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On the Protection of National Minority Rights in Ukraine

The difficult journey towards compliance with international standards

Supervisor

Chiar.ma Prof.ssa Sara De Vido

Assistant supervisor

Chiar.mo Prof. Stefano Petrungaro

Graduand

Chiara Pontin

Matriculation number 856313

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ABSTRACT

Il presente elaborato analizza la situazione delle minoranze nazionali in Ucraina e si propone di indagare se gli eventi che vedono coinvolto ormai da diversi anni questo paese possano essere riconducibili ad una mancanza di standard adeguati nella tutela e promozione dei diritti delle minoranze a livello nazionale.

Per poter comprendere appieno la complessità del rapporto tra l'Ucraina e le proprie minoranze nazionali, è essenziale innanzitutto fornire due tipologie di contestualizzazione. Il primo contesto fondamentale da avere bene a mente è quello legislativo internazionale.

Nel corso del tempo, quello delle minoranze è un tema che è diventato sempre più centrale nel diritto internazionale. Numerosi sono i documenti legislativi adottati fino ad ora, come trattati internazionali sui temi dell'antidiscriminazione, della protezione dei diritti umani e dedicati nello specifico alle minoranze nazionali. Tuttavia, il maggior problema che questo tema riscontra ancora oggi è la mancanza di una definizione universalmente accettata di ciò che costituisce una minoranza. Nonostante le numerose proposte, nessuno, accademico od organizzazione internazionale, è riuscito a fornire una definizione che mettesse d'accordo la comunità internazionale. Tale *impasse* dà luogo ad una serie di ulteriori problematiche, di cui la principale è sicuramente la mancanza di riconoscimento internazionale. Infatti, in assenza di una definizione ufficiale, la decisione sul se e in che misura riconoscere le minoranze risulta a discrezione degli stati, e questo contribuisce inevitabilmente a creare una situazione di stallo che difficilmente verrà superata nel prossimo futuro.

Un'ulteriore complicazione è costituita poi dalla pluralità di categorie che rientrano nel concetto di "minoranze". L'elaborato si occupa solo di quelle che potremmo definire "minoranze etniche", e non dei cosiddetti "gruppi marginali", eppure, anche nella categoria delle minoranze etniche abbiamo molteplici sottocategorie su cui vale la pena fare delle distinzioni, come antiche e nuove minoranze, minoranze disperse e popolazioni indigene.

Come accennato, nel corso del tempo, il diritto internazionale si è dedicato in maniera sempre più intensa al tema delle minoranze, dunque l'elaborato mira a fornire un quadro più o meno esaustivo di quelli che sono attualmente gli organi e gli strumenti esistenti, a livello internazionale e regionale europeo, per la tutela delle minoranze. Le

istituzioni più coinvolte sono indubbiamente le Nazioni Unite, il Consiglio d'Europa, l'OSCE e l'Unione Europea, tuttavia è importante trattare il contributo fondamentale anche di corti internazionali, organizzazioni internazionali come l'ILO, agenzie specializzate e la stessa società civile.

La seconda contestualizzazione fondamentale che l'elaborato mira a fornire è quella storica. Il variegato profilo linguistico e culturale dell'Ucraina è infatti frutto di un passato ricco di eventi, e risulta pertanto importante avere bene a mente quali sono state le epoche che più hanno lasciato il segno su questo territorio. Sin dalla dominazione dell'Impero Russo, il territorio ucraino e le popolazioni che lo abitavano sono stati coinvolti in un continuo susseguirsi di politiche differenti. Anche solo all'interno della stessa dominazione degli zar, nel corso dei suoi 200 anni di storia, sono stati adottati una molteplicità di approcci differenti nei confronti delle nazionalità che risiedevano nel territorio, dove durissime repressioni e ondate di russificazione si alternavano a periodi di maggiori libertà e diritti. Inoltre, tali politiche presentavano sostanziali differenze tra diversi territori e diverse nazionalità, tant'è che è quasi impossibile individuare un'unica politica lineare e coerente.

Anche per quanto riguarda l'epoca sovietica non possiamo parlare di omogeneità nelle politiche sulle nazionalità. Subito dopo la presa di potere da parte dei Bolscevichi, ad avere la meglio furono le politiche del leader del partito Vladimir Lenin, che sin già da molto prima della Rivoluzione dimostrava una forte sensibilità sul tema. Questa prima fase del periodo sovietico, che andò dai primi anni '20 del '900 fino al 1928, passò alla storia come '*korenizatsiya*', un termine che definiva la politica di *nation-building* sovietica basata sul principio della 'indigenizzazione', contrapposto all'assimilazione forzata della lingua e cultura Russa. Il 1928 marcò invece l'inizio di una nuova fase. Alla morte di Lenin, il nuovo capo di partito divenne Iosif Stalin. Seppur inizialmente il nuovo leader sembrava intenzionato a seguire le orme del predecessore, ben presto dimostrò di avere idee completamente diverse. All'indigenizzazione si sostituì la sovietizzazione, con l'obiettivo di raggiungere il Comunismo nel tempo di una generazione: questo si tradusse in una serie di azioni brutali che contribuirono a definire l'epoca staliniana con il nome di 'Grande Terrore'. Negli ultimi anni della sua esistenza, l'URSS vide un alternarsi di fasi di apertura a fasi di repressione. Tuttavia, attraverso i territori dell'Impero il sentimento nazionalista

cresceva in misura sempre maggiore e questo andò a costituire uno dei fattori decisivi nel crollo dell'Unione Sovietica.

Una volta fornite le dovute contestualizzazioni, l'elaborato passa al cuore della questione, ossia il quadro legislativo ucraino sul tema delle minoranze e la sua conformità agli standard internazionali. Ciò che questa tesi si propone, nello specifico, è di analizzare ciò che l'Ucraina è riuscita a fare, sin dall'ottenimento dell'indipendenza, per adeguarsi ai crescenti standard internazionali sul tema. Tale questione risulta ad oggi più rilevante ed attuale che mai, non solo perché la tutela delle minoranze è uno dei temi più importanti dell'agenda internazionale, ma anche e soprattutto alla luce di un'eventuale adesione dell'Ucraina all'Unione Europea. Infatti, l'accesso di nuovi stati membri, governato dall'Articolo 49 del Trattato dell'Unione Europea, è subordinato al possesso di due condizioni, fra cui il rispetto per i diritti delle persone appartenenti a minoranze. Il futuro del paese nella regione dipende in buona parte dalla sua capacità nel prossimo futuro di approcciarsi adeguatamente alle proprie minoranze nazionali. Questo è particolarmente evidente, ad esempio, se si parla della NATO: l'Ungheria ha posto il veto sull'accesso dell'Ucraina all'organizzazione proprio per le tensioni tra i due paesi sul tema della minoranza ungherese e la sua protezione all'interno dei confini ucraini.

Nell'elaborato vengono dunque analizzati i principali strumenti adottati dalle autorità ucraine in questi due decenni concentrandosi, in particolare, su tre campi: politica linguistica, ambito educativo, partecipazione politica ed elettorale. Inoltre, vengono analizzate la Costituzione del 1996 e la Legge sulle Minoranze Nazionali del 1992 e viene fatto breve cenno ad altre leggi minori sul tema che, seppur non trattate nel dettaglio, risultano comunque degne di essere menzionate.

Per determinare se gli strumenti introdotti dall'Ucraina in questi due decenni siano da considerarsi sufficienti ed efficaci, nell'elaborato viene fatto ampio ricorso alle Opinioni dell'*Advisory Committee* sulla Convenzione-quadro per la protezione delle minoranze nazionali.

L'elaborato, infine, analizza la Crimea come specifico caso studio sul tema delle minoranze in Ucraina, poiché le peculiarità del territorio sono tali da renderlo meritevole di un discorso a parte. Un passato ricco di eventi ha contribuito in modo massiccio a dare forma al variegato profilo demografico, linguistico e culturale che

presenta la Crimea odierna. Tra gli eventi maggiormente segnanti per il territorio, vi sono sicuramente i lunghi secoli di dominazione turca con fede islamica, la cui eredità permane ancora oggi in modo significativo, come anche e soprattutto i legami di lunga data con la Russia. A partire dal 1783, infatti, la Crimea divenne parte integrante dell'Impero Russo e lo rimase fino alla sua fine, nel 1917. Furono anni di grandi cambiamenti a livello demografico: masse di Tatari di Crimea emigrarono all'estero, mentre molti russi si stabilirono sul territorio, insieme a Greci, Armeni, Tedeschi, Estoni, ma anche Bulgari Cechi, Polacchi, e Ucraini. I legami della Crimea con la Russia non ebbero fine col tramonto dello zarismo: dopo un breve ma fondamentale periodo di indipendenza a seguito della rivoluzione bolscevica, nel 1921 la Crimea venne inglobata nel sistema sovietico come repubblica autonoma. Come menzionato, gli anni della *korenizatsiya* leniniana lasciarono presto spazio alla sovietizzazione e repressione staliniana e il profilo demografico della Crimea subì nuovamente sostanziali trasformazioni: le deportazioni nel corso della Seconda Guerra Mondiale annullarono quasi completamente la presenza dei Tatari di Crimea sul territorio, mentre le massicce migrazioni dall'URSS portarono la componente russa a costituire la maggioranza della popolazione totale. La possibilità di ritorno per la popolazione tatara in Crimea si aprì solo molti decenni dopo e avvenne gradualmente a partire dal 1989.

Il caso dei Tatari di Crimea è estremamente interessante nonché fondamentale per capire i rapporti interetnici in Ucraina. Essi possiedono due organismi governativi autonomi, il Qurultay e il Mejlis, principali rappresentanti e promotori dei bisogni e diritti della comunità tatara. Inoltre, in quanto abitanti nativi del territorio, i Tatari di Crimea desiderano vi si faccia riferimento come 'popolazione indigena', non come minoranza nazionale. Eppure, tale riconoscimento è giunto dal governo ucraino solo in tempi recenti, nel 2014.

Secondo l'ultimo censimento condotto in Ucraina, risalente al 2001, i Tatari rappresentano una buona fetta della popolazione totale della Crimea, tuttavia, questo territorio è l'unica parte dell'Ucraina dove la popolazione ucraina è minoritaria rispetto a quella russa. Ciò ha dato luogo nel corso del tempo ad una situazione interna molto complicata, con una società profondamente divisa e dove i rapporti interetnici sono tutt'altro che semplici. Nel 2013-2014, le tensioni hanno portato ai ben noti eventi dell'Euromaidan, culminati con l'incorporazione della Crimea nel territorio della

Federazione Russa. Da allora, l'Ucraina è al centro dell'attenzione internazionale a causa di un vero e proprio conflitto geopolitico che si sta consumando sul proprio territorio: esso continua a mutare il profilo demografico del territorio e nel corso degli anni ha comportato numerose violazioni del diritto umanitario internazionale e dei diritti umani. In questo contesto, sono i Tatari di Crimea a pagare il prezzo più alto.

Negli ultimi due anni, i rapporti interetnici nel paese sono andati peggiorando, anche a causa dello scoppio della pandemia da Covid-19, che ha dato luogo a nuovi scenari di violazioni di diritti umani.

A gennaio 2021, la Corte Europea dei Diritti Umani ha stabilito che ad avere giurisdizione in Crimea è la Federazione Russa, in quanto, sin dal febbraio 2014, esercita controllo effettivo sul territorio. Si tratta di una decisione storica, che dissipa le molte incertezze sul tema e che accende la speranza in un possibile miglioramento della situazione.

Alla base dell'analisi proposta in questa tesi di laurea vi è la necessità di comprendere perché l'Ucraina odierna sia un paese lacerato dalle lotte intestine di natura interetnica. Questa analisi risulta più attuale e rilevante che mai visto che, negli ultimi anni, il conflitto non solo non ha dato segno di attenuarsi, ma anzi è sembrato spesso sull'orlo di riaccendersi con più vigore.

Ciò che l'elaborato si è preposto di indagare è proprio se alla base di questa delicata situazione geopolitica non vi siano delle questioni irrisolte nella relazione tra l'Ucraina e le proprie minoranze interne, questioni che affondano le proprie radici in un quadro legislativo di tutela e promozione dei diritti ancora incompleto e ambiguo.

L'impressione generale è che l'Ucraina stia cercando di fare del proprio meglio per garantire un buon livello di protezione per le proprie minoranze, alla luce di pressioni internazionali e alte aspettative, sia da parte dalle istituzioni europee che dagli stati esteri che rappresentano le proprie diaspore nel paese. Tuttavia, risultano altrettanto evidenti una serie di problematiche che ostacolano una piena tutela delle minoranze nel Paese. Innanzitutto, l'ago della bilancia sembra sempre oscillare tra ucraini e russofoni: in passato, a seconda che il presidente fosse filorusso o meno, la popolazione russofona in Ucraina ha potuto godere di maggiori privilegi, oppure essere considerata al pari di tutte le altre minoranze, nonostante la componente russa costituisca circa la metà del totale. Questo continuo scontro tra le due va a discapito

delle altre minoranze che, nonostante presenti in misura minore, meritano altrettanta attenzione e tutela a livello nazionale. Prova ne è la situazione precaria in cui si trovano costantemente i Tatari di Crimea.

Un altro problema che emerge chiaramente in Ucraina è il generale scarso dialogo tra il governo centrale e i rappresentanti delle minoranze. Questo dà spesso luogo a situazioni in cui viene adottata una certa legge, ma i diretti interessati non sono stati minimamente interpellati.

In più, vi è un conflitto ancora in corso. La situazione geopolitica nel paese in termini di stabilità e sicurezza rappresenta inevitabilmente un grande – se non il maggior – ostacolo nella protezione delle minoranze e delle popolazioni indigene in Ucraina, che interferisce e ritarda ulteriormente un processo già faticoso.

Complessivamente, in Ucraina, il quadro normativo per la tutela e promozione dei diritti delle minoranze nazionali risulta incompleto e poco integrato, nonostante si possa notare un approccio positivo delle autorità volto ad un miglioramento della situazione. La causa è probabilmente riconducibile ad una società che, sin dall'alba dei tempi come nazione indipendente, risulta ancora in cerca di una propria identità. Tuttavia, il compito non risulta affatto semplice per un territorio che ospita più di 130 culture e tradizioni.

L'Ucraina sembra avere davanti a sé un lungo e difficile cammino verso la piena protezione delle proprie minoranze nazionali. Tuttavia, è importante ricordare che, nonostante la grande attenzione sul tema, lo stesso diritto internazionale presenta ancora grandi lacune. La mancanza di una definizione universalmente accettata e il mancato riconoscimento delle minoranze, rimangono i maggiori ostacoli alla piena protezione delle minoranze a livello internazionale.

Ad oggi, è molto complicato attribuire al sistema legislativo ucraino una certa arretratezza in materia di protezione delle minoranze nazionali, alla luce di un sistema internazionale che forse deve ancora svilupparsi pienamente.

INTRODUCTION

Since the infamous events of 2013-2014, culminating in the incorporation of Crimea into the territory of the Russian Federation, Ukraine has been at the center of international attention due to a true geopolitical conflict taking place on its territory. However, this was an outburst of inter-ethnic tensions that have much more ancient origins.

This master's thesis analyzes the situation of national minorities in Ukraine and aims to investigate whether the events that have been involving the Ukrainian territory for several years now are attributable to a lack of adequate legislative standards in the protection and promotion of minority rights at the national level.

The elaborate will consist of four chapters.
In order to fully understand the complexity of the relationship between Ukraine and its national minorities, it is essential to provide two types of contextualization.

The first one will be given by Chapter 1 and involves the international legislative framework. Here, will be provided a more or less comprehensive picture of what are the main existing instruments, at international and regional European level, for the protection of national minorities, The institutions most involved are undoubtedly the United Nations, the Council of Europe, the OSCE and the European Union, but it is also important to deal with the fundamental contribution of international courts, international organizations, specialized agencies and civil society.
Over time, the topic of minority rights has gained centrality on the international agenda and the body of international law has been increasingly devoted to the issue. Despite the numerous legislative documents adopted so far, however, there are still some major problems. The most critical issue is the lack of a universally accepted definition of what constitutes a minority, but there are other additional problems, such as the lack of international recognition and the rich plurality of categories that today are classified as "minorities."

The second fundamental contextualization will be given by Chapter 2, where the historical framework will be outlined. Here will be provided an excursus of what have

been the historical periods and events that most marked this territory. The varied linguistic and cultural profile of Ukraine is the result of a dynamic past: since the domination of the Russian Empire, and throughout the Soviet era, the Ukrainian territory and the people who inhabited it have been involved in a continuous succession of different policies. A multiplicity of different approaches were indeed adopted towards the nationalities residing in the territory, where harsh repressions and waves of Russification alternated with periods of greater freedom and rights. Moreover, these policies have differed substantially between different territories and different nationalities, up to the point that it is almost impossible to identify a single coherent and linear policy.

Once the necessary contextualizations have been provided, the dissertation will move on to the heart of the matter, namely the Ukrainian legislative framework on the issue of minorities and its compliance with international standards. More specifically, this thesis aims to analyze what Ukraine has done, since obtaining its independence, to comply to the growing international standards on the topic: this issue is more relevant and topical than ever, not only because the protection of minorities is one of the most important issues on the international agenda, but also and especially in light of a possible accession of Ukraine to the European Union and NATO. The country's future in the region depends in large part on its ability in the near future to approach appropriately to its national minorities.

For these reasons, in Chapter 3 the main instruments adopted by the Ukrainian authorities in these two decades will be analyzed, focusing in particular on three fields: language policy, education, political participation and elections. In addition, the Constitution of 1996 and the Law on National Minorities of 1992 will be explored in depth. In order to determine whether the instruments introduced by Ukraine in these two decades are to be considered sufficient and effective, will be made extensive use of the Opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities.

Finally, Chapter 4 will deal with the situation of Crimea as a specific case study on the topic of minorities in Ukraine. An eventful past has contributed massively to shaping the diverse demographic, linguistic and cultural profile of contemporary

Crimea. Among the most significant events for the territory, there are undoubtedly the long centuries of Turkish domination with Islamic faith, whose legacy still persists today, as well as - and above all - the long-standing ties with Russia, first within the Tsarist Empire and then under the Soviet yoke. This Chapter will also focus on Crimean Tatars, whose presence and history are fundamental to understand interethnic relations in Ukraine. The demographic composition in Crimea is extremely complicated: Tatars represent a good portion of the total population, but this territory is the only part of Ukraine where the Ukrainian population is outnumbered by the Russian one. Over time, this has resulted in a truly complicated internal situation, with a deeply divided society and where inter-ethnic relations are far from simple. The ongoing Russian-Ukrainian conflict continues to change the demographic profile of the territory and has resulted in numerous violations of international humanitarian law and human rights. Furthermore, over the past two years, inter-ethnic relations in the country have been deteriorating, partly due to the outbreak of the Covid-19 pandemic, which has given rise to new scenarios of human rights violations.

At the base of the analysis proposed in this thesis there is the need to understand why Ukraine today is a country torn by inter-ethnic infighting. This analysis is more topical and relevant than ever given that, in recent years, the conflict has not only shown no sign of coming to an end, but has often seemed on the verge of flaring up again with greater vigor. The purpose of this thesis is to investigate precisely whether behind this delicate geopolitical situation there might be unresolved issues in the relationship between Ukraine and its internal minorities, having their roots in a legislative framework of protection and promotion of their rights still ambiguous and incomplete.

LIST OF ACRONYMS

(A)SSR	(Autonomous) Soviet Socialist Republic
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CoE	Council of Europe
CPSU	Communist Party of the Soviet Union
CSCE	Commission on Security and Cooperation in Europe
EAEC	European Atomic Energy Community
ECHR	European Convention on Human Rights
ECI	European Citizens Initiative
ECJ	European Court of Justice
ECRML	European Charter for Regional or Minority Languages
ECSC	European Coal and Steel Community
EEC	European Economic Community
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
HCNM	High Commissioner on National Minorities
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILO	International Labour Organization
KHPG	Kharkiv Human Rights Protection Group
NATO	North Atlantic Treaty Organization
NGO(s)	Non-Governmental Organization
OCU	Orthodox Church of Ukraine
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PCJI	Permanent Court of International Justice
(R)SFSR	(Russian) Soviet Federative Socialist Republic
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

UNESCO	United Nations Educational, Scientific and Cultural Organization
USSR	Union of Soviet Socialist Republics
WWI	World War I
WWII	World War II

CHAPTER 1. MINORITIES UNDER INTERNATIONAL LAW

CONTENTS: 1.0 Introduction to the chapter – 1.1 The concept of "minority" – 1.1.1 The inconclusive search for a definition and the consequent problem of recognition – 1.1.2 Further complications: old and new minorities – 1.2 Minorities under international law: existing international and regional systems for minority protection – 1.2.1 Historical background – 1.2.2 The United Nations – 1.2.3 The Council of Europe – 1.2.4 The Organization for Security and Co-operation in Europe – 1.2.5 The European Union – 1.2.6 International courts – 1.2.7 Other relevant instruments – 1.3 Conclusions.

1.0 Introduction to the chapter

Before we deal with Ukraine and its approach towards national minorities, it is important to have a more rounded vision of what has been and is nowadays the international legislative framework concerning minorities. The first chapter of this thesis aims at providing an overall view around the topic of minorities in the body of international law.

In the first place, we will try to reconstruct the difficult and still unresolved process towards the introduction of a universally accepted definition of 'minority'. As we will be able to observe, despite the rich number of international treaties concerning non-discrimination, human rights and minority rights protection, up until now no one, neither international organizations and scholars, has been able to offer the ultimate definition of minorities.

The absence of a definition comes with other problems, the most critical one is the lack of recognition. In fact, at the present, the decision whether to and to what extent recognize minorities is left up to single states. This inevitably contributes to the present stalemate, which is not expected to be broken soon.

Furthermore, the terminology involving the broader picture of minorities' world is so rich that some clarifications need to be made. In order to deal with Ukraine and its relationship with minorities, we will see the main issues concerning old and new minorities, dispersed minorities and, only in brief to leave the discussion for Chapter 4, indigenous people.

In the second place, we will present an outline of minorities under international law. After a brief historical reconstruction of how the international approach towards minorities developed in the course of history, we will examine current existing instruments, at international and regional level[1], concerning minority protection.

We will try to give an overview of the main mechanisms provided by the United Nations, the Council of Europe, the OSCE and the European Union. Will also take into account the rich contributions offered by international courts and some other relevant instruments provided by independent bodies, such as specialized agencies and NGOs.

1.1 The concept of "minority"

1.1.1 The inconclusive search for a definition and the consequent problem of recognition

Nowadays, we can quite surely affirm that all States in the world host at least some types of minorities within their territories, whether we are talking about ethnic, linguistic or religious minorities. If we consider the world's scenario, it is no surprise that, both at national and international level, minority rights have become, over time, one of the key topics in contemporary agenda.

That of minorities represents, indeed, a prominent theme in our current global society, but it must be also pointed out how there is still no common consensus over an authoritative, generally accepted definition of 'minority'.

Not even the most important international organizations and their advanced instruments have been able to succeed in this fundamental task. For instance, one of the reasons why a universally agreed-upon definition of 'minority' does not exist even today in the context of the United Nations, is that, ever since the 50s, whenever the issue was raised within the discussions of the organization there was always a widespread dissent over a definition or another.

At the end of the 20th century, the UN started working on a draft Declaration on Minorities and, of course, the issue of including a definition came up. If, on the one

[1] Considering that this study is meant to concentrate on Ukraine, we will only deal with the European regional systems and not with the African and American ones.

hand, many different proposals were made, the UN had also two previous definitions at its disposal.

One had been provided by the Permanent Court of International Justice (hereinafter: PCJI) in 1930. On 31 July 1930, indeed, the PCJI tried to define the meaning of 'community' in its Advisory Opinion concerning the case of Greco-Bulgarian communities. In that occasion, the Court stated that:

> *"By tradition, which plays so important a part in Eastern countries, the 'community' is a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other"*[2]

The second definition had been instead provided in 1977 by Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Francesco Capotorti. Special Rapporteur Capotorti tried to fill the void of a univocal concept giving a definition of minority in accordance with Article 27 of the International Covenant on Civil and Political Rights.[3]

> *"A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language".*[4]

In 1985, based on the definition given by Capotorti, Canadian Superior Court judge Jules Deschênes submitted his revised proposal of definition:

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[2] Permanent Court of International Justice, Greco-Bulgarian Communities, Advisory Opinion, 1930 P.C.I.J. (ser. B) No. 17 (July 31). Available at: https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_B/B_17/01_Communautes_greco-bulgares_Avis_consultatif.pdf

[3] See page 31 of this thesis.

[4] United Nations, Minority Rights: International Standards and Guidance for Implementation, New York and Geneva, 2010, p. 2. Available at: https://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf

"A group of citizens of a State, constituting a numerical minority and in a nondominant position in a State, endowed with ethnic, religious or linguistic characteristics which differ from those of the majority of the population, having a sense of solidarity with one another, motivated, if only implicitly, by a collective will to survive and whose aim is to achieve equality with the majority in fact and in law".[5]

However, neither of these proposed definitions was ever accepted by the Members of the Sub-Commission on the Promotion and Protection of Human Rights. The attempts to formulate an unequivocal definition of what constitutes a minority went on for so long that it was finally decided not to include one in the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

Efforts in giving a definition of what constitutes a minority have been also undertaken within the context of the Council of Europe. In 1993, the Parliamentary Assembly proposed to add a protocol at the 1953 European Convention on Human Rights and Fundamental Freedoms. The Additional Protocol on the Rights of National Minorities refers to 'national minority' as a:

"A group of persons in a state who reside on the territory on that state and are citizens thereof; maintain long standing, firm and lasting ties with that state; display distinctive ethnic, cultural, religious or linguistic characteristics; are sufficiently representative, although smaller in number than the rest of the population of that state or of a region of that state; are motivated by a concern to preserve their culture, their traditions, their religion or their language".[6]

[5] Deschênes, J., Proposal concerning a definition of the term UNDOC E/CN.4/ Sub.2/1985/31. Cited in Alam, A., Minority Rights under International Law, Journal of the Indian Institute, July-September 2015, vol. 57, No. 3, p. 379

[6] Parliamentary Assembly, Recommendation 1201, adopted 1 February 1993, Additional protocol on the rights of national minorities to the European Convention on Human Rights. Available at: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15235. Cited in Petričušić, A., The Rights of Minorities in International Law: Tracing Developments in Normative Arrangements of International Organizations, Croatian International Relations Review, Vol. 11, No.38/39, 2005, p. 4

As we can observe, in defining the expression 'national minority', the Parliamentary Assembly of the Council of Europe basically repeated Special Rapporteur Capotorti's formulation. Capotorti has indeed provided what has later become probably the most widely accepted theoretical definition of minority.

One of the biggest successes of the Council of Europe is undoubtedly the Framework Convention for the Protection of National Minorities. Despite being an extremely complete document and the only existing legally binding international instrument for minority protection, a definition of 'national minority' was never included in the text. In the document it is indeed explained that "at this stage, it is impossible to arrive at a definition capable of mustering general support of all Council of Europe member States".[7]

As far as the Organization for Security and Co-operation in Europe (OSCE) is concerned, we can observe that both in the 1975 Helsinki Final Act and in the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension, despite clearly stating the rights that should be guaranteed to minorities, there is no attempt to give a definition of what a minority is. The Copenhagen document, indeed, limits itself to the phrase: "to belong to a national minority is a matter of a person's individual choice".[8]

During one of its speeches, first designated OSCE High Commissioner on National Minorities Max Van der Stoel gave his own interpretation of what constitutes a minority: "First of all, a minority is a group with linguistic, ethnic or cultural characteristics which distinguish it from the majority. Secondly, a minority is a group which usually not only seeks to maintain its identity but also tries to give stronger expression to that identity".[9] However, it was never included in any official document.

In the framework of the OSCE, the definition was probably never given for several reasons. First of all, there was a certain flexibility when dealing with the cases,

[7] Framework Convention for the Protection of National Minorities and Explanatory Report, 1995, paragraph 12 of the Explanatory report. Available at: https://rm.coe.int/16800c10cf

[8] CSCE, Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, paragraph 30. Available at: https://www.osce.org/files/f/documents/9/c/14304.pdf

[9] Intervention at the Human Dimension seminar, Warsaw, 24 May 1993. Cited in Kemp, W., (ed.), Quiet diplomacy in Action: The OSCE High Commissioner on National Minorities, The Hague, 2001, pp. 29-30

and this flexibility was allowed only given the absence of a definition. In Van der Stoel's opinion, in fact, a definition was not needed and was long "preferable to proceed pragmatically".[10] On the other hand, there was a general agreement on the fact that the search for an accepted definition would have delayed the work of the organization.

As we anticipated, consequently to the problem of definition comes the problem of recognition. Indeed, the lack of a precise definition of minority at international level inevitably leaves up to each state the possibility to recognize a certain group in its territory as a minority and, most importantly, the decision on if and to what extent provide for their protection. This means that a state might avoid having to deal with potential minority issues, by simply claiming that the state has a homogenous national population with no minorities inside it.[11]

There are several reasons why some countries are hostile towards recognizing minority rights. One is usually considered to be the fact that minority rights are often perceived as superfluous in democratic societies where there is a wide protection of individual human rights.

In response to this first argument, it is important to highlight how a systematic protection of individual rights does not necessarily imply an automatic protection of minority rights. According to Canadian political philosopher Will Kymlicka, in some cases traditional human rights are simply not enough to resolve issues concerning minorities. He affirms on the contrary that "it is legitimate, and indeed unavoidable, to supplement traditional human rights with minority rights".[12]

High Commissioner Van der Stoel seemed to agree with this conception. In 1993, indeed, while explaining why his approach was not directed towards the human dimension, but more on the politico-military aspects of security, he explained that: "Minority questions are so intimately connected to issues which go to the heart of the

[10] Acceptance speech at the meeting of the Council of Ministers of Foreign Affairs of the CSCE, Stockholm, 15 December 1992. Cited in Kemp, W., op. cit., p. 31

[11] It is, for instance, the case of France and Turkey, which did not ratify the Framework Convention.

[12] Kymlicka, Will, Multicultural Citizenship: A Liberal Theory of Minority Rights, Clarendon Press, Oxford, 1995. Cited in Geldenhuys, D., Rossouw, J., The International Protection of Minority Rights. Special report complied for the FW de Klerk Foundation, August 2001, pp. 7. Available at: http://www.fwdeklerk.org/index.php/en/document-library/publications?download=82:the-international-protection-of-minority-rights

existence of states, that an approach based exclusively on the human rights aspects would be incomplete and therefore insufficient."[13]

Another obstacle to the recognition of minorities consists in the widespread belief that the promotion of minority rights enhances divisions among the population, possibly bringing to episodes of secessionism.[14]

Concerning this argument, it must be pointed out that a formal recognition of minorities and their rights is instead believed to play a decisive role in a country's stability. This idea is clearly affirmed in the Framework Convention: "the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent".[15] It is in fact when minorities fear for their survival as a group, that internal instability arises.[16]

There have been episodes in history that suggest how ill-treatment of minorities can lead to international tension and even war. Indeed, issues involving minority rights are still one of the main causes of turmoil in various parts of the world.

Having explained the absence of a definition and the consequent problems of recognition, it must be however pointed out that there are some defined characteristic features usually taken into consideration, when trying to determine if part of a certain population can be considered a minority.

Indeed, minorities are usually groups of people in numerical inferiority with respect to the rest of the population, who find themselves in a non-dominant position. This means that they are not in governing positions and, thus, cannot make decisions. Furthermore, these groups of people express some distinctive characteristics, which can range from ethnicity to culture or language, and that clearly distinguish them from the majority.

Generally speaking, we can sum up the features that are most commonly considered in this way: "the numerical size of the group, its economic strength, its

[13] Intervention at the Human Dimension Implementation Meeting, 28-29 September 1993. Cited in Kemp, W., op. cit., p. 25

[14] Geldenhuys, D., Rossouw, J., op. cit., p. 6

[15] Framework Convention for the Protection of National Minorities and Explanatory Report, op. cit., Preamble.

[16] Geldenhuys, D., Rossouw, J., op. cit., p. 7

homogeneity, territorial location and density, as well as its claims based mostly on its historical past and sometimes on the changed contemporary conditions".[17]

1.1.2 Further complications: typologies of minorities

To further complicate this framework, there is the wide use made of the term minority. When we generally speak about minorities, in fact, we usually tend to consider a vast heterogeneity of groups.[18] In order to better understand the rich but complicated framework in Ukraine concerning minorities, we should first briefly have a look at the main existing typologies of minorities.

The first distinction we should deal with is between 'old' and 'new' minorities. Even though this contraposition does not exist formally, it is fundamental to examine it more in depth because it is actually a broadly discussed topic in social and political contexts.

Whereas the term 'old' refers to groups that are autochthonous in a certain territory, the term 'new' is used to indicate minority groups that resulted from international migrations, especially after World War II. More in detail, old minorities are communities characterized by:

> *"a distinct language, culture, or religion as compared to the rest of the population and who have become minorities through the redrawing of international borders, having seen the sovereignty of their territories shift from one country to another. […] In many but not all cases, their co-ethnics may be numerically or politically dominant in another state, which they therefore regard as their 'external national homeland', or kin-state".*[19]

[17] Trifunovska, S., Minorities in Europe. Croatia, Estonia and Slovakia. The Hague: T.M.C. Asser Press. 1999, pp. 21. Cited in Petričušić, A., op.cit., p. 5

[18] In this section we will not consider those typologies of minorities that are usually defined as 'marginal groups', namely, with no claim of being exhaustive, people with disabilities, women, LGBTQ+ community and black people.

[19] Medda-Windischer, R., Old and New Minorities: Diversity Governance and Social Cohesion from the Perspective of Minority Rights, Acta Univ. Sapientiae, European and Regional Studies, 11, 2017, pp. 26-27

Generally, old minorities are called 'ethnic minorities', because culture and language are usually their characteristic features.

New minorities are instead communities formed by people who, for whatever reason, emigrated from their countries and now live along with their descendants in the country they settled in, "on a more than merely transitional basis".[20]

Only in rather recent times, the topic gained more international interest and scholars started discussing if, and in what, new minorities are similar to traditional minorities. Besides their origin, an important difference between the two is that while old minorities are somehow imposed a certain assimilation, new minorities deliberately choose to adapt to a new culture and language.

Indeed, the claims of new minorities are directed, of course, towards the guarantee of their cultural practices, but more towards improving their economic and social integration in the host country. On the contrary, old minorities usually have to deal with external pressures regarding assimilation.[21] Historical minorities are consequently keener to seek for a recognition as a separate identity, ask for territorial or non-territorial forms of autonomy, or even to push for secession.

However, both old and new minorities express the desire to manifest an identity other than the one of the dominant culture. In fact, "in spite of their differences old and new minorities share some common characteristics and thus voice similar claims, namely the right to existence, the right to equal treatment and non-discrimination, the right to identity and diversity, and the right to the effective participation in cultural, social, and economic life and in public affairs".[22]

[20] Geldenhuys, D., Rossouw, J., op. cit., p. 6

[21] The Framework Convention for the Protection of National Minorities distinguishes between integration and assimilation, by saying that "while assimilation forces persons belonging to a minority to relinquish their specific characteristics to blend into a society that is dominated by the majority, integration requires both the majority and the minorities to mutually adapt and change through an ongoing negotiation and accommodation process" (Article 5(2)). Under this article, minorities are protected from forced assimilation. Voluntary assimilation is instead not prohibited.

[22] Eide, A., Protection of Minorities. Report submitted to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-fifth session, 10 August 1993, UN Doc. E/CN.4/Sub.2/1993/34. Cited in Medda-Windischer, R., op. cit., p. 32

In the current discussion regarding minorities, the debate focused on if and to what extent the difference between old and new minorities can be overcome, reconciling both groups' needs, claims and priorities under a unique system of management. Indeed, although in principle all minorities are considered equal, minority protection instruments traditionally apply only to old minority groups.

As we mentioned, due to the absence of a definition, states are left with a broad margin of discretion in recognizing minorities and their rights: likewise, in this case, states across Europe adopted several different approaches to the issue.

When adopting the Framework Convention, some countries established systems for the protection of traditional minorities in order to comply with their obligations, but they also explicitly opposed including new groups in their provisions.[23] Other countries, instead, adopted a more case-by-case methodology and have been praised for their inclusive approach when interpreting the term 'national minority'.[24] There are also countries who have not yet adopted any official position.[25]

International bodies, for their part, adopted an open approach in dealing with minorities.[26]

The heart of the matter is that the current situation inevitably leads to an inconsistent implementation of minority rights. If new minorities were included in the provisions usually directed at old minorities, this might represent an additional instrument to respond to specific needs for protection. In fact, behind the search for a common ground between old and new minorities lies the aim of protecting cultural diversity, democracy and human rights. On the other hand, the insufficient recognition of minorities has proved to have a destabilizing effect for the country, since it can lead to alienation and eventually armed conflicts.

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[23] See, for instance, the declaration made by Germany when signing the FCNM on 11 May 1995. Reservations and Declarations for Treaty No.157 - Framework Convention for the Protection of National Minorities, Declarations in force as of today, Status as of 06/05/2021. Online page available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/157/declarations

[24] It is the case of the United Kingdom. See: Advisory Committee on the Framework Convention for the Protection of National Minorities - Opinion on the United Kingdom, adopted on 30 November 2001, ACFC/INF/OP/I(2002)006, pp. 5. Available at: https://bemis.org.uk/PDF_1st_OP_UK.pdf

[25] Medda-Windischer, R., op. cit., p. 30

[26] See for example: Advisory Committee on the Framework Convention for the Protection of National Minorities - Opinion on Ukraine, adopted on 1 March 2002, ACFC/INF/OP/I(2002)010. Available at: https://www.refworld.org/docid/447eef6f4.html

An important category of minorities that should be mentioned in this paragraph, is that of dispersed minorities. With the term 'dispersed' we refer to minorities that are not concentrated in a certain area and that have no "territorial base where they can constitute a majority".[27] An example of dispersed minority is Roma population, which is extremely relevant when speaking of our case study, Ukraine.

The first National Population Census of Ukraine was carried out in 2001 and recorded 47,600 Romani people, constituting around 1% of the total population, mostly present in Zakarpattia and Odessa regions.[28]

The major issues with regards to the protection of Romani are generated by the fact that many Roma are not even official citizens of the country, have no access to civil registration and identity documents. Moreover, many Romani houses are unauthorized constructions and are not present on the maps.

These circumstances let us think that the actual number of Romani people might be underestimated. This may be particularly true in the case of Ukraine, considering that the first census was also the last one and dates back to 20 years ago: since then, the situation might have changed consistently.[29] Another census was supposed to be conducted in 2010, but it has been constantly postponed, up to April 2020[30], when, due to Covid-19, was again further postponed to November-December.[31] Not only was the 2020 census finally cancelled, it was also declared that it is unlikely to take place in 2021 as well: Minister Oleg Nemchinov called it "an expensive pleasure".[32]

Roma are believed to be the most excluded and discriminated minority. Considering their lack of identity, Romani people are usually prevented from being

[27] De Villiers, B., Protecting Minorities on a Non-Territorial Basis—Recent International Developments, Beijing Law Review, 3, 2012, pp. 170-183. Available at: https://file.scirp.org/pdf/BLR20120400004_55481154.pdf

[28] Vseukraiynskyi perepys naselenniia, Derzhavna sluzhba statistiki Ukraini. Available in Ukrainian at: http://www.ukrcensus.gov.ua

[29] In these respects, see for instance: Viglyadaye tak sho v derzhavi nemaye nadijnih danih pro kilkist naselennya v ukrayini. Online article available in Ukrainian at: https://hromadske.ua/posts/viglyadaye-tak-sho-v-derzhavi-nemaye-nadijnih-danih-pro-kilkist-naselennya-v-ukrayini

[30] Ukrainian population census will be held in 2020 – Cabinet decree. Online article available at: https://en.interfax.com.ua/news/general/313066.html

[31] Vseukraiynskyi perepys naselenniia zaplanovano na kinez 2020-go. Online article available in Ukrainian at: https://www.pravda.com.ua/news/2019/10/10/7228684/

[32] U 2021 roci najimovirnishe ne bude vseukrayinskogo perepisu naselennya - ministr. Online article in Ukrainian available at: https://hromadske.ua/posts/u-2021-roci-najimovirnishe-ne-bude-vseukrayinskogo-perepisu-naselennya-ministr

guaranteed basic human rights: some major problems include inadequate housing conditions, poor health care, high unemployment rates and, as a result of limited access to quality education, high levels of illiteracy.

A particular issue concerns the widespread gender inequality. Girls are very likely to quit school at a very young age: this is first of all because they are usually perceived as less in need to get an education with respect to boys, secondly, as they grow up, girls are more and more involved in household activities and in taking care of younger siblings. Furthermore, in many Romani communities, early marriages are quite a common practice.[33]

An obstacle in the effective inclusion of this type of minority is usually constituted by its very nature of being dispersed. In fact, while there is the possibility to achieve a certain degree of autonomy for minorities that are sufficiently concentrated in a certain area, in the case of dispersed minorities it is very difficult to enjoy these potential mechanisms.[34] In this sense, there has been countries' proposal of conferring a type of autonomy not based on the territorial feature, but more on a cultural basis instead. Basically, non-territorial autonomy means implementing a decentralization of the decision-making to communities, rather than to a certain geographical area.[35]

Some clarifications should be made. First of all, the constitution of a community's cultural council as a form of non-territorial/cultural autonomy is a different concept compared to non-governmental organizations: while, as it can be deduced by the name, NGOs do not have governmental functions, these type of autonomies represent somehow a legal entity, that can operate as an organ of government, by clothing public powers.[36] In the second place, there are some practical differences between non-territorial and territorial autonomies. If territorial autonomies can decide on matters like their own infrastructures or public transport, for their part cultural councils have instead a restricted range of functions.[37] This is

[33] For more information concerning the situation of Romani people in a specific country visit the website of Minority Rights Group International: https://minorityrights.org

[34] De Villiers, B., op. cit., p. 171

[35] Ivi, p. 172

[36] Ivi, p. 173

[37] Ivi, p. 174

because cultural autonomies primarily deal with cultural, linguistic and religious matters.

In addition, while for territorial autonomy the jurisdiction is very well defined and involves people residing within a certain region or area, in the case of cultural councils the jurisdiction applies to its members regardless of where they reside.[38]

Of course, on the other side of the coin, there is the widespread fear that conferring such autonomy might cause conflicts and undermine national unity.

However, in this section we tried to explain why non-territorial autonomies might represent a valid instrument for dispersed minorities in order to promote their own rights.

In 1999, High Commissioner Van der Stoel affirmed that "insufficient attention has been paid to the possibilities of non-territorial autonomy".[39] The introduction of non-territorial solutions remains indeed limited, but it raised such a growing interest in time that nowadays we can find some concrete examples of it.[40]

The last typology of minority that definitely merits inclusion in this paragraph is constituted by indigenous people. Indigenous people are extremely similar to old minorities, but there is an additional characteristic, "they are the original inhabitants of their countries, having settled there before the majority population".[41]

The slight continuum between historical minorities and indigenous peoples is indeed a controversial issue and the debate around it is particularly complex. Given the importance of this point for the purpose of this thesis, we will leave this discussion to Chapter 4, where we will examine in depth the situation regarding Crimean Tatars.

1.2 Minorities under international law: existing international and regional systems for minority protection

[38] Ibid.

[39] Van der Stoel, M., Peace and stability through human and minority rights: speeches by the OSCE High Commissioner on National Minorities, Nomos, 1999, pp. 172. Cited in De Villiers, B., op. cit., p. 171

[40] De Villiers examines in detail some examples of cultural autonomies experimented by Estonia, Finland, Slovenia, and Kosovo. See De Villiers, op. cit., pp. 174-180

[41] Geldenhuys, D., Rossouw, J., op. cit., p. 6

1.2.1 Historical background

Even though, according to several scholars, the first steps towards the protection of certain minorities can be traced long back in our history[42], it is indeed in the seventeenth and eighteenth centuries that minority protection sinks its roots. During those centuries, European countries signed the first treaties that included clauses on religious minorities.[43] A relevant example is usually considered to be the Treaty of Westphalia of 1648, when Protestants in Germany were granted with religious freedom as much as Roman Catholics.

At the basis of these earliest concerns there was religion, not ethnicity, mainly because religious minorities were usually those most subject to persecutions.

In this sense, a relevant change has been made at the Congress of Vienna of 1815. On that occasion, even though an international system for minority rights protection was not yet provided, the concern started shifting for the first time from religious minorities towards ethnic minorities. For instance, Article 1 of the Final Act provided that the Poles were recognized with the right to preserve their culture and institutions.[44]

It is also remarkable to notice that the Final Act is the only treaty of the 19th century where some rights were also accorded to linguistic minorities.[45]

The development of the modern international system of minority protection is usually considered to have started in the aftermath of World War I. The Treaty of Versailles, the peace agreement that formally ended the war, contained indeed various minority treaties, where it was stated that minorities could enjoy their rights and manifest their identity freely, whether it was a religion, a language, a culture.[46] Article 86, for instance, stated that Czechoslovakia was obliged to "protect the interests of

[42] Cfr., for example, Oestreich, J., Liberal Theory and Minority Group Rights, Human Rights Quarterly, vol. 21, no. 1, 1991, pp. 110 and Vijapur, A.P., International Protection of Minority Rights, Sage Publications New Delhi/Thousand Oaks/London, International studies Vol. 43, No. 4, 2006, pp. 368

[43] See Capotorti, F., Study on the rights of persons belonging to ethnic, religious and linguistic minorities, United Nations, New York, 1979, pp. 1-4

[44] Final Act of the Congress of Vienna, 9 June 1815, Aus.- Fr.-Gr. Brit.-Port.-Prussia- Russ.-Swed., 64 Consol. T.S. 453. Cited in Oestreich, J., op. cit., p. 111

[45] Capotorti, op. cit., pp. 3, paragraph 15

[46] Claude, I.L., National minorities: an international problem, Harvard Political Studies, Harvard University Press, 1955. Cited in Oeastreich, op. cit., p. 111

inhabitants of that state who differ from the majority of the population in race, language, or religion"[47], while article 93 was aimed at protecting the interests of the "inhabitants of Poland who differ from the majority of the population in race, language or religion".[48]

On the other hand, the Treaty of Versailles established the League of Nations. The Pact accepted by its members contained no provisions regarding human rights and did not further develop those minority rights that were somehow emerging, but was "rather a series of practical documents designed to protect certain at-risk peoples in Europe".[49] A concept similar to the protection of a community was the part where it was specified that states parties were obliged to "secure just treatment" of the "native inhabitants" of their territories and to ensure "freedom of conscience and religion, subject only to the maintenance of public order and morals".[50]

If this certainly represented a step forward, especially in terms of content, there were still some limitations. The League of Nations aimed more at maintaining a peaceful living through cooperation between states, rather than having the protection of minorities as final scope.[51] Furthermore, provisions concerning minorities involved only some states, while others, despite a considerable number of minorities within their territories, were not supposed to grant them any right.[52]

Nevertheless, it should be considered the fact the League was not a supra-state organization, but merely an international body.[53]

Furthermore, it must be acknowledged that the twentieth century represented a major development with regards to minority protection: the League of Nations' minority treaties of have been significant precursors to post-World War II efforts to guarantee minority rights,[54] an historical moment in which the idea of human rights protection emerged stronger than ever.

[47] Treaty of Versailles, 1919. Cited in Geldenhuys, D., Rossouw, J., op. cit., p. 12
[48] Ibid.
[49] Oestreich, J., op. cit., pp. 113
[50] Treaty of Versailles, 1919. Cited in Geldenhuys, D., Rossouw, J., op. cit., p. 12
[51] Alam, A., op. cit., p. 383
[52] Ibid.
[53] Vijapur, op. cit., p. 370
[54] Oestreich, J., op. cit., p. 113

After the war, significant changes took place both at international and national level: several bilateral agreements concerning minority rights were concluded and many states introduced the matter of minorities in their national legislation.

Moreover, most importantly, was established the Organization of United Nations. Keeping in mind the weaknesses of its sister, the League of Nations, the newborn Organization adopted a novel approach and tried to find a different path. The UN established, indeed, a whole mechanism made of conventions and covenants to promote and guarantee the implementation of human rights norms:[55] instead of single treaties concerning specific minorities, the UN introduced a regime that was centered on more universal rights.[56]

The most relevant instruments introduced by the United Nations from that moment on will be described and analyzed in chronological order in the following paragraph.[57]

1.2.2 - The United Nations

As already stated, after World War II the focus shifted from rights that should be given to certain groups, to an idea of universal rights. That is why, in all the UN documents we will see ahead, namely the Charter of the United Nations, the Universal Declaration on Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide, even though not specifically mentioned, minorities are entitled to all the rights included.

In addition to these instruments, we will see the provisions dedicated to minorities contained in the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights and the Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities.

[55] Vijapur, op. cit., p. 370

[56] Ibid.

[57] Paragraph 1.2.2, likewise the following ones, do not aspire to conduct an exhaustive coverage of all the available instruments at minorities' disposal, the aim is providing an overview of the most commonly recognized and cited documents in the sphere of minority rights' protection.

Adopted in 1945, the Charter of the United Nations clearly expresses the early mentioned postwar concerns about individual human rights. Accordingly, one of the purposes of the newborn world body was to achieve international cooperation in "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion", respecting "the principle of equal rights and self-determination of peoples".[58]

Moreover, concerning "the administration of territories whose peoples have not yet attained a full measure of self-government", States are obliged "to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses".[59]

In both these phrases, the term 'peoples' should be intended for whole populations and not minority groups, since, as we mentioned, the main focus were human rights and not certain groups' rights.

Three years after the adoption of the UN Charter, the General Assembly adopted the Universal Declaration on Human Rights (UDHR). The UDHR is a milestone document in human rights history: for the first time, it was set out that fundamental human rights had to be universally protected after the horrors of World War II.

Given the universal character of the Declaration, it does not contain a provision directly concerning minorities. During the drafting stage, though, attempts to include a provision for the protection of minorities were made by the UN Secretariat and several governments.[60] However, due to the strong opposition encountered, the provision was not approved: member states like the US opposed because human rights already included minority rights, while others opposed for fear that a minority rights regime would have undermined the unity of their own countries.[61]

[58] Charter of the United Nations and Statute of the International Court of Justice, 1945, Article 1. Available at: https://treaties.un.org/doc/Publication/CTC/uncharter.pdf

[59] Ivi, Article 73

[60] For a summary of these efforts by the Secretariat and by the governments of Denmark, France, the Soviet Union, the UK and Yugoslavia, see Claude, I., National Minorities: An International Problem. Cambridge, Mass.: Harvard University Press, 1995. Cited by Vijapur, A.P., op. cit., p.372

[61] Hurst, H., Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights, 71, University of Pennsylvania Press, Philadelphia, 1990. Cited in Alam, A., op. cit., p. 384

The Soviet Union tried also to suggest a supplementary Article concerning minority rights, but it failed as well.[62]

On the same day, however, the General Assembly adopted a resolution entitled 'Fate of minorities'. In that document, the UN affirmed that, even though it decided "not to deal in a specific provision with the question of minorities" it could not "remain indifferent to the fate of minorities".[63] Thus, the UN called the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities "to make a thorough study of the problem of minorities, in order [...] to take effective measures for the protection of racial, national, religious or linguistic minorities".[64]

Moreover, it is important to note that, even though almost every right in the Declaration is expressed as individual, at times, it is also expressed as a collective dimension. This emerges, for instance, in Article 20 concerning freedom of assembly and association and Article 27 on the right to freely participate in the cultural life of the community.[65]

The UDHR is undoubtedly a successful document, given its wide acceptance: it has been translated into 250 languages and is still the best known and most cited human rights document in the world. The Declaration continues to inspire human rights activism and legislation even nowadays, it has been and still is the model for numerous international treaties and declarations and is also incorporated in constitutions and laws of many countries.

The year 1948 has also seen the introduction of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter: Genocide Convention).

The Genocide Convention is particularly interesting, both because it seemed an exception to the post World War II tendence of subsuming minority rights within the

[62] Sohn, L., The Rights of Minorities, in Louis Henkin, ed., The International Bill of Rights: The Covenant on Civil and Political Rights. New York: Columbia University Press, 1981, pp. 272. Cited by Vijapur, A.P., op. cit., p. 373

[63] 'Fate of Minorities', General Assembly resolution 217 C [III] of 10 December 1948. Available at: http://un-documents.net/a3r217c.htm

[64] Ibid.

[65] See also Articles 16, 26, 21 and 28

category of human rights[66], and also because collective rights emerged more notably. The crime of genocide was defined as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group".[67]

The Genocide Convention did not directly mention minorities, nor tried to prescribe how members of minorities ought to be treated, but minorities could clearly benefit from the Convention, since it was specified how they shall not be treated.[68]

In the Genocide Convention was also anticipated the creation of an international penal tribute and of an International Court of Justice, in charge of deciding over disputes between Contracting Parties.[69] However, it was only in 2002 that an International Criminal Court was established.[70] The absence of an effective enforcement provision was probably one of the greatest weaknesses of the Genocide Convention.

An explicit international recognition of the existence of minorities and group rights was however emerging in the same years. In 1947, indeed, the United Nations Commission on Human Rights decided to establish a Sub-Commission on Prevention of Discrimination and Protection of Minorities.[71] Often described as a think tank, its main functions consisted in studies addressing various aspects of human rights and recommendations for preventing and combating discrimination, protecting minorities and other vulnerable groups, or any other task which may be assigned to it.

In 1965, the UN General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination.

Even though minorities are not mentioned in the document, the provisions contained in Article 2 and 4 can be read as an implicit acknowledgement of minority rights.[72] States Parties are required to undertake measures aimed at "eliminating racial

[66] Alam, A., op. cit., p. 348

[67] Convention on the Prevention and Punishment of the Crime of Genocide, 1948, Article II. Available at: https://legal.un.org/avl/pdf/ha/cppcg/cppcg_e.pdf

[68] It is noteworthy that linguistic minorities are not mentioned as one of the groups to be protected.

[69] Respectively in Article VI and Article IX of the Genocide Convention.

[70] *Infra* 1.2.6

[71] In 2006, the Sub-Commission on the Promotion and Protection of Human Rights was replaced by the Advisory Committee.

[72] Geldenhuys, D., Rossouw, J., op. cit., pp. 14

discrimination in all its forms and promoting understanding among all races",[73] but also to "ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms".[74] The Convention explicitly condemns "ideas or theories of superiority of one race or group of persons of one color or ethnic origin", as well as "acts of violence or incitement to such acts against any race or group of persons of another color or ethnic origin".[75]

The major UN achievement in the field of minority protection is usually held to be the 1966 International Covenant on Civil and Political Rights (hereinafter: ICCPR). The ICCPR is extremely relevant because, for the first time, an international legally binding treaty contained a provision especially dedicated to minority rights. Even today, Article 27 of the ICCPR is one of the most important and widely acknowledged provision for minority protection in international law:

> *"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."*[76]

If on the one hand the ICCPR goes further than the UDHR, there are still some problems. First of all, the language of the Article triggers those issues of recognition we had the opportunity to discuss: by stating that the norm applies to "those states in which minorities exist", states are allowed to deny the presence of minorities within their jurisdiction. It is, for instance, the case France: at the time of its accession to the ICCPR, France declared that, in light of Article 2 of the Constitution of the French

[73] International Convention on the Elimination of All Forms of Racial Discrimination, 1965, Article 2.1. Available at: https://ohchr.org/Documents/ProfessionalInterest/cerd.pdf

[74] Ivi, Article 2.2

[75] Ivi, Article 4

[76] International Covenant on Civil and Political Rights, 1966. Available at: https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf

Republic,[77] Article 27 of the Convention was not applicable as far as France was concerned.[78]

A second issue is that Article 27 of the ICCPR does not recognize minorities per se, but only the rights of persons belonging to them.[79]

Finally, if one the one hand states have the duty not to interfere with the enjoyment of these rights by minorities, on the other hand they are not required to assist them.[80]

There are other provisions at minorities' disposal within the ICCPR, for instance: Article 2 on non-discrimination; Article 4 on non-derogation; Article 14 on equality before the courts and on language interpretation in criminal justice proceedings; Article 20 on the limitation of the freedom of speech if it constitutes advocacy of ethnic hatred; Article 25 on equal suffrage and equal access to public service; and Article 26 on equality before the law.[81] Religious minorities can also refer to Article 18, guaranteeing freedom to profess a religion, right to worship and to live in accordance with religious beliefs.

In 1966, another relevant instrument was introduced: the International Covenant on Economic, Social and Cultural Rights (hereinafter: ICESCR). Even though this document does not directly address the issue of minority protection, there are some provisions of particular relevance to minority rights.

Besides Article 2 dedicated to non-discrimination, the articles of the ICESCR that are usually considered important when speaking about minority rights are Article 13 and Article 15. Article 15 recognizes the right of everyone to participate in cultural life, while Article 13 (along with n. 14) recognizes everyone's right to education. It especially refers to educational activities promoting the respect of human rights,

[77] Article 2 of the French Constitution: "France is Republic, indivisible, secular, democratic and social. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs". France's Constitution of 1958 with Amendments through 2008. Available in English at: https://www.constituteproject.org/constitution/France_2008.pdf?lang=en

[78] France declarations on the different UN documents can be found at: https://indicators.ohchr.org/

[79] For an in depth analysis of these issues see: Vijapur, A.P., op. cit., pp. 375-379

[80] Freeman, M., Human Rights—An interdisciplinary approach. London: Polity press, 2002, pp. 114-115. Cited in Vijapur, A.P., op. cit., pp. 375

[81] Alfredsson, G., and Ferrer, E., Minority Rights: A Guide to United Nations Procedures and Institutions, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, June 2004, pp. 9

understanding, tolerance and friendship among all nations and all "racial, ethnic or religious groups"[82], plus, States Parties are required to respect a scale of obligations in order to achieve the full realization of Article 13.[83] It is also guaranteed the right of parents to choose for their children schools other than those established by the public authorities according to their religious or moral convictions, with respect to the minimum standards laid down by the state.[84]

In 1985 was created a committee to oversee the implementation of this Covenant, the Committee on Economic, Social and Cultural Rights. This Committee serves as a monitoring mechanism: every five years, States Parties submit a report on the observance of Covenant rights in their states.

After the end of the Cold war and the collapse of the Soviet Union, the 1990s saw the eruption of violent ethnic conflicts.[85] At that point, it was clear the emerging need for the international community to recognize minorities with their rights and to provide a legal framework for minority protection.

It was, in fact, during that period that the UN adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The 1992 Declaration on Minorities is the first and only UN human rights instrument exclusively addressing minority rights: the content of many existing rights is restated and is also underlined the role of "specialized agencies and other organizations of the United Nations system" in "the full realization of the rights and principles" set forth in the Declaration.[86]

To promote the implementation of this Declaration, in 2005 was introduced the figure of the Independent Expert on minority issues. Its work also consists in enhancing the work of the Forum on Minority Issues, established in 2007, to provide a platform for promoting dialogue and cooperation on issues pertaining to national or ethnic, religious and linguistic minorities.

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[82] International Covenant on Economic, Social and Cultural Rights, 1965. Available at: https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

[83] Ivi, Article 13, Paragraph 2

[84] Ivi, Paragraph 3

[85] Most notably Rwanda, Darfur and Yugoslavia.

[86] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, Article 9. Available at: https://www.ohchr.org/Documents/Issues/Minorities/Booklet_Minorities_English.pdf

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities reflects the renovated approach of the UN towards the development of a more comprehensive minority rights regime. Although some major issues still exist, for instance the fact that as such the Declaration is not legally binding, it is held to have marked the beginning of a new era in the development of international norms on minority issues.[87]

Consistent with the provisions of the 1992 Declaration, there is the 2001 Durban Declaration and Programme of Action. The so-called WCAR or Durban I was aimed at taking measures in favor of minorities under the jurisdiction of participating states, creating the favorable conditions for them to express themselves freely and to participate in every aspect of the life of the country in which they live. The Durban Programme of Action denounces every form of racism, racial discrimination, xenophobia and related intolerance.[88]

To review the implementation of Durban I, in 2009 took place the Durban Review Conference, or Durban II.

As a final discussion for this paragraph dedicated to the UN, it is noteworthy to discuss the UN involvement on the theme of indigenous people.

Undoubtedly, one of the UN major achievements in the field was the 2007 Declaration on the Rights of Indigenous Peoples (hereinafter: UNDRIP).

The decision by the UN to start working on a Declaration devoted at the protection of indigenous people's rights was taken following the publication of a study made by the Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities José R. Martinéz Cobo. Between 1971 and 1986, indeed, Martinéz Cobo conducted a study on the problem of discrimination against indigenous populations, denouncing the suffering of indigenous people for their oppression, marginalization and exploitation.[89] At that point, the UN decided it

[87] Alam, A., op. cit., pp. 385

[88] Durban Declaration, United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001, passim. Available at: https://www.un.org/WCAR/durban.pdf

[89] Study of the Problem of Discrimination against Indigenous Populations, by José R. Martinéz Cobo, UN Document No. E/CN.4/Sub.2/1986/7 (vols 1–5). Available at: https://undocs.org/en/E/CN.4/Sub.2/1986/7/Add.4

was time to adopt a resolution dedicated to their protection and, for this purpose, in 1982, was set up the Working Group on Indigenous Populations.

A first draft of declaration was submitted by the Working Group in 1994, but the process of approval was slowed down by the difficulties encountered during the discussions with the States. The works went on for so long that the Declaration saw the light only in 2007, as a non-legally binding resolution adopted by a majority of 144 states in favor. At first, Australia, Canada, New Zealand and the United States voted against, but they then changed their position and now support the Declaration.

In achieving their goals, Member States are assisted by the Expert Mechanism on the Rights of Indigenous Peoples, a group composed by seven experts with competence and experience concerning the rights of indigenous peoples. Its mandate consists in providing studies and advice, not only to States, but also to civil society, international organizations, indigenous peoples, and other institutions in need.

The UNDRIP is particularly interesting for our discussion for two reasons. First of all, to date, this is the most comprehensive instrument in international law at indigenous peoples' disposal. It constitutes a universal framework of "minimum standards for the survival, dignity and well-being of the indigenous peoples of the world"[90] and applies to indigenous peoples the existing standards concerning human rights and fundamental freedoms.[91]

Secondly, it must be observed that Ukraine was one of the 11 countries that abstained from the vote. As opposed to Colombia and Samoa, which have then decided to endorse the Declaration, up until now Ukraine has not yet changed its mind.

In the last thirty years, the UN was very active towards the promotion and protection of indigenous peoples, not only holding international celebrations, but also establishing a Permanent Forum on Indigenous Peoples and appointing a Special Rapporteur on the Rights of Indigenous Peoples. In 2014 was also organized the first World Conference on Indigenous Peoples.[92]

[90] Declaration on the Rights of Indigenous Peoples, 2007, Article 43. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement

[91] Ivi, Article 34

[92] For more information see: Indigenous Peoples at the United Nations. Online page available at: https://www.un.org/development/desa/indigenouspeoples/about-us.html

1.2.3 The Council of Europe

As stated in its Statute of 1949, the aim of the Council of Europe is "to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage"[93] and one of the methods to pursue this aim is "the maintenance and further realization of human rights and fundamental freedoms".[94]

Within the framework of the Council of Europe (hereinafter: CoE) there are several relevant documents and bodies that shall be presented here.

Concerning the documents, we will see the European Convention on Human Rights, being also the principal instrument of the Council of Europe, together with the instrument specifically dedicated to minority issues, such as the European Charter for Regional and Minority Languages and the Framework Convention on the Protection of National Minorities. The CoE bodies illustrated in this paragraph, instead, will be the Venice Commission and the European Court on Human Rights.

Drafted in 1950, the European Convention on Human Rights (hereinafter: ECHR) contains civil and political rights and freedoms and models itself on the United Nations Universal Declaration of Human Rights of 1948. The inspiration to the UDHR emerges in the preamble of the Convention where it is stated "that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared (in the UDHR *ndr*)".[95]

Having the United Nations Declaration as a model, the ECHR is concerned with a general protection of human rights. This is also by virtue of Article 1, where it is specified that rights and freedoms set out in the Convention are secured to everyone within the jurisdiction of contracting States.[96]

This is the reason why no specific provision concerning minority protection is included in the text. The only reference to minorities can be found in Article 14, with regards to the prohibition of discrimination, where is declared that the enjoyment of

[93] Article 1 of the Statute of the Council of Europe, London, 5 May 1949, in force 3 August 1949, ETS No. 1.
[94] Ibid.
[95] European Convention on Human Rights, 1953, Preamble. Available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf
[96] Ivi, Article 1

the rights and freedoms set in the Convention shall not be discriminated, inter alia, on the ground of "association with a national minority".[97]

As we previously mentioned,[98] in 1993 the Parliamentary Assembly proposed to include an 'Additional protocol on the rights of national minorities to the European Convention on Human Rights',[99] which was rejected by CoE member States.[100]

The European Charter for Regional and Minority Languages (hereinafter: Language Charter or ECRML) was signed in Strasbourg in 1992 and entered into force in 1998. The aim of the Charter is to protect and promote historical regional and minority languages as an essential part of the European traditions and cultural heritage.

The Language Charter does not establish any individual or collective right for the speakers of minority languages. The scope of the Language Charter, indeed, goes beyond anti-discrimination and minority protection: States Parties are obliged to promote the use of these languages, both in private and public life's fields, namely education, courts, administration, media, culture, economic and social life, and cross-border co-operation.[101]

In Part I it is stated that the languages to which the Charter applies are regional and minority languages, non-territorial languages and less widely used official languages. Are instead excluded from the scope of the Charter dialects of the official language and those languages that appeared as a consequence of recent migratory movements.[102]

In this respect, each of the States Parties has to list the languages used under their jurisdiction that fall under the scope of the Charter, to which provisions will apply.[103]

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[97] Ivi, Article 14

[98] *Infra* 1.1.2

[99] Parliamentary Assembly, Recommendation 1201, adopted on 1 February 1993, Additional protocol on the rights of national minorities to the European Convention on Human Rights.

[100] Wheatley, S., Democracy, Minorities and International Law, Cambridge University Press, 2005, pp. 47

[101] The enforcement of the Charter is under control of a European Committee of Experts, which periodically examines reports presented by the Parties.

[102] European Charter for Regional or Minority Languages, 1992, Article 1. Available at: https://www.coe.int/it/web/conventions/full-list/-/conventions/rms/0900001680695175

[103] Ivi, Article 3

To be considered as a party to the Charter, states are required to adopt 8 basic principles, while they can choose a minimum of thirty-five paragraphs or sub-paragraph, out of sixty-eight specific undertakings in 7 areas of public life.[104]

Governments are, thus, left with considerable discretion on which measures they will have to include in their legislations: this flexibility is surely one advantage of this Charter. The second advantage is that countries can apply only to those provisions they are able to insert into their domestic legislation, without exceeding the limits of their capabilities.[105] The approach of the Charter is gradual: countries adopt the provisions according to their possibilities at the time of ratification, after some time they will be able to apply also to additional provisions.

Furthermore, even non-member states of the CoE, willing to conform their legislation to the Charter, are invited to adopt the document.

Nonetheless, what might appear as an advantage to many states, is in reality a disadvantage for national minorities, which are not entitled to concrete provisions under a precise text of international law.[106]

The most important document in the context of the CoE, is the already mentioned Framework Convention on the protection of National Minorities (hereinafter: FCNM). The FCNM was adopted in 1994 and entered into force in 1998. Its importance lies in the fact that it is the first international legally binding instrument dedicated to the protection of national minorities.

The Framework Convention aims at preserving the existence of national minorities within the territories of States Parties, at promoting the full and effective equality of persons belonging to minorities in all areas of life, but also at setting the conditions for them to protect, express and develop their identity, meaning their culture, traditions, religion and language.

The monitoring of the implementation is conducted through the evaluation of countries' reports. States are, indeed, required to submit periodic reports containing information on the measures taken to comply with the FCNM's principles. In this

[104] Ivi, Article 2

[105] Petričušić, op. cit., p. 15

[106] Benedikter, T., (ed.) Europe's Ethnic Mosaic. A Short Guide to Minority Rights in Europe, Bozen, 10 October 2008, pp. 116-117

monitoring process are involved both the Committee of Ministers of the CoE and the Advisory Committee, composed of 18 independent minority rights experts.[107]

The Advisory Committee can also carry out country visits, after which it issues an Opinion on the measures taken by the State party. After receiving this Opinion and the eventual comments made by the State, the Committee of Ministers adopts a Resolution containing the recommendations directed at the State concerned.

Flexibility is one of the strengths the FCNM is usually recognized with, resulting from the compromises made during the drafting procedure.[108] Indeed, State Parties enjoy a certain margin of discretion, not only when implementing their obligations, but also when assessing which groups on their territory shall benefit from the Convention.[109]

The fact that the Framework Convention allows the adoption of the approach that States consider more suitable for their own situation is probably one of the main reasons why the majority of CoE States and also many non-member states signed and ratified the Convention.[110]

On the other hand, many experts believe that this large room of maneuvering is also one of the Convention's greatest weaknesses.[111]

It is, however, undeniable the great contribution that the Framework Convention has brought to the international protection of minorities. For instance, the FCNM favored the adoption of new laws directed at minority protection and encouraged states to shape their legislation and practice on the basis of non-discrimination.[112]

[107] Framework Convention for the Protection of National Minorities, 1995, Section IV.

[108] Petričušić, op. cit., p. 14

[109] As we said in paragraph 1.1, the FCNM does not contain a definition of 'national minority'.

[110] The Framework Convention counts 39 State Parties, including for instance Transcaucasian states: Armenia, Azerbaijan, Georgia. Ukraine has also ratified the Convention.

[111] Consider, for instance, the issues concerning the contraposition between old and new minorities. *Infra* 1.1

[112] Factsheet on the Framework Convention for the Protection of National Minorities (updated October 2016). Online page available at: https://www.coe.int/en/web/minorities/fcnm-factsheet

Furthermore, the Advisory Committee is a highly respected body in the field minority protection and its Opinions represent a central reference in the works of other international bodies, such as the High Commissioner on National Minorities.[113]

Turning to the CoE most active bodies in the field of minorities' protection, one is certainly the European Commission for Democracy Through Law. Better known as the Venice Commission, this expert body of the CoE was established in 1990 as an advisory body, providing legal advice to CoE member states. It is mainly engaged in constitutional matters: constitutional assistance is also given to post-Communist states wishing to conform their constitutional arrangements to the European standards.

In accordance with the CoE main concerns, the Venice Commission is engaged in promoting democracy, human rights and the rule of law.

In 1991, the Venice Commission made the proposal for a European Convention for the Protection of Minorities. The Convention represented, in the words of the Chairman of the Sub-Commission on the Protection of Minorities Franz Matscher, "an attempt to strike a fair balance between those minimum rights which should be granted to minorities and those duties which are incumbent on them".[114]

Within the proposed Convention, would have also been established a system of control on the respect of States' obligations, through the institution of a European Committee for the Protection of Minorities.[115] Moreover, States were required to submit mandatory periodical reports to the Committee.[116] The other two means of control were instead optional and consisted in inter-State petitions and individual petitions.[117]

[113] Ibid.

[114] Mastscher, F., Introduction, in "The Protection of Minorities, collected texts of the European Commission for Democracy through Law", Strasbourg, 1994, p. 2. Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-STD(1994)009-e

[115] Ivi, Article 18

[116] Ivi, Article 24

[117] Ivi, respectively Article 25 and 26

However, the proposal for the Convention was rejected by the CoE member States.[118]

Another fundamental body of the Council of Europe is the European Court of Human Rights. It was set up in 1959, in the framework of the European Convention on Human Rights, along with other two institutions, the European Commission of Human Rights and the Committee of Ministers of the Council of Europe. These three bodies were all entrusted with the enforcement of the obligations taken by the States.

The Court was made single and permanent in 1998 by Protocol No. 11,[119] one of the twelve Protocols adopted since the ECHR's entry into force. It is composed by a number of judges equal to that of the ECHR contracting states, but they are not representing the state they belong to.

Having exhausted all domestic remedies at their disposal, High Contracting Parties, individuals, groups of individuals or non-governmental organizations may submit an application to the Court, if they consider themselves to be a victim of a violation contained in the Convention.

According to Article 46 of the amending protocol, respondent States undertake to abide by the Court's final judgements, as they are legally binding.[120]

To supervise the execution of the judgements, apart from the Council of Europe, there is the Committee of Ministers, in charge of verifying whether contracting States have taken the adequate measures in order to comply with their obligations.[121]

A great number of cases concerning minority rights were submitted to the Court, even though, as we mentioned, there is no specific provision concerning minorities in the ECHR. Indeed, although, Article 14 of the ECHR prohibits discrimination, *inter alia*, on the ground of "association with a national minority"[122] it is not a freestanding clause concerning minority rights, as opposed to, for instance, Article 27 of the ICCPR.

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[118] Petričušić, op. cit., p. 14

[119] Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, Strasbourg, 11 May 1994, ETS No. 155. Available at: https://www.echr.coe.int/Documents/Library_Collection_P11_ETS155E_ENG.pdf

[120] Ivi, Article 46

[121] Ibid.

[122] European Convention on Human Rights, 1953, Article 14

As a result, Article 14 of the ECHR can only be invoked along with another Convention right.[123]

A case brought in front of the Court, that should be mentioned here, is the case of *Sidiropoulos and Others v. Greece*.[124] By refusing to register the minority association founded by the applicants, Greece was found in violation of Article 11, concerning the freedom of assembly and association. The Court declared that the objectives of the association[125] appeared "to be perfectly clear and legitimate"[126] and that "there was nothing in the case file to suggest that any of the applicants had wished to undermine Greece's territorial integrity, national security or public order".[127] Furthermore, most importantly, the Court declared that "the existence of minorities and different cultures in a country was a historical fact that a 'democratic society' had to tolerate and even protect and support according to the principles of international law".[128] It is right for this statement that this is considered a leading case in the ECHR's case-law on minority rights.[129]

What is also interesting to notice in this case is that the Court based its reasoning on the documents of another international organization, namely the OSCE. Indeed, in explaining why Greece was declared in violation of Article 11 of the ECHR, the Court referred to the Document of the Copenhagen Meeting of the Conference on the Human Dimension and to the Charter of Paris for a New Europe, both of 1990, which stated people's right "to form associations to protect their cultural and spiritual heritage".[130] A document which Greece had signed.

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[123] Petričušić, op. cit., pp. 13

[124] European Court of Human Rights, Case of Sidiropoulos and Others v. Greece, (57/1997/841/1047), Strasbourg, 10 July 1998. Available at: https://www.cilevics.eu/minelres/coe/court/sidiropoulos.html. Cited in Petričušić, op. cit., 13

[125] "(a) the cultural, intellectual and artistic development of its members and of the inhabitants of Florina in general and the fostering of a spirit of cooperation, solidarity and love between them; (b) cultural decentralisation and the preservation of intellectual and artistic endeavours and traditions and of the civilisation's monuments and, more generally, the promotion and development of [their] folk culture; and (c) the protection of the region's natural and cultural environment" (Paragraph 8)

[126] Case of Sidiropoulos and Others v. Greece, Paragraph 44

[127] Ivi, Paragraph 41

[128] Ibid.

[129] Petričušić, op. cit., p. 13

[130] Case of Sidiropoulos and Others v. Greece, Paragraph 44

In this particular ruling, the Court avoided invoking the Framework Convention on National Minorities, because Greece had not ratified it. It instead decided to base its reasoning on these two OSCE documents, because Greece was bound to respect them.

It must be, however, reminded the tight link between the Framework Convention and OSCE instruments: in the preamble of the FCNM it is, indeed, stated that "the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990"[131] were taken much in consideration during the drafting process of the Framework Convention.

1.2.4 The Organization for Security and Co-operation in Europe

The Organization for Security and Co-operation in Europe (OSCE) counts 57 participating States across Europe, North America and Central Asia and is the largest regional security organization in the world. The OSCE traces its origins in the early 1970s, the period of the détente, when the Conference on Security and Co-operation in Europe (hereinafter: CSCE) was created to function as a multilateral discussion board for negotiation and dialogue between the East and the West.

The OSCE's approach to security comprehends many aspects: political, military, economic, environmental and human. It therefore addresses a wide range of security-related concerns, including human rights and national minorities issues.

The process of foundation of the OSCE, which started in Helsinki in 1975, immediately gave major attention towards the development of a minority rights regime. Indeed, the question of minority protection was on the OSCE agenda from the very beginning of its existence. The Helsinki Final Act of the CSCE of that year, declared that "the participating states on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere".[132]

[131] Framework Convention for the Protection of National Minorities and Explanatory Report, 1995, Preamble

[132] CSCE, Helsinki Final Act, 1 August 1975, Preamble. Available at: https://www.osce.org/files/f/documents/5/c/39501.pdf

The development concerning group rights went further at the CSCE's Conference of 1989. In the Vienna Concluding Document Participating states reaffirmed their commitment to protect human rights and to "ensure that persons belonging to national minorities or regional cultures on their territories can maintain and develop their own culture in all its aspects, including language, literature and religion [...]".[133] Furthermore, States commit to respect their free exercise of rights and to "ensure their full equality with others".[134]

In 1990, in Copenhagen, took place the OSCE's Conference on the Human Dimension, where important commitments were made with respect to human rights, democracy and the rights of persons belonging to national minorities.

The Copenhagen Document reaffirmed the idea "that respect for the rights of persons belonging to national minorities, as part of universally recognized human rights, is an essential factor for peace, justice, stability and democracy in the participating States".[135] Persons belonging to national minorities were also entitled with the right "to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law",[136] but also "to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will".[137]

The OSCE paid much attention to the issue of linguistic rights of minorities. This emerges clearly in the text: States are required to ensure that minorities can "have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities".[138]

Furthermore, the Copenhagen Document is extremely important because it stresses the role of positive measures: States are required to "protect the ethnic,

[133] Ivi, Article 59

[134] Ivi, Article 19

[135] CSCE, Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, Article 30. Available at: https://www.osce.org/files/f/documents/9/c/14304.pdf

[136] Ivi, Article 31

[137] Ivi, Article 32

[138] Ivi, Article 34

cultural, linguistic and religious identity of national minorities on their territory", but also to "create conditions for the promotion of that identity".[139]

The commitments do not extend to the introduction of territorial mechanisms of self-government, although it is recognized the establishment of "appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities"[140] as an instrument to protect and promote minorities' own identity.

Until 1990, the CSCE consisted principally in various meetings and conferences, working on participating States' commitments and periodically reviewing their implementation. With the end of the Cold War, the CSCE had to assume a different role. At the Paris Summit of 1990, "the CSCE was called upon to play its part in managing the historic change taking place in Europe and responding to the new challenges of the post-Cold War period".[141] As part of this institutionalization process, four years later, the CSCE was renamed OSCE.

On that historic occasion was introduced the Charter of Paris for a New Europe, where it was clearly stated the importance of the "rich contribution of national minorities to the life of our societies" and the fundamental need to "undertake further to improve their situation".[142] In this sense, the OSCE reported that a Meeting of Experts on National Minorities was going to be held the following year in Geneva.

The Charter marked the raising awareness of the need to strengthen international cooperation in this area, also bearing in mind the importance of the issue for emerging new democratic countries.[143]

In 1992, on occasion of the Helsinki Conference, the CSCE introduced the High Commissioner on National Minorities (hereinafter: HCNM), with the role of mediating in conflicts involving national minorities at the earliest stage possible. The HCNM's mission is, first of all, to intervene and de-escalate tensions in order to prevent possible

[139] Ivi, Article 33

[140] Ivi, Article 35

[141] Paris Summit 1990 and the Charter of Paris for a New Europe. Online page available at: https://www.osce.org/paris-summit-1990-and-charter-of-paris-for-a-new-europe

[142] Charter of Paris for a New Europe, 1990, p. 7. Available at: https://www.osce.org/files/f/documents/0/6/39516.pdf

[143] As we said, 1990s were marked with the emergence of violent ethnic conflicts.

clashes. Whenever these tensions threaten to become true ethno-political conflicts, at the point he cannot contain them with the means at his disposal, the HCNM is required to alert the OSCE.

There are several HCNM sets of recommendations on the rights of minorities that are worth citing here. These recommendations are meant to serve as a preventive measure against conflicts concerning national minorities, by providing OSCE participating States with guidance on how to act on a certain matter.

In 1996 were issued the Hague Recommendations, to provide participating States with a reference on how to best ensure the education rights of national minorities within their borders. They cover the spirit of international instruments, measures and resources, decentralization and participation, public and private institutions, minority education at primary and secondary levels, minority education in vocational schools, minority education at the tertiary level and curriculum development.[144]

Dating back to 1998, there are the Oslo Recommendations, which represent a guidance on how best to ensure the linguistic rights of national minorities within the borders of OSCE participating States. These recommendations cover names, religion, community life and non-governmental organizations, the media, economic life, administrative authorities and public services, independent national institutions, the judicial authorities and deprivation of liberty.[145]

In 1999, were issued the Lund Recommendations, a guidance to ensure the participation of national minorities within their home-states.[146]

Finally, the HCNM commissioned a group of experts to develop some guidelines on the use of minority languages in the broadcast media. They were issued in 2003 and set the standards that states should meet, with regards to general principles of freedom of expression, cultural and linguistic diversity, protection of identity, equality and non-discrimination.[147]

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[144] OSCE, The Hague Recommendations regarding the Education Rights of National Minorities & Explanatory Note, 1996. Available at: https://www.osce.org/files/f/documents/e/2/32180_0.pdf

[145] OSCE, The Oslo Recommendations regarding the Linguistic Rights of National Minorities & Explanatory Note, 1998. Available at: https://www.osce.org/files/f/documents/8/1/67531.pdf

[146] OSCE, The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note, 1999. Available at: https://www.osce.org/files/f/documents/0/9/32240.pdf

[147] OSCE Guidelines on the Use of Minority Languages in the Broadcast Media, 2003. Available at: https://www.osce.org/files/f/documents/0/1/32310.pdf

One of the main criticisms that are usually addressed to the High Commissioner concerns the limits imposed by his action to "an interstate dimension of minority problems" while "minorities that live entirely within one state do not fall under protection of the early-warning mechanism".[148] The HCNM in fact assists in the resolution of disputes involving persons belonging to national minorities who share an ethnic, cultural, religious or linguistic identity with the majority/titular population of a neighboring State.[149]

On the other hand, more generally, the problem with the OSCE concerns the fact that its decisions are politically, but not legally binding for participating States.

1.2.5 The European Union

Even though the protection of human rights, the promotion of democracy and the rule of law are the European Union's core values, that of minorities has never been much of a central topic in EU discussions.

In the Consolidated Version of the Treaty of the European Union, we can find a general principle of non-discrimination,[150] while Article 2 makes specific reference to the core values of the European Union, among which there is the "respect for human rights, including the rights of persons belonging to minorities".[151]

With the Treaty of Amsterdam of 1999, amending the Treaty of the European Union, the Council of Europe was invested with the possibility to "take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation".[152]

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[148] Heintze, H., Minority Issues in Western Europe and the OSCE High Commissioner on National Minorities. International Journal on Minority and Group Rights, Vol. 7/4, 2000, pp. 386. Cited in Petričušić, op. cit., p. 17

[149] Wheatley, S., op. cit., pp. 60

[150] Consolidated version of the Treaty of the European Union, 2012, Article 3 (ex Article 2 of the original Treaty of the EU of 1992). Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

[151] Ivi, Article 2

[152] Treaty of Amsterdam Amending the Treaty on European Union, the treaties establishing the European communities and certain related acts, 1997, Article 6a. Available at: https://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf

Besides these short passages, there is no specific provision or reference dedicated to minorities, within the core treaties of the European Union. We should, however, remember that the European Union was historically a project of economic integration, finding its roots in ECSC (European Coal Steel Community), in the EEC (European Economic Community) and the EAEC (European Atomic Energy Community). In light of this, it is no surprise that the theme of minority rights has not been on the EU agenda for quite a long time.

In the context of the European Union, a relevant instrument for persons belonging to minorities is represented by the Resolution on the Languages and Cultures of Regional and Ethnic Minorities. The European Parliament adopted this Resolution on 30 October 1987, underlining "the need for member states (of the European Union *ndr*) to recognize their linguistic minorities in their laws and thus create the basic condition for the preservation and development of regional and minority cultures and languages".[153]

Among the various fields in which the Resolution recommended to carry out some measures, there is the educational sphere: an important measure was, for instance, the one aimed at guaranteeing "education to be officially conducted in the regional and minority languages in the language areas concerned on an equal footing with instruction in the national languages".[154] Other measures included the use of regional and minority languages in the administrative and legal spheres,[155] the possibility to broadcasts in mass media in regional and minority languages,[156] and, with regard to social and economic measures, to make use of regional and minority languages in public concerns.[157]

Another important document is the European Charter of Fundamental Rights of the European Union. Solemnly proclaimed in Nice on 7 December 2000, the Charter was born out of a desire to include all individual rights ever established in history of

[153] Resolution on the Languages and Cultures of Regional and Ethnic Minorities of the European Parliament, 1987, Point 2. Available at: https://ospcom.files.wordpress.com/2011/10/lc4.pdf
[154] Ivi, Point 5.
[155] Ivi, Point 6.
[156] Ivi, point 7.
[157] Ivi, point 9.

the EU in different times, ways and forms, in order to make them "more visible and more explicit for citizens".[158] It brings together all the personal, civic, political, economic and social rights included in the case law of the Court of Justice of the EU; in the European Convention on Human Rights and those resulting from the common constitutional traditions of European countries and those from other international instruments.

Rights and freedoms are grouped under six titles: dignity, freedoms, equality, solidarity, citizens' rights and justice. The Charter was also updated in the light of changes that took place in the society, that is why it includes 'third generation' fundamental rights, namely data protection, guarantees on bioethics and transparent administration.[159]

Minorities are not specifically mentioned, except for Article 21, prohibiting discrimination, among others, on the ground of "membership to a national minority".[160] This article appears to be very similar to Article 14 of the ECHR.[161]

The Charter was approved by the European Parliament, the Council of Ministers and the European Commission, but initially consisted in a mere political commitment. It has, indeed, become legally binding only in December 2009 with the entry into force of the Treaty of Lisbon. The Charter was amended and proclaimed again on 12 December 2007.

It is important to notice how, nowadays, the "respect for human rights, including the rights of persons belonging to minorities" is one of the requirements to join the EU.[162] The Treaty of the EU provides, in fact, that any European country respecting "the values referred to in Article 2 [...] may apply to become a Member of the Union".[163]

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[158] Why do we need the Charter?. Online page available at: https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/why-do-we-need-charter_en

[159] Ibid.

[160] European Charter of Fundamental Rights of the European Union, 2000, Article 21. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT

[161] Article 14 - Prohibition of discrimination: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

[162] Consolidated version of the Treaty of the European Union, 2012, Article 2.

[163] Ivi, Article 49

Furthermore, the admission is subject to compliance with a criterion set out by the European Council at the Copenhagen Summit of 1993. The so-called Copenhagen Criteria requires that, besides market economy conditions, "the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities".[164]

The reason why the protection of minorities is taken into consideration for the enlargement of the Union, is because it is considered an important pillar of the political stability of each state.[165]

In these respects, one of the criticisms usually moved towards the European Union is that some 'older' members have themselves failed to maintain the same standards concerning minorities that are now required from new aspirant member states. Indeed, the fact that some states, first and foremost France, have not yet signed or ratified the Framework Convention, makes many believe that within the EU there is somehow a double standard, one for current members and one for potential members.[166] This discrepancy inevitably hinders further developments of international norms concerning minority rights protection.

On 7 December 2020, the EU has adopted a regulation[167] and a decision[168] on the establishment of a global human rights sanctions regime, consisting in the freezing of funds or the travel ban for "individuals, entities and bodies - including state and non-state actors - responsible for, involved in or associated with serious human rights violations and abuses worldwide".[169] The new regime applies to acts such as genocide, crimes against humanity; serious human rights violations and other widespread

[164] Presidency Conclusions of the Copenhagen European Council, 1993, pp. 1. Available at: https://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf

[165] The respect for persons belonging to minorities is also one of the criteria to become a member of NATO. See for example: NATO Transformed, NATO Public Diplomacy Division, Jun. 2004, p. 21. Available at: https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_publications/20120116_nato-trans-eng.pdf

[166] Petričušić, A., op. cit., pp. 18-19

[167] Council Regulation (EU) 2020/1998 and Council Decision (CFSP) 2020/1999. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32020R1998

[168] Council Decision (CFSP) 2020/1999

[169] European Council Press Releases, EU adopts a global human rights sanctions regime. Available at: https://www.consilium.europa.eu/en/press/press-releases/2020/12/07/eu-adopts-a-global-human-rights-sanctions-regime/?utm_source=dsms-auto&utm_medium=email&utm_campaign=EU+adopts+a+global+human+rights+sanctions+regime

systematic violations, such as abuses of freedom of peaceful assembly, expression and religion.

No specific reference is made to minorities. However, it is stated that for the application of the regime "regard should be made to customary international law and widely accepted instruments of international law".[170] These are the same instruments which we have said minorities can benefit from, for instance the ICCPR.

Preparatory work to develop the EU regime against human rights violations was launched in December 2019. On 17 November 2020, the EU committed to developing this regime in the framework of the EU Action Plan on Human Rights and Democracy 2020-2024.

1.2.6 International courts

Over time, members of minorities turned more and more to international courts seeking protection. This has led to a constantly richer case-law concerning minority rights and this is why judges are believed to play a central role nowadays in dealing with minority-based disputes.

One of the main contributions in developing the system of minority protection was given by the already mentioned Permanent Court of International Justice (PCIJ), which was introduced by the League of Nations in 1920.[171] The PCJI was competent in case of international disputes, but also in providing advisory opinions for the Council or the Assembly of the League of Nations.

During its years of operation, from 1922 to 1940, when the War caused a decline in its activities, many disputes arising from the application of minority treaties have been argued before the Permanent Court. Thanks to its work, the PCJI made a significant contribution to the scope of minority protection under the League of Nations' system.

Besides its Opinion of 1930 concerning Greco-Bulgarian Communities,[172] it is worth mentioning here the Advisory Opinion adopted in 1935 concerning 'Minority

[170] Council Decision (CFSP) 2020/1999, Article 1, paragraph 2.

[171] Article 14 of the Covenant of the League of Nations: "The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice […]". Covenant of the League of Nations, 1920. Available at: https://veritaspress.com/resourcefFiles/TreatyText.pdf

[172] *Infra* 1.1.1

Schools in Albania'.[173] In that decision, the Permanent Court drew the attention to the fact that:

> "*The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and cooperating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority and satisfying the ensuing special needs*".[174]

The Court declared that, in order to achieve this objective, there are two necessary steps to make, highly intertwined one another: the first one is to place minorities "on a footing of perfect equality with the other nationals of the State"[175], and the second one is to guarantee them with "suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics".[176]

The Permanent Court affirmed that "minority is to enjoy the same treatment as the majority".[177] Furthermore, it asserted that "a genuine and effective equality, not merely a formal equality" had to be ensured.[178]

Applying this decision to the case, the Court ruled that the abolition of Greek minority's institutions in Albania and their replacement with governmental ones would have destroyed this equality of treatment, privileging the majority.[179]

Under the system of the League of Nations, minorities could also send their complaints in the form of petitions, to be examined by a committee. Among the topics of these petitions there were also grievances on the suppression of private schools, the use of biased historical textbooks and on the restrictions on minority languages.[180]

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[173] Minority Schools in Albania, Advisory Opinion, 1935 P.C.I.J. (ser. A/B) No. 64 (Apr. 6). Available at: http://www.worldcourts.com/pcij/eng/decisions/1935.04.06_albania.htm

[174] Ivi, paragraph 48

[175] Ivi, paragraph 50

[176] Ivi, paragraph 51

[177] Ivi, paragraph 95

[178] Ivi, paragraph 39

[179] Ivi, paragraph 67

[180] Vijapur, A.P., op. cit., p. 370

Anyway, many of these petitions were rejected or it was decided to find a compromise with the State involved in the controversy.

The PCJI was formally dissolved in 1946, when it took over its successor, the International Court of Justice (ICJ). As the principal judicial organ of the United Nations, the Court had the role of settling disputes between States and providing advisory opinions on legal questions.

The ICJ is particularly interesting for our study, because it has expressed itself on the situation of Crimean Tatars and ethnic Ukrainians following the events of 2014.

In 2017, Ukraine started a proceeding against Russia in front of the ICJ:[181] Russia was alleged to have violated its obligations under the International Convention for the Suppression of the Financing of Terrorism (1999) and the International Convention on the Elimination of All Forms of Racial Discrimination (1965). Especially with regards to the CERD, Ukraine argued that the restrictions imposed in Crimea prevented Crimean Tatars and ethnic Ukrainians from enjoying the rights protected under the Convention.

In November 2019, the ICJ delivered its final judgement on the dispute, concluding that the claims of Ukraine fell indeed under the provisions of the Convention, since "Crimean Tatars and ethnic Ukrainians in Crimea constitute ethnic groups protected under CERD", both according to Ukraine and Russia.[182]

Another important court is the International Criminal Court (ICC). As we had the occasion to mention, the creation of an International Court of Justice was anticipated in the Genocide Convention, but it was only with the Statute of Rome of July 1998 that the ICC was established. The Statute entered into force in 2002 with the ratification of 60 countries and stated the jurisdiction of the ICC over crimes of genocide, war crimes and crimes against humanity.[183] This jurisdiction was to be

[181] International Court of Justice Press Release, Ukraine institutes proceedings against the Russian Federation and requests the Court to indicate provisional measures, 17 January 2017. Available at: https://www.icj-cij.org/public/files/case-related/166/19310.pdf

[182] International Court of Justice Press Release, The Court finds that it has jurisdiction to entertain the claims made by Ukraine and that the Application in relation to those claims is admissible, November 2019. Available at: https://www.icj-cij.org/public/files/case-related/166/166-20191108-PRE-01-00-EN.pdf

[183] With the amendments made in 2010, the ICC was also given jurisdiction over the crime of aggression.

considered non retroactive, meaning that the ICC was going to deal with crimes committed only after its creation.

The establishment of the ICC made a positive contribution towards a greater respect for minority rights. For instance, as the ICJ, also the ICC expressed over the Ukrainian-Russian issue and the alleged crimes against humanity committed on the territory of Ukraine, during the Maidan protests of 2013 and 2014.[184] Indeed, even though Ukraine is not part of the Rome Statute, both in 2014 and 2015, the country declared to accept the ICC's jurisdiction of these alleged crimes.[185] Following Ukraine's declarations, the ICC could start carrying out its examinations, which are still ongoing.

The European Court of Human Rights has also expressed itself in cases concerning Ukraine-Russia disputes. Since we had the occasion to speak about this Court in the previous paragraph, it will not be illustrated here, but it is worth highlighting that there are five inter-state applications pending at the moment before the Court and about 6,500 individual ones.[186]

Finally, an international court that has recently stressed the importance of minority protection as one of the intrinsic values of the European project, is the Court of Justice of the European Union (ECJ). It was established in 1952 to oversee the interpretation and application of the European Union law and to ensure that EU member states comply with their obligations. It consists of two Courts: the Court of Justice and the General Court, set up in 1988.

The ECJ is cited here for a case which has involved the General Court from 2013 to 2019. In 2013, in the context of a European Citizens Initiative (ECI), was proposed the "Minority SafePack – one million signatures for diversity in Europe", a project aimed at adopting a series of legal acts to protect minorities through Europe and preserving the European cultural and linguistic diversity.[187]

[184] For more information see: Preliminary examination -Ukraine. Available at: https://www.icc-cpi.int/ukraine

[185] Ibid.

[186] European Court of Human Rights Press Unit, Factsheet – Armed conflicts, pp. 15-18. March 2020. Available at: https://www.echr.coe.int/Documents/FS_Armed_conflicts_ENG.pdf

[187] For more information visits the official website of the initiative: http://www.minority-safepack.eu/

At first, the Commission refused to register the initiative, because, in his opinion, it fell outside its competence.[188] After a citizen's committee brought proceedings against this decision before it, in 2017 the General Court decided to nullify it.[189] Romania tried to seek for the annulment of the registration of the initiative, but in 2019 the General Court dismissed its action.[190]

The Court vindicated for two times the promoters of the 'Minority Safepack', by stating that the legal acts to be adopted under the initiative were "deemed to contribute both to ensuring respect for the rights of persons belonging to minorities, which is an EU value, and to respecting and promoting cultural and linguistic diversity in the EU, which is an EU objective".[191] The decision was considered another important victory for European minorities.

1.2.7 Other relevant instruments

In this last section of the first chapter, are presented other relevant international instruments to which minorities can refer, to have their rights promoted and protected.

First of all, there are several interesting instruments introduced over time by the United Nations Specialized Agencies. These Agencies are autonomous international organizations that work with and within the UN system through ad hoc agreements. Only some of them were created by the UN itself, some of them existed even before the League of Nations, some were associated with the League of Nations, and others were established in the same period as the United Nations.

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[188] Commission Decision C(2013) 5969 final of 13 September 2013 refusing the request for registration of the proposed European citizens' initiative entitled 'Minority SafePack – one million signatures for diversity in Europe'. Cited in General Court of the European Union Press Release No 120/19, The General Court confirms the Commission's decision to register the proposed European citizens' initiative 'Minority SafePack – one million signatures for diversity in Europe', 24 September 2019. Available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-09/cp190120en.pdf

[189] General Court of the European Union Press Release No. 10/17, The General Court annuls the Commission decision refusing registration of the proposed European citizens' initiative entitled 'Minority SafePack – one million signatures for diversity in Europe', 3 February 2017, Available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-02/cp170010en.pdf

[190] General Court of the European Union Press Release No 120/19, cit.

[191] Ibid.

Out of the 15 specialized agencies now existing, two are especially worth mentioning here, with regards to the purpose of minority rights protection, namely the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The International Labour Organization is widely considered to be one of the most active organizations in promoting and protecting the rights of minorities, especially those of indigenous people. Founded in 1919, the ILO became the first specialized agency of the UN in 1946 and is the lead UN agency focusing on labor rights. The ILO's work does not, however, limit to job-related concerns only, it indeed deals with a wide range of socio-economic issues, even those not usually associated with the working world, such as fundamental human rights, minority rights, indigenous and tribal people.

To date, the ILO is the only organization providing instruments specifically devoted to indigenous, tribal and semi-tribal peoples and their rights.

The Organization started dedicating to indigenous people in the 1930s, when the issue of exploitation in the colonies was particularly relevant.[192] In 1936, the ILO introduced its first instrument specifically directed to indigenous people, the Convention No. 50 on Recruiting of Indigenous Workers, while it was especially during the 50s that it intensified its commitment towards a further development of these people's rights.[193]

In the framework of the ILO, the most significant instrument that shall be undoubtedly mentioned here is the 1989 Convention No. 169 on Indigenous and Tribal Peoples, which was born as a revised version of the 1957 Convention No. 107 on Indigenous and Tribal Populations.[194]

[192] See for example: ILO, Forced Labour Convention (No. 29), 1930

[193] It created an Expert Committee on Indigenous Labour, a program to assist indigenous people in South America and published a report on the living and working conditions of aboriginal populations in independent countries. See: Roy, C., and Kaye, M. The International Labour Organization: a handbook for minorities and indigenous peoples, Minority Rights Group International and Anti-Slavery International, 2002, pp. 19

[194] Convention No. 107 was aimed at protecting indigenous and tribal populations' rights, but it also stated that "integration into the dominant society should be the objective of all programmes affecting indigenous and tribal peoples". The instrument was largely criticized for its paternalistic and outdated approach, that is why they thought of a revised and updated version. See: Roy, C., and Kaye, M., op. cit., pp. 19-20

Convention No. 169 was aimed at the recognition of indigenous and tribal peoples' right to exist as distinct peoples, to preserve their traditions, culture and ways of life. The Convention required governments to provide the resources and opportunities for their development, covering issues ranging from spiritual values to employment, from bilingual education to environment and land rights.

Its importance lies in the fact that it was affirmed for the first time these peoples' right to self-identification[195] and the right to consultation and participation. As a result, indeed, under this Convention indigenous people were not only left free to decide for their own future, but also supposed to be involved in any decision "which may affect them directly".[196]

Second only to the 2007 UN Declaration on the Rights of Indigenous Peoples, the ILO Convention No. 169 is an extremely comprehensive instrument in international law at indigenous peoples' disposal.[197]

However, it must be unfortunately observed how, in the European geographical area, it has been so far ratified only by Denmark, Luxembourg, Netherlands, Norway and Spain.

The second UN specialized agency, whose instruments shall be presented here is the United Nations Educational, Scientific and Cultural Organization (UNESCO). It was established in 1946 with the aim of maintaining peace through international cooperation in the field of education, science and culture. It currently counts 193 Member States and 11 Associate Members.

One of UNESCO's priority areas for response concerns right indigenous people and their needs, with the specific final aim of contributing to the effective implementation of the already mentioned 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP). UNESCO's normative instruments consist in three types of actions: implementing policies and strategies, the most recent is the Policy on Engaging with Indigenous People of 2017; holding international celebrations, for

[195] Convention concerning Indigenous and Tribal people in independent countries (No. 169), 1989, Article 1. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

[196] Ivi, Article 6

[197] For a complete and in depth analysis of ILO instruments, containing provisions dedicated at minorities and indigenous people, see Roy, C., and Kaye, M., op. cit.

example the International Year on Indigenous Languages was celebrated in 2019; and introducing standard-setting instruments.

In these respects, four important instruments should be cited here: the Convention against Discrimination in Education, the Convention for the Safeguarding of the Intangible Cultural Heritage, the Declaration on Race and Racial Prejudice and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

The Convention against Discrimination in Education was adopted in 1960 to promote the fundamental principle of equality in the educational opportunities. Discrimination is prohibited on any ground: "race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth".[198]

It is the first instrument covering extensively the right to education and it is legally binding for all its States Parties. Although the Convention is celebrating its 60th anniversary this year, this is still considered one of the most powerful tools in education, especially for the achievement of SDG4 of the 2030 Agenda for Sustainable Development.

To date, there are 106 Member States: Ukraine ratified the Convention in 1962, being the eleventh country to do so.

In 1972 UNESCO adopted the Convention concerning the Protection of the World Cultural and Natural Heritage, concerned with the tangible aspects of cultural heritage, namely monuments and sites of valuable meaning for the world. The Convention adopted in 2003 was, instead, dedicated at the safeguarding of the intangible cultural heritage, defined as "the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage".[199]

The Convention is particularly relevant for indigenous people, because it recognizes their special role in the "safeguarding, maintenance and re-creation of the

[198] Convention against Discrimination in Education, 1960, Article 1. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000114583.page=118

[199] Convention on the Safeguarding of the Intangible Cultural Heritage, 2003, Article 2.1. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000132540

intangible cultural heritage, thus helping to enrich cultural diversity and human creativity".[200] Furthermore, the importance of protecting the intangible cultural heritage lies in the fact that it is "transmitted from generation to generation" providing communities "with a sense of identity and continuity".[201]

There are currently 180 States Parties of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage: Ukraine ratified the Convention in 2008.

In 1978, the UNESCO adopted the Declaration on Race and Racial Prejudice to address the problem of discrimination.

Although minorities are not specifically mentioned in the Declaration, it is anyway relevant to include this document in our discussion, since it is stated that "all individuals and groups have the right to be different, to consider themselves as different and to be regarded as such", and this diversity cannot "in any circumstance, serve as a pretext for racial prejudice".[202]

Furthermore, the Declaration affirms that "identity of origin in no way affects the fact that human beings can and may live differently, nor does it preclude the existence of differences based on cultural, environmental and historical diversity nor the right to maintain cultural identity".[203]

Finally, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions was adopted in 2005 as a complement of the UNESCO Declaration on Cultural Diversity of 2001 and it is a major legally binding international instrument for the protection of minority and indigenous people's rights, in particular, their cultural rights.

The Convention states, indeed, the "principle of equal dignity of and respect for all cultures [...], including the cultures of persons belonging to minorities and

[200] Ivi, Preamble

[201] Ivi, Article 2.1

[202] Declaration on Race and Racial Prejudice, 1978, Article 1.2. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000114032.page=60

[203] Ivi, Article 1.3

indigenous people".[204] Furthermore, States Parties "shall endeavor to create in their territory an environment which encourages individuals and social groups", always paying attention to special circumstances and needs of "various social groups, including persons belonging to minorities and indigenous peoples".[205]

This instrument is particularly relevant because it was adopted two years before the UN Declaration on the Rights of Indigenous People: this means that attempts to provide certain standards for indigenous people's protection were already taking place in the international community.

So far, the Convention counts 148 Member countries: Ukraine ratified it in 2010. In 2006, also the European Union deposited its instrument of accession.

The rights of minority groups represent a heartfelt topic also for the civil society: thanks to their activism, private initiatives and non-state organizations not only help in keeping minority related issues on the international agenda, including monitoring States' compliance with their commitments under the already existing international conventions and declarations, but they also bring a relevant contribution by providing their own instruments.

We already had the opportunity to mention the European Citizens Initiative (ECI) and their "Minority SafePack – one million signatures for diversity in Europe", but another relevant example is represented by the Universal Declaration of Linguistic Rights of 1996.

The document is also known as the Barcelona Declaration, because it was signed at the World Conference on Linguistic Rights held in Barcelona in 1996, where more than 200 people gathered, including representatives of international and small NGOs, writers, linguists, law experts, and many other categories. Started from the initiative of the International PEN Club and the Escarré International Centre for Ethnic Minorities and Nations, the aim of the Declaration was to reinvigorate the process started by the UN Declaration on Human Rights of 1948, while more concentrating on the

[204] Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, Article 2.3. Available at: https://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf

[205] Ivi, Article 7.1

importance of languages.[206] The idea of the Declaration, indeed, was born from the belief that there was a lack of attention in the global scene on the topic of linguistic rights and it thus aimed at contributing to a possible future regulation of linguistic rights and their defense.

The drafting process involved forty experts from various countries and various specializations, 61 NGOs and 41 PEN Club centers, and is interesting to notice that the content was not focused on obligations and prohibitions, but rather on the rights.[207]

Although it has not been approved or adopted, the Declaration made an important contribution to the discussion, because it considered both the individual and collective dimensions of linguistic rights, by affirming that the two dimensions are inseparable and interdependent.[208]

1.3 Conclusions

In the first chapter of this thesis, we tried to provide a more rounded vision of what is the current situation for persons belonging to minorities under international law.

The first paragraph focused on the concept of minority: we tried to explain why this is still one of the major deadlocks in the contemporary discussions on minority rights. The first and most fundamental issue concerns the inconclusive search for a definition of what constitutes a minority: even the most relevant multilateral organizations have not been able during their whole history to provide a univocal definition of minority, plus, although prominent individuals have attempted to contribute by offering their own proposals, we still do not have a universally accepted definition. To date, the most widely cited and accepted definition is the one suggested by Francesco Capotorti, but it is important, however, to point out that it has not yet been included in any international treaty concerning minorities, nor human rights.

A problem closely related to the absence of a definition is the widespread lack of recognition at the international level, which often hides political reasons behind it.

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[206] World Conference on Linguistic Rights, Barcelona, Universal Declaration of Linguistic Rights, 1996, passim. Available at: drets_culturals389.pdf (culturalrights.net)

[207] Universal Declaration of Linguistic Rights, 1996, pp 33. Available at: https://culturalrights.net/descargas/drets_culturals389.pdf

[208] Ibid.

Added to this, there are the issues deriving from the presence of many typologies of groups: even if they may fall into the broader category of existing minorities, they still possess characteristics and needs different from one another.

The second paragraph, for its part, provided an overview of the discussion around minorities and their rights: how it has evolved over the centuries, what are the most important systems for minorities protection that emerged over time, both at international and regional level and, within these systems, what are the main mechanisms and instruments currently existing at minorities' disposal.

In the light of the situation we presented in this chapter, we can conclude that there is still a pervasive lack of international governance in this field, combined with frictions caused by the reluctance of many states in contributing to the search for a definition. Remarkable attempts have been made by each of the bodies we presented, but the general impression is that the number of deadlocks in the discussion ultimately led to an inability to provide a complete international legal framework for the protection of minorities and their rights. The situation inevitably results in a fragile basis for the international protection of minorities.

CHAPTER 2. UKRAINE AND NATIONAL MINORITIES: HISTORICAL FRAMEWORK

CONTENTS: 2.0 Introduction to the chapter – 2.1 The roots of Ukraine's ethnic diversity: national identity and the language issue – 2.2 Nationalities in the Russian Empire – 2.3 Nationalities in the USSR – 2.3.1 Lenin and the policy of *korenizatsiya* – 2.3.2 The age of Stalin – 2.3.3 From the death of Stalin to the collapse of the Soviet Union – 2.4 Final considerations.

2.0 Introduction to the chapter

The second chapter of this thesis provides an historical contextualization of how Ukraine has come to incorporate over time more than one hundred nationalities, what are their current characteristics, and the main issues involving them.

Since it would not be possible to fully understand interethnic relations in Ukraine, and the problems related to minorities, without analyzing the history of the country, the chapter traces back over the centuries the main changes that involved Ukraine with regards to nationality policy, from the domination of the Russian Empire up to the current situation.

First of all, we will observe that during its 200 years of existence, the Russian Empire adopted different approaches with regards to nationalities, where times of harsh russification alternated with periods of greater freedoms and rights. Strategies also varied significantly across territories and specific nationalities, so that it is practically impossible to outline a single coherent policy.

Secondly, we will examine the changes that occurred once the Bolsheviks seized power. In that historical moment, Lenin's longtime sensitivity to the theme of nationalities prevailed over the opinions of other representatives of the Party, who sustained that the real focus of the Revolution was class not nationality and that nationalities were nothing but a tool towards the establishment of socialism. The 1920s have been later defined as the period of *korenizatsiya*, a policy of nation-building based on the principle of nativization, in contrast with the forced assimilation of Russian language and culture.

When Stalin took the lead after Lenin's death, the new head of the Party immediately committed to follow the policy of his predecessor. In his early political career, Stalin had been a fervent sustainer of Lenin and his ethnolinguistic approach, however the period of concessions granted to the republics of the Union did not last long. At the end of 1920s, Stalin set himself and the country to reach Communism in record time, this meant also implementing a progressive process of russification that reached peaks of harshness and brutality comparable to the worst policies of the Russian Empire.

After the Great Terror of the Stalin era, in the last decades of its existence, the USSR saw phases of openness alternating phases of repression. In the background of forging the prototype of Soviet man, embodying the quintessence of a unified Soviet people, forms of nationalism grew stronger over time in the republics and at times emerged openly. The national question gave a severe blow to the Soviet rule, which, combined with several other factors, eventually led to the collapse of the Soviet Union.

If the Russian Empire aimed at the creation of a great Russian nation and the USSR at that of a single Soviet people, we will be able to notice how contemporary Ukraine seems instead to pay great attention to the multi-ethnic factor, on which depends the social and political stability of the country.

2.1 The roots of Ukraine's ethnic diversity: national identity and the language issue

Contemporary Ukraine has a rich and complicated ethnolinguistic structure, deriving from the imperial period, when the borders of the region were quarreled between Russia, the Austro-Hungarian Empire and the Polish-Lithuanian Confederation.

By virtue of their geographical position, over the centuries the Ukrainian territories were subjected to various dominations, thus becoming part of different states, each of which tried to impose its own official language: the Mongol Empire, the Kingdom of Poland, the Grand Duchy of Lithuania, the Khanate of Crimea, the Kingdom of Hungary, the State of Moscow and the Ottoman Empire. Indeed, all these

rulers tried to push their linguistic policies on the Ukrainian land and each of them was characterized by varying approaches.[209]

In the period preceding the First World War, Ukraine was divided between the Austro-Hungarian Empire and the Russian Empire. It was in the territories subjected to the Habsburgs that the birth of Ukrainian nationalism took place, also thanks to the recognition for the various nationalities of the right to maintain and cultivate their own identity and language, including teaching it in schools and its use in public life.[210] The strong national liberation movement, born in that time, continued even after the end of the war.[211] The same thing did not happen in the part under Romanov's domination, as we will see in the next paragraph.

With the birth of new states at the end of the First World War, the policies dictated by the new governments overlapped to the old Austrian and Russian imperial policies: if Slovakia and Hungary developed a so-called "non-intervention" policy, on the contrary, the Russian domination was characterized by policies aimed at russifying Ukrainian lands, meaning attempting to make Russian prevalent.[212]

The Ukrainian territory as we know it today settled at the end of the Second World War. The war brought significant modifications to the ethnic composition of Ukraine, both through the infamous forced deportations, but also through various territorial expansions that contributed to the inclusion of non-ethnic Ukrainian populations. After the war, indeed, Ukraine incorporated territories that previously came under the sovereignty of neighboring states, expanding in particular to the detriment of Poland, Romania and Czechoslovakia. To become part of Soviet Ukraine were Eastern Galicia, inhabited by Ukrainians, but also Volhynia and Polissa,[213] while Northern Bukovina and lower Bessarabia were ceded by Romania.[214] The rest of Bessarabia was incorporated into the Soviet Union and became the Moldavian Soviet

[209] Totskyj, B. A., Regional and Minority Languages in the Ukrainian Legislation, Minority politics within the Europe of regions, Cluj, 2010, cit. Available at: http://www.academia.edu/1221616/Regional_and_minority_languages_in_Ukrainian_legislation

[210] See Article 19 of the Austro-Hungarian Compromise (Österreichisch-Ungarischer Ausgleich / Kiegyezés) of 1867

[211] Ulasiuk, I., The Language Issue in the Evolution of Ukrainian Constitutionalism, Revista de Llengua i Dret, núm. 54, 2010, pp. 137-138

[212] Totskyj, B. A., op. cit., cit.

[213] Magocsi, P. R., A history of Ukraine, University of Toronto Press, 1996, p. 639

[214] Baistrocchi, M. S., Ex-URSS: La questione delle nazionalità in Unione Sovietica da Lenin alla CSI, Mursia, 1992, p. 50

Socialist Republic.[215] An entirely new acquisition for Soviet Ukraine, handed over from Czechoslovakia, was the province of Transcarpathia (once called Subcarpathia),[216] now part of the furthest West in modern Ukraine.

The configuration of the current Ukrainian borders will then be completed in 1954, when Khrushchev caved in Crimea to Ukraine to celebrate the 300th anniversary of the first Russian-Ukrainian union.[217]

Given the historical circumstances, it is no surprise that the Ukrainian ethnocultural nucleus and its meaning of identity have acquired different dimensions over time — regional, religious and linguistic.[218]

To date, the Ukrainian territory is home to more than 130 minority ethnic groups. The last census took place in 2001 and registered a total Ukrainian population of 48.46 million, around 78% of which identified as being of Ukrainian ethnicity (37.7 million). The most widespread minority was constituted by the Russians who made up about 17% of the population (8.3 million). Other nationalities making up less than 1% of the total population, were Romanian, Moldavian, Belarusian, Crimean Tatar, Bulgarian, Hungarian, Polish, Jewish and Armenian (**Tab. 1**).[219]

Tab. 1 *National structure of the population of Ukraine.*

	Total (Thousand persons)	%
Ukrainians	37541.7	77.8
Russians	8334.1	17.3
Belarussians	275.8	0.6
Moldavians	258.6	0.5

[215] Magocsi, P. R., op. cit., p. 639

[216] Ivi, p. 641

[217] Magocsi, P. R., op. cit., p. 653

[218] Stepanenko, V., Identities and Language Politics in Ukraine: The Challenges of Nation-State Building, p. 110, in Daftary, F., Grin, F., Nation-building Ethnicity and Language Politics in Transition Countries, Budapest: Open Society Institute, 2003

[219] About number and composition population of Ukraine by data All-Ukrainian population census - 2001 data. Available at: http://2001.ukrcensus.gov.ua/eng/results/general/nationality/

Crimean Tatars	248.2	0.5
Bulgarians	204.6	0.4
Hungarians	156.6	0.3
Romanians	151.0	0.3
Poles	144.1	0.3
Jews	103.6	0.2
Armenians	99.9	0.2
Greeks	91.5	0.2
Tatars	73.3	0.2
Gipsies	47.6	0.1
Azerbaijanians	45.2	0.1
Georgians	34.2	0.1
Germans	33.3	0.1
Gagausians	31.9	0.1
Other	177.1	0.4

Source: *About number and composition population of UKRAINE by data All-Ukrainian population census'2001 data.*

The various minorities then have a different type of settlement from each other: some are dispersed - Jews and Roma - others reside compactly in defined areas. Russians, for example, live mainly in the south-eastern regions of the country, on the borders with Russia and the Black Sea, making up the majority of the population in Crimea. Russian language is still used predominantly in the cities of central Ukraine, including the capital Kiev. The Crimean Tatars mainly live on the peninsula, the Hungarians and Slovaks in the Transcarpathian region, and the Romanians in Bukovina, now called the Chernivtsi region. In the south we find the Bulgarians (Odessa and Kherson regions), the Greeks and the Germans, while the Poles reside instead in the northwestern regions (Polissya and Volyn).

Finally, some minorities live mainly in urban areas (the Russians, the Jews, the Poles, etc.), while others live in rural areas (the Moldovans, the Tatars, the Bulgarians, the Hungarians, etc.).[220]

[220] For a detailed classification see the table in Stepanenko, V., A State to Build, a Nation to Form: Ethno-Policy in Ukraine, p. 311, in Bíró, A. M., & Kovács, P., Diversity in Action: Local Public Management of Multi-ethnic Communities in Central and Eastern Europe, Open Society Institute, 2001

All these data suggest the extreme variety of languages, cultures and religions of which Ukraine is composed. However, if, on the one hand, the presence of a vast multitude of peoples and ethnic groups represents the richness of a country's cultural heritage, on the other hand there is the problem of integrating this multitude within the framework of a single national identity. Indeed, after achieving independence in 1991, Ukraine had to face the challenge posed by the birth of a Ukrainian national state, which at that point had to be based not only on an ethnic component, but also on a civic one. The task was totally new to the country, since, in contrast to Russia and the majority of Central European and Baltic states, Ukraine does not possess a stable or developed historical tradition of independent statehood.[221] As Taras Kuzio observes, in the modern era, Ukraine has only enjoyed two brief periods of independence, the first for a few years after the Cossack rebellion of 1648, and the other one between 1917 and 1921, during the succession of weak governments.[222]

Although Ukraine's ethnic population makes up 78% of the total, it should be underlined that ethnic Ukrainians themselves constitute a very heterogeneous community: due to the diverse historical heritage of the different parts of the country, identity varies consistently.[223]

One of the main dividing factors in the country involves ethnic Ukrainians: western Ukrainians are strongly nationalist, while those living in the southern-east parts of the country are more 'russified'.[224] This political and cultural polarization between east and west might be a direct consequence of the peculiar separation of the country in two spheres of influence: as we mentioned, Western Ukraine saw the birth and development of the national language and became the cradle of Ukrainian nationalism, probably because it belonged first to the Austro-Hungarian Empire, later to Poland, and has been part of the Soviet Empire only for a shorter time. This happened to a lesser extent (or not at all) in the eastern areas.

[221] Stepanenko, V., Identities and Language Politics in Ukraine, op. cit., p. 110

[222] Kuzio, T., Ukraine. The Unfinished Revolution, London: Alliance Publishers, 1992, p. 7 cited in Stepanenko, V., Identities and Language Politics in Ukraine, op. cit., p. 110

[223] Stepanenko, V., A state to build, op. cit., p. 310

[224] Ivi, p. 312

An even more dividing factor involves the contraposition between ethnic Ukrainians and ethnic Russians. The eastern regions of the country are constituted mainly by the Russian population and traditions of Soviet-Russian administration are stronger. On the contrary, a more liberal national consciousness has developed in the western regions, inhabited mostly by Ukrainians.[225]

Furthermore, divisions are given by a religious factor. Indeed, in Ukraine we find the coexistence of many different churches: the Catholic (Greek) Church - Ukrainian and historically dominant in the west, the Russian Orthodox Church, and the Orthodox Church of Ukraine. The OCU was founded in 2018 by the reunification of the Ukrainian Autocephalous Orthodox Church and the Ukrainian Orthodox Church, which separated from the Russian one in 1992. The independence of the Ukrainian Church has caused a religious crisis called the "Orthodox Schism of 2018", considered a direct consequence of the Russian-Ukrainian political crisis that began in 2014.

To further complicate this picture, there is the fact that ethnic differences in Ukraine do not coincide with linguistic differences: the spread of the Russian language is not limited to the borders of the national minority, but instead involves large sections of the population that defines itself as ethnic Ukrainian. Indeed, following the division we previously mentioned between western and southeastern ethnic Ukrainians, we find that Russian is predominant in the Southeast and Ukrainian in the West. Not to mention the population that considers itself bilingual and a smaller percentage of people who speak a language other than Ukrainian or Russian.

According to a poll conducted by the Razumkov Center in 2017, 67.7% of respondents considers Ukrainian as their native language, 13.8% affirms it is Russian, while 17.4% says both Ukrainian and Russian. [226]

Results vary according to nationalities and regions,[227] but also depending on the type of settlement: Russian dominates in urban areas, except for Western Ukraine, while Ukrainian in rural areas. Furthermore, the decision whether to use Ukrainian or

[225] Ibid.

[226] "Opituvannya: 86% gromadyan Ukrajini vvajayut ridnoiyu movoyu ukrajinsku". Online article available at: https://www.unian.ua/society/1873666-opituvannya-68-gromadyan-ukrajini-vvajayut-ridnoyu-movoyu-ukrajinsku.html

[227] The survey was conducted in all Ukrainian regions, with the exception of the occupied territories.

Russian among bilinguals seems to depend mainly on the situation, where Ukrainian is preferred for formal communication.

Overall, it is easy to imagine how the above-mentioned circumstances make especially the relationship between ethnic Ukrainians and the Russian community an extremely relevant issue for the stability of the country. Given the historical, religious, and linguistic closeness between Ukrainians and Russians and the complex dynamics that involved the development of the two countries, the Ukrainian–Russian relationship represents the most delicate issue in current socio-political, cultural and language policies in Ukraine.[228]

2.2 Nationalities in the Russian Empire

The Russian Empire has not always been characterized by its territorial vastness. At the beginning of its history, in fact, the Russian territory was nothing more than a nucleus and it was only during the 18th and 19th centuries that a progressive expansion of the borders took place. Through its territorial acquisitions, by the end of the 18th century Russia represented "the most imperial of nations, comprising more peoples than any other", and concerning its ethnographic variety, in 1797 Heinrich Storch affirmed that "no other state on earth contains such a variety of inhabitants".[229] As a consequence of its massive expansion, Russians were not anymore the dominant ethnicity in the Empire: the 1897 census revealed, indeed, that Great Russians were constituting less than 50% of the total population.[230]

However, in this type of society, ethnicity represented quite a marginal matter. Russia constituted an autocracy, where the ruler exercised absolute power over its territories and subjects: Peter the Great (1682-1725) embodied the image of the emperor as hero and god, someone who stood above other men and worked for the

[228] Stepanenko, V., Identities and Language Politics in Ukraine, op. cit., p. 112

[229] Kappeler, A., Rußland als Vielvölkerreich. Entstehung, Geschichte, Zerfall., Munich, Beck, 1992, p. 121; Wortman, R., Scenarios of Power: Myth and Ceremony in Russian Monarchy from Peter the Great to the Abdication of Nicholas II, Princeton University Press, 2006, pp. 136-137. Cited in Suny, R. G. & Martin, T., A State of Nations. Empire and Nation-making in the Age of Lenin and Stalin, Oxford University Press, Oxford 2001, p. 42

[230] Pervaja vceobshaja perepis naselenija Rossjskoij Imperii 1897g. Available at: http://www.demoscope.ru/weekly/ssp/rus_lan_97.php

common good of his subjects.[231] Specialists affirm that, in this century, the concept of national consciousness in Russia, at least among nobles and the educated population, was largely based on the identification with the state and its monarch, rather than with the nation.[232]

In describing how the approach to the nationalities integrated in the Empire changed over time, Aneta Pavlenko distinguishes four periods: a first one of linguistic autonomy (1721-1830), a second one of selective russification (1830–1863), a third one of expanding russification (1863–1905), and a fourth one of retrenchment of russification (1905–1917).[233]

Before the 18th century, we can see that there was more a practice, rather than a concrete policy, when dealing with non-Russian populations: after the acquisition of a territory, the local administration was conducted through the establishment of a cooperation with non-Russian elites, while, for its part, linguistic assimilation was not imposed but rather left to its natural development. The need for a concrete language policy appeared to be evident after the 1721 Treaty of Nystad, which set off the incorporation of the Baltic provinces, territories whose societies were much more developed than Russia under political, legal, economic and cultural aspects. The first phase Aneta Pavlenko identifies starts here and is called of 'linguistic autonomy'.

As a matter of fact, that of imperial authorities was more of a dualistic approach. In the Western provinces, like the Baltics, the main aim was to preserve the status quo: the west was seen as model to shape the future of the Russian empire, thus, the policies implemented in this area consisted in several concessions, ranging from the autonomy of German as the language of administration, courts and education in the Baltics provinces, to the decentralization of the system of national education, which allowed the newly integrated territories to self-manage their educational and professional training system. Policies similar to those implemented in the Baltics were also introduced at the end of the 18th centuries, after the partitions of Poland: Polish nobility remained to run Western provinces, where Polish was declared the language of

[231] Wortman, R., Scenarios of Power, op. cit., p. 81. Cited in Suny, R. G. & Martin, T., op. cit., p. 40

[232] Suny, R. G. & Martin, T., op. cit., p. 40

[233] Pavlenko, A., Linguistic russification in the Russian Empire: Peasants into Russians? Языковая руссификация в Российской империи: стали ли крестьяне русскими?, Russian Linguistics, Vol. 35, No. 3, 2011, pp. 331-350

administration and education, while in Congress Poland was for example founded the Warsaw University.

The other side of the coin was represented by the eastern territories, where the policies introduced were aimed at tackling their backwardness through a process of russification of the administrative and educational system. For instance, a relative autonomy was initially granted to Malorossia,[234] a territory which boasted a well-developed educational system. However, the presence of the Ukrainian hetmanates[235] was a frequent cause of instability and conflicts in the region. After the riot that took place in 1708-09 against Russia, Catherine II (1762-1796) decided to abolish the autonomy of the territory and Malorossia became nothing but a regular province of the Russian empire with Russian as its official language.

As a consequence of the partitions of Poland, another ethnic group that became part of the Russian Empire were the Jews. At first, the Jews enjoyed relative autonomy, for example in choosing which languages to use. Jewish schools were requested to offer instruction in Russian, Polish, or German, as well as Jewish officials and merchants had to be sufficiently proficient in one of these languages. As we will see later in this paragraph, the end of the 18th will witness a total change of tide.

The transition of these populations and territories into the Russian Empire was made relatively smooth by the cooperation with non-Russian establishments: the integration into the Russian nobility offered local elites several benefits, moreover, through the knowledge of Russian they could aim at career opportunities in the imperial service. This represented the main tool of linguistic assimilation at that time.[236]

Aneta Pavlenko affirms that the period between 1830 and 1863 was instead characterized by a 'selective russification', which involved only some parts of the Empire, namely the Western provinces and Congress Poland.

From the very beginning, the integration of Polish territories represented a destabilizing factor for the Russian Empire, with its constant unrest and willingness to secede, but the first concrete shift in imperial language policies towards Poland

[234] Area that today corresponds to territories part of Belarus, Russia and Ukraine.

[235] Cossack states.

[236] Pavlenko, A., op. cit., pp. 335-7

occurred after the 1830–1831 Polish uprising. After the event, tsar Nicholas I (1825-1855) ordered the administrative russification of Congress Poland. Polish could be used with the exception of the administrative service, where a Russian proficiency certificate was required. In addition, the teaching of Russian subjects was progressively incorporated in secondary schools. The Western provinces, on the other hand, faced harsher consequences: Polish was replaced with Russian in the administrative and judiciary fields; Russian was introduced as the language of instruction in schools financed by the state and the universities of Warsaw and Vilna were closed.

The expansion of Russian language instruction was attempted also in the Baltic provinces, but in those territories resistance was quite persistent, also for the fact that the educational system was funded and controlled locally. Consequently, the level of proficiency in Russian remained particularly low.

A different approach was adopted in the Caucasus, where some schools offered primary instruction in the local languages, then switching to Russian in the third year. Others, instead, included the use of local language as a mandatory subject, but functioned in Russian.[237]

Up to the reign of Nicholas I, the Russian monarchy considered the country as a modern Western state, but the "West" had not remained the same as in Peter's time: Europe was no longer attached to the ideal of absolutism and was instead following the principles of nationality and popular sovereignty, industrialism and free labor, constitutionalism and representative government.[238] In the West was also accepted the idea that the monarch should be subject to the same laws as his subjects, a concept that came to be known as 'rule of law'.[239]

This was not the case of Russia, where the preservation of Tsarist autocratic power stood at the heart of the Romanov rule: the tsar stood above the law, but he could impose it on the population. In this scenario, the Orthodox Church played a crucial role both in converting newly integrated populations from other religions to serve the interests of both Church and state, but also, most importantly, in legitimizing the autocratic power of the tsars. Nicholas I commissioned the construction of

[237] Pavlenko, A., op. cit., pp. 337-8

[238] Suny, R. G. & Martin, T., op. cit., p. 47

[239] Dalton, H., Fordham, M., Smith, D., A/AS Level History for AQA Tsarist and Communist Russia, 1855–1964, Cambridge University Press, p. 7

churches all across the empire and extended the religious rituals in government, all in order to cement the link between Church and state.[240]

These and many other attempts to bring the people together under the authority of the Tsar, also through the means of faith, constituted what became known as the doctrine of 'Official Nationality'. Starting from Nicholas I, monarchs worked to control a particularly Russian discourse of the nation, whose ideological formulation was summed up in the official slogan "Orthodoxy, Autocracy, Nationality". This trinity meant that such a territory as wide and heterogeneous as Russia could have been held together only by the Orthodox faith and an autocratic regime, and that the only nationality that could exist was inevitably the one founded on Orthodoxy and on autocracy.[241] Russia was imagined as "a single family in which the ruler is the father and the subjects the children [and] the father retains complete authority over the children, while he allows them to have full freedom [...]".[242]

The doctrine of "Official Nationality" represented an attempt to face the emergence of the concept of 'nation' as a political community separate from the state.[243]

In general, the reign of Nicholas I was dedicated to the maintenance of political and social stability, connected with the cultural and linguistic integration of the Poles, even though it was widely acknowledged how turning them into Russians was practically impossible.[244]

If, overall, Nicholas I did not bring any fundamental change in Russian language management, the ascension of Alexander II (1818-1881) represented a major turn-around. At 36 years old, Alexander II was to receive enormous power, but also several problems: Russia was losing the Crimean War (1853-1856) against Britain and France and was unable to repay its national debt; increasingly frequent riots involved peasants in rural areas and the emergent middle classes started criticizing Russian backwardness in the political and economic fields. Furthermore, millions subjugated minorities living at the borders of the empire started calling for their self-

[240] Ibid.

[241] Riasanovsky, Nicholas I and Official Nationality, p. 77. Cited in Suny, R. G. & Martin, T., op. cit., p. 47

[242] Ivi, pp. 118-119

[243] Suny, R. G. & Martin, T., op. cit., p. 48

[244] Pavlenko, A., op. cit., p. 338

determination. Alexander II was thus left with the critical task of maintaining the balance between modernization of the country and preservation of its autocratic nature.[245]

Throughout the Russian Empire, the coronation of Alexander II ignited the hopes and social ferment started spreading. Nicholas I had brutally crushed the Polish uprising of 1830 and severely limited Polish autonomy: his death could only be welcomed by the Poles, who now had high hopes with regards to their future. The new tsar, however, was more oriented to greater transformations. Alexander II came indeed to be known in history for his reforms, among which, probably the most famous, was the abolishment of serfdom. These reforms did not raise the interest of Russian Poland, on the contrary, diminishing repression brought more demands for further concessions:[246] conflicts escalated quickly, and another open rebellion exploded in early 1863.

The Polish sedition and the revolutionary and national movements emerging at the time, made clear for the Russian monarchy the need for a tighter unification of the Russian Empire: Aneta Pavlenko affirms that what we assist to, from 1863 to 1905, is an expansion of the russification processes. After the rebellion 1863, the Polish fate was sealed: the long-coveted reform would come, but it would be aimed at crushing Polish freedoms.[247] In Congress Poland, Polish was replaced with Russian in administration, official press, court proceedings and education. The extent of these reforms, however, was pretty much downsized due to the lack of resources necessary to implement them.[248]

For their part, as it happened after the 1830 insurrection, Western provinces paid the higher price, and the russification assumed the form of a depolonization campaign.[249] Since the most obvious symbol of one's culture is language, Russian policy aimed at eliminating Polish use among its people.[250] Historians affirmed that "even Polish shop signs were not allowed" and simple conversations in Polish in public

[245] Dalton, H., Fordham, M., Smith, D, op. cit., p. 6

[246] Weeks, T., Nation and State in Late Imperial Russia: Nationalism and Russification on the Western Frontier, 1863-1914, Northern Illinois University Press, 1996, p. 96

[247] Ibid.

[248] Pavlenko, A., op. cit., p. 339

[249] Ibid.

[250] Weeks, T., op. cit., p. 99

places could bring unpleasant consequences.[251] Russian replaced Polish for almost all official, educational and public uses.[252]

In written language, the Latin alphabet was banned in favor of the Cyrillic, not only in Polish, but also in Belorussian, Lithuanian, Ukrainian and Latgalian. These policies favored the proliferation of clandestine activities, especially underground schools teaching in Polish and the smuggling of books in Lithuanian from Prussia.[253]

In 1869 the Polish Szkoła Główna was turned into a Russian university and in the following decade the educational system in the Kingdom of Poland became principally Russian.[254]

The russification of Ukraine reached its peak in this phase, but not from the very beginning. The first half of the 19th century was indeed characterized by a rising Ukrainophilia, meaning that during these years Ukrainian started emerging as a literary language, the foundations of modern orthography were laid, and it started to be used in written publications. This resulted in a heated debate in Russia around the existence of the Ukrainian language and the possibility for Ukrainians to be instructed in that language.[255]

The opinion of the imperial authorities concerning Ukraine changed after the Polish rebellion of 1863-1846, when the movement started to be considered a possible threat, subjected to exploitation by the Polish national movement.[256]
In 1863 was issued a decree bringing the name of minister of interiors Valuev, which stated that the Ukrainian language "did not, does not, and cannot exist",[257] but was instead "the same Russian language with the only difference of it being spoiled by Polish".[258] The consequence was that Ukraine was banned from being used, not only

[251] Wandycz, P., The Lands of Partitioned Poland, 1795-1918, Seattle, 1974, p. 240; Korwin-Milewski, H., Siedemdziesiąt lat wspomnien, 1855-1925, Poznan, 1930, pp. 48-69 and 79-80. Cited in Weeks, T., op. cit., pp. 99-100
[252] Weeks, T., op. cit., p. 99
[253] Pavlenko, A., op. cit., p. 339
[254] Weeks, T., op. cit., p. 100
[255] Pavlenko, A., op. cit., p. 339
[256] Ibid.
[257] Dragomanov, M. P., Politicheskie sochineniia, ed. Grevs, I. M., and Kistiakovskii, B. A., vol. 1, Moscow, 1908, p. 48. Cited in Weeks, T., op. cit., p. 102
[258] Totskyj, B. A., op. cit., cit.

in all types of publications,[259] but also in education, in order not to transmit to the peasants a sense of Ukrainian consciousness that might result in separatist ideas.[260] A second and even harsher rule concerning Ukraine was the Emsky decree, issued in 1872, which prohibited the import of books in Ukrainian from Western Ukraine,[261] part of the Austro-Hungarian empire and more liberal.

The severity of the bans is commonly explained by the fact that in that period, the language of instruction and even orthography were becoming political questions. There was a widespread concern among imperial law-makers, that allowing Ukrainian and Belorussian peasants to access primary education in their native languages, might result in growing nationalist consciousness and separatist ideas, also supported by the Poles. Only if Ukrainians remained incorporated in the Russian nation, Russians could constitute a majority of the empire's population, otherwise, Russians would become a minority in Russia.[262]

The latter half of Alexander II's reign, and particularly the 1870s, saw the emergence of Russian revolutionary terrorism, which, after many failed attempts, brought to his assassination in early 1881.

The new tsar, Alexander III (1881-1894), "harbored none of his father's liberal sympathies".[263] On the contrary he did not want to suffer the same fate as his father, so he imposed autocracy even more ruthlessly: police powers were extended; Russia's conservative traditions were reinforced, and he soon began to limit the rights and institutions of non-Russian in the borderlands.[264]

As we had the occasion to briefly mention, a big change of tide with respect to the previous period involved the Jews. During the government of Alexander II, the Jews benefited from a number of measures aimed at their integration, but after the death of the tsar, the Empire experienced the worst wave of pogroms ever seen, during which, among other bans, the Jews were restricted from settling outside of urban areas in the Pale.[265]

[259] Ibid.
[260] Pavlenko, A., op. cit., p. 339
[261] Totskyj, B. A., op. cit., cit.
[262] Pavlenko, A., op. cit., p. 340
[263] Weeks, T., op. cit., p. 105
[264] Ibid.
[265] Weeks, T., op. cit., p. 5

With regards to the Baltic provinces, if during the reign of his father the efforts to expand Russian-language education remained quite tender, due to lack of resources and local resistance, when Alexander III came to power, the enforcement of Russian became systematic and Russian started replacing German in administration, court proceedings and some levels of education. However, usually only ethnic elites were involved in the process, and even those reforms that had greater impact were de facto hampered by several factors, always including insufficient funds and local resistance.

Between the 1890s and 1905 attempts of russification were also conducted in the Great Duchy of Finland, not only with scarce results, but even eventually resulting in clashes.

The number of rural schools throughout the empire increased as well, but not as sufficiently to help carry out extensively the process of russification of non-Russian peasants. [266]

Overall, during the 1880s, was followed the general line of spreading russification adopted since 1863, although with a brutality that had been absent for most of the 1870s.[267] These harsh and yet clumsy policies had however quite the inverse effect of heightening the sense of national identity and mobilizing national movements.[268]

Since the reign of Alexander III and especially, as we observed, the 1880s was a period of repression throughout all Russia, it is not surprising that for non-Russians, and in particular the Poles and Western borderlands, his death went practically unmourned. The accession to the throne of Nicholas II (1894-1917) was consequently greeted with excitement and hope. Unfortunately, the new tsar dismissed these "senseless dreams" very soon.[269] What would have later become the last emperor vowed to continue the policies of his father: he was convinced to be able to restore the absolutism of his 17th-century ancestors, through the use of force and leveraging its closeness to the peasants. However, society was not anymore willing to blindly accept autocratic power.[270]

[266] Pavlenko, A., op. cit., pp. 341-2

[267] Weeks, T., op. cit., p. 106

[268] Pavlenko, A., op. cit., p. 343

[269] Weeks, T., op. cit., p. p. 107

[270] Suny, R. G., Nationalities in the Russian Empire. The Russian Review, Vol. 59, No. 5, 2002, p. 489

This last phase in Russian language policy covers the years of the revolutions, from 1905 to 1917, and Aneta Pavlenko defines it as 'retrenchment of russification'. The events of 1905 represented, indeed, a turning point in the reign of Nicholas II: the nationality question became a crucial issue after the revolution, since, according to the newspapers of that time, it assumed a "national character" in the Western borderlands, Transcaucasia and Siberia.[271] The historian Andreas Kappeler has even talked about the events of 1905-1907 as the "Springtime of Non-Russian Nations".[272]

In the attempt to appease the tensions, Nicholas II was forced to make some concessions: religious freedom started spreading, censorship was significantly eased and a Constitution was also introduced (even though the autocratic character of the empire was reiterated).[273] Concessions started also to be directed towards the non-Russian populations. For instance, in these respects, the early mentioned Valuev and Emskij decrees were abrogated,[274] and the participation in the State Duma, the new constitutional assembly, was guaranteed also to non-Russians.[275]

As a matter of fact, the several small but relevant nationality-based political parties that were emerging in those years, were demanding much more, namely the cultural and – somehow – political autonomy of the empire's nationalities.[276] Indeed, these years saw the strengthening of nationalism among minorities, movements that were not immediate threats but were certainly gaining great disruptive potential.[277]

This last phase of the Russian empire witnessed major upheavals. Even though, overall, nothing changed in terms of distinctions and hierarchies within the imperial structure, with the Revolution of 1905 and the October Manifesto, Russia moved into a semiconstitutional, semiautocratic political system.[278] Moreover, nationality gained more and more importance as a category of identity as opposed to religion, which progressively lost its relevance:[279] nationality became "a politically salient category

[271] Hirsch, F., Empire of Nations, Ethnographic Knowledge and the Making of the Soviet Union, Cornell University Press, Ithaca 2005, p. 24

[272] Kappeler, A., Rußland als Vielvölkerreich, op. cit., cit. Cited in Weeks, T., op. cit., p. 107

[273] Weeks, T., op. cit., p. 107

[274] Totskyj, B. A., op. cit., cit.

[275] Hirsch, F., op. cit., p. 24

[276] Ivi, pp. 24-25

[277] Weeks, T., op. cit., p. 109

[278] Suny, R. G., op. cit., p. 491

[279] Ivi, p. 492

within imperial Russia" and "the primary criterion for distinguishing Russians from non-Russians (and one group of non-Russians from another) by overturning an earlier official definition of the situation, according to which religion was the primary criterion for determining Russianness and non-Russianness".[280] In the last years of tsarism, Russia passed from a differentiation mainly based on religion, to a politics in which nationality counted as never before.[281]

The last phase of the Russian empire was also characterized by a particular attention given to educational issues. The budget dedicated for educational purposes was increased and local education in the Western Provinces started to be allowed in Polish and Lithuanian. The same treatment was not, however, reserved for Ukraine and Belorussia, where Russian remained the language of state-sponsored instruction.[282] The given reason was that: "the little Russian and Belorussian dialects are so close to the Russian language that the teaching of both together is not necessary."[283] If once the goal was to tackle the backwardness of the peoples through the means of Orthodoxy, now the goal became the maximum possible assimilation of non-Russians.[284]

In Ukraine, nationalists started claiming their nationhood based on a distinct culture against those who defined them as lesser branches of a single Russian people.[285]

Ukraine was not an isolated case of ethnic nationalism at that time. The government was prepared to use its resources to convince *inorodtsy*[286] to join the general educational system of the Russian-language state schools and to adopt Russian as the state language of instruction.[287] The emergence of feelings of self-consciousness among people had to be opposed, in favor of "cultivating in them, as in native Russians,

[280] Slocum, J. W., The Boundaries of National Identity: Religion, Language, and Nationality Politics in Late Imperial Russia, Ph.D. diss., University of Chicago, 1993, p. 10. Cited in Suny, R. G. & Martin, T., op. cit., p. 54
[281] Suny, R. G. & Martin, T., op. cit., p. 54
[282] Pavlenko, A., op. cit., p. 344
[283] Weeks, T., op. cit., p. 64
[284] Suny, R. G. & Martin, T., op. cit., p. 54
[285] Ibid.
[286] Non-Russian peoples.
[287] Suny, R. G. & Martin, T., op. cit., p. 54

love of Russia and consciousness of her unity, wholeness, and indivisibility".[288] However, the state seemed to be realizing that "the majority of the empire's population was not and never would be truly Russian".[289]

Debates like the one concerning the language of instruction for non-Russians lost momentum starting from 1914, when the spotlight was stolen by the outbreak of the First World War.[290]

Through the defeats and human losses during the war, the Russian monarchy openly showed its weaknesses. The "fragile aura of legitimacy" surrounding the tsar and his family started to gradually dissolve, making them distant from their people: what once used to make them powerful now became "a fatal liability".[291] Together with the war, the Monarchy also lost "its last sources of popular affection and legitimacy" and when the time of need has come, as the tragic outcomes of the 1917 Bolshevik revolution eventually showed, it was unable to find the support needed to contrast and defeat the popular resistance who turned against its rule.[292]

The year 1917 marks the end of the Russian Empire: with the disintegration, parts of the former empire became independent nation-states (Poland, Finland, Latvia, Estonia and Lithuania), while others were eventually integrated into the newborn Soviet Union. Tsarist Russia had succeeded in building a state and creating an empire, but within that empire it failed to construct a multiethnic Russian nation.[293] The crumbling of the Russian Empire was caused by endogenous factors, but the incapacity to develop a univocal conception of nation identity,[294] not dependent on religious and state identifications,[295] eventually contributed to its collapse.

2.3 Nationalities in the USSR

[288] Slocum, J. W., The Boundaries of National Identity: Religion, Language, and Nationality Politics in Late Imperial Russia, Ph.D. diss., University of Chicago, 1993, p. 10. Cited in Suny, R. G. & Martin, T., op. cit., p. 55
[289] Suny, R. G. & Martin, T., op. cit., p. 256
[290] Pavlenko, A., op. cit., p. 344
[291] Suny, R. G. & Martin, T., op. cit., p. 57
[292] Ibid.
[293] Suny, R. G. & Martin, T., op. cit., p. 56
[294] Suny, R. G., op. cit., p. 492
[295] Suny, R. G. & Martin, T., op. cit., p. 8

2.3.1 Lenin and the policy of *korenizatsiya*

Lenin was very sensitive towards the question of nationalities and sustained their right to self-determination long before the Bolsheviks seized the power in 1917: the turmoil of 1904-1905 proved him the importance of nationalities for putting an end to the Monarchy and ensuring the good outcome of the Revolution.[296]

Lenin's thoughts were not, however, free from ambiguity. He was indeed very active in promoting the importance of unity for the proletarian class of all nations. This somehow reflected in his partial change of mind of 1903, when he affirmed that the principal scope of the socio-democrat party was to pursue the self-determination of the proletarian class in each nationality, rather than that of peoples or nations.[297]

Ten years later were issued the 'Theses on the National Question", where Lenin, in invoking again the need for a united proletariat of all nations for the revolutionary cause, called the Social-Democrats to settle the question of secession "only on the basis of a universal, direct and equal vote of the population of the given territory by secret ballot". [298] Lenin drew inspiration from the 1905 referendum concerning the secession of Norway from Sweden, an event that Lenin cited several times during the years as an exceptional example of democracy.[299]

Close to the revolution, Lenin published "The socialist revolution and the right of nations to self-determination" where he was eventually forced to affirm that the only solution was probably the establishment of a federation, rather than forcing the subordination of nations resulting in more frequent and passionate secessionist movements. [300]

Lenin was highly fascinated by Switzerland and frequently praised the country for being an exemplary solution to the problem of nationalities. He affirmed that the richness of the country were its three official languages – German, French and Italian: none of them was imposed over the others, they were instead used freely by "the

[296] Graziosi, A., L'Unione Sovietica 1914-1991, Mulino, 2011, pp. 29-30

[297] Lenin, V. I., Collected Works, Vol. 20, Progress publisher, Moscow, 1966, pp. 430-431. Cited in N Nahaylo, B., Swoboda, V., Disunione Sovietica, traduzione di Barbara Staffa e Dario Staffa, Rizzoli, Milano 1991, p. 31

[298] Lenin, V. I., Theses on the National Question, written in 1913 and first published in 1925 in the Lenin Miscellany III. Available at: https://www.marxists.org/archive/lenin/works/1913/jun/30.htm

[299] Nahaylo, B., Swoboda, V., op. cit., p. 31

[300] Ibid.

civilized citizens of a democratic state".[301] In Lenin's opinion, if Russian would have stopped being imposed as the only state language, the majority of the population would have soon adopted it voluntarily as the vehicular language for communications and economic purposes.[302]

At the Seventh Conference of the Russian Social Democratic Labor Party (Bolshevik), that took place in April 1917, the Resolution on the National Question was adopted. In this occasion was stated that the recognition by the proletariat of the right of nations to secede was the only way to " ensure complete solidarity among the workers of the various nations and help to bring the nations closer together on truly democratic lines".[303] The Party demanded "broad regional autonomy, the abolition of supervision from above, the abolition of a compulsory official language, and the fixing of the boundaries of the self-governing and autonomous regions".[304] Furthermore, the Party demanded "that a fundamental law be embodied in the constitution annulling all privileges enjoyed by any one nation and all infringements of the rights of national minorities".[305]

A few weeks before the Revolution, Lenin reiterated his idea: as soon as the Bolsheviks would have seized power, they would have to grant "the right to a free secession" for all nations once oppressed by tsarism and the bourgeoisie.[306] A free secession was fundamental in order to achieve a free unification, an alliance between the big Russia and the largest possible number of neighboring countries, in the interests of democracy and socialism.[307]

When they seized power in 1917, the Bolsheviks did not have a coherent nationalities policy.[308] What they did have was the slogan on the right of nations to

[301] Lenin, V.I., Critical remarks on the national question, Prosveshcheniye Nos. 10, 11, and 12, 1913 in Lenin, V. I., Collected works, Vol. 20, op. cit., p. 20-21

[302] Ibid.

[303] Lenin, V. I., Resolution on the National question, Supplement to Soldatskaya Pravda No. 13, May 16 (3), 1917. Available at: https://www.marxists.org/archive/lenin/works/1917/7thconf/29e.htm

[304] Ibid.

[305] Ibid.

[306] Lenin, V. I., Collected works, Vol. 20, op. cit., pp. 20-21; 40-42. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 32

[307] Lenin, V. I., Collected works, Vol. 26, pp. 175-176. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 32

[308] Suny, R. G. & Martin, T., op. cit., p. 67

self-determination, but it served merely as a means to recruit support of nationalities for the revolution.[309]

The strength of nationalist movements in those years, coming not only from Poland and Finland, but also from other numerous territories above all Ukraine, caught the Bolsheviks by surprise and generated a lot of concerns.[310] In many non-Russian territories were created national councils, parliaments and autonomous national governments: all these organs were demanding more freedom in managing their own internal affairs and to transform the unitary Russian state into a federation of nations with equal rights.[311]

Having to deal with this situation, the Bolsheviks decided to formulate their new nationalities policy.[312] Within a week from the October Revolution, the new government issued the "Declaration on the rights of the peoples of Russia", setting up the principles of equality and sovereignty of the peoples of Russia; their right to a free self-determination, including secession and the formation of independent states; the abolition of all national and religious privileges and restrictions of all kinds and the free development of national minorities and ethnic groups settled on the territory of Russia.[313]

The strategy pursued by Lenin in the years following the Revolution was summarized in a speech delivered on 22 November, in which he affirmed that the only way for nations to achieve their freedom was through the help of the local Bolsheviks. A military intervention would have led to the end of the existing government and the establishment of a Soviet Bolshevik one. [314]

Inevitably, Lenin's opinions raised the scandal among his fellow communists and the formulation of a nationality policy led to heated internal debate between the nation-builders, led by Lenin and Stalin, and the internationalists, led by Georgii Piatakov and Nikolai Bukharin: in occasion of the Eighth Party Congress of March 1919, the two factions clashed over the issue of the right to self-determination.[315]

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[309] Ivi, p. 68

[310] Ibid.

[311] Nahaylo, B., Swoboda, V., op. cit., p. 34

[312] Suny, R. G. & Martin, T., op. cit., p. 68

[313] Lenin, V. I., Collected works, Vol. 26, p. 344. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 35

[314] Ibid.

[315] Suny, R. G. & Martin, T., op. cit., p. 68

Lenin insisted that the recognition of the right of nations to self-determination was vital to the communist revolution.[316] On the other side, Piatakov argued that national self-determination became an irrelevant matter after the proletariat had seized power. Bukharin supported Piatakov and affirmed that the principle of self-determination could involve only the proletariat, not "some fictitious so-called 'national will'".[317] In their opinion, after the Revolution, the only politically relevant social identity had to be class, not nationality.[318]
Lenin replied that only if national identity was given proper respect, class would become the politically dominant social identity.[319] Furthermore, Lenin advised diplomatically that "one must be particularly cautious of the various nations, since there is nothing worse than the distrust of a nation".[320]

The congress supported Lenin and from 1919 to 1923 the policy remained oriented towards the self-determination of non-Russian populations.[321]

Nationalities policy had been debated repeatedly at important party meetings during the years, but the public debate ceased in 1923, with the adoption of two Resolutions, one from the Twelfth Party Congress of April and one from the Central Committee Conference on Nationalities Policy of June.[322] In these resolutions it was declared that forms of nationhood would have been maximally supported by the Soviet state, if not in conflict with a unitary central state.[323] By that time, Soviet nationalities were already being formed, so the resolutions were basically a way to validate their existence and prevent any plan to abolish them.[324]

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[316] VIII s'ezd RKP(b), mart 1919 goda: Protokoly, Moscow, 1959, pp. 52-56. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 44

[317] Vosmoi s'ezd RKP/b/. 18-23 marta 1919 g. Protokoly, Moscow, 1933, pp. 48-49. Cited in Suny, R. G. & Martin, T., op. cit., p. 68

[318] Suny, R. G. & Martin, T., op. cit., p. 68

[319] Ibid.

[320] Nahaylo, B., Swoboda, V., op. cit. pp. 45-46

[321] Suny, R. G. & Martin, T., op. cit., pp. 68-69

[322] Ivi, p. 73

[323] Ibid.

[324] Dvenadtsatyi s'ezd RKP/b/. 77-75 aprelia 1923 goda. Stenogrqficheskii otchet, Moscow: Izadtel'stvo politicheskoi literatury, 1968, pp. 693-694; Tainy natsional'noi politiki TsK RKP. Stenograjicheskii otchet sekretnogo IV soveshchaniia TsK RKP, 1923 g., Moscow, 1992, pp. 283-284. Cited in Suny, R. G. & Martin, T., op. cit., p. 73

The 1923 resolutions were part of a policy that had already been stated years before but had not yet been implemented.[325] This policy had two main aims: first, to promote national languages as the official state language in each national territory, and second, to create in each national territory an elite class formed by local cadres.[326]

These two goals were part of what was later defined as the policy of *korenizatsiya*. The term contains the stem *koren-* ("root") or better the word *korennoi*, which is the adjectival form to be used together with *narod* to refer to 'indigenous people'. *korenizatsiya* can be thus best translated as 'indigenization'. Starting from 1923, this policy entered the Soviet agenda as the most urgent item concerning nationalities policy: at the time, the Bolsheviks preferred to use the term natsionalizatsiia, in order to emphasize the project of nation-building. The term *korenizatsiya* emerged only in a later stage to refer to all indigenous peoples and not only titular nationalities.[327] In the national republics the policy was named after the specific nationality: for example, Ukrainization, Belarusization or Tatarization.[328]

The reforms introduced by Lenin encouraged the education in native languages, which should have ensured their immunity against russification, contrasting the Great Russian chauvinism.[329] In this historical phase, education played a decisive role in shaping national consciousness.[330]

After Lenin's death, the Soviet Constitution of 1924 marked the formation of the Union of the Soviet Socialist Republics - Russia, Ukraine, Belorussia and Transcaucasia. Although the Constitution provided federalism, the principle of self-determination of the people did not materialize. The constitution was an ideological propaganda tool that opposed the capitalist world, considered as the kingdom of

[325] Suny, R. G. & Martin, T., op. cit., p. 73

[326] Ibid.

[327] Suny, R. G. & Martin, T., op. cit., p. 74

[328] Nahaylo, B., Swoboda, V., op. cit., p. 87

[329] The Great Soviet Encyclopedia defines it as the ideology of the "*dominant exploiting classes of the nation, holding a dominant (sovereign) position in the state, declaring their nation as the 'superior' nation*". Prokhorov, A. M., Great Soviet Encyclopedia, Macmillan, New York, 1973

[330] Goshadze, M., Gorbachev's Perestroika and the Aftermath of Soviet Nationalities Policy, Goshadze, M., Gorbachev's Perestroika and the Aftermath of Soviet Nationalities Policy, Identity Studies, vol. 4, Ilia State University, Tbilisi, 2012, p. 11

colonial slavery, and the new socialist world, in which triumphed peaceful coexistence and fraternal collaboration between peoples.[331]

2.3.2 The age of Stalin

The period in which Stalin ruled over the Soviet empire was characterized by two distinct phases with regards to nationality policy.

Immediately after his appointment as Secretary General of the Communist Party in 1922, when Lenin was still alive, Stalin committed to continue the Leninist policy on nationalities, granting them many concessions, especially in the name of that "freedom of national development of peoples" expressed in the 1924 Constitution.[332] In this first phase of his nationality policy, Stalin promoted more decisively the affirmative action, for example, with respect to Ukraine. In the aftermath of the Revolution, Stalin defined the Ukrainians as "brothers and companions" and in 1921 rejected the thesis of those according to which "the Ukrainian Republic and the Ukrainian nation were an invention of the Germans", stating that "it is clear that the Ukrainian nation exists and that the communists must develop its culture".[333]

Therefore, Ukraine started to be involved in the process of *korenizatsiya* or, in this specific case, 'Ukrainization': culture, education, press, publications, state apparatus, with the consequence that in a short time the publication of books in Ukrainian increased significantly, and so did Ukrainian cadres of the Party and the State.

By 1927 the majority of primary schools had been Ukrainianized, and over 40% of schoolchildren were educated in Ukrainian. Furthermore, after all the work conducted on language, vocabulary and alphabet, Ukrainian was progressively diverging from

[331] Gravina, R., Teorie e prassi delle costituzioni sovietiche e della costituzione post-sovietica del 1993: dall'URSS alla Federazione Russa, Giornale di Storia Costituzionale, Vol. 33, No. 1, 2017, p. 55

[332] Preamble of the 1924 Constitution of the Union of Socialist Soviet Republics, describing the Union as "*one federated state capable of guaranteeing external security, economic prosperity internally, and the free national development of peoples*". Constitution (Fundamental Law) of the Union of Soviet Socialist Republics of 1924. Основной закон (Конституция) Союза Советских Социалистических Республик, Принят второй сессией ЦИК СССР первого созыва 6 июля 1923 года и в окончательной редакции II съездом Советов СССР 31 января 1924 года.

[333] Stalin (1971-73), vol. 5, p. 42. Cited in Losurdo, D., Stalin: Storia e critica di una leggenda nera, Carocci, 2008, p. 191

Russian, and Ukrainian intellectuals were talking about Ukraine's 'colonial' position vis-à-vis Russia.[334]

In this period, under the effect of *korenizatsiya* non-Russian national literatures and the arts prospered; writers' organizations proliferated, and, in the political sphere, local party and administration started becoming more "national".[335]

The change of mind in Stalin's policy on nationalities occurred in the late 20s. At that time, Soviet power was to be considered consolidated according to Stalin, who in the meantime was increasingly concentrating the power in his own hands. The leader began to think that there was no longer a need to gain the favor of peasants and non-Russian populations,[336] but it was rather the moment to bend them.

The compromises of 1921-1923 were replaced by offensives against peasants, specialists, trade unions, workers, nationalities and the party itself.[337]

Terror began to spread in non-Russian territories on a large scale as early as 1928-29: it was the brutal breaking of the implicit "national contract" concluded between Russians and non-Russians thanks to Lenin and his policy. Between 1929 and 1934 several thousand people were arrested and tried in Ukraine and Belarus on charges of belonging to alleged subversive national organizations.[338]

The peasants, in particular the kulaks, were considered the first promoters of national movements and became the main target of the so-called forced collectivization.[339] In the areas where the wealth was often related to national belonging (Polish peasants in Belarus, and Ukraine, the Germans in the Ukraine and on the Volga, etc.,) the deportation took a distinct ethnic nuance. Indeed, authorities in the border regions ordered first to attack the kulaks belonging to treacherous nationalities.[340] The Ukrainians, for example, were part of the largest nation of the USSR after the Russians, had enjoyed an independent government and had resisted

[334] Graziosi, A., L'Unione Sovietica 1914-1991, op. cit., p. 96
[335] Nahaylo, B., Swoboda, V., op. cit., p. 91
[336] Ivi, p. 92
[337] Graziosi, A., L'Unione Sovietica 1914-1991, pp. 97-98
[338] Ibid.
[339] Nahaylo, B., Swoboda, V., op. cit., p. 93
[340] Graziosi, A., L'Unione Sovietica 1914-1991, p. 112

the Russian reconquest for three years: this made them suspect of a lack of loyalty to the party.[341]

The peasants conducted numerous armed insurrections, against which the Red Army itself often refused to fight, but the preoccupations of the regime were mostly directed at the events taking place in Ukraine and particularly in the border regions, where Soviet power seemed to have lost authority and echoed slogans for independence.[342] To the riots, Stalin responded with even more cruelty, forcing the peasants to hand over more grain than what was even produced, so as to starve the campaigns and subdue them.[343]

In the autumn of 1931, after the last great uprisings were tamed, began a famine that involved the entire Soviet territory, but recorded its most devastating effects in Ukraine. This has become known in Ukrainian history as Holodomor, "the Great Famine". According to a research conducted in the late 1980s, the number of people who starved to death during the 1930s ranged from 4.5 to 10 million.[344] Soviet authorities denied for a long time the famine in Ukraine, which was also claimed to be part of an international conspiracy to defame the name of the great Soviet Union.[345]

Scholars still seem to divide on the question whether we should speak of a Ukrainian genocide or not. Andrea Graziosi affirms that if we apply the definition of genocide adopted by the United Nations in 1948 as "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part"[346] and consider the number of deaths that followed, but not necessarily involved, the famine in the following years, then the answer seems to be that a genocide has actually taken place in Ukraine.[347]

For Stalin, the peasant riots were nothing but the confirmation of his theory about the countryside and peasants being the cradle of nationalism.[348] In particular, he was aware that in Ukraine and Kuban the peasant issue was also a national issue

[341] Nahaylo, B., Swoboda, V., op. cit., p. 95
[342] Graziosi, A., L'Unione Sovietica 1914-1991, p. 113
[343] Nahaylo, B., Swoboda, V., op. cit., p. 96
[344] Magocsi, P. R., op. cit., p. 559
[345] Ibid.
[346] Convention on the Prevention and Punishment of the Crime of Genocide, 1948, Article II(c).
[347] Graziosi, A., L'Unione Sovietica 1914-1991, p. 147
[348] Ivi, p. 113

and would have been impossible to solve the first without addressing the latter as well.[349] At that point, Stalin decided it was necessary to eliminate national elites.

In December 1933, the Soviet leader passed two secret resolutions overturning the nationality policies established in 1923: it was stated that *korenizatsiya* in Ukraine and Kuban had not contributed to fade national sentiment, but had instead increased it, turning the party members themselves into enemies. Therefore, the responsibility for the crisis was not only of the peasants, but also of the Ukrainian political and intellectual class.[350] The resolutions marked the end of the policy of Ukrainianization: by 1933 it was clear that Ukraine would have been forced to become an economically, politically, and culturally integral part of the Soviet Union.[351]

The most acute phase of Stalin's 'Great Terror' was reached between 1934 and 1938. In the midst of the Great Purge, Stalin decided to amend the Constitution.

The Constitution of 1936, the "most democratic in the world", guaranteed Soviet citizens democratic rights (freedom of speech, assembly and press, inviolability of domicile and correspondence) and enshrined equality and secrecy of voting in elections.[352] The idea behind the new Constitution was that socialism had now been built, economic problems were solved, and the enemies were eliminated, so there was no need for the dictatorship of the proletariat.[353]

However, the new Constitution demonstrated the gap between democratic theory and Stalinist practice:[354] it claimed to safeguard the people of all the Republics from external threats, while in thousands were perishing on the orders of Stalin; it promised economic development, while the countryside was exploited and the peasants left to die; it guaranteed the "freedom of national development of peoples", while teachers, professors, writers, actors, were killed and their languages were excluded from official use.[355]

[349] Ivi, p. 139
[350] Ibid.
[351] Magocsi, P. R., op. cit., p. 567
[352] Gravina, R., op. cit., p. 52
[353] Graziosi, A., L'Unione Sovietica 1914-1991, p. 159
[354] Gravina, R., op. cit., p. 52
[355] Nahaylo, B., Swoboda, V., op. cit., p. 102

The 1936 Constitution institutionalized the new society born of the revolution and inaugurated a new legal civilization based on the monocracy (*edinoderžavie*) of the proletariat,[356] reaffirming the leading role of the party.

Despite a few changes in the upcoming decades, the Stalinist constitutional settlement remained almost unchanged until 1977.

The year following the introduction of the Constitution, Stalin began a major "ethno-social surgery" on the population, combined with the continuation of the purge of the party, state, and culture.[357]

The first step was the systematic elimination of national party leadership with false accusations of treason. The extermination was particularly harsh in Ukraine, where the leadership demonstrated to be against the extension of the purges.[358] After eliminating the political leaders of non-Russian republics, Stalin replaced them with obedient servants, the majority of which no longer belonged to the local nationality but were instead Russians.[359]

The purges of political elites were followed by those of the cultural sphere: writers, teachers, engineers, professors, scholars, technicians and so forth. The *intelligentsia*, especially writers, were considered the main keepers of the national consciousness and therefore became the main target. The victims in all Republics were in the hundreds, most of them under the charge of 'nationalism'.[360]

The "ethno-social surgery" continued with the elimination of the treacherous nationalities, Poles, Latvians, Germans, Estonians, Finns, Greeks, Iranians, Chinese, Romanians, Macedonians and Bulgarians, were all defined as "nationalities subject to foreign government", even if their members had resided in the country for centuries.[361] Around 250,000 of the 300,000 people arrested were shot: it has been estimated that the nationalities affected made up about a fifth of the total victims of Stalinist terror.[362]

[356] Gravina, R., op. cit., p. 52
[357] Graziosi, A., L'Unione Sovietica 1914-1991, p. 166
[358] Nahaylo, B., Swoboda, V., op. cit., p. 103
[359] Ivi, p. 105
[360] Ivi, p. 106
[361] Graziosi, A., L'Unione Sovietica 1914-1991, p. 167
[362] Ibid.

Throughout the 1930s, the pruning within non-Russian nations was accompanied by a vast process of russification in all fields.

Having abandoned the policy of *korenizatsiya*, Russian became the only language for official negotiations and technical education; Russian started spreading more and more as the language of education in primary and secondary schools, while in the areas where teaching was provided in the local language, Russian became a compulsory subject,[363] even though with scarce results.[364] In 1937 Stalin also stressed the need for an army where everyone was speaking the same language.[365]

The cultural flourishing of the 1920s was replaced by ferocious attacks against 'bourgeois nationalism': the number of books in non-Russian languages fell significantly compared to the number of publications of 1931-32; the entire lexicographical work that had been done for the languages of the republics was declared 'nationalist' and banned; vocabularies were purged of terms that made a dangerous reference to national history and the same happened with 'foreign' words: in Ukraine and Belarus, for example, words of Polish origin were declared 'fascist'.[366] In 1933, decrees were requiring Ukrainian to be brought back closer to Russian and in 1937 there were also Soviet ideologists proposing to merge the two languages. Starting from 1938 all Ukrainians were required to have a fluent command of Russian.[367]

Between 1938 and 1940, the Cyrillic alphabet supplanted the Latin one almost everywhere.[368]

Nevertheless, at a certain point, Stalin started thinking that the solution did not consist in the substitution of one language by another, but rather the elimination of the whole ethnic structure, achieved through a massive program of migration flows and deportations. The fewer the number of languages that remained, the closer was the achievement of Communism.[369]

If earlier deportations had involved national groups to purge the borders from the treacherous nationalities, starting from the dawn of World War II, deportations

[363] Nahaylo, B., Swoboda, V., op. cit., p. 107

[364] Suny, R. G. & Martin, T., op. cit., pp. 253-267

[365] Ivi, p. 255

[366] Nahaylo, B., Swoboda, V., op. cit., p. 107

[367] Magocsi, P. R., op. cit., p. 570

[368] Nahaylo, B., Swoboda, V., op. cit., p. 108

[369] Rannut, M., Beyond Linguistic Policy: The Soviet Union Versus Estonia, ROLIG Papir, Vol. 48, 1991, pp. 26-7

and persecutions involved whole nations and ethnic groups. This was done especially for preventive purposes (the Volga Germans) or punitive purposes (the Crimean Tatars).[370]

For Stalin, the German ethnic group of the Volga could represent a threat in case of German invasion, since Soviet Germans could turn against their country of adoption, in which they had lived for many generations, and fight instead for the country of their ancestors. For this reason, in August 1941, Stalin had about 400,000 Volga Germans deported to Siberia and Kazakhstan and abolished their republic, the Volga German ASSR. The Volga Germans were regarded as a "fifth column" of alleged spies and saboteurs and exiled to the Urals, where they were treated as traitors. In total, about 800,000 Germans were deported.[371]

Once Hitler was defeated, in 1944 the USSR regained almost all of its old possessions of 1938 and Stalin soon forgot the contribution and sacrifice of the Soviet peoples in securing the victory of the Union over Germany. Stalin abandoned any aspiration of "union between equal nations", attributing a leadership role to the Russian people and glorifying its superiority over all the other peoples of the USSR.[372]

The same fate of the Volga Germans was suffered by seven nations accused of treason during the war: in 1943 the Kalmyk, the Cherkess, the Balkar; in February 1944 the Chechen and the Ingush; in May, one week after the deportation of the Volga Germans, was the turn of Crimean Tatars and later that year that of the Meskhetians.[373]

The deportation of the Tatar minority is part of the issue concerning collaborationism with the German army. Indeed, in this period, many Ukrainians, especially the indigenous peoples, were involved in the perpetration of Nazi crimes. However, the often-entrenched opinion is that the population had a certain willingness in helping the Germans, “as if they as a nation invited and applauded the Holocaust”.[374] In reality, people willing to kill for the Reich were only a small part. The majority had very little possibility to choose. Those who did not sign up voluntarily, were forced. What mattered was survival, at any cost, the alternative were worker education camps,

[370] Graziosi, A., Stalin e il comunismo, Laterza, 2010, p. 27

[371] Nahaylo, B., Swoboda, V., op. cit., p. 122

[372] Ivi, p. 127

[373] Ivi, p. 128

[374] Brown, K., A Biography of No Place: From Ethnic Borderland to Soviet Heartland, Harvard University Press, London, 2003, pp. 212

meaning quite always certain death. Indigenous people were chosen for their knowledge of the territory and the language, and compensated for their service with uniforms, pocket money and additional rations. Furthermore, among collaborationists there were also Ukrainians who lived abroad and thought that the German army would have liberated their homeland from Russian and Polish domination, so as to form a Ukrainian state. All this without counting the mental factor: the German propaganda machine and the psychological pressure exerted on the inhabitants of occupied Ukraine, facilitated the insinuation of doubt that something wrong with the Jews must necessarily be there, polarizing souls towards anti-Semitism.[375]

It was with these accusations of wartime collaboration with Germany, that the entire Tatar population was deported to Siberia and Soviet Central Asia, marking the end of the centuries-old Tatar presence in the region. In June 1945 the Crimean ASSR was abolished and the peninsula became an ordinary *oblast'* of the Russian SFSR.[376] Many monuments of Tatar culture, including cemeteries, were destroyed.[377]

Overall, it has been calculated that the nationalities completely and systematically deported from 1937 to 1951 were 13, for a total of more than 2 million people. Some of them lost 20% and more of their members.[378]

2.3.3 From the death of Stalin to the collapse of the Soviet Union

After Stalin's death, public opinion began to advocate a more conciliatory approach to the problem of nationalities. The national question was brought forward by Lavrentiy Berija, ex Stalin's secret police chief and now head of the Ministry of Internal Affairs, who believed it was necessary to loosen the pressure on non-Russian nationalities.[379] Berija's career, however, had a short life: he was soon removed from power, arrested and eventually executed. After his departure, the leadership immediately backtracked, denying much of what Berija said to be willing to give: the

[375] Ibid., pp. 212-219

[376] In Russian, *'oblast'* means essentially a district of Soviet Russia, so this change of status translated into a consistent loss of autonomy.

[377] Magocsi, P. R., op. cit., p. 653

[378] Graziosi, A., Stalin e il comunismo, op. cit., p. 27

[379] Graziosi, A., L'Unione Sovietica 1914-1991, op. cit., p. 257

theme of Russian pre-eminence reappeared in the press and the national question was relegated to the background.[380]

The changes initiated by Berija seemed to have had a great impact particularly in Ukraine, where letters denouncing the russification process began to appear in the official Ukrainian press and some teachers started even raising the question of native-language teaching.[381]

When Berija was ousted, the new first secretary of the Central Committee of the CPSU Nikita Khrushchev, a Russian born in Ukraine, was careful not to take any action that would lead him to lose the goodwill of the Ukrainian cadres.[382] Bohdan Nahaylo and Victor Swoboda point out that at the end of 1953 it became evident that Moscow recognized the importance of Ukraine and intended to ingratiate itself with the people, or at least the leading cadres.[383] First was celebrated the tricentenary of the Treaty of Perejaslav, with which the Ukrainian state had submitted to Russia and which was often considered the moment of the 'reunification of Ukraine with Russia'.[384] Then, in January 1954, were published the theses of the Central Committee of the Communist Party[385] which, among other things, underlined the presence in the USSR of "Two great peoples: the Russian and the Ukrainian"[386] and that Ukrainians "were the first, after their Russian brothers, to set out on the road to socialism".[387] In February, the Russian Federation handed over Crimea to the Ukrainian SSR as "yet another affirmation of the great fraternal love and trust of the Russian people for Ukraine".[388] However, the question of the Crimean Tatars deported under Stalin was completely ignored.[389]

In exchange for this, however, the Ukrainians had to adopt a distorted version of their history, which was reduced to a mere ancient desire for unity with Russia.[390]

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[380] Fairbanks, C. H. Jr., National Cadres as a force in the Soviet System: The Evidence of Beria Career, 1949-53, pp. 173-74. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 148

[381] Holubnychy, V., Ukraine Since World War II, in Kubijovyc, Ukraine: A Concise Encyclopaedia, p. 906. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 149

[382] Nahaylo, B., Swoboda, V., op. cit., p. 148

[383] Ivi, p. 149

[384] Magocsi, P. R., op. cit., p. 654

[385] Pravda, 9 December 1953. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 149

[386] Pravda, 12 January 1954. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 150

[387] Nahaylo, B., Swoboda, V., op. cit., p. 150

[388] Magocsi, P. R., op. cit., p. 653

[389] Pravda, 27 February 1954. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 150

[390] Nahaylo, B., Swoboda, V., op. cit., p. 150

The Theses also reaffirmed the usual formula of the Soviet Union as a "shining example of a country that, for the first time in human history, has solved the national problem".[391]

In February 1956, Khrushchev read his 'secret' report in front of the 20th Congress of the party, condemning many of Stalin's crimes, including the crimes perpetrated against nationalities, from the purges of national elites to forced russification and the illegitimate deportations of entire nations, defined as "grave" and "monstrous" violations of Leninist principles of nationality.[392] The new Kremlin leadership condemned the old-imperial policy of the Georgian dictator and invited the peoples of the Union to develop their own culture, history and ancient national traditions. It was the beginning of de-Stalinization.

Khrushchev appeared extremely concerned with reassuring non-Russians, underlying that Socialism guarantees the "flourishing" (*rascvet*) of the cultures of non-Russian peoples. He was careful not to emphasize the importance of the Russian language or to exalt the Russians as the leading nation of the USSR, on the contrary, he emphasized the alleged equality between the peoples of the Soviet Union.[393]

Khrushchev wanted to give new impetus to the country's economic development, in order to overtake the United States by 20 years. To achieve this, was necessary industrial decentralization, meaning allowing cadres and local elites to have enough room for maneuver and autonomy, and decreasing the power and number of members of the party apparatus and ministries in Moscow.[394]

Khrushchev greeted the advent of the "new period of world history, predicted by Lenin, in which the peoples of the East will play an active role in deciding the destinies of the world", but also affirmed that the "great friendship" between the Soviet peoples had to be strengthened.[395] Khrushchev's statements and the documents approved by the congress highlighted the party's intention, in the field of nationality policy, to

[391] Pravda, 12 January 1954. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 150

[392] Baistrocchi, M. S., op. cit., p. 278

[393] Nahaylo, B., Swoboda, V., op. cit., p. 154

[394] Baistrocchi, M. S., op. cit., p. 278

[395] Graziosi, A., L'Unione Sovietica 1914-1991, op. cit., p. 268

restore the pragmatic attitude assumed by Lenin in his last years of life, when he stressed the importance of concessions to overcome the resistance of non-Russians.[396] Indeed, between the end of 1956 and the beginning of 1957, five of the seven "collaborationist" nations were rehabilitated and authorized for repatriation to their homelands, however, Germans of the Volga, Meskhetians and Crimean Tatars, were excluded from this provision.[397]

In August 1958, an article published in the Kommunist introduced the policy *slijanie*, meaning the merger of different ethnic groups. The aim was to form a new historical community of 'Soviet people',[398] but while in theory it meant taking the best elements from all cultures and fusing them in a new Soviet combination, in reality it consisted in the assimilation of Russian culture.[399] This new prototype of man was going to be called '*homo soveticus'* and would have to speak Russian as the language of the future Communist society.[400]

Furthermore, Russian propagandists created a myth, according to which Russians, Ukrainians and Belarusians were fraternal nations with a common historical stump and languages deriving from the same roots, the Slavic language. Ukrainians and Belarusians were the younger brothers and had to know the language of their older brother, not their national ones. These three people had to constitute the nucleus of the new *homo soveticus*. [401]

In 1958 was introduced a reform in the field of education, which allowed the inhabitants of the republics to choose the language of instruction for their children, abolishing the obligatory teaching in the local language.[402] This provoked acute controversy throughout the Union, but did not stop the implementation of the reform. The mobilization of public opinion was particularly wide in Ukraine: Ukrainian authors wrote in defense of their language, supported by students and teachers, but also heads of industrial companies and even leaders of the party.[403]

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[396] Nahaylo, B., Swoboda, V., op. cit., p. 155

[397] Cfr. Baistrocchi, M. S., op. cit., pp. 277-278; Nahaylo, B., Swoboda, V., op. cit. p. 162-163; Graziosi, A., op. cit., p. 275

[398] Stepanenko, V., A State to Build, a Nation to Form, op. cit., p. 313

[399] Magocsi, P. R., op. cit., p. 660

[400] Rannut, M., op. cit., p. 29

[401] Totsky, B. A., op. cit., cit.

[402] Graziosi, A., L'Unione Sovietica 1914-1991, op. cit., p. 281

[403] Ivi, p. 282

After Khrushchev's removal in 1964, Leonid Brezhnev basically continued along the same lines of his predecessor. Despite a few positive signals at the beginning, with, for example, the restoration of full rights to the majority of deported nationalities,[404] concessions were soon replaced by a conservative turn. It was during this period that the problem of nationalities became more important than ever and laid the foundations for future forms of destabilization.[405]

The nationalist wave in Ukraine had reinvigorated in the mid-1950s with Khrushchev, but in the mid-1960s it became particularly relevant, involving academics, writers, artists, even the local communist leaders themselves. Moscow's crackdown first in 1965-66 and then in 1971 was very harsh, with arrests, searches, interrogations and trials in order to intimidate the most turbulent elements of Ukraine's *intelligentsia* and silence Ukrainian dissent.[406] However, repressive initiatives in Ukraine had the opposite effect of further encouraging dissident activity, with public protests drawing again the attention to the issue of nationalities. After those events, regime opposition radicalized and open forms of resistance consolidated.[407]

In 1977, a new Constitution was introduced in the USSR. The intention to amend the 1936 Constitution had been expressed already in 1959 by Khrushchev.[408] According to him, the basic law of the Soviet Union had to be adapted to the changes occurring in the internal politics of the USSR and the international situation.[409] However, due to the various delays and the departure of the leader, the baton passed to Leonid Brezhnev.

In June 1977 was published the draft revision of the Constitution, stating the basic principles of the Socialist State.[410] The project did not provide changes to the Soviet federal structure, now considered a consolidated multinational state, but was

[404] Ivi, p. 308

[405] Baistrocchi, M. S., op. cit., p- 279

[406] Nahaylo, B., Beyond the Sinyavsky-Daniel' Case: The Twentieth Anniversary of the KGB Crackdown in the Ukraine, RL 288/85, 4 September 1985. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 190

[407] Graziosi, A., L'Unione Sovietica 1914-1991, op. cit., 315

[408] Biscaretti di Ruffia, C., Lineamenti generali dell'ordinamento costituzionale sovietico. Dottrina, Legislazione e Prassi, Milano, Giuffrè, 1981, pp. 102 ss. Cited in Gravina, R., op. cit., p. 57

[409] Gravina, R., op. cit., p. 57

[410] Biscaretti di Ruffia, C., op. cit., pp. 102 ss. Cited in Gravina, R., op. cit., p. 57

designed in the spirit of greater centralization.[411] The rights of the republics and especially the right to secession were confirmed (Art. 72), but it remained "a mere legal fiction":[412] the definition of the USSR as a unitary state basically nullified the right of the republics to free secession.[413]

Moreover, the new Constitution included a revised and more pluralistic version of the policy of *slijane*, according to which the merging would have created a Soviet people (*sovetskii narod*), not a Soviet nation (*sovetskaia natsiia*), where national distinctions would not exist.

The conception of the 'Soviet people' according to the Brezhnevian leadership clearly emerges in the new national anthem adopted in May of the same year:

The unbreakable union of free republics,
Great Russia united forever.
Long live created by the will of the peoples,
The united, mighty Soviet Union![414]

Overall, both Soviet leaders, Khrushchev and Breznev, supported russification as an important tool towards success, but resistance to linguistic assimilation persisted during the 1960's and 1970's, keeping national consciousness alive.[415]

Despite Brezhnev's policies aimed at muting reformist impulses, however, by the beginning of 1980s it was becoming clear that managing the Soviet multinational system could not be conducted anymore through traditional instruments.[416]

After the brief interludes of Andropov and Cernienko, in 1985 the role of the new leader of the Kremlin was assumed by Mikhail Sergeyevich Gorbachev. With the new secretary of the CPSU and President of the Presidium of the Supreme Soviet, the key words of the new reform course became *perestroika* (restructuring), *glasnost'* (openness) and *uskorenie* (acceleration).

[411] Nahaylo, B., Swoboda, V., op. cit., pp. 251-2
[412] Ivi, p. 252
[413] Magocsi, P. R., op. cit., p. 660
[414] Pravda, 12 June 1977. Cited in Nahaylo, B., Swoboda, V., op. cit., p. 253
[415] Goshadze, M., op.cit., p. 12
[416] Lapidus, G. W., Gorbachev's Nationalities problem, Foreign Affairs, 1989, Vol. 68, No. 4, p. 97

Gorbachev strongly considered himself a Leninist and, from the very beginning, showed an attitude of openness towards nationalities and their needs, in accordance with the Leninist nationality policy. Massimo Baistrocchi reports part of a speech Gorbachev made at the meeting of the Presidium of the Supreme Soviet of the USSR on November 26, 1988, in which he stated that the disappearance of nationalities from the Union would have been a mistake and a crime. It was instead necessary to strengthen and consolidate the federal state, allowing the development of all nations and their cultures. [417]

In his 'theses' discussed at the 19th CPSU conference, Gorbachev affirmed the need to treat the question of nationalities in the spirit of perestroika.[418] In his opinion, for a radical transformation of society, it was impossible not to take into account the common and converging interests of all the nations of the USSR, whose support was "vital and necessary".[419]

Considering the distribution of power between the center and the periphery a "fundamental condition" for strengthening the country,[420] Gorbachev affirmed the need to decentralize as much as possible and grant the maximum managerial autonomy to local authorities, while always reiterating the role of the party as a cohesive force union of Soviet peoples.[421] In fact, with regard to the self-determination of the peoples of the USSR, Gorbachev repeatedly underlined his firm opposition, stating that, in his interpretation of the Leninist conception, independence was to be considered related to political, social and cultural development, rather than a matter of nationality. Of course, Russian remained the national language and "the cultural cement of the country".[422]

In the years following Gorbachev's appointment, the country was shaken by upheavals and demonstrations in several national areas. Initially the leader attributed the onset of these national awakening phenomena to the ferments induced by

[417] Baistrocchi, M. S., op. cit., 279
[418] Ivi, p. 63; 192
[419] Ivi, p. 182
[420] Ivi, p. 193
[421] Ivi, p. 63; 72
[422] Ivi, p. 210

glasnost',[423] failing to understand that the process of reform would inevitably revive the 'nationalities question'.[424] With liberalization, nations were able to take measures to preserve their languages and culture, but also dream about their possible independence.[425] Above all, what was underestimated was their potential explosiveness.

At the end of the 1980s, non-Russians were beginning to test *glasnost'* and democratization in the streets and squares: Estonians, Lithuanians, Crimean Tatars, Jews, Georgians and Armenians were openly protesting, while Moldovans, Belarusians and Kyrgyzs were asking for the de-russification of the educational system.[426]
However, the Gorbachevian leaders did nothing but condemn these "manifestations of parochialism and parasitism" and exorcise these "nationalist epidemics".[427] It almost seemed that the leadership was convinced that, while pursuing the main purpose of *perestroika*, the national problem could be left aside.[428]

The tensions culminated in 1988 in the bloody Armenian Azerbaijani confrontations over the Nagorno-Karabakh region, a conflict that still continues nowadays.

The exceptional events in Transcaucasia dramatically brought back the attention on the problem of nationalities and forced the Kremlin to consider that the nationalities question was not a marginal one, but was instead intimately entwined with the issue of reforms.[429]

In Ukraine, the effects of *glasnost'* were felt a few years later with respect to the other Republics, especially after the environmental disaster of Chernobyl' of 1986. In that dramatic occasion, Ukraine became abruptly aware of the need for its people to have more control over their lives and Ukrainian started thinking it was time to put an end to Moscow's nefarious imperialism.[430]

From that moment on, Ukraine saw the flourishing of many associations and organizations, such as the Ukrainian Writers' Union, active in promoting the rebirth of

[423] Gravina, R., op. cit., p. 53
[424] Losurdo, D., op. cit., p. 95
[425] Rannut, M., op. cit., p. 35
[426] Nahaylo, B., Swoboda, V., op. cit., p. 348
[427] Ivi, p. 348
[428] Ivi, p. 349
[429] Lapidus, G. W., op. cit., p. 99
[430] Magocsi, P. R., op. cit., pp. 668-9

Ukrainian culture and language, or Green World, an ecological association calling for a nuclear-free Ukraine and stricter controls over environmental conditions. The largest and most influential organization was the Rukh, Popular Movement of Ukraine for Restructuring, calling for reforms in political, economic, environmental, and cultural fields, but also for guaranteeing human rights.

At the same time, thanks to the abolition of censorship, publications increased consistently, figures of the past were 'rehabilitated' and it became possible to discuss events long denied by Soviet sources, such as the Great Famine of 1933.[431]

After the Nagorno-Karabakh crisis, although Gorbachev tried to reverse the course of the events, the processes of *glasnost*' and 'democratization' had already impacted too heavily the society and would have been impossible to arrest the process: fear had diminished and the attitudes of the people were changing.[432]

What Gorbachev could have done to stop the protests was to resort to violence, but he had constructed an image of himself as "the champion of democracy" and condemned the use of force as unacceptable, saying that it was too late to abandon his 'liberal' ideology.[433]

In 1990, Gorbachev prepared a second amendment to the 1977 Constitution, in order to try to put an end at the "parade of sovereignties" that had led to Soviet disunity, in which was reaffirmed the right to secession of the republics, but established that any territorial modification required the adhesion of the autonomous entity concerned and subsequently ratification by the Congress of the Union.[434] Substantially, the constitutional reform did not break the deadlock of inter-ethnic conflicts and the claims of independence on the part of nationalities. Although Gorbachev wanted to maintain the territorial integrity of the USSR, the declaration of independence of Russia on June 12, 1990, not only closed "the parade of sovereignties", but actually put an end to the Soviet experiment.[435]

[431] Ivi, p. 672

[432] Nahaylo, B., Swoboda, V., op. cit., p. 360

[433] Goshadze, M., op. cit., p. 14

[434] Gravina, R., op. cit., pp. 58-59

[435] Gravina, R., op. cit., pp. 59

Undoubtedly, the collapse of the Soviet Union was the outcome of different factors, however, there is the tendency to underestimate the importance that nationalities played in the end of the Soviet era.

On the one hand, a great impact was surely given by external circumstances, such as the economic downfall and the gradual weakening of the socialist ideology.[436] In this sense, the topic of nationalities is quite relevant since, as Mariam Goshadze observes, the feature of multiculturalism does not automatically imply a future blow up, but a strong association with the government is crucial for its success.[437] Having lost vitality and relevance, the official ideology could not act anymore as the cohesive force of the Union.[438]

An important role was played by the progressive dismantling of the power of the party perpetrated by Gorbachev through his policies. As we noted, when political control was loosened, the population did not retain from taking advantage of the opportunities and freedoms offered by perestroika and *glasnost'*,[439] but instead found themselves with the instruments to challenge the idea of a single Soviet nation.[440]

When challenges became conflicts, Gorbachev lacked despotism and, unlike Stalin and his successors, was not in the position to resort to the use of terror. Gorbachev was a passionate supporter of the Leninist approach to nationalities and followed the utopistic vision of the Soviet Union as a home where the sense of comfort would have been such as to "override the desire for autonomy or independence".[441] However, his approach was superficial towards nationalities' issues and sometimes more condemning than welcoming.[442]

2.4 Final considerations

After the collapse of the Soviet Union and the establishment of the new independent States, arose the issue of what would have been now on the status of minorities within them.

[436] Ibid.
[437] Goshadze, M., op. cit., p. 13
[438] Lapidus, G. W., op. cit., p. 97
[439] Goshadze, M., op. cit., p. 6
[440] Ivi, p. 10
[441] Ibid.
[442] Ibid.

With regard to the policies that the countries of the former Soviet Union have held towards linguistic minorities, in particular Russian-speaking ones, Bronislav Totskyi identifies at least three approaches: radical, conservative and liberal.[443]

Totskyi suggests that Latvia opted for the radical approach, strengthening the status of Latvian, while all other languages were considered as foreign, including the historic ones, German and Russian (1999).[444] Belarus should instead be regarded as a good example of the conservative policy, according to which it was decided to grant the status of official languages both to Belarusian and Russian (1995).[445]

Between the willingness to eliminate Russian from public life and its recognition as an official language, Ukraine chose to find a compromise and pursued a liberal policy. Ukraine's approach consisted in keeping Ukrainian as the only official language, but granting a privileged role for Russian with respect to other minority languages.

In 2006, Donetsk regional council declared that Russian could be equally used in the region as Ukrainian "as the language of work, record keeping, documentation and public relations, government, public bodies, enterprises, institutions and organizations as well as education, science and culture".[446] This decision was followed in similar ways in Luhansk, Kharkiv and Sevastopol.

The accession of Ukraine to the Framework Convention for the Protection of Minorities and to the European Charter for Regional or Minority Languages demonstrates a generally positive approach to the issue of minorities. However, the delicate political situation within the country suggests that there are still several unresolved issues in the relationship between Ukraine and its internal minorities. As we have seen in the course of this chapter, the question of nationalities is often a factor of instability, but above all, even more dangerous, a cause of true armed conflict. The latter scenario is by no means unlikely to take place in the country: it is precisely what we have witnessed since 2013, when the Euromaidan protests began, up to the ongoing conflict in the Donbass.

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[443] Totskyj, B. A., op. cit., cit.

[444] See: Republic of Latvia, Official Language Law, adopted by Saeima on 9 December 1999. Available at: http://izm.izm.gov.lv/laws-regulations/2292.html?print=1

[445] See: Constitution of the Republic of Belarus of 1994, with alterations and amendments adopted at the republican referendums of November 24, 1996 and of October 17, 2004, Article 17. Available at: https://www.wipo.int/edocs/lexdocs/laws/en/by/by016en.pdf

[446] Totsky, B. A., op. cit., cit.

In light of this scenario, in the following chapters we will try to analyze what Ukraine has done, after obtaining independence, to comply with international law in the field of minority protection. We will make extensive use, for example, of the opinions of the Advisory Committee to identify the issues underlying Ukraine's national legislation and the effectiveness of the instruments adopted.

Given the current situation, that still keeps the country on its knees, the question arises whether Ukraine's infighting might be due to a lack of adequate standards concerning minorities rights.

CHAPTER 3. UKRAINE AND NATIONAL MINORITIES: COMPLIANCE WITH INTERNATIONAL STANDARDS

CONTENTS: 3.0 Chapter overview - 3.1 General legislative framework – 3.1.1 Minorities in the Ukrainian Constitution - 3.1.2 Law on National Minorities (1992) - 3.1.3 Brief outline of other national laws concerning minorities - 3.2 National legislation regulating language use and international resonance - 3.2.1 Law on Languages in the Ukrainian SSR (1989) - 3.2.2 Law on Ratification of the European Charter for Regional and Minority Languages (2003) - 3.2.3 Law on the Principles of the State Language Policy (2012) and Kravchuk's Draft (2012/14) - 3.2.4 Law on Ensuring the Functioning of Ukrainian as the State Language (2019) - 3.3 Minorities and education - 3.3.1 Ukrainian educational policy regarding minorities - 3.3.2 Article 7 of the 2017 Law on Education: the response of national minorities and the controversy over compliance with international law - 3.3.3 Recent developments: Zelensky's presidency and the Law on Complete General Secondary Education (2020) - 3.4 Minorities and political representation: political rights and electoral opportunities for minorities in Ukraine - 3.5 Conclusions.

3.0 Chapter overview

The third chapter of this thesis provides an outline of Ukraine's national legislation with regards to minorities: as we mentioned, our task will be to analyze what Ukraine has done, after obtaining independence, to comply with international law in the field of minority protection and to assess if this has been sufficient and effective.

In the first place, we will analyze the Fundamental Law of Ukraine. Promulgated in 2006, the Constitution is the main source of rights for minorities in the country. It was amended in 2004 and since 2014 has been at the center of a still ongoing debate on the need for a reform. Apart from the Constitution, we will also deal with the first Ukrainian law dedicated to minorities, entitled precisely 'on National Minorities' and introduced in 1992. At the end of the first paragraph, we will provide a brief outline of other national laws affecting minorities: even though these laws will not be analyzed as part of our research, they are still worth mentioning to have a complete overview of the legislative framework concerning minority rights in Ukraine.

The second paragraph is entirely dedicated to the most important language laws promulgated in the country since 1989, when Ukraine was not yet a nation but was still a Soviet Socialist Republic. As we will see, until 2012, the 1989 'Law on Languages in the Ukrainian SSR' was the sole law dedicated to linguistic issues in the country. It was only on 3 July 2012 that was promulgated a new language law, 'On the Principles of State Language Policy'. The process experienced by this law has not been simple and linear: the text has aroused several controversies and despite a two-year period in which the law was in force, in 2014, national ferment in the context of the Euromaidan protests has momentarily compromised its effectiveness. Despite uncertainties, the Law remained in force until 2018, when it was declared unconstitutional. In July 2019 came into force the 'Law on Ensuring the Functioning of Ukrainian as the State Language', which is currently the most updated law on languages in Ukraine.

Paragraph 3 is dedicated to the educational sphere. We will briefly go through the main policies adopted with regards to ethnic minorities and education in Ukraine, from the achievement of independence to the presidency of Petro Poroshenko. Subsequently, we will deal with the Law on Education of 2017, which triggered a harsh controversy with Ukraine's neighboring countries and a dispute over compliance with international law. To conclude the paragraph, we will see what the recent developments have been under the presidency of Volodymyr Zelensky, with particular reference to the 'Law on Complete General Secondary Education' of 2020.

The last paragraph of this chapter deals with the political sphere, providing a picture of political rights and electoral opportunities at minorities' disposal in Ukraine.

3.1 General legislative framework

3.1.1 Minorities in the Ukrainian Constitution

The analysis of the legislative situation of Ukraine can only move from the Fundamental Law of the country, its constitution.[447] It is indeed the 1996 Constitution the source of the most important rights and guarantees for minorities in Ukraine.[448]

[447] Конституція України, Відомості Верховної Ради України (ВВР), 1996, № 30, ст. 141. Available at: http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?page=1&nreg=254%EA%2F96-%E2%F0

[448] Stepanenko, V., A State to build, op. cit., p. 325

The first Constitution of the newborn Ukrainian State came into force on 28 June 1996 to comply with the commitment made by the country, at the time of its admission to the Council of Europe, to adopt, within one year, a Constitution that would comply with the standards of the organization.[449] Among former Soviet Republics, Ukraine was the last one to adopt a Constitution.[450]

However, the Ukrainian Constitution adopted in 1996 presents many contradictions.

For our analysis is fundamental to highlight how the preamble of the Constitution recognizes the ethnic diversity of Ukraine, by addressing to the population as "the Ukrainian people – citizens of Ukraine of all nationalities".[451] This is certainly an important detail to take in account, however, as Taras Kuzio observes, at the dawn of its transformation into a nation-state, no one was doubting that Ukraine would have been defined in inclusive terms.[452] The main question at the time was rather if this inclusivity would have been based upon the ethnic Ukrainian criteria or the Ukrainian- Russian linguistic and cultural ones. The answer was clearly stated in the Constitution: the Ukrainian nation would have been based upon Ukrainians as the titular, core ethnic group, and its language would have been the only state language. Indeed, according to President Leonij Kuchma, nation building had to be based upon civic principles, meaning ethnic Ukrainians.[453]

A first contradiction emerges if we compare the preamble with Article 11: if the former describes the unity of the Ukrainian people, regardless of affiliation to a national group, the latter, while reiterating multiethnicity, gives ethnic Ukrainians a prominent role, appointing the state as a promoter of "the consolidation and development of the Ukrainian nation", therefore placing a positive obligation upon the

[449] Pace (Parliamentary Assembly Council of Europe), Opinion No. 190 (1995) On the Application by Ukraine for Membership of the Council of Europe, point 11.5. Available at: http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=13929

[450] Kuzio, T., Ukraine State and Nation Building, Routledge, 1998, p. 33

[451] The Verkhovna Rada of Ukraine on behalf of the Ukrainian people - citizens of Ukraine of all nationalities, (omissis) adopts this Constitution - the Basic Law of Ukraine.

Верховна Рада України від імені Українського народу - громадян України всіх національностей, (omissis) приймає цю Конституцію - Основний Закон України.

[452] Kuzio, T., Ukraine State and Nation Building, op.cit., p. 234

[453] Ibid.

State.[454] The contradiction between preamble and Article 11 derives from the fact that Ukraine becomes independent reaffirming its national character, but also confronting the country's deeply multi-ethnic reality. Gwendolyn Sasse affirms that the total absence of consensus over the structure of the new state and its national identity resulted in a necessary political compromise that was the basis for the drafting of the Constitution.[455]

Apart from defining Ukrainians as the sole titular ethnic group, Article 11 also grants the rights of indigenous peoples and minorities "in exchange for their loyalty to the state and their integration within the Ukrainian political nation".[456]

Irina Ulyasuk points out that an implicit hierarchy among the communities residing in Ukraine emerges from Article 11: on top we find the Ukrainian people (*ukrajins'kyj narod*) which includes citizens of Ukraine of each nationality, then the Ukrainian nation (*ukrajins'ka nacija*), for instance ethnic Ukrainians; Indigenous Peoples (*korinni narody*) and national minorities (*nacional'nij menšyny*).[457]

It is also important to emphasize how the Ukrainian Constitution reflects the international problems of providing a definition, by not even trying to provide one, nor of national minorities or indigenous peoples. The Constitution limits to making a referral to an ordinary law regulation detailing their rights (Article 92, comma 3 of the Constitution),[458] but, as we shall see later, it has never been approved. We will talk about the problem of indigenous peoples when we will deal specifically with Crimea.

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[454] Article 11. The state contributes to the consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture, as well as the development of ethnic, cultural, linguistic and religious identity of all indigenous peoples and national minorities of Ukraine.

Стаття 11. Держава сприяє консолідації та розвиткові української нації, її історичної свідомості, традицій і культури, а також розвиткові етнічної, культурної, мовної та релігійної самобутності всіх корінних народів і національних меншин України.

[455] Sasse, G., Conflict-Prevention in a Transition State: The Crimean Issue in Post-Soviet Ukraine, Nationalism and Ethnic Politics, Volume 8, Number 2, 2002, p. 13. Cited in Ulasiuk, I., op. cit., p. 148

[456] Kuzio, T., Ukraine: State and Nation Building, op. cit., p. 148

[457] Ulasiuk, I., op. cit., p. 149

[458] Article 92. Exceptionally by the laws of Ukraine is determined: (numbers 1, 2 omissis) 3) rights for native people and national minorities; (numbers 4 – 22 omissis)

Стаття 92. Виключно законами України визначаються: (numbers 1, 2 omissis) 3) права корінних народів і національних меншин; (numbers 4 – 22 omissis)

The Constitution also deals with linguistic rights of minorities.

According to Article 10, in Ukraine "the free development, use and protection of Russian and other languages of national minorities" is guaranteed, however, the article clearly states that the official state language of the country is Ukrainian.[459] What is extremely important to highlight is that Article 10 does not limit to its recognition, but also affirms the positive obligation of the State to ensure its "full development and functioning" under all aspects and throughout the nation.

The Constitution does not confer any special status to the Russian language: Russian is explicitly mentioned in Article 10, which puts it in a privileged position and highlights its specificity deriving from its widespread use, however, it is evident that Russian is regarded as any other language of national minorities.[460] It is also noteworthy the terminology chosen in the formulation of the article: if, on the one hand, the State cannot limit itself to a passive attitude with regards to Ukrainian and *must* instead actively promote it, Russian is simply allowed to develop freely.[461]

The adoption of Article 10 was linked with the widespread opposition to the idea of two state languages.[462] In the draft of March 1996, was provided that in the areas where the majority of the population accepted a certain language, that could be used, along with the state language, "in the activities of bodies of state power and state organisations". However, the provision was omitted in the final June version: the adoption of Article 10 in its final formulation represented somehow a defeat for those who sought the upgrade of Russian language status.[463] The Russian community of

[459] Article 10. The official language in Ukraine is Ukrainian. The state ensures the full development and functioning of the Ukrainian language in all spheres of public life throughout Ukraine. Ukraine guarantees the free development, use and protection of Russian and other languages of national minorities of Ukraine. The state promotes the study of languages of international communication. The use of languages in Ukraine is guaranteed by the Constitution of Ukraine and determined by law.

Стаття 10. Державною мовою в Україні є українська мова. Держава забезпечує всебічний розвиток і функціонування української мови в усіх сферах суспільного життя на всій території України. В Україні гарантується вільний розвиток, використання і захист російської, інших мов національних меншин України. Держава сприяє вивченню мов міжнародного спілкування. Застосування мов в Україні гарантується Конституцією України та визначається законом.

[460] Kuzio, T., Ukraine: State and Nation Building, op. cit., p. 185

[461] Wolczuk, K., The New Ukrainian Constitution: In Pursuit of a Compromise, CERT Discussion Papers 9710, Centre for Economic Reform and Transformation, Heriot Watt University, 1997, p. 9

[462] Kuzio, T., Ukraine: State and Nation Building, op. cit., p. 185-188

[463] Wolczuk, K., op. cit., p. 8-9

Ukraine is still disappointed by the denied official status of Russian and the dispute on whether to confer it the status of official language "is one of the most serious inter-ethnic issues in the country".[464]

Given its degree of ambiguity, in 1999 Article 10 was subjected to an "official" interpretation by the Constitutional Court. In its decision of 14 December 1999, the Constitutional Court of Ukraine ruled that Ukrainian as the state language should be intended in such a way that the Ukrainian language:

> *"is a mandatory means of communication throughout Ukraine in the exercise of powers by state authorities and local self-government bodies (language of acts, work, records, documentation, etc.), as well as in other public spheres of public life, which are determined by law (part five of Article 10 of the Constitution of Ukraine)".*

However, the decision underlines that:

> *"Along with the state language, Russian and other languages of national minorities can be used in the exercise of powers by local executive authorities, bodies of the Autonomous Republic of Crimea and local self-government bodies within the limits and order determined by the laws of Ukraine".*[465]

What is noteworthy, is that one of the judges of the Constitutional Court, Oleksandr Mykolajovyč Myronenko, expressed its strong dissent with the Court's decision, affirming that the Constitution states the Ukrainian language as the official and working language of the Ukrainian State, but not necessarily of its society and its private citizens.[466]

Viktor Stepanenko declares that the central government exerted substantial influence over the Constitutional Court, especially with regards to ethno-politics, and affirms that minority activists were blaming the Court to act as a Ukranization tool for the government. As we shall see later, the lack of full independence of the judicial

[464] Stepanenko, V., A state to build, op. cit., p. 325

[465] Рішення Конституційного Суду України N° 10-рп/99 від 14.12.1999 (справа про застосування української мови), п. 1

[466] Individual opinion (окрема думка) by Judge Oleksandr Mykolajovyč Myronenko, available on the website of the Constitutional Court of Ukraine: https://ccu.gov.ua

system in Ukraine emerged on several other occasions, first and foremost when the Court blocked the ratification of the Charter for Regional or Minority Languages, apparently on the grounds of procedural flaws in the vote, but in reality for political reasons.[467]

With reference to minorities in Ukraine, other articles of the Constitution that are worth mentioning in this paragraph are Articles 24 and 53.

Placed in section II, entitled 'Rights, Freedoms and Duties of Man and Citizen', Article 24 provides the absolute equality of rights for the citizens before law, prohibiting "privileges or limitations" on the base, among others, of ethnic origin and after the linguistic sign.[468] The article does not establish a positive obligation for the State to promote the protection of these fragile groups. Furthermore, since it clearly expresses the prohibition of both negative discriminations (limitations, *obmežen'*) and positive ones (privileges, *pryvilejiv*), the intervention of the state in the protection of these groups could be considered as a privilege. This serious issue of interpretation posed by Article 24 was analyzed by the Advisory Committee of the Framework Convention for the Protection of National Minorities. In its first Opinion on Ukraine of 2002, the Advisory Committee noted that Article 24 was occasionally "used in public discussions as an argument against the introduction of special measures for the benefit of persons belonging to national minorities aimed at promoting full and effective equality".[469] An aspect underlined by the Advisory Committee in this Opinion, but even more so in the following two, adopted respectively in 2008 and 2012, is the fact that "such measures must not be considered to be an act of discrimination"[470], "but rather

[467] Stepanenko, V., A State to Build, op. cit., pp. 328-329

[468] Article 24. Citizens have even constitutional rights and freedoms and are even before a law. It cannot be privileges or limitations after the signs of race, color of skin, political, religious and other persuasions, floor, ethnic and social origin, property state, place of residence, after linguistic or other signs. (comma 3 omissis)

Стаття 24. Громадяни мають рівні конституційні права і свободи та є рівними перед законом. Не може бути привілеїв чи обмежень за ознаками раси, кольору шкіри, політичних, релігійних та інших переконань, статі, етнічного та соціального походження, майнового стану, місця проживання, за мовними або іншими ознаками. (comma 3 omissis)

[469] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Ukraine, adopted on 1 March 2002, Council of Europe, ACFC/INF/OP/I(2002)010, para. 27

[470] Ibid.

a means to achieve full and effective equality for persons belonging to the most disadvantaged minority groups, such as Crimean Tatars and Rom".[471]

Furthermore, in its second Opinion, the Advisory Committee noted that a comprehensive and detailed anti-discrimination legislation had not yet been developed.[472] This was also expressed in the third Opinion, where the Committee invited Ukrainian authorities to urgently act in this regard.[473]

In contrast to Article 24, Article 53, right to education for everyone,[474] expresses positive obligations for the State. The fifth comma guarantees the right, for citizens belonging to national minorities, to receive education in their mother tongue. However, as we will see later in the chapter,[475] within the Law on Education of 2017, a reservation is expressed to this law.

To conclude the analysis of the constitutional framework, it is necessary to mention how the events of 2013-2014 started a debate around the need for a vast reform of the Constitutional Charter. The situation was similar to ten years earlier, when, as a result of the so-called Orange Revolution,[476] people were calling for changes in the Fundamental law. In 2004, was introduced a series of amendments that significantly changed the face of the Ukrainian state, as the President was divested of a great part of its power. Likewise, after the events of Euromaidan, the sentiment was to make the state more responsive to the needs of the population, because for too long

[471] Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Ukraine, adopted on 30 May 2008, Council of Europe, ACFC/OP/II(2008)004 para. 13
cf. Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Ukraine, adopted on 22 March 2012, Council of Europe, ACFC/OP/III(2012)002 para. 46, 50

[472] Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Ukraine, adopted on 30 May 2008, Council of Europe, ACFC/OP/II(2008)004 para. 66, 69

[473] Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Ukraine, adopted on 22 March 2012, Council of Europe, ACFC/OP/III(2012)002 para. 15, 40-45

[474] Article 53. Everybody has a right to education. (comma 2-4 omissis) Citizens belonging to national minorities are guaranteed, in accordance with the law, with the right to receive education in their mother tongue or to study their native language in state and municipal educational institutions or through national cultural societies.

Стаття 53. Кожен має право на освіту. (comma 2-4 omissis) Громадянам, які належать до національних меншин, відповідно до закону гарантується право на навчання рідною мовою чи на вивчення рідної мови у державних і комунальних навчальних закладах або через національні культурні товариства.

[475] *Infra* 3.2.2

[476] Series of strong protests against the outcome of the 2004 presidential elections, considered rigged, which saw pro-Russian candidate Yanukovych victorious at the expense of the pro-European Viktor Yushchenko. It is one of the so-called color revolutions that occurred in the post-Soviet space.

in Ukraine civil liberties had been deceived and the Constitution had been used by Presidents for their own advantage, with the approval of the Constitutional Court.[477] That is precisely what happened first in 2003, when Leonid Kuchma was allowed by the Constitutional Court to run for President for the third time, despite the prohibition according to the Constitution to exceed two consecutive terms.[478] A similar affair took place in 2010, when the Court declared the 2004 constitutional reform illegal, due to procedural breaches.[479] Since the Constitution was reverted to its older version of 1996, Ukraine went back to being a presidential-parliamentary republic, President Viktor Yanukovych was invested again with greater power.[480]

The process towards a reformed Ukrainian Constitution has been going on for seven years now and to date remains uncompleted. Anyway, we can get an idea of what was going to be the new path set up, because, in 2014, President Petro Poroshenko presented a list of draft amendments to the Constitution, which were analyzed by the Venice Commission.[481] The proposal envisaged the introduction of a second comma to Article 143, stating the possibility for "villages, settlements, cities, districts and *oblast'* councils" to confer "a special status of the Russian language and other languages of national minorities within the boundaries of the corresponding administrative and territorial units".[482] If, on the one hand, the provision was praised by the Venice Commission as a possible solution to the issue of the protection of Russian and minority languages in the country, on the other hand, was also considered raising "issues of harmonization" with Article 10 of the Constitution, as well as European standards concerning minority protection, and the guarantees laid down in the ordinary legislation. As we will see later,[483] the Law of Ukraine 'on Principles on State

[477] We have already talked about how the Constitutional Court is often subject to the influence of the central government.

[478] Ukraine: Kuchma Cleared To Run For Third Term, 30 December 2003. Online article available at: https://www.rferl.org/a/1105441.html

[479] Yanukovich pledges "democratic constitutional transit", 1 October 2010. Online article available at: https://www.rt.com/russia/ukraine-constitution-reform-yanukovich/

[480] The amendments of 2004 were then reinstated, on February 21 2014, following the events of Euromaidan.

[481] opean Commission for Democracy Through Law (Venice Commission), Opinion on the draft law amending the Constitution of Ukraine submitted by the President of Ukraine on 2 July 2014, Opinion no. 766/2014, Strasbourg, 27 October 2014. Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)037-e

[482] Ivi, p. 11

[483] *Infra* 3.2.2

Language Policy' recognizes the right to address the authorities either in Ukrainian or in Russian and to use other languages at the regional and local levels, irrespective of the support of more than 50 percent of the local government council. The new comma would have, thus, somehow limited the use of Russian with respect to the already existing provisions. In the draft presented the following year,[484] the provision was eliminated, leaving no other referral to the linguistic issues in Ukraine. Since then, there has been almost no new progress, and, considering the issues in the country's internal security, the entire reform remains on standby.

3.1.2 Law on National Minorities (1992)

Having analyzed the Constitution of Ukraine, we start to examine Ukrainian legislation. The first law entirely dedicated to the topic of national minorities that we will deal with was introduced in 1992 and is entitled precisely Law on National Minorities.[485] [486] The Law was not the first official document of the newborn Ukrainian State dedicated exclusively to nationality rights. In fact, the previous year, the Ukrainian Parliament had adopted the Declaration on the Rights of Nationalities.[487]

Having stated that the construction of an independent democratic state and the inviolability of human and minority rights are in the "vital interests of the Ukrainian nation", the Preamble expresses the guarantee of "the right to free development for national minorities" as the main aim of this Law, in accordance with the international commitments undertaken by the country.[488]

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[484] Comparative Table Draft Constitutional Law of Ukraine "On Amending the Constitution of Ukraine (Regarding Territorial Structure and Local Administration", 17 June 2015, in Congress of Local and Regional Authorities Report to the Congress on the Constitutional Revision Process and the New Amendments to the Ukrainian Constitution Regarding Decentralization, 18 June 2015, pp. 12-24

[485] Закон України "Про національні меншини в Україні", N 2494-XII, 25 червня 1992 року Відомості Верховної Ради України (ВВР), 1992, N 36, ст.529

[486] The 1992 Law on National Minorities is placed in this paragraph, because the next one will deal exclusively with laws on languages.

[487] Декларація прав національностей України, N 1771-XII, 1 листопад 1991 року Відомості Верховної Ради України (ВВР), 1991, N 53, ст.799

[488] The Verkhovna Rada of Ukraine, proceeding from the vital interests of the Ukrainian nation and all nationalities in the development of an independent democratic state, recognizing the inviolability of human rights and rights of nationalities, aspiring to implement the Declaration of the Rights of Nationalities in Ukraine, adhering to international obligations for national minorities; passes this law in order to guarantee the right to free development for national minorities.

Article 1 guarantees the formal equality of Ukrainian citizens and is extremely interesting because it clearly affirms that the State, in ensuring the protection of minorities, together with the development of their national self-awareness and self-expression, “proceeds from the ground that they are an integral part of universally recognized human rights”.[489]

The enjoyment of the right to formal equality is closely linked to Article 18, non-discrimination. It provides for the prohibition of restricting the "rights and freedoms of citizens on the basis of their nationality", as well as providing for its punishment by law.[490] Despite it is not clear what exactly means direct or indirect restriction, it should be noted that unlike Article 24 of the Constitution, which we have already analyzed, only negative discrimination is prohibited, and this is certainly a plus for this article, since, unlike Article 24, problems of ambiguity are avoided.

Always on the basis of the principle of formal equality, Article 9 provides for the right of persons belonging to minorities to be elected or appointed to any position in the bodies of public power.[491]

Верховна Рада України виходячи із життєвих інтересів української нації та всіх національностей в справі розбудови незалежної демократичної держави, визнаючи нерозривність прав людини і прав національностей, прагнучи реалізувати Декларацію прав національностей України, дотримуючись міжнародних зобов'язань щодо національних меншин, приймає цей Закон з метою гарантування національним меншинам права на вільний розвиток.

[489] Article 1. Ukraine guarantees the citizens of the republic, regardless of their national origin, equal political, social, economic and cultural rights and freedom; supports the development of national self-awareness and self-expression.

All citizens of Ukraine shall enjoy the protection of the state on equal grounds.

When ensuring the rights of persons belonging to national minorities, the state proceeds from the ground that they are an integral part of universally recognised human rights.

Стаття 1. Україна гарантує громадянам республіки незалежно від їх національного походження рівні політичні, соціальні, економічні та культурні права і свободи, підтримує розвиток національної самосвідомості й самовиявлення.

Усі громадяни України користуються захистом держави на рівних підставах.

При забезпеченні прав осіб, які належать до національних меншин, держава виходить з того, що вони є невід'ємною частиною загальновизнаних прав людини.

[490] Article 18. Any direct or indirect restriction of the rights and freedoms of citizens on the basis of nationality is prohibited and punishable by law.

Стаття 18. Будь-яке пряме чи непряме обмеження прав і свобод громадян за національною ознакою забороняється й карається законом.

[491] Article 9. Citizens of Ukraine belonging to national minorities have the right, respectively, to be elected or appointed on an equal basis to any positions in legislative, executive, judicial, local and regional self-government bodies, in the army, at enterprises, institutions and organizations.

Another very important article is Article 3, where we can find an attempt to define what a national minority is: “To national minorities belong groups of Ukrainian citizens, who are not of Ukrainian nationality, but show feelings of national self-awareness and affinity”.[492] However, the article does not provide a list of those national minorities the law applies to. Both in its first and second Opinion, the Advisory Committee of the Framework Convention observed that Ukraine has never provided a list of its national minorities, thus suggesting that the FCNM could address all those 130 “nationalities” living on its territory. In addition, there was the question of what the Ukrainian authorities called” ethno-graphic groups", understood as sub-ethnic groups, such as Boikos, Hutsuls and Lemkis, which was not quite clear whether they were protected by the Framework Convention or not.[493] The Committee acknowledged that Ukraine had prepared an ad hoc plan for these " ethno-graphic groups”, to promote their “preservation and revival of the cultural heritage and national traditions”,[494] but still reiterating the need to improve dialogue.

The issue was taken up by the Committee in its third Opinion, with particular reference to the population of Ruthenians. Although this group claimed their protection as a national minority, Ukrainian authorities had decided to include them among sub-ethnic groups, “based on extensive research conducted by academics and independent experts”. The Committee admonished Ukrainian authorities for failing to dialogue or at least consult the Ruthenians and the other groups involved, which is a violation of the principle of self-identification contained in Article 3 of the FCNM.[495] Again, in its fourth, and by now last, Opinion of 2018, the Committee noted with concern that the issue had not yet been examined, and decided to recall that extending

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Стаття 9. Громадяни України, які належать до національних меншин, мають право відповідно обиратися або призначатися на рівних засадах на будь-які посади до органів законодавчої, виконавчої, судової влади, місцевого і регіонального самоврядування, в армії, на підприємствах, в установах і організаціях.

[492] Article 3. To national minorities, belong groups of Ukrainian citizens, who are not of Ukrainian nationality, but show a feeling of national self-awareness and affinity.

Стаття 3. До національних меншин належать групи громадян України, які не є українцями за національністю, виявляють почуття національного самоусвідомлення та спільності між собою.

[493] Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Ukraine, adopted on 30 May 2008, Council of Europe, ACFC/OP/II(2008)004 para. 31, 37

[494] Ivi, para. 35

[495] Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Ukraine, adopted on 22 March 2012, Council of Europe, ACFC/OP/III(2012)002 para. 26-28

the provisions of the FCNM to a certain group "does not necessarily require its formal recognition as a national minority or its specific legal status as a group".[496]

Article 5 regulates the representation of national minorities in public bodies, which, however, remain purely consultative in nature. Reference is also made to the Ministry for Nationality Affairs of Ukraine, which was set up ad hoc to deal with interethnic relations in the country and contained the Council of Representatives for Public Associations of National Minorities.[497]

In relation to this issue, we can find Articles 13 and 14. The second comma of Article 13 establishes the possibility for members of national minorities to protect their rights also through the establishment of associations,[498] while Article 14 stipulates the obligation of the state to promote their activities, in addition to the right "to nominate their candidates for deputies in elections of the bodies of state power".[499] However, the

[496] Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Ukraine, adopted on 5 March 2018, Council of Europe, ACFC/OP/IV(2017)002, para. 31

[497] Article 5. In the Verkhovna Rada of Ukraine, and in case of necessity in local Councils of People's Deputies, permanent committees on questions pertaining to nationalities are functioning. In the local bodies within the State executive power, appropriate structural departments can be created correspondingly.
Consultative bodies on public grounds can be established and function, formed by representatives of national minorities by local Councils of People's Deputies. The formation of such bodies are regulated by the corresponding Councils of People's Deputies.
The central body of the state executive power in the field of relations among nationalities of Ukraine, is the Ministry for Nationality Affairs of Ukraine. The Council of representatives of Public Associations of national minorities of Ukraine functions as an advisory body under the Ministry.

Стаття 5. У Верховній Раді України, в разі необхідності - в місцевих Радах народних депутатів, діють постійні комісії з питань міжнаціональних відносин. В місцевих органах державної виконавчої влади можуть створюватися відповідні структурні підрозділи.
При місцевих Радах народних депутатів можуть утворюватися і функціонувати на громадських засадах дорадчі органи з представників національних меншин. Порядок формування цих органів визначається відповідними Радами народних депутатів.
Центральним органом державної виконавчої влади у сфері міжнаціональних відносин є Міністерство у справах національностей України. При Міністерстві функціонує як дорадчий орган Рада представників громадських об'єднань національних меншин України.

[498] Article 13. Citizens belonging to national minorities are free to choose the scope and forms of exercise of the rights granted to them by the current legislation, and exercise them personally, as well as through the relevant state bodies and public associations being created. (omissis)

Стаття 13. Громадяни, які належать до національних меншин, вільні у виборі обсягу і форм здійснення прав, що надаються їм чинним законодавством, і реалізують їх особисто, а також через відповідні державні органи та створювані громадські об'єднання. (omissis)

[499] Article 14. State bodies promote the activities of national public associations operating in accordance with the current legislation. National Public Associations have the right to nominate their candidates for deputies in

rule remains very abstract as there is no explicit encouragement for minorities to provide for their political representation, such as the establishment of a reserved quota.[500]

Articles 6 and 8 deal with language issues. Article 6 guarantees the right to all minorities to "national-cultural autonomy": various rights that fall under this concept are expressed, such as the possibility to use and learn their native language, to develop their traditions, use their symbols, celebrate their holidays, profess their religion, and so forth.[501] However, Bill Bowring observes that neither in this law nor in the others is given a definition of what this "national-cultural autonomy" is.[502] Furthermore, in its first Opinion, the Advisory Committee observed that the formulation of the Article is extremely general, and that "the content and the reach of this concept would merit being defined and developed in more detail".[503] Bowring reports of a draft Law "On

elections of the bodies of state power in accordance with the Constitution of Ukraine (888-09), laws on elections of people's Deputies of Ukraine and deputies of local councils of people's deputies.

Стаття 14. Державні органи сприяють діяльності національних громадських об'єднань, які діють відповідно до чинного законодавства. Національні громадські об'єднання мають право висувати своїх кандидатів у депутати на виборах органів державної влади відповідно до Конституції України (888-09), законів про вибори народних депутатів України і депутатів місцевих Рад народних депутатів.

[500] Stepanenko, V., A State to Build, op. cit., p. 326

[501] Article 6. The state guarantees all national minorities the right to national and cultural autonomy: the use and teaching of their native language or the study of their native language in state educational institutions or through national cultural societies, the development of national cultural traditions, the use of national symbols, the celebration of national holidays, the practice of their religion, the satisfaction of needs for literature, art, mass media, the creation of national cultural and educational institutions and any other activity that does not contradict the current legislation. Monuments of the history and culture of national minorities on the territory of Ukraine are protected by law.

Стаття 6. Держава гарантує всім національним меншинам права на національно-культурну автономію: користування і навчання рідною мовою чи вивчення рідної мови в державних навчальних закладах або через національні культурні товариства, розвиток національних культурних традицій, використання національної символіки, відзначення національних свят, сповідування своєї релігії, задоволення потреб у літературі, мистецтві, засобах масової інформації, створення національних культурних і навчальних закладів та будь-яку іншу діяльність, що не суперечить чинному законодавству. Пам'ятки історії і культури національних меншин на території України охороняються законом.

[502] Bowring, B., Language Policy in Ukraine: International Standards and Obligation, and Ukrainian Law and Legislation, SSRN Electronic Journal, 2011, p. 21

[503] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Ukraine, adopted on 1 March 2002, Council of Europe, ACFC/OP/II(2002)010 para. 32

National-Cultural Autonomy", proposed in 2006 by an ethnic Hungarian Deputy, which however made no progress in front of the Verkhovna Rada.[504]

Finally, it should be noted that Article 6 does not provide for any positive obligation on the state with regard to explicit rights, except for "monuments of the history and culture of national minorities on the territory of Ukraine", which are protected by law.

Originally, Article 8 provided that the local mother tongue could be used along with Ukrainian, in places where the majority of the population is formed by a certain national minority.[505] I am writing 'originally' because Article 8 was modified with the introduction of the Law on State Language Policy of 2012. We will analyze this law later in this chapter, but we can say that Article 8 of the Law on National Minorities was substituted by a reference to Article 11 of the Law of 2012.The issue presented by the formulation of this law, in its original form, consists in the fact that is quite difficult to determine if and when a minority constitutes "the majority of the population". The Advisory Committee commented the content of this article, as we will see, along with Article 3 of the 1989 Law on Languages in the Ukrainian SSR, since the two present quite the same formulation,[506] and stated that the threshold set was too high and that authorities were left with too much margin of discretion.[507]

Finally, an article worth mentioning in this paragraph is Article 10. It is dedicated to "the problem of the return to the territory of Ukraine of persons belonging to the deported Nations", but it is very short and simple. In fact, it does not introduce any relevant rule to regulate the issue, delegating the solution to "appropriate

[504] Bowring, B., Language Policy in Ukraine, op. cit., p. 21, footnote n. 65

[505] Article 8. In the work of state bodies, public associations, as well as enterprises, institutions and organizations located in places where the majority of the population is constituted by a certain national minority, its language can be used along with the state language - Ukrainian.

Стаття 8. У роботі державних органів, громадських об'єднань, а також підприємств, установ і організацій, розташованих у місцях, де більшість населення становить певна національна меншина, може використовуватися її мова поряд з державною українською мовою.

[506] *Infra* 3.2.1

[507] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Ukraine, adopted on 1 March 2002, Council of Europe, ACFC/OP/II(2002)010 para. 53
Cf. Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Ukraine, adopted on 22 March 2012, Council of Europe, ACFC/OP/III(2012)002 para. 104, 112

legislative acts" and "treaties of Ukraine with other states".[508] It simply limits itself to enunciate the problem.

In relation to this issue, Bowring explains that one of the critical points of this law is that it addresses only "citizens", which is something that per se does not comply with international law.[509] This was in fact discussed by the Advisory Committee which, in its first Opinion of 2002, observed that this clause concerning citizenship represented a limit in the protection of deported minorities, who had experienced various difficulties in obtaining their citizenship. The Committee expressed the wish for these populations, including non-citizens, to be covered by the protection of this law, and invited Ukrainian authorities to "consider this issue in consultation with those concerned".[510] The issue was still unresolved in 2018, in fact, the Advisory Committee reiterated the need to extend the protection of the domestic legislation also to non-citizens.[511]

In addition, another critical point of this law concerns the use by the Ukrainian authorities of the term "national minorities". At the national level, this term – noted the Advisory Committee – can constitute a factor of friction, both with regard to Crimean Tatars, who prefer to be called "indigenous people", and both towards Russians, who seem somewhat reluctant to be described with this term. All this, not to mention the high number of (ethnic) Ukrainians whose mother tongue is Russian, a factor that the Committee believes should be taken into greater consideration.[512]

[508] Article 10. (comma 1 omissis) The problem of the return to the territory of Ukraine of persons belonging to the deported nations is resolved by appropriate legislative acts and treaties of Ukraine with other states.

Стаття 10. (comma 1 omissis) Питання про повернення на територію України представників депортованих народів вирішуються відповідними законодавчими актами та договорами України з іншими державами.

[509] Indeed, Bowring recalls that the UN Human Rights Committee has expressed, in its General Comment, the fact that Article 27 of the ICCPR applies both to citizens and non-citizens. Cited in Bowring, B., Language Policy in Ukraine, op. cit., p. 22

[510] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Ukraine, adopted on 1 March 2002, Council of Europe, ACFC/OP/II(2002)010, para. 17, 18

[511] Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Ukraine, adopted on 5 March 2018, Council of Europe, ACFC/OP/IV(2017)002, para. 29-30

[512] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Ukraine, adopted on 1 March 2002, Council of Europe, ACFC/OP/II(2002)010, para. 19, 20

The problem of a lack of definitions has not been solved by Ukraine over the years, in fact the Committee cited the matter also in its third Opinion.[513] We should, however, recall that the issue of the total absence of univocal definitions remains an international problem, not only Ukrainian.

In 2012, the Law "On National Minorities in Ukraine" was amended with the introduction of the Law "On Amending Certain Legislative Instruments of Ukraine Concerning Activities of the Ministry of Justice of Ukraine, Ministry of Culture of Ukraine, Other Central Executive Authorities Activities of Which Are Directed and Coordinated by Respective Ministers as well as the State Space Agency of Ukraine". A number of provisions were cancelled, and this is the case, for instance, of Part 2 of Article 14, which now establishes that national public associations must be assisted by public authorities in acting in accordance with the law. Other provisions were instead amended, this is the case of Article 5.[514]

In 2018, the Advisory Committee reiterated how the Law "On National Minorities" was now outdated, "badly focused and too vague to regulate complex issues connected to the protection of national minorities in contemporary Ukraine". However, the Committee noted that the events of 2013-2014 gave somehow impetus to the discussions concerning the amendment of the 1992 Law, and, thus, invited Ukrainian authorities "to adopt without delay and in close consultation with representatives of the groups concerned, an adequate and comprehensive legal framework for the protection of national minorities".[515]

3.1.3 Brief outline of other national laws concerning minorities

Since the most important language laws will be analyzed in the second part of this chapter, while the third and fourth part will be dedicated respectively to the educational and political spheres, we conclude this first part of chapter 3 with a brief

[513] Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Ukraine, adopted on 22 March 2012, Council of Europe, ACFC/OP/III(2012)002 para. 36

[514] Council of Europe, Fourth Report submitted by on implementation of the Framework Convention for the Protection of National Minorities, 30 May 2016, ACFC/SR/IV(2016)003, pp. 8-9

[515] Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Ukraine, adopted on 5 March 2018, Council of Europe, ACFC/OP/IV(2017)002, para. 45-48

outline of other Ukrainian laws worth-mentioning in relation to national minorities and their languages: the 1992 'Law On Print Media (Press) in Ukraine', the 2001 'Law On Ukrainian Citizenship' and the 2012 Law 'On the Fundamentals Prevention and Counteraction to Discrimination in Ukraine'.

Article 4 of the 1992 Law on Print Media (Press) in Ukraine determines that the language of the press and mass media is Ukrainian, but publications can take place as well as in other languages.[516] The article gives no further explanations, nor provides a list of what these languages are: Bowring describes this simply as "not acceptable".[517] Furthermore, according to the law, while the freedom in the choice of the language of publication is guaranteed, every newspaper and magazine is also required to communicate the chosen language at the time of applying for state registration (Article 12).[518]

In its Second Opinion,[519] the Advisory Committee praised Ukraine for largely respecting the "freedom of persons belonging to national minorities to receive and impart information and ideas in their language, without interference by public authorities", and noted with satisfaction the great variety of printed media published in minority languages.[520] However, the Committee highlighted the difficulties encountered by minorities in financing their newspapers "which are an important means to preserve their language and culture", and that several minorities were regretting that the system of state financial support for minority publications was directed only towards a small number of groups. Indeed, Armenian, Crimean Tatar,

[516] Article 4. Language of the printed mass media. The printed mass media in Ukraine are published in the state language, as well as in other languages. (omissis)

Стаття 4. Мова друкованих засобів масової інформації Друковані засоби масової інформації в Україні видаються державною мовою, а також іншими мовами. (omissis)

[517] Bowring, B., Language Policy in Ukraine, op. cit., p. 22

[518] Article 12. Application for state registration of a printed mass media the application for state registration of a printed mass media must indicate: (1-3 omissis) 4) the language of publication; 5) the scope of distribution (local, regional, national, foreign) and categories of readers;

Стаття 12. Заява про державну реєстрацію друкованого засобу масової інформації У заяві про державну реєстрацію друкованого засобу масової інформації повинні бути вказані: (1-3 omissis) 4) мова видання; 5) сфера розповсюдження (місцева, регіональна, загальнодержавна, зарубіжна) та категорії читачів;

[519] Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Ukraine, adopted on 30 May 2008, Council of Europe, ACFC/OP/II(2008)004

[520] Para. 140-141

Yiddish, Polish, Bulgarian and Romanian publications were supported by the State, but as the Committee noted "there are apparently no clear criteria for selecting those minority newspapers which will receive public funding".[521] The Advisory Committee concluded that Ukraine should have widened its financial aid, "especially for numerically smaller groups", and decided "objective criteria to identify the publications which can receive public support".[522]

The Law on Ukrainian Citizenship was adopted by the Verkhovna Rada on 8 October 1991 and stated that all persons residing in the Ukrainian SSR at the moment of the proclamation of the newborn Ukrainian state, would have become their rightful citizens.[523] This largely reflects the liberal approach that Ukraine decided to pursue after obtaining independence and which we had the occasion to mention at the end of the previous chapter. Another interesting matter is the one emerging from Article 9: the article provides that the concession of the Ukrainian citizenship is subject to a "proficiency in the state language or its understanding to an extent sufficient for communication".[524] This is not specifically interesting in relation to the theme of this thesis, since this provision is not addressed to the minorities, but to foreigners or stateless people wishing to obtain citizenship of Ukraine, however, it represents a rather emblematic example of the attachment of the country to its official state language.

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[521] Para. 142

[522] Para. 143

[523] Article 3. Belonging to the citizenship of Ukraine. Citizens of Ukraine are: 1) all citizens of the former USSR who at the time of the declaration of independence of Ukraine (August 24, 1991) permanently resided on the territory of Ukraine; (points 2-4 omissis)

Стаття 3. Належність до громадянства України Громадянами України є: 1) усі громадяни колишнього СРСР, які на момент проголошення незалежності України (24 серпня 1991 року) постійно проживали на території України; (points 2-4 omissis)

[524] Article 9. Concession of Ukrainian citizenship. A foreigner or a stateless person may be admitted to the Ukrainian citizenship at their request. The conditions for applying for Ukrainian citizenship are: (comma 1-4 omissis) 5) proficiency in the state language or its understanding to an extent sufficient for communication. This condition does not apply to individuals with certain physical disabilities (blind, deaf, mute); (comma 6 omissis)

Стаття 9. Прийняття до громадянства України. Іноземець або особа без громадянства можуть бути за їх клопотаннями прийняті до громадянства України. Умовами прийняття до громадянства України є: (comma 1-4 omissis) 5) володіння державною мовою або її розуміння в обсязі, достатньому для спілкування. Ця умова не поширюється на осіб, які мають певні фізичні вади (сліпі, глухі, німі); (comma 6 omissis)

Finally, in 2012 was adopted the Law on the Fundamentals of Prevention and Counteraction to Discrimination in Ukraine. The Law prohibits discrimination on various grounds, among which ethnic origin, and was indeed part of the 2010-2012 Action Plan to Combat Xenophobia and Racial and Ethnic Discrimination in the Ukrainian society. The text was amended in May 2014, as specified by the Advisory Committee, in order "to be brought into compliance with international law".[525] The further commitment of Ukraine to strengthen the respect of the principle of non-discrimination, particularly with particular reference to persons belonging to minorities, is one of the main pillars of the EU-Ukraine Association Agreement, a deal according to which Ukraine commits to converge its policies and legislation to those of the European Union, through a series of reforms in different aspects of society.

Here are other legislative acts containing provisions on minorities, which will not be analyzed in the course of this thesis, but which are at least worth citing: the 1991 Law "On Freedom of Conscience and Religious Organizations",[526] the 1994 'Law on Television and Radio Broadcasting', the 1996 Decree of the President "On publishing legislative acts of Ukraine", the 1997 Law "On Local Government in Ukraine",[527] the 2002 Law "On the Judicial System of Ukraine",[528] and the 2012 Law "On Public Associations".[529]

3.2 National legislation regulating language use and international resonance

Until 2012, the only law dedicated to linguistic issues in Ukraine was the 1989 Law on Languages in the Ukrainian SSR, which was precedent not only to the Constitution, but also the country's independence. It was only on 3 July 2012 that the

[525] Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Ukraine, adopted on 5 March 2018, Council of Europe, ACFC/OP/IV(2017)002, p. 13

[526] Закон України "Про свободу совісті та релігійні організації". Відомості Верховної Ради УРСР (ВВР), 1991, № 25, ст.283. Available at: https://zakon.rada.gov.ua/laws/show/987-12

[527] Закон України "Про місцеве самоврядування в Україні". Відомості Верховної Ради України (ВВР), 1997, № 24, ст.170. Available at: https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80#Text

[528] Закон України "Про судоустрій України". Відомості Верховної Ради України (ВВР), 2002, N 27-28, ст.180. Available at: https://zakon.rada.gov.ua/laws/show/3018-14#Text

[529] Закон України "Про громадські об'єднання". Відомості Верховної Ради України (ВВР), 2013, № 1, ст.1. Available at: https://zakon.rada.gov.ua/laws/show/4572-17#Text

extremely outdated legislative framework of Ukraine was updated with the promulgation, by President Viktor Yanukovych, of the Law on the Principles of State Language Policy.

In the meantime, since Ukraine acceded to the Council of Europe in 1995, the State was called to adopt the major international conventions in the field of minority protection. If, in 1997, the ratification of the European Convention on Human Rights and the Framework Convention for the Protection of National Minorities took place quite smoothly, the ratification of the European Charter for Regional and Minority Languages encountered many difficulties and 13 years passed before it took place.

In conjunction with the events of Euromaidan, in 2014, following a national turmoil, the 2012 Law on State Language Policy was formally amended by the Law on the Development and Use of Languages in Ukraine, or so-called Kravchuk's draft: due to several reasons, in late 2010s there was a widespread uncertainty among Ukrainian citizens on which of the two laws was still in effect.

Finally, in 2019 was introduced the Law on Ensuring the Functioning of Ukrainian as the State Language, which is currently the most updated legislative act concerning languages in Ukraine.

3.2.1 Law on Languages in the Ukrainian SSR (1989)

As we said in the previous chapter, after obtaining independence, Ukraine pursued a liberal policy, under which Ukrainian was proclaimed the only official language, but Russian was granted a privileged role with respect to other minority languages. Two years before actually becoming 'Ukraine', the Ukrainian SSR adopted the so-called Law on Languages in the Ukrainian SSR.[530]

The 1989 Law is interesting for the purposes of our analysis because, although it dates back 7 years before the introduction of the Ukrainian Fundamental Law, both the two remained in force until 2012, and, especially in comparison with the Constitution, the Law presents several unclear or contradictory passages.

[530] Закон Української Радянської Соціалістичної Республіки "Про мови в Українській РСР". Відомості Верховної Ради УРСР (ВВР), 1989, Додаток до N 45, ст.631. Available at: https://zakon.rada.gov.ua/laws/show/8312-11#Text

Starting from the preamble to the law,[531] we encounter several deadlocks. The first issue emerges in the first paragraph, which recognizes the vital and social value of "all national languages". Bill Bowring notes how this expression is particularly ambiguous: it is not clear if the 'national' has to be understood as 'ethnic', meaning 'all the languages actually spoken on the territory of Ukraine', or if 'national' has to be understood as 'state'. In this case the meaning expressed would be significantly different.[532]

Continuing the analysis of the preamble, the second paragraph of the 1989 Law defines the Ukrainian language as "one of the important factors of the national originality of the Ukrainian people". On the one hand, Bowring notes how the expression is quite unusual for a legal text, while on the other hand he compares the text with that of the basic law of Ukraine. The author stresses that, if the Constitution is addressed to "the Ukrainian people — citizens of Ukraine of all nationalities, the

[531] The Ukrainian SSR recognizes the life and social value of all national languages and unconditionally guarantees its citizens national, cultural and linguistic rights, based on the fact that only the free development and equality of national languages, High language culture is the basis of spiritual mutual understanding, cultural enrichment and strengthening of friendship of peoples.
The Ukrainian language is one of the important factors of the national originality of the Ukrainian people.
The Ukrainian SSR provides the Ukrainian language with the status of the state language in order to promote the comprehensive development of the spiritual and creative forces of the Ukrainian people, ensuring their sovereign national and state future.
It is the duty of state, party, public bodies and mass media of the Republic to educate citizens, regardless of their nationality, to understand the social purpose of the Ukrainian language as the state language in the Ukrainian SSR, and the Russian language as the language of interethnic communication of the peoples of the USSR. The choice of the language of interpersonal communication of citizens of the Ukrainian SSR is an inalienable right of the citizens themselves.

Українська РСР визнає життєдайність та суспільну цінність усіх національних мов і беззастережно гарантує своїм громадянам національно-культурні та мовні права, виходячи з того, що тільки вільний розвиток і рівноправність національних мов, висока мовна культура є основою духовного взаєморозуміння, культурного взаємозбагачення та зміцнення дружби народів.
Українська мова є одним з вирішальних чинників національної самобутності українського народу.
Українська РСР забезпечує українській мові статус державної з метою сприяння всебічному розвиткові духовних творчих сил українського народу, гарантування його суверенної національно-державної майбутності.
Виховувати у громадян, незалежно від їхньої національної належності, розуміння соціального призначення української мови як державної в Українській РСР, а російської мови як мови міжнаціонального спілкування народів Союзу РСР - обов'язок державних, партійних, громадських органів та засобів масової інформації республіки. Вибір мови міжособового спілкування громадян Української РСР є невід'ємним правом самих громадян.
[532] Bowring, B., Language policy in Ukraine, op. cit., pp. 17-18

soviet law "refers only to a part of the 'Ukrainian people'," excluding those who speak other languages.

The third paragraph is neither in conformity with the Constitution according to Bowring: the Ukrainian language alone is entrusted with the task of ensuring "the complete development of the creative spiritual forces of the Ukrainian people", which means that the Law does not recognize the multiethnic character of the Country instead expressed by the Constitution.

The preamble also refers to the Russian language, investing it in the role of "language of interethnic communication of the peoples of the Union of Soviet Socialist Republics among citizens". Even though Russian is not considered on the same level as Ukrainian, it is noteworthy the fact that it is explicitly mentioned and is also given a certain "social value".

Since the status given to Russian by the law of 1989 is different from that expressed in the Law of Ratification of the European Charter for Regional or Minority languages, the Committee of Experts on the Charter expressed its own opinion on the Russian language in Ukrainian society. As we shall see, the Law on the Ratification of the Charter provides for the application of the provisions to 13 minorities, including Russian. The Committee, however, stressed that Russian cannot be considered as a minority language "in the same position as other regional or minority languages", since many national minorities and part of (ethnic) Ukrainians consider it as their mother tongue. In addition, while admitting that the status of a language is not part of the competencies of the Charter, but "a matter of internal policy", the Committee concluded that "given the number of Russian speakers in Ukraine, it is clear that the Russian language must be accorded a special position".[533]

Proceeding with the analysis of the law, Articles 1 and 2 are substantially in line with international standards: the first addresses "Ukrainian and other languages used by the population of the Republic",[534] thus avoiding references to the concepts of

[533] Report of the Committee of Experts on the Charter in European Charter for Regional or Minority Languages, Application of the Charter in Ukraine, ECRML (2010) 6, Strasbourg, 7 July 2010, para. 61. Available at: https://www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/UkraineECRML1_en.pdf

[534] Article 1. Tasks of legislation on languages in the Ukrainian SSR. The legislation of the Ukrainian SSR on languages has the task of regulating public relations in the sphere of comprehensive development and use of Ukrainian and other languages used by the population of the Republic, […]. (omissis)

nationality or mother tongue, while the second, proclaiming Ukrainian as the state language,[535] expresses the proper right of the country, under international law, to decide on its state language.[536]

Article 3 and 5 have been at the center of various discussions among international authorities regarding the criteria expressed. Article 5 provides that, in dealing with official bodies, citizens may use any language, be it Ukrainian, Russian or another language, as long as it is acceptable for the parties.[537] Article 3, instead, provides that national languages may be used in official bodies in areas where the majority of the population is composed of a certain nationality other than Ukrainian. Otherwise, the language used should be Ukrainian.[538] The Advisory Committee on the

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Стаття 1. Завдання законодавства про мови в Українській РСР. Законодавство Української РСР про мови має своїм завданням регулювання суспільних відносин у сфері всебічного розвитку і вживання української та інших мов, якими користується населення республіки, […]. (omissis)

[535] Article 2. State language of the Ukrainian SSR. According to the Constitution of the Ukrainian SSR (888-09), the state language is Ukrainian. (omissis)

Стаття 2. Державна мова Української РСР Відповідно до Конституції Української РСР (888-09) державною мовою Української Радянської Соціалістичної Республіки є українська мова. (omissis)

[536] Bowring, B., op. cit., p. 18

[537] Article 5. Right of citizens to use any language. Citizens of the Ukrainian SSR are guaranteed the right to use their national language or any other language.
A citizen has the right to apply to state, party, public bodies, enterprises, institutions and organizations in Ukrainian or any other language of their work, Russian or the language accepted for the parties. (omissis)

Стаття 5. Право громадян користуватися будь-якою мовою. Громадянам Української РСР гарантується право користуватися своєю національною мовою або будь-якою іншою мовою.
Громадянин вправі звертатися до державних, партійних, громадських органів, підприємств, установ і організацій українською чи іншою мовою їх роботи, російською мовою або мовою, прийнятною для сторін. (omissis)

[538] Article 3. Languages of other nationalities in the Ukrainian SSR. The Ukrainian SSR creates the necessary conditions for the development and use of other languages nationalities in the Republic.
In the work of state, party, public bodies, enterprises, institutions and organizations, located in the places of residence of most citizens of other nationalities (cities, districts, village and settlement councils, rural localities, their totality), can use along with Ukrainian and their national languages.
In the case when citizens of another nationality who make up the majority of the population these administrative-territorial units and localities that do not have the following rights: in the national language or when several nationalities live compactly within these administrative-territorial units or localities, none of which make up the majority of the population of this area, in the work of these bodies and organizations can use the Ukrainian language or the language accepted for everything population.

Стаття 3. Мови інших національностей в Українській РСР Українська РСР створює необхідні умови для розвитку і використання мов інших національностей в республіці.

Framework Convention, both in its First and Second Opinions on Ukraine,[539] observed that "the legal proportion", required in order to exercise the right to use a minority language before the administrative authorities, was too high, and that authorities were left with a too wide margin of discretion. Consequently, the Advisory Committee recommended Ukraine, on the one hand, to decrease the threshold currently in place in relation with Article 3, while, on the other, to introduce "more objective criteria to trigger the right to use a minority language in relations with administrative authorities".[540]

Another criticism of Article 3 is also pointed out by Bowring, who affirms that the formulation of the article seems to presume the existence in the country of nations distinct on ethnic basis, each of which has its own language. This, affirms the author, would be in contradiction not only with the Ukrainian Constitution, but also with the international commitments of the country, since international conventions usually provide that belonging to a minority is a matter of individual choice and not an "ethno-political decision".[541]

Article 8, entitled 'Protection of Languages', expresses the principle of non-discrimination on the basis of language.[542] If we compare the content with that of

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В роботі державних, партійних, громадських органів, підприємств, установ і організацій, розташованих у місцях проживання більшості громадян інших національностей (міста, райони, сільські і селищні Ради, сільські населені пункти, їх сукупність), можуть використовуватись поряд з українською і їхні національні мови.

У разі, коли громадяни іншої національності, що становлять більшість населення зазначених адміністративно-територіальних одиниць, населених пунктів, не володіють в належному обсязі національною мовою або коли в межах цих адміністративно-територіальних одиниць, населених пунктів компактно проживає кілька національностей, жодна з яких не становить більшості населення даної місцевості, в роботі названих органів і організацій може використовуватись українська мова або мова, прийнятна для всього населення.

[539] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Ukraine, adopted on 1 March 2002, Council of Europe, ACFC/INF/OP/I(2002)010, para. 51

Cfr. Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Ukraine, adopted on 30 May 2008, Council of Europe, ACFC/OP/II(2008)004, para. 153-4

[540] Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Ukraine, adopted on 30 May 2008, Council of Europe, ACFC/OP/II(2008)004, para. 155

[541] Bowring, B., op. cit., p. 18

[542] Article 8. Protection of languages. Any privileges or limitations on a person's rights based on language and language discrimination are not allowed. (omissis)

Стаття 8. Захист мов. Будь-які привілеї чи обмеження прав особи за мовною ознакою, мовна дискримінація неприпустимі. (omissis)

Article 24 of the Constitution, we can see that the two are extremely similar. Indeed, both present the terminological problem we discussed earlier, according to which prohibiting 'privileges' on a linguistic basis could be an obstacle to the implementation of policies in favor of minorities.

In Article 10, we can note again how a certain implied hierarchy emerges with regard to the languages spoken in the country. In fact, as we pointed out in the previous paragraph with regards to the Constitution,[543] Russian seems to be given greater prominence, although not being considered on the same level as Ukrainian. Article 10 provides, indeed, that the acts of state, party, public bodies, enterprises, institutions and organizations must be "adopted" in Ukrainian and “published” in Ukrainian and Russian, while the publication in other national languages shall take place (only) when necessary.[544]

A final set of articles worth mentioning for our analysis is contained in the chapter on 'Language of Education, Science, Computing and Culture'. Article 25, opening the chapter, is particularly relevant because it establishes “the free choice of the language of instruction” as “an inalienable right of citizens of the Ukrainian SSR”.[545] In addition, the article ensures that every child has “the right to education and getting an education in the national language”. The following articles serve to further explain this right: Article 27, for example, provides the establishment of secondary schools “in places of compact residence of citizens of other nationalities” offering an

[543] *Infra* 3.1.1

[544] Article 10. Language of acts of state authorities and administration. Acts of the highest bodies of state power and administration. The Ukrainian SSR is accepted in Ukrainian and published in Ukrainian and Russian […] and if necessary - they are also published in another national language. (omissis)

Стаття 10. Мова актів органів державної влади та управління. Акти найвищих органів державної влади та управління. Української РСР приймаються українською мовою і публікуються українською і російською мовами […] а в разі необхідності - публікуються і іншою національною мовою. (omissis)

[545] Article 25. Language of education and receiving education. The free choice of the language of instruction is an inalienable right of citizens of the Ukrainian SSR. The Ukrainian SSR guarantees every child the right to education and receive education in the national language. This right is ensured by the creation of a network of pre-school institutions and schools with education and training in Ukrainian and other national languages.

Стаття 25. Мова виховання та одержання освіти. Вільний вибір мови навчання є невід'ємним правом громадян Української РСР. Українська РСР гарантує кожній дитині право на виховання і одержання освіти національною мовою. Це право забезпечується створенням мережі дошкільних установ та шкіл з вихованням і навчанням українською та іншими національними мовами.

education “in their national or another language”. Furthermore, the study of Ukrainian and Russian is declared compulsory in all schools of general education.[546]

With regard to the establishment of schools dedicated to minorities, the Committee of Experts of the ECRML expressed its own opinion, stressing that the criterion according to which classes or schools for minority languages should be established should not be the ethnic composition of a region, but instead a “sufficient demand”.[547]

Overall, the interpretation given by Volodymyr Kulyk was that the ambiguities and contradictions contained in the Law were the result of Soviet policy: Russian was promoted in official institutions and as the vehicular language of communication, while Ukrainian was provided with legitimacy; moreover, proclaiming it state language constituted a “nation-state program”.[548] Bowring observes that this relationship between a nation-building based on Ukrainian language and a widespread presence of Russian represented the basis for what Kulyk defined as “highly contradictory ideological messages”, which “discouraged the perception of ethnolinguistic matters in terms of human rights and adherence to the law”.[549] Of a totally different opinion – says Bowring - is instead Volodymyr Vassilenko, one of the authors of the Law, who affirms that “the status of the state language is part of the constitutional order, designed to preserve the rights of the Ukrainian nation” and that “Russian cannot be

[546] Article 27. Language of instruction and upbringing in general education schools. (comma 1 omissis)
In places of compact residence of citizens of other nationalities, general education schools can be established, where educational work is conducted in their national or other language. (comma 3-4 omissis)
Studying Ukrainian and Russian languages in all general education schools is mandatory. (omissis)

Стаття 27. Мова навчання і виховання в загальноосвітніх школах. (comma 1 omissis)
У місцях компактного проживання громадян інших національностей можуть створюватись загальноосвітні школи, навчальна і виховна робота в яких ведеться їхньою національною або іншою мовою. (comma 3-4 omissis)
Вивчення в усіх загальноосвітніх школах української і російської мов є обов'язковим. (omissis)

[547] Committee of Experts on the Charter in European Charter for Regional or Minority Languages, Report on the Application of the Charter in Ukraine, ECRML (2010) 6, Strasbourg, 7 July 2010, para. 153

[548] Kulyk, V., Constructing common sense: Language and ethnicity in Ukrainian public discourse, Ethnic and racial studies. Vol. 29, No. 2, p. 295. Cited in Bowring, B., Language policy in Ukraine, op. cit., p. 20

[549] Bowring, Language policy in Ukraine, op. cit., p. 16

given any status other than the language of a national minority",[550] otherwise Ukraine might collapse as a nation.

This debate is one of the many examples showing us that there are deep divisions between experts concerning the nature and purpose of legislation in Ukraine.

3.2.2 Law on Ratification of the European Charter for Regional and Minority Languages (2003)

Having joined the Council of Europe in 1996, Ukraine was soon required to ratify its main conventions. This was the case with the FCNM, ratified on 9 December 1997 and entered into force on 1 May 1998, but also with the European Charter of regional or minority languages. The latter was eventually ratified, but the path was not short and simple.

On 24 December 1999 took place the first attempt of ratification of the Charter. However, the rise of a strong political debate in the country led the Constitutional Court to repeal the ratification law on 12 July 2000.

Indeed, only 10 days before the ratification of the Charter, the Constitutional Court had delivered its official interpretation of Article 10 of the Constitution, but the two versions, expressed respectively by Article 10 and the Charter, were considered incompatible. If the former provided that Ukrainian is the sole state language of Ukraine, the latter "provided, in effect, for the regional status of Russian on nearly half of Ukraine's territory".[551] The ratification stipulated that, in regions with at least 20% of the minority population, their languages would be granted "regional status".

If the Russian community was satisfied with this formulation and pressed for the ratification of the Law, it was instead hindered by several deputies and the President himself, who turned to the Constitutional Court to block it. On 12 July 2000, the court declared the provision unconstitutional, and so was consequently the Law ratifying the Charter.[552]

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[550] Interview with the author conducted by Bowring, Kyiv, 26 February 2008. Cited in Bowring, Language policy in Ukraine, op. cit., p. 17

[551] Kulyk, V., 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, C. Neukirch (eds), Comparative Case Studies on the Effectiveness of the OSCEHigh Commissioner on National Minorities, Hamburg: CORE (CORE Working PaperNo. 6), 2002, p. 112. Cited in Bowring, B., Antonovych, M., Ukraine's long and winding road to the European charter for regional or minority languages, 2008, p. 170

[552] Rishennia Konstytutsiinoho Sudu Ukrainy, 12 July 2000. Cited in Bowring, B., Antonovych, M., op. cit., p. 170

The final adoption of the ECRML took place only in 2006, after the country made its second attempt to ratify the Charter on 15 May 2003. The 2003 Law of ratification applied the provision of the Charter to 13 minorities in the country (Belarusian, Bulgarian, Gagauz, Greek, Jewish, Crimean Tatar, Moldovan, German, Polish, Russian, Romanian, Slovak and Hungarian), but did not specify a threshold for its application. As we mentioned in the previous paragraph, in its first report of July 2010, the Committee of Experts on the application of the Charter, made specific reference to the situation of the Russian language, but also admonished Ukraine for excluding several languages from the ratification instrument (Armenian, Czech, Karaim, Krimchak, Romani, Ruthenian and Tatar), inviting Ukrainian authorities to clarify whether these should be considered in accordance with Article 1 of the Charter.[553]

The instrument of ratification was deposited in Strasbourg on 19 September 2005 and the ECRML entered into force on 1 January 2006.

One of the major reasons why the ratification of the Law took so long was due to a general fear that the Charter would somehow advantage minority languages, first and foremost Russian, at the expense of Ukrainian.[554] This could not happen in any case, because the primary purpose of the Charter is “the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction”.[555] Russian certainly cannot be considered on the verge of extinction, as it is a language widely spoken throughout the post-Soviet space: this should therefore have excluded it from the protections of the Charter. However, the object and purpose of the Charter were subject to an “erroneous understanding”, which, according to the official conclusions of the Minister of Justice, was attributable to an incorrect translation of the document. The term 'minority language' was confused with 'language of the minority', therefore, although the Charter was aimed at protecting and supporting regional or minoritarian languages, and not minorities,[556] Russian ended up falling under the provisions of the Charter.

[553] Report of the Committee of Experts on the Charter in European Charter for Regional or Minority Languages, Application of the Charter in Ukraine, ECRML (2010) 6, Strasbourg, 7 July 2010, pp. 11; 97

[554] Bowring, B., Antonovych, M., op. cit., p. 172-3

[555] Totskyj, B. A., Regional and Minority Languages in the Ukrainian Legislation, op.cit., cit.

[556] Tishchenko, Y., Origins of the "language sovereignty" in the plane of regional policy, Glavred, 16 May 2006. Cited in Totskyj, B. A., Regional and Minority Languages in the Ukrainian Legislation, op.cit., cit.

This led to a situation where the entire implementation of the Charter was far from what it should have been. In its first report published in July 2010, the Committee of Experts on the application of the Charter invited Ukrainian authorities to make a new translation,[557] but this never happened.

3.2.3 Law on the Principles of the State Language Policy (2012) and Kravchuk's Law (2012/14)

As we mentioned at the beginning of this paragraph, the legislative framework of Ukraine with regards to linguistic issues has been updated only in 2012, with the introduction, by President Viktor Yanukovych, of the Law on the Principles of State Language Policy. Over time, the laws of 1989 and 1992 were considered more and more inadequate to the situation in the country: years were passing without the introduction of any new legislation to regulate language issues and the frequent clashes of political forces contributed to further delay the process. This situation prompted international observers to intervene: in its second Opinion of 2008, the Advisory Committee on the FCNM lamented the fact that the situation had remained substantially unchanged with respect to 2002, when the Committee first expressed concern about Ukraine's outdated legislative system.[558] The same conclusion was also reached in the Third Opinion of 2012, where the Committee stated that no progress had been made on "the adoption of a comprehensive legal framework pertaining to minority rights", on either "the adoption of comprehensive anti-discrimination legislation", or that "of a consistent and up-to-date legislative framework for the use of languages in Ukraine".[559]

A similar opinion was also expressed by the Committee of Experts on the ECRML in its report of 2010, where was stated that "the lack of clarity in the inter-relation" between the two co-existing laws, meaning the Constitution of 1996 and the 1989 Law on Languages, was causing "legal uncertainty". The Committee of Experts

[557] Committee of Experts on the Charter in European Charter for Regional or Minority Languages, Report on the Application of the Charter in Ukraine, ECRML (2010) 6, Strasbourg, 7 July 2010, cit.

[558] Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Ukraine, adopted on 30 May 2008, Council of Europe, ACFC/OP/II(2008)004, para. 109

[559] Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on Ukraine, adopted on 22 March 2012, Council of Europe, ACFC/OP/III(2012)002, para. 11, 15, 19

supported the remarks made by the Advisory Committee and invited "Ukrainian authorities to step up their efforts to enact a new legislation on languages".[560]

In the face of all the various pressures from the European Union, in 2012, Ukraine introduced the Law on the Principles of State Language Policy, which, despite a series of turbulences, remained in force until 2019, year in which was promulgated the Law on Ensuring the Functioning of Ukrainian as the State Language.

Composed of the preamble and 11 sections, this law is essentially identical to that of 1989, however it has the peculiarity of being particularly suited to expand the use of the Russian language, and it was not by chance strongly wanted by the Party of the Regions.[561] [562] The text of the Law drew from the ECRML regarding the use of the expression "regional or minority language" in reference to Russian, which conferred it a semi-official status in the majority of Ukrainian regions. However, while drawing from the ECRML, the 2012 law was far from the objectives of the Charter, since multilingualism was not respected and the position of Ukrainian as a state language was threatened: rather than promoting bilingualism, the law stimulated what Bohdan Azhniuk calls a 'polarized bilingualism', where not encouraging the use of Ukrainian meant decreasing Russian-Ukrainian bilingualism in favor of Russian monolingualism.[563]

Furthermore, only Russian fell in the category of 'regional and minority language': it was the only language explicitly mentioned in the text, although there were plenty of languages that could possibly enjoy the benefits of this law.[564] This is what the European Commission for Democracy through Law tried to work on the most in 2011, when it analyzed the draft of the Law.[565] In the final text of the Law, despite –

[560] Committee of Experts on the Charter in European Charter for Regional or Minority Languages, Report on the Application of the Charter in Ukraine, ECRML (2010) 6, Strasbourg, 7 July 2010, para. 74,75

[561] The pro-Russia political party 'Party of Regions', of which was prominent member former President Viktor Yanukovych, was particularly popular between 2006 and 2014. However, after the events of Euromaidan, the party lost momentum and has not competed anymore in the elections until 2020, when it was de facto dissolved.

[562] Azhniuk, H., Ukrainian Language Legislation and the National Crisis, Harvard Ukrainian Studies, 2017-2018, Vol. 35, No. 1/4, The Battle for Ukrainian: a Comparative Perspective (2017-2018), p. 311

[563] Ivi, p. 312

[564] Ibid.

[565] European Commission for Democracy through Law (Venice Commission), Opinion on the draft law on principles of the state language policy of Ukraine, Opinion no.651/2011 (CDL-AD(2011)047), Venice 16-17 December 2011, Council of Europe

with a few exceptions - Russian was still the only language explicitly mentioned, the purpose of the Venice Commission was to extend the protection of the law to the other minority languages, without compromising on Russian. As explained by the Venice Commission in its Opinion, the purpose of the amendments was not to ensure that Russian was going to be "used in fewer situations than it would have been the case according to the previous draft", but that "persons belonging to other minorities will also enjoy the same equal protection".[566]

The year 2013 was marked by the events of Euromaidan, the protests concerning the future of Ukraine based on closer ties either with the European Union or Russia. The protests started peacefully, which gave the manifestation the name of 'Revolution of Dignity', but in late November clashes with the police escalated to violence. On 22 February 2014, President Yanukovich was forced to flee the country and the day after, only two years after its adoption, the Law on State Language Policy was repealed by the Verkhovna Rada.[567]

This act gave impetus to a series of civil protests in the regions where Russian was dominant, because many interpreted it as an attempt to strip Russian of the newly acquired benefits.[568] Russia declared to be willing to protect Russian-speaking people in Ukraine against the country's nationalism and its troops started to be deployed in the Autonomous Republic of Crimea.[569]

Considering the situation, President ad interim Oleksandr Turchynov decided, first of all, not to confirm the repeal of the Law of 2012, which thus remained in force,[570] but decided also to set up a Temporary Special Commission, composed by members of the Parliament, academics and activists, entrusted with the task of drafting a new language act.[571]

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[566] Ivi, para. 40

[567] Csernicskó, I. And Fedinec, C., Four Language Laws of Ukraine, International Journal on Minority and Group rights 23, 2016, pp. 560-582, p. 564

[568] To What Extent was the Current Crisis in Ukraine Influenced by the Repeal of the Regional Language Bill?. Online article available at: http://www.quora.com/To-what-extent-was-the-current-crisis-in-Ukraine-influenced-by-the-repeal-of-the-regional-language-bill. Cited in Azhniuk, H., op. cit., p. 317

[569] Csernicskó, I., Fedinec, C., op. cit., p. 565

[570] Ibid.

[571] Azhniuk, H., op. cit., p. 316

Out of the four draft laws that were presented, on April 11th was chosen the one prepared by Leonid Kravchuk's working group.[572] According to the academic Mykola Zhulynskyi, who worked on its drafting, the bill prepared in 2012 "was going to reestablish the leading role of the Ukrainian language, retaining, however, a special status for regional or minority languages on the local".[573]

Now called 'On the Protocol for Language Use in Ukraine', the new Law stated the importance of developing and promoting the use of Ukrainian as the state language (Article 3) and affirmed the need to protect Ukrainian in those parts of the territory where its use was scarce (Article 4). Concerning education, it was established that, in areas where a certain regional and minority language was in use, schooling in Ukrainian was guaranteed along with the possibility to study the local language correspondingly (Article 17.1).

However, it is important to recall that the new draft law was not exempt from generating controversies. For instance, and this was the most critical issue, the threshold for a certain language to be considered as regional was raised from 10 to 30% with respect to previous provisions. In this way, the possibility for non-Russian minorities to receive support was drastically reduced.[574]

Among the members of the Temporary Special Commission was voted in favor of Kravchuk's draft so that it would have become the basis for a future law on languages. Nevertheless, due to various reasons such as the failure to achieve a quorum, several amendments to the draft did not pass. Furthermore, decisions concerning the repeal of the Law on State Language Policy were postponed until a later date.

In 2014, Ukrainian authorities confirmed that the Law of 2012 was still in force, but the general lack of clarity led to a situation in which many Ukrainians did not know exactly if and which law was in effect.[575]

The Kivalov-Kolesnichenko Law, another way to call the Law of 2012, was officially declared unconstitutional in February 2018.

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[572] Kravchuk had been Ukraine's first president and was head of the Constitutional Assembly at that time.

[573] Zhulynskyi, M., Nova redaktsiia movnoho zakonu riatuie sytuatsiuu, Ukraina moloda, 14 September 2012. Cited in Azhniuk, H., op. cit., p. 320

[574] Azhniuk, H., op. cit., p. 320

[575] Ivi, p. 322-323

3.2.4 Law on Ensuring the Functioning of Ukrainian as the State Language (2019)

To substitute the Law of 2012 as the legal foundation of the Ukrainian State language policy, in October 2018 was approved the Law on Ensuring the Functioning of Ukrainian as the State Language. Since then, the text went through countless amendments and passed by the Verkhovna Rada only one year and a half later, on 25 April 2019,[576] to then enter into force on 16 July 2019.

As stated in its title, the Law regulates the use of Ukrainian, proclaimed once again the only state language (Article 1), under different aspects, among which are education, print media, publishing, advertisement and services.[577] The aim of the Law is to "strengthen the state-building and consolidating functions of the Ukrainian language", and through it ensure "the territorial integrity and national security of Ukraine".[578] Article 1 establishes that Ukrainian is the mandatory language in state bodies and local self-government bodies, as well as the language of interethnic communication. This is said to be in order to guarantee "human rights protection for each Ukrainian citizen irrespective of its ethnic origin" and "the unity and national security of Ukraine".

Article 6 requires every citizen of the country to be proficient in the Ukrainian language and the State has the main role in ensuring the fulfillment of this provision, so that every citizen has the opportunity to learn Ukrainian, either in the school system, or through training programs.[579] In the original text of the law, these provisions were

[576] Закон України "Про забезпечення функціонування української мови як державної". Відомості Верховної Ради (ВВР), 2019, № 21, ст.81. Available at: https://zakon.rada.gov.ua/laws/show/2704-19#Text

[577] It does not apply to the spheres of private communication and religious rites (Article 2.2)

[578] Preamble

[579] Article 6. Obligation of a citizen of Ukraine to speak the state language. 1. Every citizen of Ukraine is obliged to speak the state language. 2. The state provides every citizen of Ukraine with opportunities to master the state language through a system of preschool, full general secondary, extracurricular, vocational (vocational), professional higher, higher education, adult education, as well as through support of non-formal and informal education aimed at study of the state language. 3. The state organizes free Ukrainian language courses for adults and provides the opportunity to freely master the state language to citizens of Ukraine who have not had such an opportunity.

Стаття 6. Обов'язок громадянина України володіти державною мовою. 1. Кожний громадянин України зобов'язаний володіти державною мовою. 2. Держава забезпечує кожному громадянинові України можливості для опанування державної мови через систему закладів дошкільної, повної загальної середньої, позашкільної, професійної (професійно-технічної), фахової передвищої, вищої освіти, освіти

not supported by effective measures: it was only following the recommendations of the UN Human Rights Monitoring Mission in Ukraine that concrete mechanisms were made explicit in the final text.

In July 2021 will enter into force the provision concerning naturalization, according to which, with a few exemptions, who applies for citizenship will have to prove a good level of proficiency in Ukrainian (Article 7).[580] Until that date, only a sufficient level of communication is required.

The Law establishes that the language in which official duties are performed is Ukrainian and specifies all the positions where persons are obliged to speak and use the state language (Article 9).

The Autonomous Republic of Crimea is also required to comply with the obligations of the Law, so for example it is stated that Ukrainian is used for the work of official bodies and events (Article 12), as well as legal documents (Article 13).

Concerning the educational sphere, the Law establishes that Ukrainian is the language of instruction, but that minorities have the right to study also in their respective native language (Article 21). Ukrainian is also the language, for example, of science (Article 22) and culture (Article 23).

In order to enforce the provisions, Ukraine set up the National Commission on State Language Standards, authorized, among others, to establish the standards and the methods to check the level of proficiency in Ukrainian (Article 43). Along with this body, was also introduced the figure of the Commissioner for the Protection of the State Language, whose task is to promote and protect the functioning of Ukrainian in all spheres of public life (Article 49).

In relation with the Law on Ensuring the Functioning of Ukrainian as the State Language, in a statement of August 2020, the UN Human Rights Monitoring Mission in Ukraine declared: “during the process (that led to the adoption of the Law *ndr*), we shared our concerns and recommendations with the Parliament on how to bring the law in line with international human rights standards”, and added that “many of these were addressed in the final version of the law”. However, the UN affirmed that, despite

дорослих, а також через підтримку неформальної та інформальної освіти, спрямованої на вивчення державної мови. 3. Держава організовує безкоштовні курси української мови для дорослих та забезпечує можливість вільно опанувати державну мову громадянам України, які не мали такої змоги.

[580] See Section IX, Final and Transitional Provisions, paragraph 1.

some positive steps ahead, the Law was still raising several human rights concerns. The UN admonished Ukraine, saying that due to an outdated legislation on minorities, their rights were exposed to the risk of being jeopardized. Indeed, the statement explained how "the law regulates the use of Ukrainian as the sole State language in many spheres of public life, but does not regulate the use of minority languages".

For these reasons, the UN called on Ukrainian authorities "to elaborate a law on the realization of the rights of national minorities and indigenous people without undue delay", always in closer consultation groups involved, meaning representatives of national minorities and indigenous people.[581]

3.3 Minorities and education

3.3.1 Ukrainian educational policy regarding minorities

After obtaining independence, affirms Jan Germen Janmaat, the priority of the newly established Ukrainian government, headed by President Kravchuk, was to promote a sense of nationhood that would have maximized the distinctiveness of Ukrainian vis-a-vis Russian.[582] This took place especially with regards to education. Newly appointed Minister of Education Talanchuk was unsatisfied with the level of instruction in Ukrainian and introduced several measures in order to achieve Ukrainization. For instance, among others, in order to discourage the institution of Russian schools, he established that local authorities were allowed to open special schools, such as lyceums and gymnasium, only in Ukrainian. Another provision regarded the fact that, according to the Minister, parents were encountering many difficulties when trying to make their children study in Ukrainian, because they were requested to send an official written application to the school. By order of Talanchuk, the rule was inverted: from that moment on, only parents wishing their children to study in other languages were requested to write a special letter of application. For the

[581] UN calls on Ukraine to develop law on rights of indigenous people, national minorities. Online article available at: https://www.unian.info/society/legislation-in-ukraine-un-calls-on-ukraine-to-develop-law-on-rights-of-indigenous-peoples-11101127.html

[582] Janmaat, J. G., Vickers, E., Education and identity formation in post-cold war Eastern Europe and Asia. Compare, Vol. 37, No. 3, 2007, p. 5. Cited in Zajda, J., Daun, H. & Saha, L. J., Nation-building, Identity and Citizenship Education: Cross-cultural Perspectives, Springer, 2009, p. 4

new government, Ukrainian schools had to become the norm, while schools in other languages had to be considered the exception, and not the other way around.[583] Furthermore, Russian literature stopped being taught as a subject and became part of the 'world literature'. Correspondingly, schools started also to be allowed to cease the teaching of Russian, but this provision was in contradiction with the 1989 Law on Languages in the Ukrainian SSR, since, as we mentioned, it established the teaching of Russian as a compulsory subject in all schools, alongside with Ukrainian.[584]

Kravchuk's successor was Leonid Kuchma. Even though Kuchma was Russian-speaking Ukrainian, who sought to establish closer relations with Russia, the 1994 newly elected President failed to meet the expectation of the Russian community, because the policy of Ukrainization of the Kravchuk's years was basically continued: as we have seen, for instance, how the Constitution of 1996 provides the status of official language to the solely Ukrainian language. Pål Kolstø tried to provide an explanation for this and affirmed that Kuchma and his entourage knew that Ukraine had to hold on to its newly achieved independence, but this is impossible "unless the country has a cultural identity distinct from that of Russia". Of course, explains Kolstø, the most obvious marker for a certain culture is language and this is why the new government pursued a policy to keep the two languages separated.[585]

During the times of the Orange revolution, Yushchenko's presidency was concentrated on extending the use of Ukrainian. Improving the situation with regards to instruction and teaching in minority languages was not in the plans of the President, who was instead satisfied with the increasing number of Ukrainian-taught schools. Between 2004 and 2010, much was done to extend the use of Ukrainian and improve its teaching, also in minority schools, with the long-term aim to achieve majority monolingualism through education.[586] The same policy involved higher education,

[583] Janmaat, J. G., Nation-Building in Post-Soviet Ukraine, Educational Policies and the Response of the Russian-Speaking Population, Royal Duch Geographical Society, Universiteit van Amsterdam, Netherlands Geographical Studies 268, Utrecht-Amsterdam 2000, p. 68

[584] *Infra* 3.1.2

[585] Cited in Janmaat, J. G., Nation-Building in Post-Soviet Ukraine, op. cit., p. 60

[586] Kollath, A., Ukrainian educational policy and the minorities, p. 15. In Szoták, S., Magyar nyelv és kultúra a Kárpát-medencében, UMIZ - Magyar Média és Információs Központ, Alsóőr Gramma Nyelvi Iroda, Dunaszerdahely Imre Samu Nyelvi Intézet, Alsóőr, 2011

indeed, in the draft Law on Higher Education of 2008, the only language that is mentioned for the education of this grade is Ukrainian.[587]

From 2010, there was a change of tide under President Yanukovych: the new government pursued a program of promoting Russian as a second state language. As we have seen, in 2012 was adopted the Law on State Language policy, which elevated the status of Russian, weakening the position of Ukrainian. This was indeed co-written by Vadym Kolesnichenko, member of Yanukovich's establishment. In the educational sphere, even though with scarce results, Minister Dmytro Tabachnyk was just as focused in trying to foster Russian language at the expense of Ukrainian. However, the general sentiment during Yanukovich' presidency was that his language policy was not serving the interests of Russophones in Ukraine, but rather that of the Kremlin.[588]

After a brief interlude with President Turchynov, in 2014 was elected Petr Poroshenko. This is the most important phase for our analysis, because it was during Poroshenko's mandate that the controversial Law on Education was introduced.

3.3.2 Article 7 of the 2017 Law on Education: the response of national minorities and the controversy over compliance with international law

Adopted on 5 September 2017 by the Verkhovna Rada, the Law on Education[589] soon became an extremely controversial issue, which had resonance not only among international bodies, such as the Venice Commission, but also among foreign states, who stepped up in defense of their correspondent minority in Ukraine.

As stated in the preamble, the Law on Education was aimed at regulating "social relations arising in the process of realization of the constitutional human right for education, rights and responsibilities of physical and legal persons participating in implementation of this right," and established "powers of the state authorities and bodies of local self-government in the area of education".[590] Among other provisions,

[587] Ivi, p. 18

[588] Moser, M., Language Policy and the Discourse on Languages in Ukraine under President Viktor Yanukovych (25 February 2010–28 October 2012), Stuttgart: ibidem-Verlag, 2013. Review by Kulyk, V., Ab Imperio, no. 3, 2013, pp. 485-489

[589] Закон України "Про освіту". Відомості Верховної Ради (ВВР), 2017, № 38-39, ст.380. Available at: https://zakon.rada.gov.ua/laws/show/2145-19#Text

[590] See p. 5

the Law established the right to receive high-quality and affordable education, accessible for everyone indistinctly (Article 3), and the right to tuition-free education (Article 4).

However, the Article that triggered the international controversy, was number 7, establishing that "the language of the educational process at institutions of education is the state language". In practical terms, the Article established that, from the year following the adoption of the law, children starting their educational path would have been able to study their native language only until the fifth grade, while from that class on, the number of Ukrainian-taught subject would have gradually increased, so that in the 11th grade almost all subjects would have been in Ukrainian.

Ukrainian authorities explained that this decision was taken to contrast the increasing number of graduates from minority schools who were failing to pass the Ukrainian language test, so that every Ukrainian citizen could enjoy equal opportunities.[591] However, already when the law was still being drafted, in its fourth Opinion on Ukraine adopted in 2017, the Advisory Committee had expressed its concerns about Article 7. The Committee observed how "the proposed changes do not seem to offer the same level of protection as the Constitutional provision and circumscribe teaching in national minority languages". Furthermore, most of the amendments proposed were considered to "further limit teaching of minority languages in Ukrainian schools".[592]

As anticipated, as soon as the law was adopted by the Ukrainian Parliament, foreign states expressed their contrariety to the law and tried to push for the text to be vetoed or at least amended.

In the name of around 150,000 Hungarians residing in the Ukrainian region of Transcarpathia, on 6th September, Hungary issued a press service where the new law was described as an "unprecedented violation of the rights of minorities". In its statement, the Hungarian government requested amendments to the Law "so that the rights of national minorities, including Hungarians, are not affected".[593] Also the

[591] Ukraine's new education law: why the process of legislation matters, DRI Legal News, Issue 2, by Dmytro Koval, 30 October 2017, cit. Online publication available at: https://democracy-reporting.org/ukraines-new-education-law-why-the-process-of-legislation-matters/

[592]Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Ukraine, adopted on 5 March 2018, Council of Europe, ACFC/OP/IV(2017)002, para. 25

[593] Ofitsijna ugorshchina vislovila rishuchij protest proti ukraïnskogo zakonu "Pro osvitu", 6 September 2017. Online article available in Ukrainian at: http://www.mukachevo.net/ua/news/view/240681

Hungarian Culture Society of Transcarpathia protested the provisions and appealed to Poroshenko not to sign "a law that threatens the existence of national minorities".[594] In commenting on the Law on Education, the director of the Transcarpathian Hungarian College of Higher Education Ferenc Rakoczi II, Ildyka Oros, affirmed that "the darkest Stalinist times have returned to Ukraine".[595] Minister of Foreign Affairs Peter Szijjarto declared that "Ukraine stabbed Hungary in the back"[596] and signing the law would have represented "a shame and a disgrace" for Poroshenko.[597]

Protests came also from the Ministry of Foreign Affairs of Romania, whose diaspora in Ukraine was estimated to be around 400,000. In a statement issued a few days after the adoption of the Law, the Ministry expressed all its concern for the linguistic policy of Ukraine and recalled how, according to Framework Convention, people belonging to national minorities have the right to study in their native language.[598]

Russia and Moldova condemned the law, while the Foreign Ministers of Bulgaria and Greece united with their Hungarian and Romanian counterparts in the protests and tried to make their voice heard by sending a letter to the Council of Europe and the OSCE.[599]

The Ministry of Foreign Affairs of Ukraine, Pavlo Klimkin, rejected the accusations, affirming that not only the Law "strengthens the rights of national minorities", but also that knowing Ukrainian "will significantly expand the career opportunities of representatives of nationalities".[600] Poroshenko supported the law as well, affirming that provisions were aimed at strengthening the role of Ukrainian, while

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[594] Zakarpatski ugortsi prosjat Poroshjenka ne pidpisuvati zakon pro osvitu, 6 September 2017. Online article available in Ukrainian at: http://www.mukachevo.net/ua/news/view/240677

[595] "Povernennjam chasiv Stalina" nazvala zakon pro osvitu rektor ugorskogo vishu na Zakarpatti, 7 September 2017. Online article available in Ukrainian at: http://www.mukachevo.net/ua/news/view/240694

[596] "Nizh u spinu": Ugorshchina rozkritikuvala ukraïnskij zakon pro osvitu, 8 March 2017. Online article available in Ukrainian at: https://www.eurointegration.com.ua/news/2017/09/8/7070668/

[597] Ukraine's president signs controversial education law, 26 September 2017. Online article available at: https://apnews.com/article/8de699d3efde4297a1db9bec5ef124e5

[598] Romania, Concerned over New Ukrainian Education Law, 8 September 2017. Online article available at: https://www.romania-insider.com/romania-ukrainian-education-law-september-2017/

[599] Hungary, Romania, Greece, Bulgaria to complain to OSCE about Ukrainian education law, 15 September 2017. Online article available at: https://en.interfax.com.ua/news/general/448662.html

[600] Klimkin pro Zakarpattja ta ugorsku gromadu: «Jakshcho volodinnja derzhavnoju movoju – tse radikalizm, to ja radikal», 6 September 2017. Online article available in Ukrainian at: http://www.mukachevo.net/ua/news/view/240678

always protecting the educational rights of all minorities.[601] Eventually, the President signed the Law, which came into force on September 28, further exacerbating tensions.

Ukrainian authorities submitted the Law to the Venice Commission to receive an opinion by the end of 2017. While it was under the evaluation of the Venice Commission, the Law was also analyzed by the Parliamentary Assembly of the Council of Europe.[602] The PACE expressed its concern about the downsides of the Law for minorities and admonished Ukraine for the absence of dialogue with the representatives of national minorities concerning Article 7. Furthermore, the Assembly complained about the delay in submitting the text of the law to the Venice Commission, which should have taken place before its adoption.[603]

Coming to the content of the law, in its resolution, the Assembly recognized the legitimacy for a certain State to promote its official language and to require its learning in the educational field for all citizens.[604] However, affirmed the PACE, promoting the official language should take place along with the protection and promotion of minority languages, otherwise the process results in assimilation and not integration.[605] The PACE explained that these two fundamentals, along with a third one, namely the internationally recognized principle of non-discrimination, are the pillars of the concept of "living together".[606] The new Law introduced by Ukraine, however, was not only failing to strike a fair balance between Ukrainian and minority languages, but also reducing the rights previously granted to national minorities, and this, concluded the PACE, was not "conducive to 'living together'".[607]

In its Opinion adopted in November 2017, the Venice Commission recommended Ukraine to adopt a more gradual and balanced approach in the implementation of the Law. Among others, Ukraine was advised to free private schools from the requirements of the new law and to ensure that minorities who started their secondary education before September 1, 2018 continued their educational path as

[601] Ukraine's president signs controversial education law, cit.

[602] Resolution of 12 October 2017 of the Parliamentary Assembly, The new Ukrainian law on education: a major impediment to the teaching of national minorities' mother tongues, 2189 (2017). Available at: http://assembly.coe.int/nw/xml/xref/xref-xml2html-en.asp?fileid=24218&lang=en

[603] Para. 2

[604] Para. 4

[605] Para. 5

[606] Para. 6-7

[607] Paragraphs 8-9

before the introduction of the law, until September 1, 2020, "with gradual increase of the number of subjects that are taught in the Ukrainian language".[608] In June 2018, Minister Klimkin declared that the country committed to follow the recommendations of the Venice Commission, so that the language provision would not apply to private schools, but also that "every public school for national minorities will have broad powers to independently determine which classes will be taught in Ukrainian or their native language".[609]

In October 2019, President Volodymyr Zelensky affirmed that Ukraine had already fulfilled most of the recommendations of the Venice Commission.[610] However, the Hungarian counterpart stood firm on its opposition to the Law and, since its adoption, the relationship between the two countries remains tense. At the end of October 2019, the Hungarian Government vetoed the accession of Ukraine to the North Atlantic Treaty Organization (NATO). Minister Szijjarto commented on the decision saying that "Hungary will not sacrifice the ethnic Hungarian community for geopolitics".[611] This situation was not unpredictable: at the time of its adoption, neighboring countries warned Ukraine that the implementation of this law would have complicated not only their relationships, but also Ukraine's process towards European integration.[612]

[608] European Commission for Democracy through Law (Venice Commission), Ukraine - The Law on Education adopted by the Verkhovna Rada on 5 September 2017 (for issue of language, see Article 7 and Concluding Remarks and Transitional Provision N° 18), Opinion No. 902/2017, Strasbourg, 15 November 2017. Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)047-e

[609] Hungary realizes Ukraine not to change education law – Klimkin, 27 June 2018. Online article available at_ https://www.unian.info/politics/10167494-hungary-realizes-ukraine-not-to-change-education-law-klimkin.html

[610] Zelensky assures Stoltenberg that Ukraine fulfills Venice Commission recommendations, 31 October 2019. Online article available at: https://www.ukrinform.net/rubric-polytics/2809376-zelensky-assures-stoltenberg-that-ukraine-fulfills-venice-commissions-recommendations.html

[611] Hungary vetoes NATO statement on Ukraine over minority rights: minister, 30 October 2019. Online article available at: https://www.reuters.com/article/us-hungary-nato-ukraine-idUSKBN1X91ZI

[612] Kulyk, V., Ukraine's 2017 Education Law Incites International Controversy Over Language Stipulation, PONARS Eurasia Policy Memo No. 525, April 2018. Available at: https://www.ponarseurasia.org/ukraine-s-2017-education-law-incites-international-controversy-over-language-stipulation/

3.3.3 Recent developments: Zelensky's presidency and the Law on Complete General Secondary Education (2020)

As a second step in reforming the educational system in Ukraine, in mid-January 2020, the Verkhovna Rada adopted the Law on Complete General Secondary Education.[613]

Among other provisions, the Law contains three language learning models (Article 5). According to the first model, schools can provide for the teaching of all subjects in minority or indigenous language, who do not live in a language environment and do not possess their own state, together with Ukrainian, during all grades, from the first to the last one. This is the case of Crimean Tatars. The second model defines the amount of study to be conducted in the state language for those national minorities speaking one of the official languages of the European Union, for instance Hungarians and Romanians, while the third one is dedicated to languages pertaining to the same group of the Ukrainian language and to minorities who reside in areas where only a particular minority language is spoken. This is the case of Russian, Belarusian and Yiddish.[614]

In practical terms, the second model provides that national minorities, whose motherland is part of the EU, are able to study in their language only in nursery and elementary school, until 4th grade. From the 5th grade, at least 20% of the total time of study should take place in Ukrainian, in 9th grade - at least 40% and in high school - at least 60%.

At the beginning of February, the Hungarian Academy of Sciences issued a resolution to comment the draft Law of Ukraine and affirmed that, as "European languages", minorities like the Hungarians were going to be considered to be speaking a "foreign language": if students choose to study Hungarian, this will not count as their mother tongue, but as a foreign language, and they will not be able to learn, for instance, English. On the contrary, if students choose to abandon Hungarian and learn another language, this will result in them "gradually breaking away from their national

[613] Закон України "Про повну загальну середню освіту". Відомості Верховної Ради (ВВР), 2020, № 31, ст.226. Available at: https://zakon.rada.gov.ua/laws/show/463-20#Text

[614] Zelensky Signs Secondary Education Law With 3 Ukrainian Language Learning Models For National Minorities, 13 March 2020. Online article available at: https://ukranews.com/en/news/689826-zelenskyy-signs-secondary-education-law-with-3-ukrainian-language-learning-models-for-national

culture rooted in their mother tongue". Furthermore, high school exams, final examinations, thesis and college entrance exams will all be in Ukrainian, putting Hungarian speakers in a disadvantaged position compared to Ukrainian speakers. Overall, the Hungarian Academy expressed concern for the entry into force of the law that, if signed, "would contribute to the loss of language, the withering of national culture, the isolation of some communities linked to the Hungarian language and the rapid dissolution of others".[615]

Russia has also expressed its opinion on the Law, since, as we mentioned, the third model involves Russophones. For this category, the model provides that, Russian-speaking students will be able to receive education in their native language up to the 5th grade, while from that moment on, at least 80% of education will be in Ukrainian.

The Russian Foreign Ministry issued a comment on the draft law, affirming that, despite the recommendations of the Venice Commission on providing a balance concerning the language sphere, in Ukraine "in fact nothing has changed" and that "the Russian language in Ukraine continues to be subjected to double discrimination". The Minister condemned the actions of Kiev as a "forced Ukrainianization", which violates "the Constitution of the country and obligations in the field of protection of human rights and national minorities" and called for international human rights institutions to proceed against Ukraine.[616]

The Law was signed by President Zelensky on March 13. On the same day, a presidential statement was issued, stating that the Law fulfilled the recommendations of the 2017 fourth Opinion of the Venice Commission, and that this confirmed Ukraine's commitment to its international obligations towards minority rights.[617]

[615] A Magyar Tudományos Akadémia állásfoglalása az ukrajnai nyelvtörvénytervezetről, 4 February 2020. Online article available in Hungarian at: https://mta.hu/mta_hirei/a-magyar-tudomanyos-akademia-allasfoglalasa-az-ukrajnai-nyelvtorvenytervezetrol-110314

[616] Kommentarij Departamenta informatsii i pechati MID Rossii v svjazi s prinjatijem Verhovnoj Radoj Ukrainy zakona «Ob obshchem srednem obrazovanii», 18 January 2020. Online article available in Russian at: https://www.mid.ru/ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4001764

[617] Prezident pidpisav zakon pro serednyu osvitu, 13 March 2021. Online article available in Ukrainian at: https://www.president.gov.ua/news/prezident-pidpisav-zakon-pro-serednyu-osvitu-60145

In February 2021, Zelensky announced the willingness of his executive to undertake a new legislative initiative that will regulate the legal status of national minorities in Ukraine.[618]

3.4 Minorities and political representation: political rights and electoral opportunities for minorities in Ukraine

In Ukraine the legislative framework for political representation and electoral opportunities is provided by the Constitution, the Law on Political Parties (2001)[619] and the Law on Election of People's Deputies (2011)[620].

The Law on Political Parties of 2001 expresses the right of citizens to unite in political parties (Article 1), with no restrictions such as the ethnic basis: in this sense, the only prohibition is to form a party that foments interethnic, racial and religious conflicts.[621] However, the Law provides that the creation of a political party must be supported by the signature of at least 10,000 citizens: these signatures should be collected in at least two-thirds of the regions of Ukraine, in Kiev and Sevastopol, and in not less than two-thirds of the districts of the Autonomous Republic of Crimea (Article 10). Under these conditions, minorities encounter many difficulties in creating parties characterized by a strong ethnic basis.

Article 9 of the already mentioned Law on National Minorities of 1992 ensures the right of minorities to participate freely in political affairs,[622] as enshrined in Article

[618] Legislative initiative to regulate the legal status of national minorities was discussed at a meeting chaired by the President of Ukraine, 19 February 2021. Online article available at: https://www.president.gov.ua/en/news/zakonodavchu-iniciativu-shodo-vregulyuvannya-pravovogo-statu-66641

[619] Закон України "Про політичні партії в Україні". Відомості Верховної Ради України (ВВР), 2001, № 23, ст.118. Available at: https://zakon.rada.gov.ua/laws/show/2365-14#Text

[620] Закон України "Про вибори народних депутатів України". Відомості Верховної Ради України (ВВР), 2012, № 10-11, ст.73. Available at: https://zakon.rada.gov.ua/laws/show/4061-17

[621] Article 5. Restrictions on the formation and operation of political parties. The formation and activity of political parties is prohibited if their program goals or actions are aimed at: (point 1 to 5 omissis) 6) propaganda of war, violence, incitement of ethnic, racial or religious hatred; (omissis)

Стаття 5. Обмеження щодо утворення і діяльності політичних партій. Утворення і діяльність політичних партій забороняється, якщо їх програмні цілі або дії спрямовані на: (point 1 to 5 omissis) 6) пропаганду війни, насильства, розпалювання міжетнічної, расової чи релігійної ворожнечі (omissis)

[622] Article 9. Citizens of Ukraine belonging to national minorities have the right, respectively, to be elected or appointed on an equal basis to any positions in legislative, executive, judicial, local self-government bodies, in the army, at enterprises, institutions and organizations.

15 of the Framework Convention.[623] However, the Article is merely declarative and does not provide measures for its enforcement. Overall, not even the charters of the various political parties contain provisions and mechanisms for promoting the representation of minorities within governing bodies.[624]

On 27 January 2015, Special rapporteur on Minority Issues Rita Izsák published her report on the situation in Ukraine, where she affirmed that, despite the participation in public life being a "key pillar of minority rights", in Ukraine there are no specific measures to ensure it.[625] Izsák called Ukrainian authorities to take measures in order to strengthen the political participation of minorities in the country and involve them in decision-making bodies, since "full access to democratic structures is critical for minorities to voice their concerns and to achieve meaningful solutions to their issues".[626] Special rapporteur Izsák also provided examples on how to guarantee that minorities are represented in Parliament, including reserved seats, "the redrawing of electoral districts to allow compact minority communities to elect their own representatives" and "measures to increase political and cultural autonomy for some localities with large minority populations".[627]

According to the last report 'Freedom in the world 2021' by Freedom House,[628] Ukraine is a partly free country, scoring 26 out of 40 for political rights and 34 out of 60 for civil liberties. As we mentioned, in the country there are no formal restrictions on the participation of ethnic minorities in political life, however, the report notes that there are several factors hindering their voting and representation, first and foremost the conflict in the Donbass, but also the already mentioned issue with Romani people

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Стаття 9. Громадяни України, які належать до національних меншин, мають право відповідно обиратися або призначатися на рівних засадах на будь-які посади до органів законодавчої, виконавчої, судової влади, місцевого самоврядування, в армії, на підприємствах, в установах і організаціях.

[623] Article 15. The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

[624] Kovryzhenko, D., Regulation of political parties in Ukraine: the Current State and Direction of Reforms, Agency for Legislative Initiative, OSCE/ODIHR, September 2020, p. 85

[625] Report of the Special Rapporteur on minority issues, Rita Izsák: Addendum - Mission to Ukraine, A/HRC/28/64/Add.1, 27 January 2015. Available at: https://reliefweb.int/report/ukraine/report-special-rapporteur-minority-issues-rita-izs-k-addendum-mission-ukraine

[626] Ivi, Paragraph 87

[627] Ivi, Paragraph 88

[628] Freedom House, Freedom in the World 2021: Ukraine. Online report available at: https://freedomhouse.org/country/ukraine/freedom-world/2021

and their lack of identity documents, and legislative obstacles to run independently for many offices at local, district, and regional level.

Freedom House also assesses the situation in disputed territories, which is the case of Crimea. According to the report,[629] Crimea is not a free territory, scoring -2 for political rights and 9 for civil liberties. With regards to segments of the population such as ethnic groups, the report states that the full political rights of residents are denied. The Crimean Tatars' representative body, the Mejlis, was forced to close in 2014 and officially banned in 2016, previously, its leaders had been banned from the territory. The report concludes that "the prohibition on Ukrainian political parties leaves ethnic Ukrainians with limited options for meaningful representation".

3.5 Conclusions

In the course of this Chapter, we tried to provide a comprehensive analysis of the Ukrainian legislative framework concerning national minorities. Throughout this study, we have been able to examine the content and implications of various legislative texts dedicated to minorities, in as many fields of Ukrainian public life, including in particular the educational field and that of political representation.

Ukraine seems particularly engaged in trying to provide a good level of protection for its national minorities, especially in the light of international pressures and expectations, both from the European institutions and from foreign states, presenting diasporas in the Ukrainian territory. This is especially important for Ukraine in view of its future in the region: the protection of minorities is, indeed, a fundamental requirement for the process of European integration. In addition, as we have seen, Ukraine is forced to cope with the opposition of Hungary to its integration within NATO and consequently the EU, and this is precisely due to disagreements between the two countries on the issue of minorities.

What emerges from the bigger picture are the many difficulties of the country in finding solutions accommodating at least the great majority of the population. The tip of the scale always seems to swing between (ethnic) Ukrainians and the Russian speaking population, often to the detriment of other minorities, which, although

[629] Freedom House, Freedom in the World 2021: Crimea. Online report available at: https://freedomhouse.org/country/crimea/freedom-world/2021

present in a less widespread and consistent way, deserve to be taken into careful consideration.

In particular, a problem that emerges clearly while analyzing the approach of Ukraine towards minorities in its legislation is the poor dialogue between the central government and representatives of minorities. The scarcity of consultations between the two often gives place to situations where a certain law is adopted, but the opinions and needs of the groups directly involved and affected have not been taken into consideration at all.

Overall, the legal framework for the protection and promotion of the rights of national minorities is often incomplete, poorly integrated, but also ambiguous. This is undoubtedly attributable to a society that, since the dawn of its history as an independent nation, is still seeking its own national identity, which has the difficult task of reconciling more than 130 coexisting cultures and traditions.

Moreover, the persistent precarious situation within the country in terms of stability and security further hinders and delays a process that is already struggling itself.

CHAPTER 4. UKRAINE AND NATIONAL MINORITIES: THE CASE OF CRIMEA

4.0 Introduction to the chapter - 4.1 Geo-historical background of the Crimean Peninsula - 4.2 Crimean Tatars: minority or indigenous people? - 4.3 Self-governing bodies of Crimean Tatars: Qurultay and Mejlis - 4.4 National minorities before and after the 2014 crisis - 4.4.1 International humanitarian law and human rights violations - 4.5 Recent developments.

4.0 Introduction to the chapter

As we already anticipated in the course of this thesis, Crimea presents a wide range of peculiarities, such as to make it a separate case in our analysis. The past of this region has been particularly eventful, which contributed to shaping the extremely varied demographic, linguistic and cultural profile of the territory we have today. That is why it is fundamental, first of all, to trace back the history of the Crimean Peninsula, starting from the first populations who settled on the territory, until the current situation.

The central part of this chapter is instead devoted to the native inhabitants of the Crimean Peninsula, Crimean Tatars. First, we will try to understand what constitutes the concept of “indigenousness”, trying to understand when and how the use of the term 'indigenous people' came to be established. Then, we will discuss when and how the claims of the Crimean Tatars became more and more articulated in this direction in the course of time. In addition, we will deal with a peculiarity of the Crimean Tatar community: the presence of two self-governing bodies, the Qurultay and the Mejlis, main representatives and promoters of Crimean Tatars’ needs and rights.

The last part of this chapter addresses the relationship between ethnic groups in Crimea before and after the events of 2014. In particular, we will discuss how, since the beginning of the turmoil, numerous international humanitarian law and human rights violations have been denounced across the disputed territories and what actions have been taken at the international level to try to reach a solution.

Finally, in the last paragraph, we will discuss the most recent developments on this issue, especially with particular reference to the consequences brought by the outbreak of the Covid-19 pandemic.

4.1 Geo-historical background of the Crimean Peninsula

Connected to Ukraine in the north, Crimea is a peninsula surrounded by the Black Sea and washed by the Sea of Azov to the north-east. It is commonly called "the peninsula of diversity", not only for its richness of landscapes and nature, but also and especially for its "mosaic of peoples".[630] This is due to an eventful past, which contributed massively to shaping this extremely rich territorial profile.

The history of the Crimean Peninsula goes back to the 6th and 5th centuries B.C., when the Greeks established their colonies on the coast and became the first settlers of the territory.[631]

In the second half of the 4th century A.D., following the enduring dominance of the Greeks, the control over the peninsula passed to the Huns, Turkic people who invaded parts of Crimea. This was the first of several dominations by different tribes of Turkic origin that have taken place over the following centuries, such as Khazars, the Pechenegs and the Kumans. This is a key step in the history of this territory to fully understand it, because, despite Byzantines, Venetians and Genoese having influences on some cities located on the coast, the legacy left by Turkic culture and language was very strong.[632]

Subsequently, as another fundamental event in the history of Crimea, we have the occupation of the territory by the Mongolian army in the 13th century and the Turkification and Islamization of the territory under the rule of the Golden Horde, which brought Islam to become the dominant religion.[633]

After the decline and disintegration of the Golden Horde, in the first half of the 17th century Crimea enjoyed its first short period of independence as the Crimean

[630] Flaga, M., Janicki, W., Crimea – Difficult Return to Lost Multiethnicity, in Wojciech Janicki, European Multiculturalism as a Challenge - Policies, Successes and Failures, Political Geography Studies, no. 1, Maria Curie-Skłodowska University, Lublin, 2007, pp. 179-197, p. 179

[631] Holovaty, S., Territorial Autonomy in Ukraine – the Case of Crimea, Local Self Government, Territorial Integrity and Protection of Minorities, Strasbourg: Council of Europe Publishing, 1996, pp. 135-151, p. 136. Cited in Yapıcı, U., Change in the Status of the Crimean Tatars: from National Minority to Indigenous People?, No. 85, Spring 2018, pp. 299-332, p. 304

[632] Kırımlı, H., "Crimean Tatars". Ethnic Groups of Europe: an Encyclopedia. Ed. Jeffrey Cole California: ABC-CLIO. 2011, pp. 84-87. Cited in Yapıcı, U., op. cit., p. 304

[633] Flaga, M., Janicki, W., op. cit., p. 182

Khanate. This was until 1783, when it became part of the Russian Empire, following the Russo-Turkish War (1768-1774).[634]

This marked the beginning of a period that brought many changes in the national composition of the territory. According to the estimates, from 1783 to 1853, there were between 300.000 and 500.000 Crimean Tatars who emigrated elsewhere.[635] This was counterbalanced by a systematic colonization of the peninsula implemented by Tsarist authorities: apart from the settlement of Russian soldiers and peasants, was also encouraged the colonization of the territory by other populations, such as Greeks, Armenians, Germans and Estonians.[636] In addition, in Crimea gradually appeared as well Bulgarians, Czechs, Poles and Ukrainians.[637]

Following the Bolshevik revolution of 1917, Crimea enjoyed its second brief period of independence: December 1917 is a milestone in the history of Crimean Tatars, because the Republic of the Crimean people was proclaimed, with its own government and bodies, constitution and symbols. However, the Bolsheviks did not recognize the establishment of this Republic, and neither its government, and in February 1918, with a military intervention that led to several arrests and killings, the control over Crimea passed into their hands. In 1921, Crimea became one of the autonomous republics of the USSR, subordinated to the Russian SFSR.

The 1920s, however, were characterized by the already-mentioned policy of *korenizatsiya*, under which, for example the Tatars enjoyed a good degree of national cultural autonomy, their language was taught in elementary school and recognized as official alongside Russian.[638] Furthermore, Tatars started holding public offices or joined the Bolshevik party.[639]

As we have seen, over time the relationship between the Russian nomenklatura and the nationalities of the Empire deteriorated. In 1928 Stalin put an end to *korenizatsiya* and started implementing consistently Sovietization, this resulted

[634] Magocsi, P. R., op. cit., pp. 170-277

[635] Eren, N., Crimean Tatar Communities Abroad. The Tatars of Crimea - Return to the Homeland - Studies and Documents. Ed. Edward Allworth. Durham: Duke University Press. pp. 323-352, p. 326. Cited in Yapıcı, U., op. cit., p. 305

[636] Flaga, M., Janicki, W., op. cit., p. 183

[637] Flaga, M., Janicki, W., op. cit., pp. 183-184

[638] Bowring, B., Language Policy in Ukraine, op. cit., p. 4

[639] Flaga, M., Janicki, W., op. cit., p. 185

among others in deprivation of religious liberties, collectivization of the countryside, and famines, until reaching the deportation of entire populations during WWII.[640]

These historical events profoundly changed the composition of Crimea: according to estimates, in 1926 the Tatars represented 25.1% of the population.,[641] while in 1989 there were only 38,365 of them, constituting 1.6% of the total population of Crimea.[642] Moreover, to further distort the demographic picture in Crimea, there were the large-scale immigrations that took place after WWII and led many Russians to settle on the territory of the peninsula, primarily Soviet military personnel and tourism industry employees. These went somehow to replace deported people in the territory of the peninsula: if in 1926, Russians made up 42.2%, in 1959 they became *71.4%*.[643]

In order to fully russify the Crimean Peninsula, the USSR decided to change its administrative status: in 1945 Crimea was stripped of the status of Autonomous Republic, becoming an ordinary *oblast'* of the RSFSR, and, in 1954, as we frequently mentioned, was ceded by Khrushchev to the Ukrainian SSR as a sign of friendship.

Although Khrushchev immediately condemned the Stalinist era for its crimes, the issue of the deported peoples was never addressed. It was only in 1989 that the Supreme Soviet of the Soviet USSR approved a declaration establishing the right of the deported peoples to return to Crimea.[644] [645]

After 46 years as an *oblast'*, the Soviet Autonomous Socialist Republic of Crimea was re-established in 1991, following the Crimean sovereignty referendum for autonomy carried out on January 20, 1991, in which the great majority of the

[640] Ibid.

[641] Matelski, D., Narody słowiańskie i niesłowiańskie na Krymie w XIX i XX wieku. In E. Walewander (cur.), Polacy na Krymie, Inst. Badań nad Polonią i Duszpasterstwem Polonijnym KUL, Lublin, 2004, p. 97. Cited in Flaga, M., Janicki, W., op. cit., p. p. 188

[642] Vsesojuznaja perepis naselenija 1989 goda. Natsionalnyj sostav naselenija po respublikam SSSR". Available in Russian at: http://www.demoscope.ru/weekly/ssp/sng_nac_89.php

[643] Ibid.

[644] Flaga, M., Janicki, W., op. cit., p. 189

[645] This was a critical period in the formation of contemporary Crimea, if we just think that, in the national census of 2001, this territory counted more than 125 national and ethnic groups, with Russians, Ukrainians, and Crimean Tatars as larger populations.

participants voted in favor.[646] In 1995, the name was changed to Autonomous Republic of Crimea.

As we have seen in previous chapters, the biennium 2013-2014 was marked by a number of events that culminated in the incorporation of Crimea into the Russian territory. During the implementation of the Russian military presence in Crimea, on March 16, 2014, was held a popular referendum, asking whether the local population wanted to join Russia as a federal subject. The vote saw over 90% of the population in favor, marking the formal incorporation of Crimea into the Russian Federation, despite the lack of recognition by Kiev and a great part of the international community.[647]

The events of Crimea gave rise to tensions also in the region of the Donbass, at the eastern border between Ukraine and Russia, where pro-Russian separatists – supported by Russia – and the Ukrainian army began waging a war that has been going on for 7 years now.

4.2 Crimean Tatars: minority or indigenous people?

In Chapter 1 of this thesis, we tried to clarify the differences between the main existing typologies of minorities. Among others, we have seen what distinguishes 'old' minorities from 'new' minorities, that is that the former are autochthonous in a certain territory, while the latter resulted from international migrations, especially after World War II. In most of the cases, indigenous people are considered national minorities, sharing much in common with old minorities. However, it would be somehow reductive to define them in this way, since, as we mentioned, they have the additional characteristic of being "the original inhabitants of their countries, having settled there before the majority population".[648] Enshrined in the concept of indigenousness there is, indeed, a strong connection with land, which is a characteristic not pertaining to national minorities, but instead vital for indigenous people.

[646] Crimean Tatars: Reflections On "Autonomy" Day, 31 January 2012. Online article available at: https://unpo.org/article/13815

[647] See for example the results of the voting on the UN General Assembly Resolution 68/262, adopted on March 27, 2014. Available at: https://digitallibrary.un.org/record/767565?ln=en

[648] Geldenhuys, D., Rossouw, J., op. cit., p. 6

The use of the term indigenous people has become popular only after WWII. For example, as already mentioned, until the 1930s, in Soviet Russia people connected to a specific land were called *korennoy narod*, from which the term *korenizatsiya*. However, Stalin tried to avoid any claim related to land by introducing the expression *malochislenniye narody,* literally 'small-numbered peoples', more similar in meaning to minority people.[649]

In the first chapter we had the occasion to discuss in depth the contribution brought to the topic of minority rights by both the International Labour Organization and United Nations. Standard-setting in relation to the topic began indeed only with the ILO, which, already after the First World War, was very active in studying the situation of indigenous people in the working environment.[650] This brought to the adoption of several relevant instruments.[651]

For its part, the United Nations contributed significantly to the promotion and protection of indigenous people rights, starting from the studies conducted by Special Rapporteur José R. Martinéz Cobo and culminating in the adoption of the 2007 Declaration on the Rights of Indigenous Peoples.[652]

Since the 1980s, the interest towards indigenous people increased massively, in turn, the growing number of international protections for indigenous peoples, led "peoples" to gain courage and claim their indigenousness.[653] Of course, the increased global interest in indigenous peoples gave rise to the need to search for a definition. As it has been and still is for national minorities, this constitutes an issue.[654] However, a criterion that seemed to be considered as fundamental, both by Special Rapporteur Cobo and the ILO, is self-identification.[655] This was counterbalanced by more objective

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[649] Varfolomeeva, A., Evolution of the Concept "Indigenous People" in the Soviet Union and the Russian Federation: the Case Study of Vepses. Master of Arts. Budapest: Central European University, 2012, p. 32. Cited in Yapıcı, U., op. cit., p. 300

[650] Bowring, B., The Rights of Indigenous Peoples: International Perspectives, Migration Issues - Ukrainian Analytical, Informative Journal 2, January 1998, p. 28

[651] *Infra* 1.2.7

[652] *Infra* 1.1.2

[653] Corntassel, J. J., Who is Indigenous? 'Peoplehood' and Ethnonationalist Approaches to Rearticulating Indigenous Identity, Nationalism and Ethnic Politics. Vol. 9 No. 1, pp. 75-100, 2003, p. 76. Cited in Yapıcı, op. cit., p. 302

[654] *Infra* 1.1.1

[655] Study of the Problem of Discrimination against Indigenous Populations, by José R. Martinéz Cobo, op. cit., passim

Cfr.

criteria, among which the non-dominant position in the society expressed by Cobo,[656] and the presence of traditional practices, social organizations, political institutions, and historical continuity with pre-invasion-period, according to the ILO.[657]

However, indigenous people tend to reject any attempt of definition provided by States within the body of international law: they stress the importance of protection, but affirm their desire and right to define themselves.[658] This was reflected in the draft of the Declaration on the Rights of Indigenous Peoples of 1994, where it was stated that: "Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such".[659] In the final text of the UNDRIP, however, the substance of Article 8 was modified and was only established that "Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions".[660]

In the specific case of Crimea, we can observe that Crimean Tatars' first public demonstrations affirming their rights took place during the years of Khrushchev's presidency. However, the concept of 'indigenous people' was not being used yet: part of the population was animated by nationalist feelings, but most of the claims concerned, for example, problems with residence permits and the desire to reinstall the Crimean ASSR.[661]

The Crimean Tatars' posture about their indigenous status started emerging only after the collapse of the Soviet Union. Their claims were expressed and articulated by their self-governing bodies, namely the Qurultay and the Mejlis.[662]

ILO Convention concerning Indigenous and Tribal people in independent countries (No. 169), op. cit., Article 1.2

[656] Study of the Problem of Discrimination against Indigenous Populations, by José R. Martinéz Cobo, op. cit., para. 379-382

[657] ILO Convention concerning Indigenous and Tribal people in independent countries (No. 169), op. cit., Article 1

[658] United Nations - Department of Economic and Social Affairs, The Concept of Indigenous Peoples: Workshop on Data Collection and Disaggregation For Indigenous Peoples, PFII/2004/WS.1/3, New York, 19-21 January 2004. Available at: http://www.un.org/esa/socdev/unpfii/documents/workshop_data_background.doc

[659] Draft United Nations declaration on the rights of indigenous peoples, E/CN.4/Sub.2/1994/2/Add.1, 26 August 1994. Available at: http://un-documents.net/c4s29445.htm

[660] Declaration on the Rights of Indigenous Peoples, 2007, Article 33.1

[661] Yapıcı, U., op. cit., p. 320

[662] *Infra* 4.3

In 1991, the Qurultay proclaimed that: "The land and natural resources of the Crimea, including its therapeutic recreational potential, are the basis of the national wealth of the Crimean Tatar people and cannot be utilized without its will or its clearly expressed approval".[663] However, from the beginning, the territorial factor was not at the basis of Crimean Tatars' claims. Indeed, during its five-days-long meeting at that time, the Qurultay adopted the Declaration of National Sovereignty of the Crimean Tatar People, which confirmed Ukraine's territorial integrity.[664] [665] This is because Crimean Tatars have always been aware that "it is thanks to independent Ukraine – in spite of all shortcomings and problems – they finally had a real opportunity to return to their homeland".[666]

Likewise, in the draft constitution of the Crimean Republic proposed in December 1991 by the Mejlis, was expressed the view of a "shared sovereignty", where sovereign power in the Crimean state would belong to "the people of Crimea – Crimean Tatars, Krymchaks, Karais, who make up the indigenous population of the republic, and citizens of other nationalities, for whom by virtue of historical circumstances Crimea has become their homeland".[667]

When was established the Autonomous Republic of Crimea, Crimean Tatar leaders started publicly expressing their disagreement about its legal foundations. In February 1992, was proposed a two-chamber parliament for Crimea, where one would be limited to indigenous Tatars, and the other would have an absolute veto power over legislation.[668] However, both the indigenousness claims and legislative proposals made by the Crimean Tatars were not satisfied by the newly established Autonomous

[663] Williams, B. G., The Crimean Tatars: from Soviet Genocide to Putin's Conquest. New York: Oxford University Press, 2015, p. 144. Cited in Yapıcı, op. cit., p. 309

[664] Deklaratsija o natsionalnom suverenitete krymskotatarskogo naroda, 29 June 1991. Available at: http://qtmm.org/public/images/ckeditor/file/quick-folder/dokumenty_1_sessii_2_kurultaya.doc

[665] Kullberg, A., "The Crimean Tatars". The Forgotten Minorities of Eastern Europe: the History and Today of Selected Ethnic Groups in Five Countries. Ed. Arno Tanner. Helsinki: East-West Books, 2004, pp. 13-65, p. 34. Cited in Yapıcı, op. cit., p. 310

[666] Chazbijewicz, S., Tatarzy krymscy: walka o naród i wolna ojczyznę, Oficyna Wydawnicza LIKON, Poznań, Września, 2001; Baluk, W., Koncepcje polityki narodowościowej Ukrainy. Tradycje i współczesność, Acta Universitatis Wratislaviensis, Nr 2348, 2002. Cited in Flaga, M., Janicki, W., op. cit., p. 193

[667] Wilson, A., Politics in and around Crimea: A Difficult Homecoming. The Tatars of Crimea – Return to the Homeland. Ed. Edward A. Allworth. Durham and London: Duke University Press, 1998, pp. 281-322, p. 289-90. Cited in Yapıcı, op. cit., p. 310

[668] Kamm, H., Chatal Khaya Journal; Crimean Tatars, Exiled by Stalin, Return Home, The New York Times, 1992. Cited in Yapıcı, U., op. cit., p. 311

Republic of Crimea,[669] and Crimean Tatars' language even lost the status of state language.[670]

Despite the introduction of the term "indigenous peoples" in some of the Articles of the Ukrainian Constitution of 1996,[671] Crimean Tatars were not entitled with any special right. Furthermore, the lack of a definition made unclear where the difference between them and national minorities was laying.[672] In these respects, the Mejlis has always stressed that the Crimean Tatars are the indigenous people of Crimea and cannot be considered a national minority.[673]

In 1997, a member of the Mejlis created the Foundation for Research and Support of Indigenous Peoples in the Crimea, a non-profit organization particularly active in trying to increase the visibility of the indigenousness issue in the international arena. For example, in 2000, the Foundation submitted a report to the Council of Europe illustrating the situation of Crimea with regards to indigenous peoples and their rights, where it was clearly stated that Crimean Tatars refuse the identification with the category of 'national minorities'. The report affirmed: "…The most acceptable is the concept of indigenous people including the right for internal self-determination, which allows the Ukrainian state to preserve its territorial integrity and at the same time to promote the vital interests of Crimean Tatars…".[674]

After the infamous events of 2014, Nariman Celal, Deputy Chairman of the Mejlis, called on the Verkhovna Rada to recognize Crimean Tatars the status of indigenous people.[675] This finally happened on 20 March 2014, when the Ukrianian Parliament adopted the related Resolution. According to the text, Crimean Tatars were entitled with the right to self-determination within Ukraine (Article 2) and the

[669] Williams, B. G., op. cit., p. 58. Cited in Yapıcı, U., op. cit., p. 311

[670] Закон України "Об утверждении Конституции Автономной Республики Крым" от 23 декабря 1998 года № 350-XIV. Available at: http://www.base.spinform.ru/show_doc.fwx?rgn=17752

[671] See Articles 11, 92, and 119.

[672] Berry, C., Crimean Tatar: Resisting a Deportation of Identity". Rhetorics of Names and Naming. Ed. Star Medzerian Vanguri. New York: Routledge, pp. 132-152, p. 136. Cited in Yapıcı, U., op. cit., p. 311

[673] Bowring, B., Language Policy in Ukraine, op. cit., p. 3

[674] Eur.ac Research, Parallel Report Prepared by the Foundation for Research and Support of the Indigenous Peoples of Crimea about the Situation in Crimea (Ukraine) Undertaken in Accordance with the Article 25th of the Framework Convention for the Protection of National Minorities of Council of Europe. Cited in Yapıcı, U., op. cit., p. 312

[675] Yapıcı, U., op. cit., pp. 313-24

Qurultay and the Mejlis were recognized as high representative bodies of the Crimean Tatar community.[676]

The change of attitude of Ukraine with regards to Crimean Tatars was probably due to the threat posed by pro-Russian separatism: the Ukrainian government saw Crimean Tatars as a possible ally against the occupant in order to restore Ukraine's territorial integrity. Furthermore, Ukraine tried to play the card of international law, passing a resolution ratifying the UNDRIP.[677] Finally, symbolic gestures were also made to contribute to the cause. For example, on 12 November 2015, the Verkhovna Rada officially recognized the deportation of Crimean Tatars of 1944 as genocide,[678] and in February 2016 the *Kok Bayrak*, a Crimean Tatar National Flag, was erected in Kiev's city center, in front of the Ukrainian Ministry of Foreign Affairs.[679]

A relevant proposal was made in 2017, when President Poroshenko showed a certain willingness to amend Ukrainian constitution and grant Crimean Tatars with national autonomy.[680] This remained only a theoretical discussion, however, it should be noted that before 2014, even a discussion of such matters was not allowed in Ukraine.[681]

4.3 Self-governing bodies of Crimean Tatars: Qurultay and Mejlis

Crimean Tatars possess their own representative bodies: the Qurultay and the Mejlis. The Qurultay is the National Assembly of the Crimean Tatar people. Currently, we speak about 'Second Qurultay', since the first was held in December 1917, during the brief period of independence, and ended the moment Crimea became part of the Soviet Socialist Republics. This body was created to address the problems of the

[676] Постанова Верховної Ради України "Про Заяву Верховної Ради України щодо гарантії прав кримськотатарського народу у складі Української Держави". Відомості Верховної Ради (ВВР), 2014, № 15, ст.581). Available at: https://zakon.rada.gov.ua/laws/show/1140-vii#Text

[677] Don't Cry for Us Ukraina!, 17 February 2016. Online article available at: http://www.iccrimea.org/reports/dont-cry-ukraina.html

[678] Постанова Верховної Ради України "Про визнання геноциду кримськотатарського народу". Відомості Верховної Ради (ВВР), 2015, № 49-50, ст.469). Available at: https://zakon.rada.gov.ua/laws/show/792-19#Text

[679] Don't Cry for Us Ukraina!, op. cit.

[680] Poroshenko ready to amend Constitution for Crimean Tatar autonomy in Crimea, 15 May 2017. Online article available at: https://www.unian.info/politics/1922239-poroshenko-ready-to-amend-constitution-for-crimean-tatar-autonomy-in-crimea.html

[681] Jamestown Foundation, Controversies Over Proposed Crimean Tatar Autonomy in Ukraine, 25 May 2017, Eurasia Daily Monitor, Vol. 14, No. 72. Available at: https://www.refworld.org/docid/592d66864.html

Crimean people, their relations with the other nationalities of the peninsula, to decide the policies of the government, its laws and the introduction of any reforms.

The Qurultay was revived in 1991, following the return of Crimean Tatars to their homeland, that is why we speak about 'Second Qurultay'. Delegates were elected from various parts of the Soviet territory, in a ratio of 1 for every 1000 Tatars citizens: in Crimea 129, Uzbekistan 88, Kazakhstan 1, Kyrgyzstan 4, Tajikistan 3, RFSR 16, Ukraine (except Crimea) 9, Lithuania 3, Latvia 1, Sukhumi 1.[682] During those five-days-long meeting, the Qurultay adopted several documents, including the Declaration of the national Sovereignty of the Crimean Tatar People. In addition to the establishment of the Mejlis, the Declaration asserted the right to self-determination of the Crimean Tatars, declaring that its "political, economic, spiritual, and cultural rebirth is possible only in its national sovereign state".[683]

To date, the Qurultay meets every five years. Delegates are elected by Crimean Tatars and their family members, regardless of their citizenship, provided that they are residents of Ukraine, but also by Crimean Tatars who are citizens of Ukraine and their family members, irrespective of their citizenship.[684]

The Mejlis is part of the Qurultay, to which it is subordinate. Formed by 33 members, in the document 'Provisions on Mejlis of the Crimean Tatar People (Qirim Tatar Milli Mejlisi)' it is defined as the "single supreme authorized plenipotentiary representative and executive body of the Crimean Tatar people" (Provision 1.1). The Mejlis declares that its main purpose is the "elimination of the consequences of the genocide, committed by the Soviet state against Crimean Tatars, restoration of the national and political rights of the Crimean Tatar people and implementation of its right to free national self-determination in its national territory" (Provision 2.1). This purpose is supposed to be achieved through measures, such as, among others, those "aimed at the fastest return and resettlement of Crimean Tatars in their historical native land – Crimea"; those "to revive the language, culture, religion, system of

[682] Obshchaja informatsija o Kurultae krymskotatarskogo naroda. Online page available on the official website of the Mejlis of the Crimean Tatar People: http://qtmm.org/

[683] Belitser, N., "Indigenous Status" for the Crimean Tatars in Ukraine: A History of a Political Debate, Pylyp Orlyk Institute for Democracy, Kyiv, Paper prepared for the ESRC funded Project "'Fuzzy Statehood' and European Integration in Central and Eastern Europe", University of Birmingham, UK, 2002. Available at: http://www.iccrimea.org/scholarly/indigenous.html

[684] Obshchaja informatsija o Kurultae krymskotatarskogo naroda, op. cit., cit.

national upbringing and education, customs and traditions of Crimean Tatars", and to guarantee "compensation of moral and material damage caused to the Crimean Tatar people during the criminal deportation of 1944".[685]

Following the 'incorporation' of Crimea by Russia,[686] when the Verkhovna Rada belatedly recognized the Tatar people of Crimea as "indigenous people of Ukraine",[687] also the Qurultay and Mejlis received their recognition as bodies of the Crimean Tatars. However, as anticipated in the previous chapter, after 2014 Russia implemented a repression against the most prominent exponents and representatives of the Crimean Tatar community and in 2016 the Mejlis was banned by the Russian Supreme Court as "an extremist group".[688] For a long time Pro-Russian political groups had been pushing to disband the Autonomous Bodies of the Crimean Tatars, also defined as "organized criminal groups", whose activities are "unconstitutional".[689] Following this ban, which resulted in its eviction from its headquarters, in April 2016, the Ukrainian government approved the relocation of the Mejlis to Kiev.[690]

In 2017, the Council of Europe demanded Russia to reinstate the Mejlis and allow Crimean Tatars to enter Crimea.[691] Despite Europe having no instruments to enforce this decision, this declaration was considered fundamental, since, for example, the International Court of Justice takes into account the stance of other international institutes, often referring to them in its decisions. Indeed, in the same year, also the

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[685] Provision on Mejlis of the Crimean Tatar People. Available at: http://qtmm.org/public/images/ckeditor/file/quick-folder/the_provision_on_mejlis_of_the_crimean_tatar_people.doc

[686] It is not the task of this thesis to assess whether, in 2014, there was an illegal annexation of Crimea by the Russian Federation, therefore we will limit ourselves to neutrally defining it as 'incorporation'.

[687] Постановление Верховной Рады Украины от 20 марта 2014 года №1140-VII. Available at: http://search.ligazakon.ua/l_doc2.nsf/link1/T141140.html

[688] Верховный Суд Российской Федерации, Апелляционно е Определение № 127-апг16-4, 29 сентября 2016. Available in Russian at: http://supcourt.ru/stor_pdf.php?id=1487872

[689] Pro-Russia Groups Want Crimean Tatar Bodies Disbanded, 6 April 2010. Online article available at: https://www.rferl.org/a/ProRussia_Groups_Want_Crimean_Tatar_Bodies_Disbanded/2004234.html

[690] Crimean Tatar Council Relocates to Kiev After Russian Ban, 27 April 2016. Online article available at: https://www.newsweek.com/crimean-tatar-council-relocates-kiev-after-russian-ban-452957

[691] Council of Europe (Ministers' Deputies), Situation in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), M/Del/Dec(2017)1285/2.1bisb, 3 May 2017. Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168070ec02

International Court of Justice issued a decision ordering Russia to reinstate the Crimean Tatar Mejlis.[692]

Nevertheless, since then the situation has not changed much. In May 2021, on the occasion of the 77th anniversary of the deportation of the Crimean Tatar people, the Mejlis appealed to President Zelensky and the international community, asking for the protection of the Crimean Tatars. According to the statement, the actions undertaken by the Russian Federation, such as persecutions, banning its representative institutions, and the stimulus for Russian citizens to settle on the peninsula, have to be considered as "a deliberate policy of ethnocide of the Crimean Tatar people". To avoid the disappearance of the Crimean Tatar people, said the statement, is fundamental to combine the efforts of Ukraine and those of the international community.[693]

4.4 National minorities before and after the 2014 crisis

In the first section of this chapter, we discussed the past events that most contributed to shaping the unique demographic profile of contemporary Crimea. This has led to a situation in which Crimea is practically the only part of Ukraine where, according to the already-mentioned census of 2001, along with a consistent presence of the Crimean Tatar population (12,1%), the Ukrainian population is minoritarian (24,4%) with respect to the Russian one (58,5%).[694]

The number of Russians in the territory and the dominance of the Russian system in many fields of public social life, has long constituted a delicate ethnic problem of contemporary Crimea. Indeed, after Ukraine obtained independence in 1991, the threat of integration and possible subordination to the Ukrainian authorities gave rise to a nationalist sentiment among those identifying as Russians.[695]

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[692] International Court of Justice Press Release, The International Court of Justice Press Release, Ukraine institutes proceedings against the Russian Federation and requests the Court to indicate provisional measures, 19 April 2017. Available at: https://www.icj-cij.org/public/files/case-related/166/19412.pdf

[693] Mejlis calls on Zelensky to ensure restoration of collective rights of Crimean Tatar people – statement, 18 May 2021. Online article available at: https://en.interfax.com.ua/news/general/744705.html

[694] About the number and composition of the population of the Autonomous Republic of Crimea by data All-Ukrainian population census, op. cit.

[695] Baluk, W., Koncepcje polityki narodowościowej Ukrainy. Tradycje i współczesność, Acta Universitatis Wratislaviensis, Nr 2348, 2002. Cited in Flaga, M., Janicki, W., op. cit., p.

However, the situation is much more complicated: Russians constitute the majority, but are de facto a minority within Ukraine as a whole; ethnic Ukrainians are part of the majority in the country, but a numerical minority in Crimea, while Crimean Tatars are numerically inferior but do not want to be considered a minority, only indigenous people. Given the complexity of the situation, Crimean society results as deeply divided and inter-ethnic relations are often difficult. Furthermore, long before the crisis, different views on what the status and governance of the peninsula should have been in the future were competing.[696]

The results of the study conducted by Eleonor Knott can give us a more rounded idea of how diversified the situation is. According to Knott, indeed, we can identify different types of attitudes among Russians in Crimea with regards to their self-identification. The first category is formed by those Russians that feel a strong Russian identification, consider themselves discriminated against and threatened by the Ukrainian state. The second category, instead, is formed by those who also identify primarily as ethnic Russians, but do not feel discriminated. As a third category, we have 'political Ukrainians', meaning those who consider themselves primarily as citizens of Ukraine, regardless of ethnic identification. Fourth, 'Crimeans', who have a mixed identification, partly Ukrainian and partly Russian; and last ethnic Ukrainians, who identify ethnically and linguistically with the State. [697]

Furthermore, to constitute another destabilizing factor, there has been the return of Crimean Tatars in the last decade of the 1900s. New frictions emerged in particular for the socio-economic difficulties related to their resettlement, and for issues concerning their political integration.[698] After their return, Crimean Tatars encountered unfriendly and even hostile attitudes in their regards, were discriminated against and frequently hindered to, for example, acquire Ukrainian citizenship or opening schools in Tatar language.[699]

[696] OSCE, The integration of formerly deported people in Crimea, Ukraine: Needs assessment, August 2013, p. 2. Available at: https://www.osce.org/files/f/documents/e/a/104309.pdf

[697] Eleanor Knott, What Does it Mean to Be a Kin Majority? Analyzing Romanian Identity in Moldova and Russian Identity in Crimea from Below, Social Science Quarterly, Vol. 93, No. 3, September 2015, pp. 838-842

[698] Sasse, G., op. cit., p. 3

[699] Flaga, M., Janicki, W., op. cit., pp. 191-192

This picture suggests even more sharply how varied and complicated was the relationship between the ethnic groups residing on the territory of the Crimean Peninsula, even before the outbreak of tensions of 2014. If we consider that our data on the population of Crimea were collected in 2001, year in which the last census was conducted in Ukraine, we can already presume that the situation in the last twenty years must have certainly undergone significant changes. Furthermore, the conflict that started in 2014 has contributed massively to further shaping the face of Crimea: according to estimates, more than 140,000 people, among ethnic Ukrainians and Crimean Tatars, have left the peninsula since 2014, while, in turn, it is estimated that the number of Russians who have moved to Crimea, including military personnel, is around 250,000.[700] With the conflict still ongoing, the demographic situation tends to continue to change steadily, bringing with it a long list of consequences.

4.4.1 International humanitarian law and human rights violations

In the aftermath of the events of 2014, Amnesty International warned that "in the new Crimea", Crimean Tatars were at risk of serious persecution and harassment.[701] The NGO informed about the large number of Tatars who were fleeing the country and explained that those who decided to stay were forced to give up their citizenship for the Russian one or live as foreigners in their homes. Among the concerns expressed by Amnesty International, there were also the threats of being dissolved posed to the Qurultay and Mejlis; the detention and ill-treatment of Tatar activists and local leaders, who were also banned and prevented from returning to their homeland; and the prosecution of Crimean Tatars who were taking part in peaceful protests. [702]

Moreover, Human Rights Watch, who was also on the ground during the spring of 2014, denounced the presence of the pro-Russian so-called 'self-defense units',

[700] Crimea: Six years after illegal annexation, March 17 2020. Online article available at: https://www.brookings.edu/blog/order-from-chaos/2020/03/17/crimea-six-years-after-illegal-annexation/

[701] Crimean Tatars: At risk of persecution and harassment in the new Crimea, 23 May 2014. Online article available at: https://www.amnesty.org/en/latest/news/2014/05/crimean-tatars-risk-persecution-and-harassment-new-crimea/

[702] Amnesty International Public Statement, Harassment and Violence Against Crimean Tatars by State and Non-state Actors, 23 May 2014. Available at: https://www.amnesty.org/download/Documents/8000/eur500232014en.pdf

armed groups in civilian clothing held responsible, among others, for disappearances, attacks and detention of activists and reporters, ill-treatment and torture. These irregular guerrillas operated on their own, without coordination or control by the local police. The NGO denounced and documented their acts and called for authorities, both Ukrainian and Russian, to investigate and prosecute them under international human rights law. [703]

To date, there are several comprehensive reports on the situation in the peninsula with regards to war crimes, human rights and international humanitarian law violations, since the incorporation until today. One was issued in January 2021 by the Crimean Human Rights Group.[704] The non-profit organization observed that there are at least three articles of the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War who have been and still are violated.

Firstly, the report denounces that Russian authorities have been transferring the Crimean population to the Russian territory with the use of force. This is for example the case of prisoners sent to colonies and detention centers located in Russia, but also of Ukrainians not in possession of the documents accepted by Russia's migration laws.[705] In any case, the Fourth Geneva Convention states that these transfers and deportations "from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive".[706]

Furthermore, as we have already mentioned, this situation is counterbalanced by a widespread encouragement of Russian nationals to settle in Crimea: it is believed that the total number of Russian nationals who moved to Crimea during these years is around 205,559, even without considering military staff.[707]

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[703] Ukraine: Activists Detained and Beaten, One Tortured, 25 March 2014. Online article available at: https://www.hrw.org/news/2014/03/25/ukraine-activists-detained-and-beaten-one-tortured

[704] Crimean Human Rights Group, Human Rights and International Humanitarian Law Norms: Crimea 2020 Situation Review, January 2021. Available at: https://crimeahrg.org/wp-content/uploads/2021/02/crimea-2020-situation-review-eng-1.pdf

[705] Ivi, pp. 11

[706] Article 49.

[707] Crimean Human Rights Group, op. cit., p. 12

Secondly, the report estimates that, during the occupation of the territory, some 28,000 persons have been mobilized to the Russian Federation army.[708] According to Human Rights Watch, a widespread advertising campaign for enlistment has been conducted in the main cities of Crimea and military propaganda was also provided in schools. Moreover, Russian authorities were imposing criminal charges on those who refused to serve, since, under Russian law, draft evasion is punishable with a fine or up to 2 years in prison, and men deciding not to sign up for the army were even facing difficulties finding a job. For these reasons, Russia has been accused of being in violation of Article 51 of the Fourth Geneva Convention, prohibiting any "pressure or propaganda which aims at securing voluntary enlistment".[709]

Finally, the Fourth Geneva Convention establishes that "the penal laws of the occupied territory shall remain in force".[710] However, Crimean Human Rights Group observed that the Russian Federation has been enforcing Russian laws on the territory since the beginning, as well as the administration of justice is carried out on the basis of the Russian legislation.[711]

Another quite comprehensive report was issued on the occasion of the UN-declared 'week against racism', in March 2021, by the Anti-Discrimination Centre Memorial Brussels, and denounces the discrimination and persecution of Crimean Tatars, covering the period 2014-2021.[712] According to ADC Memorial, since Euromaidan, Crimean Tatars have been first of all discouraged from commemorating their important dates and hold cultural events: this is the case for example of Remembrance Day for the Victims of the Deportation of the Crimean Tatars in 2014, before which several activists received a warning not to hold demonstrations. The NGO says that on the contrary, Russian authorities try to give a semblance of promoting the

[708] Ivi, p. 11

[709] Crimea: Conscription Violates International Law, 1 November 2019. Online article available at: https://www.hrw.org/news/2019/11/01/crimea-conscription-violates-international-law

[710] Article 64.

[711] Crimean Human Rights Group, op. cit., p. 12

[712] Anti-Discrimination Centre Memorial Brussels, Discrimination and Persecution of the Crimean Tatar People in 2014-2021, 26 March 2021. Available at: https://adcmemorial.org/wp-content/uploads/discrimination_crimeantatars2021eng.pdf

events of the Crimean Tatars, for example by organizing for several years now the celebrations of the Hıdırellez, to which the Tatars themselves do not take part.[713]

Another example of how Crimean Tatars are being discriminated against, consists of the old Soviet rhetoric of Tatars as "traitors", which is recycled today by promoting an image of Crimean Tatars as extremists and Islamists. This has an evident impact on public opinion as incidents of discrimination by the population against members of the ethnic Tatar community are not rare and happen on a daily basis.[714]

In addition, the NGO denounces, among others, interference with the activities of Crimean Tatars media, which, since 2014 have been either shut down or lost great part of their autonomy; the already-mentioned political persecution of Crimean Tatar activists; but also widespread violations of linguistic and cultural rights and even the destruction of Crimean Tatars monuments of cultural and historical heritage.

ADC Memorial concluded its report affirming that all these actions are "part of the systematic violation of the rights of the Crimean Tatar population".[715]

4.5 Recent developments

In August 2020, on the occasion of the International Day of the World's Indigenous Peoples, President Zelensky declared that the issue of Crimean Tatars was long overdue and needed to be solved once and for all. The efforts of the executive, affirmed the President, were now devoted to the most relevant matters since the incorporation of Ukraine by Russia, that is finding a definition of indigenous peoples to be enshrined in legislative acts as well as to strengthen the status of Crimean Tatars as indigenous peoples of Crimea. Zelensky explained that the top priority for Ukraine was to restore and protect their rights, develop their language and culture, and preserve their identity since they "cannot fully develop in their historical homeland – Crimea".[716]

[713] Ivi, p. 1

[714] Ivi, pp. 3-5

[715] Ivi, p. 10

[716] President: Ukraine has to restore rights of Crimean Tatars as indigenous people, 10 August 2020. Online article available at: https://www.ukrinform.net/rubric-polytics/3078462-zelensky-ukraine-has-to-restore-rights-of-crimean-tatars-as-indigenous-people.html

In this sense, it seems that something is moving. On May 18, 2021, Day of Remembrance for Victims of Crimean Tatars Genocide, President Zelensky presented the draft Law No. 5506 in front of the Verkhovna Rada.[717] Defined as an urgent matter, the document is devoted to the indigenous peoples of Ukraine - Crimean Tatars, Karaites, and Krymchaks – entitling them with broad cultural, linguistic, educational and economic rights. If adopted, the Law would allow Crimean Tatars for example to establish their own educational institutions, learn in their native language, and receive funds from the State budget.

For an improvement of the situation regarding human rights in Crimea, a big step was taken in January 2021 by the European Court of Human Rights. The Court did not rule on the legality of the incorporation of the peninsula by the Russian Federation, but found that Ukraine's complaint on the abuses conducted in Crimea by Russia are partially admissible. The Court focused on whether Russia had 'jurisdiction' over Crimea, in order to understand if it had competence to examine the Ukrainian application, and ruled that since February 2014, Russia has exercised effective control over the territory, such that it is responsible for the violations of human rights and international humanitarian law that have taken place there over the years.[718] The Court ruled on the matter after many years of legal uncertainty, which resulted in multiple discussions and studies on the subject.[719]

When coming to this decision, the Court considered the range of Russian military presence in Crimea between January and March 2014, despite there was no consent by Ukrainian authorities or a consistent threat for Russian troops. In addition, the Court took into account the consistent evidence provided by the Ukrainian

[717] Закон про корінні народи України 5506 від 18.05.2021. Available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71931

[718] European Court of Human Rights, Case of Ukraine v. Russia (re Crimea), (57/1997/841/1047), Strasbourg, January 2021. Available at: http://hudoc.echr.coe.int/eng?i=002-13090

[719] De Vido, S., Di autorità, poteri sovrani e iurisdictio: l'incerta situazione della Crimea nei procedimenti innanzi a corti internazionali, regionali e a Tribunali arbitrali, ordine internazionale e diritti umani, 2020, pp. 780-817
Cfr.
De Vido, S., (In)certezze giuridiche sulla situazione della Crimea: una «mappa» dei casi pendenti o decisi davanti alle corti europee, in "L'Ucraina alla ricerca di un equilibrio. Sfide storiche, linguistiche e culturali da Porošenko a Zelens'kyj", a cura di Andrea Franco e Oleg Rumyantsev, Edizioni Ca' Foscari, Eurasiatica Quaderni di studi su Balcani, Anatolia, Iran, Caucaso e Asia Centrale 14, 2019

government that the Russian troops were "actively involved in the alleged events", and not "passive bystanders".[720]

The Court has numerous rulings to issue in the near future given the number of pendant cases that Ukraine has lodged against Russia on the events in Crimea, Eastern Europe and the Sea of Azov, but this is undoubtedly an important step for the accountability for the numerous human rights violations perpetrated in the territory during these years.[721]

The Covid-19 pandemic added layers of complexity to the entire situation. In April 2020, for example, the Kharkiv Human Rights Protection Group (KHPG) reported of several cases in which Crimean Tatars, especially activists, journalists and members of the national movement, where forbidden to wear masks to protect themselves from contagion, in the name of counter-extremism. What is most surreal, is that, at the time, citizens were not allowed in public places without any protection covering their faces.[722]

Public health crisis also affected the conditions in which prisoners were detained. Indeed, the already mentioned Crimean Human Rights Group stated that among the most vulnerable groups were prisoners and individuals in custody, who "do not receive the necessary medical care and do not undergo testing for COVID-19 even in the presence of the corresponding symptoms".[723] Overcrowded places and unsanitary environment made imprisonment deadly during a pandemic.

Finally, journals reported that, under the rulings issued by Russian courts, during the pandemic, several large-scale evictions and relocations were occurring, both

[720] European Court of Human Rights Press Release, Complaints brought by Ukraine against Russia concerning a pattern of human rights violations in Crimea declared partly admissible, ECHR 010 (2021), 14 January 2021. Available at: https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-6904972-9271650&filename=Grand%20Chamber%20decision%20Ukraine%20v.%20Russia%20(re%20Crimea)%20-%20complaints%20concerning%20pattern%20of%20human-rights%20violations%20partly%20admissible.pdf

[721] List of Inter-State applications by date of introduction of the application [Updated to 18 May 2021]. Available at: https://www.echr.coe.int/Documents/InterState_applications_ENG.pdf

[722] Crimean Tatar activists prohibited from wearing masks in new wave of Russian 'warnings against extremism', 24 April 2020. Online article available at: http://khpg.org/en/1587580497

[723] Findings of monitoring the COVID-19 pandemic response in Crimea (April 06 – 12, 2020), 14 April 2020. Online article available at: https://crimeahrg.org/en/findings-of-monitoring-the-covid-19-pandemic-response-in-crimea-april-06-12-2020/

of which are prohibited under international humanitarian law.[724] According to the estimates shown by Larysa Herasko, Director of the Directorate General for International Law under Ukraine's Ministry of Foreign Affairs, in October 2020 there were about six hundred Ukrainian citizens facing forced eviction from Crimea. In turn, more than 140,000 Russians were changing their residence to Crimea according to reports from international organizations.[725]

In autumn 2020, the OSCE Special Monitoring Mission to Ukraine (SMM) and the UN Human Rights Monitoring Mission in Ukraine were called on by the Crimean Tatar's Mejlis to visit Crimea and the city of Sevastopol in order to evaluate the situation in the peninsula with regards to human rights. The Mejlis reported a serious situation in terms of high number of infections, saturation of hospital beds, and shortage of drugs and medicines among others. According to the statement issued by the Mejlis, this was attributable to the Russian Federation who refused "to take measures to protect the health and lives of the population of the occupied territory".[726]

The UN General Assembly issued a Resolution on 16 December 2020, where it denounced "Russia's responsibility for impeding the Crimean residents to exercise the human rights due to unnecessary and disproportionate restrictive measures imposed under the pretext to combat the COVID-19 pandemic". [727]

Previous to this, the EU Council introduced a new sanctioning mechanism offering the possibility to apply personal sanctions to those who violated human rights, consisting in freezing the assets and imposing entry bans.[728] This constitutes an

[724] United Nations, Forced Evictions, Fact Sheet No. 25/Rev. 1. Available at: https://www.ohchr.org/Documents/Publications/FS25.Rev.1.pdf

[725] Six hundred Ukrainians facing forced eviction from Crimea, 21 October 2020. Online article available at: https://www.unian.info/society/russian-occupation-600-ukrainians-facing-eviction-from-crimea-11189252.html

[726] Mejlis calls on OSCE, UN missions to visit Crimea due to COVID-19 - statement, 27 October 2020. Online article available at: https://www.ukrinform.net/rubric-polytics/3124441-mejlis-calls-on-osce-un-missions-to-visit-crimea-due-to-covid19-statement.html

[727] Resolution adopted by the UN General Assembly on 16 December 2020 on the 'Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine'. Available at: https://undocs.org/en/A/RES/75/192. Cited in Crimean Human Rights Group, Human Rights and International Humanitarian Law Norms: Crimea 2020 Situation Review, op. cit., p. 21

[728] Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses. Available at: http://data.europa.eu/eli/reg/2020/1998/oj. Cited in Crimean

innovation for the European sanctioning system concerning severe human rights violations and abuses, whose mechanism, until 2020, was country-based and did not involve the sanctioning of individuals. In this sense, the EU is given greater flexibility. Furthermore, this mechanism has the merit of being able to avoid geopolitical tensions generated from sanctions directed towards a certain country. The new regime is still very 'young' to be evaluated, however, it certainly represents a promising mechanism for a European Union assuming more and more the role of human rights advocate.[729]

Human Rights Group, Human Rights and International Humanitarian Law Norms: Crimea 2020 Situation Review, op. cit., p. 21

[729] The New EU Human Rights Sanctions Regime: a SWOT Analysis, 7 June 2021. Online article available at: https://europeanlawblog.eu/2021/06/07/the-new-eu-human-rights-sanctions-regime-a-swot-analysis/

CONCLUSIONS

The purpose of this thesis was to investigate whether the events that have been involving the Ukrainian territory for several years now are attributable to a lack of adequate legislative standards, in the protection and promotion of minority rights at the national level. In order to carry out this analysis, it was deemed necessary to first provide two types of contextualization, one concerning the international legislation, and one concerning the historical framework.

In the first Chapter, were illustrated the bodies most active in the protection of minorities at the international level, and the main instruments and mechanisms existing for the protection of individuals belonging to these categories. At the same time, we addressed the issues that most hinder the full protection of minorities to date, above all, the absence of a universally accepted definition. This contextualization was fundamental in order to be able to compare the Ukrainian legislation on minorities with current international standards.

In the second Chapter, on the other hand, we provided an overview of the historical events that most marked the territory that today constitutes Ukraine. First the domination of the Russian Empire, then the Soviet era, have involved the nationalities inhabiting these territories in a continuous alternation of conflicting policies, sometimes repressive, sometimes accommodating, that had a strong impact in shaping the territorial, demographic and linguistic profile of contemporary Ukraine. This contextualization was necessary to understand how complicated it has been and still is trying to manage a territory hosting more than 130 nationalities, and uniting them under a single national identity.

The first two Chapters paved the way for the heart of our analysis: the Ukrainian legislative framework on the topic of minorities. Chapter 3 focused in particular on three fields - language policy, education, political participation and elections, analyzing what Ukraine has done, after gaining independence, to comply with international standards on the topic. To assess the adequacy and effectiveness of these instruments, extensive use was made of the opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities. In addition, was provided an overview of the latest developments in the Ukrainian legislation with regards to minority protection.

The fourth Chapter completed the picture on this nation, focusing on the situation of Crimea as a specific case study on the topic of minorities in Ukraine. Including in our discussion the past and the present of the indigenous ethnic group of this territory, the Crimean Tatars, was extremely important in order to fully understand interethnic relations in Ukraine. Over time, the peculiar conformation of the population in Crimea - consisting of a majority of ethnic Russians, to a lesser extent ethnic Ukrainians, and to a small extent Crimean Tatars - has been a divisive factor for this territory. This, as we know, culminated in a true armed conflict.

The ongoing Russian-Ukrainian war has led to several violations of human rights and international humanitarian law. The Covid-19 pandemic has further worsened the situation, opening the door to new scenarios of violations, resulting in a further deterioration of human rights.

The question we tried to answer in our analysis, was whether at the basis of the delicate geopolitical situation in Ukraine, torn by inter-ethnic clashes, there may be some unresolved issues between Ukraine and its internal minorities, having their roots in a legislative framework of protection and promotion of minority rights still incomplete and ambiguous.

As we have repeatedly mentioned, the importance of this research lies in its topicality, as the conflict in the Donbass not only shows no sign of de-escalating, but seems indeed often on the verge of flare up again. Moreover, Ukraine's future in terms of access to the European Union and NATO depends to a large extent on what the country will be able to accomplish in the near future in order to comply with the growing international standards.

As a result of our analysis, we have come to the conclusion that Ukraine is striving to ensure a good level of protection for its minorities, in light of international pressure and high expectations, both from European institutions and from foreign states representing their diasporas in the country. However, it is clear that there are still several issues hindering the full protection of minorities in the country.

First of all, the tip of the balance always seems to swing between Ukrainians and Russian-speakers: in the past, depending on whether the President was or not pro-Russian, the Russian-speaking population in Ukraine has been able to enjoy greater

privileges, or be considered equal to all other minorities, despite the Russian component constitutes about half of the total. This continuous clash between the two is to the detriment of other minorities who, although present in a smaller measure, deserve just as much attention and protection at the national level. Proof of this is the precarious situation in which the Crimean Tatars constantly find themselves.

Another problem that emerges clearly in Ukraine is the general lack of dialogue between the central government and representatives of minorities. This very often gives rise to situations in which a certain law is adopted, but those directly affected have not been consulted at all.

Furthermore, there is a conflict ongoing. The geopolitical situation in the country in terms of stability and security inevitably represents a major - if not the biggest - impasse in the protection of minorities and indigenous peoples in Ukraine, further hindering and delaying an already toilsome process.

Overall, in Ukraine, despite a quite evident positive approach of the authorities aimed at improving the situation, the legal framework for the protection and promotion of the rights of national minorities results incomplete and poorly integrated. This is probably also due to a society that, since the dawn of time as an independent nation, is still in search of its own identity. The task is by no means easy for a territory that is home to more than 130 cultures and traditions.

Ukraine seems to have in front of it a long and difficult journey towards the full protection of its national minorities. Nevertheless, it is important to recall that, albeit great attention is paid to the issue, international law itself still presents major gaps. The lack of a universally accepted definition and the lack of recognition of minorities, remain the major obstacles to the full protection of minorities at the international level.

To date, it is very complicated to attribute a certain backwardness to the Ukrainian legislative system with regards to minority rights protection, in the light of an international system that perhaps still needs to develop fully.

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