



Legal Mobilisation for Minority Rights in Central and South-Eastern Europe: an agenda for action

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Summary

On September 2–3, 2021, a workshop was held at ELIAMEP at which participants discussed their prospective contributions to a collective volume with the working title "Legal Mobilisation for Minority Rights in Central and South-eastern Europe (CSEE)". The contributions tracked rights-claiming by three large groups of minorities in areas historically ruled by the multicultural Austro-Hungarian monarchy and the Ottoman empire: Hungarian minorities living around their kin-state, Roma across CSEE, and Muslims in the Balkans, including Turks, Muslims, Albanians, and Bosniaks.

The edited volume will be the first systemic study of minority-rights activism in its political and geographic context, with a focus on how ethnic minorities use law in practice. Rather than focusing on high-visibility international litigation, which is dominant in the extant scholarship, the volume tracks legal action from the national and local level up, assessing the impact of legal mobilization in terms of social change, not simply legal success.

Introduction

This contextual and bottom-up analysis is particularly timely in light of the democratic backsliding in the region and the rise of ethnic populism. The minority-rights regimes imposed by Western powers on CSEE following WWI and those introduced after the fall of the Soviet Union have never properly been able to overcome majoritarian suspicion of the dual allegiance of minority groups. Nationalist narratives were reignited by the refugee crisis, pushing minorities to share a platform with asylum seekers, putting their democratic membership in question again. Scholars studying populism have problematized how national populists create polarization between insiders and outsiders by targeting both “internal outsiders”, which is to say migrants and refugees, and “external outsiders”, who can be persons but are also presented as institutions – the EU, globalization, radical Islam, or George Soros, for instance – that threaten the national way of life or security. However, in this context, little attention has so far been paid to the impact of ethnic populism on the national minorities who have traditionally been excluded “others” in Central and South-eastern Europe; minorities that must now struggle against the tide of ethnic populism and illiberalism that serves national majorities, which is a particularly steep uphill battle compared to what now appears to have been the heyday of minority-rights protection that preceded the EU accession of the respective Central and Eastern European countries.

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Since their host states’ EU accession, minority representatives are increasingly turning to domestic courts, which have become the option of last resort for rights-claiming as the opportunities for political mobilization by minority parties dwindle with the increasing inequality in the power relations between minorities and majorities.

National minorities slipping off the EU’s agenda

These dynamics have received surprisingly little attention from European decision-makers, who come to the rescue of ethno-national minorities only if their plight poses a security challenge – an approach that risks rewarding escalation. Thus, minority issues were prioritised by the EU in the aftermath of the Balkan conflicts, while the threat of westward migration propelled the rights of eastern Roma onto the EU agenda. In fact, the plight of national minorities in CSEE is as much a human rights issue as a security one. It is time for the EU to recognize that some of its Member States are systematically violating the rights of their citizens because their ethno-national identity is different to that of the ethnic majority.

For security reasons, the EU paid greater attention to minority rights as a form of political conditionality during the Eastern enlargement process. Since then, however, it has failed to monitor how the now full members of the EU treat their minorities. Signs of the gradual deterioration of minority protection in the region abound. Despite the sustained political attention to Roma rights, the situation is stagnating at best in the new Member States as systemic discrimination continues. While the EU has issued a European Framework for National Roma Integration Strategies and relied on the Racial Equality Directive for the defence of Roma rights, several EU Member States have been pursuing openly discriminatory policies against the Roma. Although around 20 per cent of Roma live in slums on the verge of homelessness in EU Member States, the EU Commission has not to date initiated infringement procedures against the countries concerned. Despite the numerous legal victories against segregated education, forced eviction, discriminatory social housing regulations, etc., many rulings favourable to the Roma have yet to be implemented.

As Krassimir Kanev, a contributor to the volume, writes, virulent hate speech inflicted by politicians from a position of power on Roma, migrants, LGBTQI, and Macedonians mostly goes unpunished in Bulgaria. This not only harms the human dignity of minority individuals and communities, it also encourages discriminatory behaviour. Before the European Court of Human Rights, the minority in Western Thrace, Greece – recognized as ‘Muslim’ – successfully challenged restrictions on minority associations relating to the inclusion of ‘Turkish’ in their name. The restrictions were imposed because the adjective ‘Turkish’ allegedly threatened public order by propagating the idea that an ethnic minority exists on Greek territory. As Dia Anagnostou, another contributor, explains, the rulings of the Strasbourg Court have not been implemented.

The Hungarian minorities’ right to use their language in public remains mostly unenforced in Romania and Serbia, although it is guaranteed in principle by generally generous legal frameworks. In both countries, the Hungarian language can mostly be used in minority institutions, such as minority schools and churches, while local public authorities fail as a rule to provide for the use of Hungarian in official local domains. In Slovakia, the situation in relation to minority language use has deteriorated due to the threat of fines imposed under the state language law.

Systemic disadvantages are overt in the case of the Roma, and subtle yet tangible in the case of other minorities. Recent research has shown that Hungarian minority students perform slightly better than the national average in PISA¹ tests in Romania but underperform in the state baccalaureate examinations, compared to their Romanian peers. As a result, fewer Hungarians enter higher education, with far-reaching consequences for the whole community. Their poorer results in state examinations are exclusively due to their weaker performance on Romanian literature and language tests, in which subjects they take the same exams as native speakers and are held to the same standards, even though Romanian is a second language for most of them – a fact state institutions are reluctant to recognize.²

Most minorities in the region experience relative social marginalization, meaning that systemic discrimination has a profound effect on the lives of individuals who belong to ethno-national minorities. The multifold nature of the social and economic vulnerability of the Roma is well documented. It is less known that relative social marginalization has also been characteristic of other ethno-national minority groups, albeit to a lesser degree than in the case of the Roma minority.

Obviously, the Roma are the worst affected if their social marginalization is measured using dimensions such as educational attainment. In Romania, only 0.7% of the Roma population had a tertiary degree in 2014, whereas among ethnic Romanians the share of people who had completed higher education was 18.2%. At the same time, minority Hungarians also fared worse than the average population, with only 11% having college degrees.³ If one measures personal income, similar disparities can be observed. Only 15% of Roma earned a salary of above 2,000 RON as opposed to 50% of the whole

¹ PISA is the OECD's Programme for International Student Assessment. PISA measures 15-year-olds' ability to use their reading, mathematics and science knowledge and skills to meet real-life challenges. <https://www.oecd.org/pisa/> retrieved 19/04/22.

² Bálványos Institute and AGFI. 2021. Shadow report on the implementation of the Framework Convention for Protection of the Rights of National Minorities in Romania, 33.

³ Tamás Kiss, Etnikai rétegződési rendszer Erdélyben és Romániában. A magyarok társadalmi pozíciói, Régió. 2014 (22)20: 187-245:204.

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population in 2018, when the average monthly salary was 2,642 RON.⁴ Hungarians, too, earned less than the national average, earning 92.4% of the average salary, which is much less than the 107.3% earned by Romanians in Transylvania (where most Hungarians reside).⁵ Similarly, in Slovakia, 87% of the Roma population are at risk of poverty compared to 13% of the general population.⁶ At the same time, southern regions inhabited by the Hungarian minority recorded both the lowest incomes in the country in 2019 and the highest unemployment rate. These disparities are no coincidence: public investment has systematically avoided these regions.⁷ Economic and social disadvantages are also characteristic of ethnic Turks in Bulgaria, who reside in the poorest towns in the southeast, have a significantly lower employment rate (49.1%) than Bulgarians (67.1%), and are considerably less likely (4.9%) to have a college degree than the ethnic majority (25.6%).⁸ Similarly, apart from shaping the situation of the Muslims in Western Thrace, Greece, a legacy of socio-economic exclusion has also limited the potential of recent efforts by the state to counterbalance the prevailing socio-economic disparities between this minority and the majority population.⁹

All these minorities have contested the violation of their rights in domestic and European courts over the last two decades.

State contempt for minority languages and cultures can translate into outright discrimination, with tangible consequences. In the Transylvanian town of Târgu Mureş, where minority Hungarians constitute 42% of the local population, most schools are so-called mixed-language schools with parallel Romanian and Hungarian classes. However, the linguistic landscape of these schools – formed by information of public interest, names of classrooms, bulletin boards and homepages – has been exclusively in the majority language, which runs counter to the relevant legal provisions defined by the law on public administration that grants the right to bilingual public scripts and signs in such institutions.¹⁰ This has proved to be more than a symbolic problem for local Hungarian pupils, however: the schools' linguistic landscape reflects the generally marginal status of Hungarian pupils in these schools, who also tend to be allotted classrooms which are in poor physical condition. The unequal distribution of resources and the lack of Hungarian signs in school interiors in mixed-language schools reinforces the asymmetrical power relations between minority and majority students. This hierarchical ordering, reflected as it is in the symbolic and linguistic organization of space, has put minority students in a subordinate position and affected the socialization processes of schoolchildren.¹¹

Minority rights to equal treatment widely violated in CSEE

All these minorities have contested the violation of their rights in domestic and European courts over the last two decades. There is considerable variation in the objectives driving the legal mobilisation of different ethnic groups. While the Roma

⁴ Agenția "Împreună" (2019). Studiu comparativ al nevoilor comunităților de romi în contextul stabilirii priorităților strategice de intervenție pentru incluziunea socială a acestora. Raport de cercetare.

⁵ Kiss, 210.

⁶ The social and employment situation of Roma communities in Slovakia, Policy Department for Economic, Scientific and Quality of Life Policies, Directorate-General for Internal Policies, European Parliament, April 2020.

⁷ Fiala-Butora, János, Hungarians in Slovakia and the evolution of Hungarian-Slovakian bilateral relations – improvement or stalemate?, 12 European Yearbook of Minority Issues 156 (2015), 162.

⁸ Liakova, Marina, The Turkish minority in Bulgaria, Euxeinos 8 (2012), 14.

⁹ Anagnostou, Dia, Triandafyllidou, Anna (2006) Regions, minorities and European integration: A case study on Muslims in Western Thrace, Greece, ELIAMEP, 16.

¹⁰ As a result of civil society activists challenging this situation, recently bilingual signs were introduced in some public schools. For more, see: Huszka, B. (2021). Minorities as citizens: The legal advocacy of language rights by the Hungarian minority in Romania. Nations and Nationalism, 1– 16. <https://doi.org/10.1111/nana.12790>

¹¹ Bálványos Institute and AGFI, 21-27.

Being denied rights in practice due to their ethno-national belonging is a unifying experience for all these minority groups. They share the ambition of seeing rights that exist on paper being enforced in practice.

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rights movement is seeking the implementation of basic human – primarily social – rights, Muslims in Greece are struggling for official recognition of their ethnic self-identity, and ethnic Hungarians are fighting for linguistic and educational rights. However, being denied rights in practice due to their ethno-national belonging is a unifying experience for all these minority groups. They share the ambition of seeing rights that exist on paper being enforced in practice. This also implies that the systemic problems outlined above with the rule of law weigh more heavily on minorities. Legal uncertainties, combined with an institutional environment hostile to minority claims, make rights largely virtual.

The EU has very little to show with regard to the protection of individuals belonging to these minority groups. In 2020, the Federal Union of European Nationalities (FUEN) submitted a citizens' initiative to the European Commission (Minority SafePack) with 1,320,000 supporting signatures from 11 Member States asking the Commission to initiate legislation for the promotion of minority rights, language rights, and the protection of minority cultures. The request was rejected by the European Commission.¹² It is not clear why disadvantages stemming from ethno-national belonging should be less of a priority for the EU than discrimination on other grounds, such as gender identity or skin colour. In order to counterbalance gender-based disparities and discrimination, the EU made gender mainstreaming an essential part of its policies and adopted a law on gender equality (Directive 2006/54/EC) and gender equality plans. While affirming the importance of these initiatives it is clear that systemic discrimination in the case of ethno-national minorities requires similar institutionalized responses. Of these, only discrimination against the Roma and migrants is addressed by the EU's legal and policy instruments, such as the monitoring reports of the EU race directive.¹³ Although the EU's recently adopted anti-racism action plan acknowledges that, besides overt racism against people of colour, "other, less explicit forms of racism and racial discrimination, [...] can be equally damaging", and that "discriminatory behaviours can be embedded in social, financial and political institutions, impacting on the levers of power and on policy-making", while "structural racism perpetuates the barriers placed in the way of citizens solely due to their racial or ethnic origin", it fails to include traditional minorities in this formulation.¹⁴ However, in the light of the evidence introduced above, it is not only racialized minorities such as Roma or migrants of African descent that suffer the consequences of systemic discrimination; other national minorities do, too, and this is not recognized in these documents. Similarly, while the EU has a specific policy dedicated to the social inclusion of the Roma, it has no comparable policies concerning these other minorities. Generally, national minorities with grievances related to cultural or identity issues are handled as a different category from Roma minorities struggling primarily with social deprivation. However, as demonstrated above, cultural discrimination almost always manifests in some degree of socio-economic marginalization, even if it is to a lesser extent than in the case of Roma minorities.

¹² FUEN, Minority SafePack: The European Commission turned its back on national minorities 14.01.2021. <https://www.fuen.org/en/article/Minority-SafePack-The-European-Commission-turned-its-back-on-national-minorities>

¹³ The impact of the Racial Equality Directive, Views of trade unions and employers in the European Union, European Union Agency for Fundamental Rights, 2010. https://fra.europa.eu/sites/default/files/fra_uploads/1636-FRA-report-racial-equality-directive-EN.pdf

¹⁴ European Commission, A Union of equality: EU anti-racism action plan 2020-2025. Brussels, 18.9.2020 COM(2020) 565 final, 2.

https://ec.europa.eu/info/sites/default/files/a_union_of_equality_eu_action_plan_against_racism_2020_-2025_en.pdf

Policy recommendations

It is therefore time for the EU to put the issue of minorities protection on its agenda.

- First, as a minimum requirement, it should start monitoring the situation of national minorities in the Member States. Minorities often frame their grievances according to nationalist narratives that highlight symbolic issues, which is convenient for the European Commission which can then ignore them as irrelevant. However, it should be recognized that there is a problem with the protection of minorities in the Member States, and that the issue at stake far transcends whether some restless Szeklers can fly their local flags in Transylvania.¹⁵ For example, the distribution of EU funds is discriminatory in many countries, since municipalities inhabited by minority communities tend to receive less than their fair share (on a population basis), despite generally being poorer. This clearly undermines one of the main goals of the EU's cohesion policy: namely, reducing economic, social and territorial disparities.¹⁶ As statistical data demonstrate, individuals such as workers or pupils who belong to these minorities are systematically discriminated against in various spheres by the state to which they belong as citizens, but from which they differ in terms of their culture and identity. While the EU forbids discrimination based on citizenship in the union and protects EU citizens against discrimination by another state, it fails to offer any remedies to those that are discriminated against by their own state institutions, owing to their ethno-national belonging.
- Second, the EU should take the promotion of Roma rights more seriously by holding Member States accountable for meeting their commitments. As long as many members of Roma communities languish on the verge of homelessness – more than half of them in Bulgaria and around a third in Romania¹⁷ – efforts to fight other forms of discrimination, such as school segregation, will remain futile. The EU should use its legal instruments – by, for example, launching infringement procedures against Member States – to promote action in the area of Roma housing, which is the foundation of many other types of human rights, such as the right to education and health care.
- Third, the EU should support litigation efforts by which minorities fight for their rights. As national governments and international organisations fail to maintain fundamental values and standards, minorities are forced to fall back on domestic courts and supra/international tribunals for protection. In many of the countries concerned, minorities have increasingly turned to courts and tribunals to claim their rights – which is sometimes their only route to regaining their voice and agency in a system that works against them. Litigation requires legal expertise and financial resources, which are largely lacking, despite the presence of global donors and legal fees which are often very low; as a result, such remedies may not be sought, even when meaningful litigation strategies are available. Limited access to legal claim-making increases minority communities'

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¹⁵ Forbidding the display of such flags was also declared discriminatory by the Strasbourg Court in a recent decision. European Court of Human Rights, Press Release, Displaying of flags: the judicial decisions failed to examine the facts in depth and lacked sufficient reasoning, ECHR 133 (2021) 27.04.2021.

¹⁶ Website of the European Commission, The EU's main investment policy. https://ec.europa.eu/regional_policy/en/policy/what/investment-policy/

¹⁷ In Romania, 22% of Roma live in illegally constructed houses; in Bulgaria, the figure is between 50% and 70%. Sources: http://www.anr.gov.ro/docs/Site2014/Strategie/Strategie_final_18-11-2014.pdf, p. 15; CM/Notes/1390/H46-5, 3 December 2020, 1390th meeting (DH) (1-3 December 2020) - H46-5 Yordanova and Others v. Bulgaria (Application No. 25446/06) (coe.int).

Establishing a permanent structure for supporting litigation would not only empower minority communities, it would also increase their pluralism.

vulnerability to their political elites, which tend to allocate resources to political rather than legal representation and monopolise the former. In contrast, rights-claiming through grassroots mobilization and administrative procedures gives a voice to every community member who is willing to act. Establishing a permanent structure for supporting litigation would not only empower minority communities, it would also increase their pluralism, enabling a wider constituency to pursue their rights through institutional democratic channels. Supporting legal mobilization for the rights of minorities financially and technically would be an important step forward in expanding the EU's fight to protect fundamental rights and extend the rule of law to ethnic minorities, not least because it promotes these rights without the paternalism inherent in most forms of rights protection.