to be an

¹⁴ A recent number of scandals within and involving the European Agency for Reconstruction show that this is not always the case. Apart from cases of misuse, EU funding usually arrives at the beneficiaries very late and can constitute a factor holding up processes.

exception and where the high pace of elections implies a high number of promises which are not always compatible with the reform agenda.

A development leading to the so-called 'Thessaloniki Agenda' adopted by the summit in Thessaloniki in spring 2003 acknowledged the limited capacity of the five countries for implementing the reforms leading to their association with the EU. Deficiencies were widely identified in the planning capacity and in the distinction between long-, medium- and short-term priorities.

It was also acknowledged that a number of instruments that applied to candidate states and that had yielded positive results, such as 'twinning', could be applied to the SAp countries as well.

Against the background of an identified need for a stronger and more structured involvement by the EU in the region it prefers to call the 'Western Balkans', the 2003 spring EU summit adopted the 'Thessaloniki Agenda'. For the SAp, this means a number of enhancements. Apart from the abovementioned twinning mechanism and access to other community programmes, as well as an enhancement in funding for CARDS, the most important instrument that emerged in Thessaloniki was that of the so-called European Partnerships. Individual partnership agreements were drawn up with four of the five countries¹⁵ 'including Kosovo', establishing individual sets of short- and medium-term priorities in the reform process, with a clear checklist of issues to be dealt with. The countries themselves had to prepare a national plan, detailing how they intended to address the issues identified in the European Partnership document. Monitoring by the EU was ensured through the annual SAp country reports.

III. PROTECTION AND PARTICIPATION OF MINORITIES

In all documents related to the SAp, the issue of the protection of minorities played a central role. A meaningful and functioning protection of minorities was seen as a precondition for further progress in the SAp.

¹⁵ Croatia is no longer a part of this process, having proceeded to the status of candidate country.

A large number of projects that focused on improving inter-ethnic relations were, and continue to be, financed through the CARDS programme. However, it is difficult to assess the impact of these projects without conducting a separate study. The impression on a global scale was that it was not comparable to the amount of funds and energy expended. In countries where the international contingent (not the EU itself) was in a position to impose regulations (Bosnia and Herzegovina, Macedonia and Kosovo), progress evidently took place when it came to legislation and institutional set-up. In other countries, this process lagged behind.

A core problem seems to be the instruments available to the European Union. Declarative statements have had little impact in the accession countries to date.¹⁶ As such, they are bound to have even less impact in the Western Balkans. International instruments like the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) or the OSCE's High Commissioner on National Minorities (HCNM) have proved very limited in their impact.

The prominent position of minority protection in EU documents related to the SAP was not matched by concrete instruments for monitoring, or even implementing, that protection.¹⁷ In most countries, instruments other than the FCNM and HCNM do not exist. To a certain extent, an exception can be seen in the Ohrid Framework Agreement in Macedonia, in a power-sharing mechanism where the EU is one of the guarantor powers. However, this very agreement is highly problematic in its improvised form, mainly because it sets standards that relate clearly to the relation between the ethnic Macedonian majority and the biggest minority, the ethnic Albanians. The other, smaller groups are either neglected or even discriminated against.¹⁸ This raises another dilemma, namely that of installing participation mechanisms without adequate provisions for minority protection. Macedonia can be cited as an example of failure in this respect. The process of decentralization, which

¹⁶ See J. Hughes and G. Sasse, "Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs", 4 *Journal of Ethnopolitics and Minority Issues in Europe* (2003), 1–36.

¹⁷ See also F. Bieber, "Minderheiten und Mehrheiten im westlichen Balkan—eine Analyse der Schwächen internationaler Politik", Paper for the Conference "Interethnic Relations in the Western Balkans: Problems, Instruments and Prospects for the Future", Berlin. 12–13 September 2003.

¹⁸ The best example is the arbitrary setting of a 20% threshold for the use of a minority language at the local and national levels, which makes this use impossible for smaller minorities in certain regions of the country.

began in 2005, was one of the milestones in the SAp, and is likely only to exacerbate these problems, leaving smaller minorities at the discretion of the numerically largest minority.

In addition, the EU is facing a problem of credibility here. While demanding protection of minorities from countries striving for EU accession and imposing participation mechanisms, no regulations ensure the same within the Union, apart from the 1993 Copenhagen Document. This problem of ‘double standards’ is often raised in relation to the region.

Furthermore, the question of long-term sustainability of adopted measures has to be addressed. As is the case with the ten countries that joined the EU in 2004, minorities in the countries currently subjected to the SAp will encounter no, or at least very weak, instruments aimed at their protection once they join the EU. The question is how and by which authority majority–minority relations will be monitored and standards enforced.

The reality within the European Union is shifting. A high number of countries have joined or are about to join, for which protection of group rights is of much more importance than it is to most ‘old’ EU members. The EU will have to face these issues, lest they grow into political problems. What is missing seems to be an institutional approach: defining a catalogue of concrete instruments for an appropriate protection of ethnic minorities, participation mechanisms and an institutional focal point for the issue, wherever this might be located.

IV. TIME AS A PROBLEM

It will take a good number of years before the developments that the SAp is attempting to foster are concluded. Even the most optimistic approach—the Macedonian one—does not foresee accession earlier than 2010. In the meantime, the countries subject to the SAp are struggling simultaneously with several burning issues, the worst being the desperate economic situation.

No matter what results the reform efforts yield it is unlikely that there will be a short- to medium-term dramatic change in the economic situation. International foreign

investment will depend on regional stability and the unresolved issue of Kosovo, as well as possible further outbursts of violence there, will continue to affect in a negative sense, the preparedness of investors to become active in the region.

What this means for the population is, at best, stagnation of the economic situation and aggravation of the social situation. The already acute 'brain drain' will continue, as long as there are no real incentives for young, qualified persons to return and apply their knowledge and experience.

In order to alleviate the economic situation of the population and to address the concrete needs of labour forces in the European Union, two measures are needed: on the one hand, a decisive liberalization of the visa regime, possibly conditioned by substantial progress in the SAP; and agreements between the EU and the individual countries relating to seasonal work permits. This would allow the massive illegal work migration to be channelled legally, while also allowing additional sources of income in conditions of a shrinking labour market in the region. It goes without saying that these measures would have to be accompanied by a more serious and comprehensive strategy to combat organized crime. The measures in place now are far from sufficient.

Another problematic issue is the dominance in the political sphere of a generation of politicians who embrace fully the 'privileges' that are part of being a politician but who are less wholehearted when it comes to responsibility. Several EU reports endeavour to appeal to the sense of responsibility of those who make quick to make commitments but are less interested implementing them. Few attempts to replace this type of politician have been successful, which contributes further to frustration among young and qualified persons and leads them away from politics or the state sector in general. It is a characteristic of weak states that they are hijacked by a political class whose interests lie elsewhere than in serving their countries and societies. A more decisive approach on the EU side is needed to isolate internationally those political elements involved in criminal activities. The so-called 'black list' is a beginning but the criteria for 'eligibility' for this list need to be enhanced.

The very slow reform of the education sector will further widen the gap between young people from the region and the rest of Europe. This can be alleviated only very

partially through the establishment of new, modern education institutions, such as the Southeast Europe University in Macedonia.

The SAp is racing against time. Success will have to be substantial if the attraction of the EU, which is very widespread, is to persist. Croatia and Macedonia have succeeded in undermining the process by almost imposing their application for candidate status. This has given the process a new dynamic, raising the hopes of the population without the requisite readiness of institutions to implement required reforms.

The example of the two countries shows that the incentive of potential EU candidate status, as envisaged in the SAp, is just not enough. A concrete and tangible vision and perspective must be given to the Western Balkans if these countries are not to fail. The introduction of the European Partnerships and the concentration of all financial aid measures into one instrument, the 'Instrument for Pre-Accession Assistance' (IPA), are steps in the right direction. However, more decisive steps will have to follow if it is to be made clear to local actors that, not only is the responsibility in their hands, but also that there is no alternative to the European path. The EU will have to define a clear accession timeframe in order to maintain reform-oriented momentum; it will have to face reality and start addressing social and economic issues in the region as a whole in a structured, comprehensive way if it wants to see the envisaged institutional reforms bear fruit.

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Biographical Note

Harald Schenker is a freelance political analyst and consultant. His specialization is in South-East European history and Balkan studies, with special emphasis on interethnic relations. He has extensive field experience with the OSCE and other organizations in Macedonia, Albania and Bosnia and Herzegovina, and has published widely on issues of minority relations in South-Eastern Europe. He is also the administrator of SEE – South East Europe Culture Exchange.