

# report

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## Pushing for Change? South East Europe's Minorities in the EU Progress Reports

By Snježana Bokulić and Galina Kostadinova





Nura and Ahmet Begović, Bosniak returnees to Potocari. They returned in November 2004 bringing with them a cow and some sheep. During the night of their return, someone killed their cow and left it in front of their door. An estimated 8,000 Bosniak (Muslim) men and boys from the nearby town of Srebrenica were massacred by Serb forces in July 1995, and many Muslim residents have still not returned.

Andrew Testa/Panos Pictures.

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MRG works with over 150 organizations in nearly 50 countries. Our governing Council, which meets twice a year, has members from 10 different countries. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples' Rights (ACHPR). MRG is registered as a charity and a company limited by guarantee under English law. Registered charity no. 282305, limited company no. 1544957.

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# EU enlargement in South East Europe



# List of abbreviations

<b>AC</b>	Advisory Committee (on the FCNM)	<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>BiH</b>	Bosnia and Herzegovina	<b>ICTY</b>	International Criminal Tribunal for former Yugoslavia
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women	<b>IDP</b>	Internally displaced person
<b>CEE</b>	Central and Eastern Europe	<b>ILO</b>	International Labour Organization
<b>CERD</b>	Committee on the Elimination of Racial Discrimination	<b>IPA</b>	Instrument for Pre-Accession Assistance
<b>CESCR</b>	Committee on Economic, Social and Cultural Rights	<b>MRG</b>	Minority Rights Group International
<b>CLNM</b>	Constitutional Law on National Minorities	<b>NATO</b>	North Atlantic Treaty Organization
<b>CRC</b>	Committee on the Rights of the Child	<b>NGO</b>	Non-governmental organization
<b>CSCE</b>	Conference on Security and Cooperation in Europe	<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>DG</b>	Directorate General	<b>RED</b>	Racial Equality Directive
<b>EC</b>	European Community	<b>RESC</b>	Revised European Social Charter
<b>ECHR</b>	European Convention on Human Rights and Fundamental Freedoms	<b>SAA</b>	Stabilization and Association Agreement
<b>ECRML</b>	European Charter for Regional or Minority Languages	<b>SAp</b>	Stabilization and Association process
<b>EED</b>	Employment Equality Directive	<b>SEE</b>	South East Europe
<b>EU</b>	European Union	<b>UDHR</b>	Universal Declaration of Human Rights
<b>FCNM</b>	Framework Convention for the Protection of National Minorities	<b>UNDM</b>	United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic or Religious Minorities
<b>FRY</b>	Federal Republic of Yugoslavia	<b>UNDP</b>	United Nations Development Programme
<b>HCNM</b>	High Commissioner on National Minorities	<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>HRC</b>	Human Rights Committee	<b>UNICEF</b>	United Nations Children's Fund
<b>ICCPR</b>	International Covenant on Civil and Political Rights	<b>UNMIK</b>	United Nations Mission in Kosovo
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination	<b>UNSCR</b>	United Nations Security Council Resolution

# Executive summary

As the countries of South East Europe (SEE) move towards EU accession, the European Union's annual country Progress Reports (EU Reports) offer a unique opportunity to improve the daily lives of the region's marginalized minorities. When they are published, the Reports receive a high level of government and media attention in the region; their conclusions are brought to the attention of societies at large. The Reports and the priorities they identify carry significant political weight which creates implementation obligations on governments aspiring to bring their countries into the EU, and they provide an important advocacy tool for human rights and minority rights activists.

But close examination of these Reports and consultation with minority groups in Bosnia and Herzegovina (BiH), Croatia, Kosovo, Macedonia, Montenegro and Serbia, shows a wide divergence between the EU messages and the realities that minorities face in their day-to-day lives.

Our survey reveals that minority protection has not been given the necessary priority in the EU Reports. The EU has not been consistent in its criticism across the different countries and across the different minority groups. For example, Roma dominate its analysis on education and employment, but do not appear in the sections on representation and political participation. Minority under-representation in the police and judiciary has been questioned by the EU in Macedonia, but has not been addressed in Montenegro where this problem also exists. Minority rights activists have found the EU Reports superficial in the choice of issues covered, and in their relevance for minorities. This disapproval refers particularly to the fact that the EU has disregarded the different, often more difficult, experiences in discrimination and poverty of minority women. Perhaps the greatest weakness identified by our study is that the EU lacks an institutionalized mechanism allowing for structured and systematic involvement of the SEE minority communities in the accession process.

This report considers three crucial areas for minorities: participation in public life, employment and education. Lack of equality in these areas serves to keep minorities disadvantaged over generations: if this goes consistently unaddressed, the seeds for future conflict can begin to grow. Yet the EU enshrined minority rights protection into the accession criteria, among other priorities, to avoid encompassing existing or potential inter-ethnic conflict into the EU as its borders enlarge. Given that one of the main

concerns of the EU in this region has been inter-ethnic conflict prevention, it is vital that more attention is given to reporting on minorities. Across the region, grassroots community-based minority rights organizations have highlighted the need for systematic consultation processes that would enable them to contribute to the Reports. Here, minority groups give their views and show how the Reports could be strengthened to effect real change.

In the case of Reports on BiH, the problem begins with the language used: it replicates the state's discriminatory term 'others', used for all who do not identify themselves as Bosniaks, Croats or Serbs. This is unacceptable to minorities in BiH, as the categorization directly prohibits them from participating fully in political life and gaining adequate representation.

In Serbia, a gross violation of the minority right to education is going unaddressed in the EU Reports. Roma children without any learning disabilities are still being channelled into schools for those with mental health problems. It is vital that the EU address this more firmly.

The EU Reports also fail to record that negative stereotypes are used to portray Roma in Macedonian textbooks at school.

Setting EU Reports in contrast to treaty monitoring bodies, in particular the Council of Europe's Advisory Committee on the Framework Convention for the protection of National Minorities (FCNM) also highlights inconsistencies. While the 2007 FCNM report warned of 'serious deficiencies' in instruction *of* and *in* minority languages in Macedonia, the EU Report omitted the issue completely.

The momentum for change that the EU accession process can generate is in danger of being lost. EU member states still have to ratify the Lisbon Treaty to create the legal and institutional framework that will make accession of the Western Balkans possible. Though countries should not accede before they are fully ready, it is clear that a more strategic and structured approach to the accession process and to these Reports, one that includes consultation with minority communities, would make a significant difference to the lives of minorities in SEE. An accession action plan, with precise targets that take into account minority rights and give attention to the rights of minority women, to be met by each state before accession, would offer this.

The fundamental rights of minorities, including the right to participate in processes and decisions that affect

their own futures, must become a standard part of the Report-writing process. The participation of minority women should be enshrined within this. Smaller minorities must be given equal consideration. Only then will the Reports fulfil their potential to promote and strengthen minority rights in SEE.

The importance of this to minority groups must not be underestimated in the daily struggle to educate children, build a livelihood and participate in public life. As one minority representative from Montenegro states, 'Accession to the EU should not be allowed until minimum rights are realized by all minorities.'

# Introduction

There is general agreement that the European Union exerts significant and multifaceted influence on countries on the track of EU accession. The EU's principal tool in this respect is the accession conditionality, the policy of setting particular conditions for moving towards full membership. These conditions are broad and far-reaching: they can fundamentally transform the political and economic systems of the countries aspiring for membership.

In 1993, the EU made minority rights protection one of its key requirements for accepting new members into the club. Almost a decade later, in 2004 the EU completed one of its most successful foreign policy projects – the eastern enlargement. The project came to an end with eight ex-Soviet bloc countries, and Cyprus and Malta, becoming EU member states. In 2007, two South East European countries, Bulgaria and Romania, followed.

Shortly before the completion of the eastern enlargement, the EU reaffirmed its enlargement commitment towards the countries in the Western Balkans. Since 2002, it has regularly monitored *inter alia* their minority rights performance. For minorities in SEE, this has been an important development; the assumption is that, with adequate political and financial backing, the EU accession process can bring about improvement in their everyday lives. At the same time, it appears that this opportunity has not been utilized fully insofar as the EU messages have been neither strong enough, nor relevant and consistent.

This is unfortunate; as the EU's influence and the momentum gained by the accession process risk being lost, any positive impact it could have on the lives of minorities in the region begins to dissolve.

It must be noted that the EU's insistence on the Copenhagen political criteria on minority rights in the accession process has made the EU open to criticism that it is using double standards, in that it requires candidate and potential candidate countries, to respect norms of minority protection which are not imposed on its own member states. The accusation of double standards is severe and warrants serious consideration by the EU and its member states; it is, however, beyond the scope of this report. And while it is true in general, from the viewpoint of minorities in candidate and potential candidate countries it is commendable that the European Commission (the Commission) should continue to refer to minority

rights in its monitoring rather than reduce the requirement to the EU's common denominator and eliminate the minority rights criterion. Thanks to this approach, the potential for significant change on the ground remains, providing the opportunity for turning it into concrete impact.

This report looks closely at how this impact can be made. It assesses the coverage of minority issues in the EU's Progress Reports (hereafter EU Reports), which are prepared annually by the Commission. This publication evaluates the EU's efforts to boost the minority rights record in the SEE countries and to bring about change in the lives of minority communities. Directorate General (DG) Enlargement is in charge of this monitoring (which is an internal and political process). In coordination with respective desk officers, country reports are prepared. They are based on information provided by the candidate and potential candidate countries, assessments made by member states and the Commission Delegations in those countries, as well as a range of international organizations, including the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE), international financial institutions and a number of United Nations (UN) agencies. While non-governmental organizations (NGOs) have been included in consultations to some extent, it is the level of consultation with civil society, in particular community-based minority civil society, which has historically been the weakest and this issue is addressed below.

Though DG Enlargement has recently taken important steps to open up the process for consultation with civil society in SEE, minority communities and their organizations remain on the margins of mainstream consultation. It must be emphasized that the general involvement of civil society in the monitoring process, commendable though it is, is not sufficient to ensure that minority voices are heard, unless specific attention is devoted to including minority-based organizations as well. Another aim of this report, therefore, is to contribute constructively to the strengthening of this dialogue with minority civil society in the Western Balkans.

This report assesses the monitoring process to date. The assessment focuses on three issues selected by partner NGOs as crucial for minority communities: the minorities' right to participation in public life, access to employment and economic participation, and the rights to and in education. To this end, all annual Reports pro-



duced by the Commission since 2002 have been reviewed to ascertain how the three issues were addressed by the EU, how much space was allocated and what was said about them. Other documents, such as the National Programs for the Adoption of the *Acquis*, or the European and Accession Partnerships, have not been included. The focus is primarily on the sections on 'Minority Rights, Cultural Rights and Minority Protection'. This study also examines how minority rights have been mainstreamed throughout the EU Reports, and particularly in the chapters dealing with the implementation of the *acquis communautaire* on 'Employment and Social Policy' and 'Education and Culture'. The study also pays attention to whether gender issues have been given due weight within the minority sections of the Reports, and in particular how the precarious position of minority women in political and economic participation, access to employment and education is addressed.

The analysis of EU Reports is set against well-established standards on education, employment and participation in international human rights law. The legal instruments include the Council of Europe's European Convention on Human Rights and Fundamental Freedoms (ECHR), Framework Convention for the Protection of National Minorities, the UN International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), as well as the Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities (UNDM) and the Universal Declaration of Human Rights (UDHR), Convention No. 111 of the International Labour Organization (ILO), and EU's own Racial Equality Directive (RED) and Employment Equality Directive (EED). The standards included in the relevant documents adopted within the framework of the OSCE, in particular the Recommendations of the High Commissioner on National Minorities (HCNM) on participation and education, are also considered.

The application of the EU minority rights conditionality is compared against the above standards, using the findings on the same issues and over the same period of time. The latter include the Advisory Committee on the FCNM, and the bodies monitoring the implementation of the UN human rights treaties: the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of All Forms of Racial Discrimination (CERD), the Committee on the Rights of the Child

(CRC), and the Committee on the Elimination of All Forms of Discrimination Against Women. These treaty monitoring bodies review the state parties' implementation of human rights obligations. They do so through periodic consideration of state reports and alternative information on the basis of which they articulate their opinions and recommendations for states on how to improve and strengthen their human rights performance. These opinions and recommendations form a point of reference for the analysis presented here.

Consultations were held with representatives of minority communities to obtain their views on the substance and process of the EU's progress reporting. In February 2008, each partner NGO organized a focus group discussion with the number of participants ranging from six to 12. The participants were representatives of at least four minority communities, including Roma communities. An equal number of female and male participants were sought; they came from different regions of their countries, mostly from grassroots minority organizations.

Finally, this report provides recommendations for improvement so that the future impact of the EU reporting process can be strengthened. The recommendations were drawn up by comparing the analysis of the three sources and from discussions with members of minority communities. The recommendations are presented jointly with partner NGOs and addressed to the Council, member states and Commission more generally, and DG Enlargement and the Delegations of the European Commission specifically.

It must be stressed that the report focuses on the Commission only and not on national governments. The primary obligation to ensure that international human rights and minority rights standards are adequately implemented rests with the states. Therefore, it is the national governments' responsibility to safeguard minority rights, promulgate inclusive policies and bring about improvement in the lives of their constituencies. But this report focuses on the role of one specific international actor that has the power to influence the national governments and can thus indirectly contribute to the above goals: the European Union. Governments and their implementation of international human rights obligations are examined to a large degree by a variety of organizations, including the Commission, the Council of Europe, the OSCE and the UN, however the Commission's minority rights monitoring processes have not been sufficiently scrutinized, particularly in the case of the Western Balkans. This report is, therefore, 'monitoring the monitors'.

Moreover, a number of commentators have pointed to the apparent disjuncture between the policy and principles of Brussels and its practice and programming on the ground. Only limited funds are allocated and used to ful-

fil the Copenhagen political criteria in the candidate and potential candidate countries. The allocation of pre-accession assistance funds by governments and the inclusion of minorities in the process, both from the viewpoint of decision-making and participation in the benefits of this spending will be analysed in a separate report prepared by Minority Rights Group International (MRG) and partners and forthcoming in 2009. This issue, therefore, is not addressed here.

This publication is produced as part of MRG's programme 'Advancing Inclusion of Vulnerable Groups in South East Europe: Minority Rights Advocacy in the EU Accession Process'. By strengthening the minority rights discourse in the EU Accession Process, the programme aims to utilize the opportunities it provides for mainstreaming minority and minority women's participation in political and developmental processes in the region. It is implemented in Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia, and these are the countries under consideration here (Albania is not covered). The programme was designed and is implemented

jointly with seven partner NGOs from the target countries who participated in the drafting of this report. These NGOs are minority-based and have long-standing experience of advocating for the protection and promotion of minority rights of their communities at the national and international levels.

#### The Copenhagen criteria

The Copenhagen criteria, adopted by the European Council in 1993, encompass four main areas. The political, economic and legal criteria relate to the candidate's stability of institutions guaranteeing democracy, the rule of law and respect for human rights; its functioning market economy and ability to cope with competitive pressures; and its ability to transpose the Community *acquis*, respectively. The fourth element is internal to the EU in that it relates to the EU's capacity to absorb new member states.

# EU engagement in the Western Balkans: what role for minority rights?

The break-up of Yugoslavia and the wars which ensued from the summer of 1991 exacerbated the security questions associated with the minority groups in the former communist East. Consequently, the EU's engagement in the Balkans in the early 1990s was characterized primarily by conflict prevention. The European Community (EC) attempted, extremely unsuccessfully, to respond to the crisis in the Balkans through various diplomatic means.

Following their failure to prevent the 1991–2 wars, in 1993 the European Union leaders declared a commitment to minority rights – a key precondition for maintaining political stability along the new EU's borders and ultimately within its territory. The Yugoslav wars were a major reason for the inclusion of the minority protection requirement among the EU's accession criteria. When the enlargement towards the East developed into a policy framework, the question of minority protection became central. At the Copenhagen Council of June 1993, it was decided that, in order to become a member, each candidate should achieve 'stability of institutions guaranteeing democracy, the rule of law, human rights *and respect for and protection of minorities*' (authors' emphasis).<sup>1</sup>

By spelling out the Copenhagen criteria for accession, (see box p. 8) the EU showed determination to avoid similar conflict scenarios in its backyard, and conveyed a clear message: no aspiring state could accede without 'respect for and protection of minorities'.

The EU devised its accession criteria in a period when the Conference for Security and Cooperation in Europe (CSCE)<sup>2</sup> was building on its minority rights standards and instruments. In the context of the CSCE, the Paris Charter for New Europe (1990) proclaimed that minority rights are the 'bedrock' of the new European order, while the Copenhagen Document on the Human Dimension (1990) provided the first catalogue of minority rights and asserted that minority rights are human rights. In 1992, a new kind of conflict prevention institution was set up in Europe but this happened in the CSCE, rather than in the Community framework: the High Commissioner on National Minorities was mandated to deal with minority-related problems through preventive diplomacy.<sup>3</sup>

In 1995 the Council of Europe adopted the first ever legally binding minority rights treaty – the Framework Convention for the Protection of National Minorities. Beyond identity issues, the FCNM also addressed, much more assertively than the Copenhagen document on the Human Dimension (1990), the socio-economic condition

of minorities and their right to participation without discrimination in any aspect of social life. For example, it called on state parties to 'create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, *social, economic* [authors' emphasis] life and in public affairs' (Article 15) and 'to adopt, where necessary, adequate measures in order to promote, in all areas of *economic, social*, [authors' emphasis] political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority' (Article 4). Building particularly upon those provisions, which extended minority rights into the wider areas of social and economic rights, minority rights became relevant not only for 'security-related' minorities but also for smaller groups whose plight often remains below the radar of international institutions.

During the eastern enlargement of the EU (1997–2004/2007) the European Commission was tasked with assessing the performance of the candidates vis-à-vis the Copenhagen political criteria and the minority protection requirement, in particular. It found itself in the unusual situation of having to monitor countries in terms of their minority rights records, without any agreed standards or benchmarks to enable it to measure effectively any advancement in the minority rights field. The Commission had to develop from scratch its approach to assessing the protection of minorities in the process of enlargement. Unlike other human rights monitoring bodies, it did not have a convention, a body of norms and an agreed set of principles by which to measure the candidates' compliance. The Commission had to look therefore to the human and minority rights outside the EU framework, notably in the Council of Europe and the OSCE, the two main European players in the 1990s in the field of minority rights. That was of great importance for minorities; both organizations had firmly put the situation of minorities beyond the security concern paradigm and repositioned it as a human rights concern.

Since the formulation of the EU accession criteria and the development of the minority rights framework in Europe, a chain of events transformed the relationship between the EU and the Western Balkans countries. Following the biggest bloodshed in Europe since the Second World War – the war and genocide in Bosnia and Herzegovina – the EU became committed to the Balkans not only as a conflict prevention manager but also as an agent

of reconstruction and development. Subsequently, after the NATO bombings of Serbia in 1999, the *de facto* separation of Kosovo and the fall of the Milošević regime in 2000, the Balkans' future within the EU gained a more tangible perspective. First, the EU launched the Stabilization and Association process (SAP) – the EU policy towards the Western Balkans that aims to promote stability while facilitating closer association with the EU. In 2002, when the first Annual Stabilization and Association Reports were published, the EU regular monitoring, including on minority rights, started. At the EU–Balkans Summit in Thessaloniki in 2003, a year before the historic eastern enlargement, the EU affirmed its commitment to the membership of the Western Balkan countries.

Today, Croatia and Macedonia have achieved candidate status, with negotiations ongoing with the former, but not the latter. Stabilization and Association Agreements (SAA) have been signed with BiH, Montenegro and Serbia. The situation of the recently independent Kosovo is complex, as its statehood has yet to be recognized by a number of EU member states. In spite of EU's explicit commitment to the membership of the Western Balkan countries, recently reaffirmed in the Commission *Communication to the European Parliament and the Coun-*

*cil*,<sup>4</sup> the EU perspective on these countries is neither clear nor tangible at the moment. First, at present the EU lacks the institutional and legal frameworks which would make further enlargement possible. Such frameworks will be put in place once the new Treaty of Lisbon<sup>5</sup> has been ratified by the 27 member states and the European Parliament.<sup>6</sup> The ratification process is ongoing; however, before it is successfully completed enlargement is not feasible. Second, there is no clear accession action plan for these countries. An unclear and protracted process will result in 'accession fatigue' in the candidate and potential candidate countries, public interest and support will falter and the process will lose its momentum. The opportunities for change will weaken and this could have a negative impact on minority protection. This is far from saying that any of the Western Balkan states should be made to join before they are adequately ready for accession. The experience with the 2007 accession of Bulgaria and Romania has shown that establishing a specific date for accession can have counter-productive effects as it reduces the political leverage of the EU. However, a comprehensive action plan with precise targets to be met by each state would go a long way towards making the most out of the accession process.

# International legal framework for the protection of minority rights: participation, employment and education

This chapter provides an overview of the existing international legal standards on minority rights protection as regards the rights to participation, access to employment and education. It is based on the analysis of the relevant legal instruments as outlined above (see p. 7). It reveals the legal framework against which the Commission Reports are analysed in this study.

## Right to participation in public life

The right to effective participation is firmly rooted in international human rights law. The right of everyone to take part in the conduct of public affairs, directly or through freely chosen representatives, as well as to vote and be elected at genuine periodic elections is prescribed in Article 25 of the International Covenant on Civil and Political Rights. This provision is the elaboration of Article 21 of the Universal Declaration on Human Rights which states that ‘Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.’ With regard to minority participation in particular, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Linguistic or Religious Minorities states that ‘persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life’ (Article 2(2)) and the right to ‘participate effectively in decisions on the national, and where appropriate, regional level concerning the minority to which they belong or the regions in which they live’ (Article 2(3)).

Within the European context, Article 3 of Protocol 1 to the European Convention on Human Rights and Fundamental Freedoms creates an obligation for the state parties to hold free elections ‘under conditions which will ensure the free expression of the people in the choice of the legislature.’ More specifically, the right of persons belonging to national minorities to participate effectively in cultural, social and economic life and in public affairs, in particular those affecting them, is protected by Article 15 of the Framework Convention for the Protection of National Minorities.

This right was articulated in recognition of the fact that effective participation of minorities in various areas

of life is essential for the development of a truly democratic, cohesive, inclusive and just society. Effective participation of minorities in decision-making processes, and particularly in those decisions which have a special impact on them, is a fundamental precondition for the full and equal enjoyment of the human rights of persons belonging to minorities. Moreover, measures taken towards ensuring the effective participation of minorities contribute to the alleviation of tensions and thus serve the purpose of conflict prevention.<sup>7</sup>

In its *General Comment No. 25*, the Human Rights Committee interprets the conduct of public affairs broadly as the exercise of power in the legislative, executive and administrative branches of the state.<sup>8</sup> Article 15 of the FCNM requires state parties to 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. According to the Advisory Committee on the FCNM, participation in public affairs entails participation in elected bodies, participation in consultation mechanisms, in public services and the judiciary, in specialized governmental bodies, in decentralized and local forms of government, as well as participation through cultural autonomy arrangements.<sup>9</sup> Participation in economic and social life encompasses participation in development projects, access to employment, land and property, healthcare, social welfare and pensions, and housing, for instance.<sup>10</sup> Participation in cultural life covers areas such as access to education, media and protection of identity.<sup>11</sup> Although the FCNM is silent on the issue of autonomy, different types of autonomy, including territorial autonomy, have come to be regarded as arrangements that facilitate effective participation and thus promote minority rights.

The right to effective participation is to be enjoyed without discrimination. The basic principle of prohibition of discrimination is articulated in a number of instruments including Protocol 12 of the ECHR, ratified by all countries of the Western Balkans, Article 4 of the FCNM, Article 5 of ICERD, Articles 2 and 26 of the ICCPR and Article 7 of CEDAW. In order to ensure full equality, the

FCNM and ICERD allow for the adoption of special measures. Article 1 of ICERD permits the implementation of special measures:

*for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals' equal enjoyment or exercise of human rights and fundamental freedoms'.<sup>12</sup>*

The same approach is taken by Article 4 of the FCNM which allows the states to 'adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority'.<sup>13</sup>

Different aspects of public participation in practice have been elaborated by treaty monitoring and expert bodies. Public participation generally entails political representation of minorities in elected bodies, their participation through consultation mechanisms in public services and the judiciary, in specialized governmental bodies, decentralized or local forms of government and cultural autonomy arrangements.<sup>14</sup>

Political participation entails parliamentary representation at the national level, as well as representation in regional and local-level assemblies. As stated in the *Lund Recommendations* of the HCNM, the essential aspect of participation is involvement, both as regards opportunities for minorities contributing substantively to decision-making processes and these contributions actually having an effect.<sup>15</sup> A variety of mechanisms are available to ensure such political participation. They include, for instance, reserved seats for minorities in one or both chambers of the parliament. In some cases, minorities have veto rights in particular over legislation which directly affects them. The challenge is to design an electoral system that reflects the diversity of society and thus ensures representativeness of the minority groups.

Minorities may face a number of obstacles which in practice hinder their participation in the political processes. States therefore have the obligation to take positive measures to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively. Moreover, information and materials about voting should be available in minority languages.<sup>16</sup> Other elements which, if defined restrictively, may impede political participation of minorities include residence requirements, citizenship requirements and language proficiency requirements, among others. As the example of post-Dayton BiH has

shown, linking political participation with ethnic identity by requiring that candidates standing for election be members of certain ethnic groups and that voters belonging to certain ethnic groups be allowed to vote only for candidates from their respective groups, to the exclusion from the political process of all other ethnic groups, can have a detrimental effect on the political participation of minorities. Such a system is inherently discriminatory and as such illegal under anti-discrimination legislation and provisions in international law.

Consultation mechanisms are seen as a key, though not always sufficient, element in enabling the participation of minorities in public affairs.<sup>17</sup> While such mechanisms can take a variety of forms, in the view of the Advisory Committee on the FCNM, it would be desirable to make them of a regular and permanent nature.<sup>18</sup> In this respect it is, moreover, imperative to ensure that such mechanisms are inclusive and representative, that is to say all minorities, including the numerically small ones, different segments within minority communities, in particular women, as well as non-citizens, are included and have an effective voice.<sup>19</sup> For the consultative bodies to be functional their mandate should be clearly defined and adequate resources should be made available to them.<sup>20</sup> Moreover, state, regional and local authorities should in fact consistently involve these bodies in their decision-making processes on issues affecting minorities.<sup>21</sup> In this respect, it is important to keep in mind that the range of issues affecting minorities is very broad and not limited to the cultural and educational sectors. In the view of the Advisory Committee, the composition of public services and the judiciary should mirror that of the society.<sup>22</sup> Constitutional guarantees for fair representation constitute a legal basis for the promotion or recruitment of persons belonging to minorities.<sup>23</sup> Different forms of such mechanisms have been established in a number of states in the Western Balkans. Their adequacy, successful implementation and positive impact on the effective participation of minorities warrant continuous evaluation.

## Rights to access to employment and economic participation

One of the key problems, articulated by various minority groups in all the examined SEE countries, was minorities' under-representation in employment. A wide range of studies and reports have revealed that minorities, and particularly minority women, have been affected disproportionately by the sudden unemployment and subsequent impoverishment that took place over the transitional and post-war periods.<sup>24</sup>

International human rights law provides for a right to work, as well as rights in work. Important human rights in the employment context include the rights to a free

choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work, and just and favourable remuneration ensuring an existence worthy of human dignity, and so forth. Where the full realization of the right to work has not been fulfilled, states are obliged to ensure that every person has a minimum standard of living.

Similarly to all human rights, employment rights must be enjoyed by minorities and majorities without distinctions of any kind, including race or ethnic origin, religion, gender or membership of a minority. Discrimination in employment, and particularly in access to employment, has been identified, including by MRG partner NGOs in SEE, as a root cause for the absence or under-representation of minorities in the labour market.

Significantly, the right to work without discrimination has been strongly proclaimed not only within international human rights law but also within the *acquis communautaire*. EU law has paid attention to human rights particularly in the employment context. Perhaps freedom from discrimination in the context of employment is the most developed human rights provision within EU law as a whole. In 2000 the EU passed two directives implementing the principle of equal treatment – the Racial Equality Directive, 2000/43/EC, and the Employment Equality Directive, 2000/78/EC, collectively known as ‘Equality Directives’. The new European anti-discrimination framework and, in particular, the RED, has been an important legal development for minorities in the EU. The Equality Directives have defined and prohibited direct and indirect discrimination, harassment, instruction to discriminate and victimization. They have introduced important legal techniques, such as the shift of the burden of proof in cases of discrimination, the possibility for NGOs to engage on behalf of or in support of victims of racial discrimination, and the requirement for a deterrent effect in the remedies.<sup>25</sup>

Access to employment is central to minorities’ economic participation. In addition to non-discrimination, minority rights law requires the states to actually ensure minorities’ participation on the labour market, and in economic life in general. The UNDM (1992) provides that the ‘Persons belonging to minorities have the right to participate effectively in [...] economic [...] life’ (Article 2(2)). As examined above, Article 15 of the FCNM further calls for the states to ‘create the conditions necessary for the effective participation of persons belonging to national minorities in [...] economic life’.

In the context of economic and social participation, disaggregated data collection is regarded as a precondition for the development of well-targeted and sustainable policies aimed at improving participation of minorities in socio-economic life.<sup>26</sup> The latter will only be possible if

the administration and public services are sensitive to the specific needs and difficulties encountered by members of minorities. One of the ways to achieve this sensitivity is for states to promote the recruitment, promotion and retention in the administration and public services of persons belonging to minorities.<sup>27</sup>

States should give special regard to the economic and social participation of minorities in economically depressed areas, including isolated rural areas, war-affected areas and regions affected by de-industrialization. To this end, economic rehabilitation and regional development programmes should be designed with due regard for the needs and rights of minority communities, and in particular the situation of minority women and youth. Minorities should therefore be involved in the preparation, implementation and evaluation of economic and development policies and projects in the regions in which they live. Moreover, particular attention should be paid to the socio-economic situation of minorities who have suffered long-standing discrimination in their access to employment.

In the view of the FCNM Advisory Committee, states should undertake special measures to counter the effects of past discrimination and promote their participation in socio-economic life.<sup>28</sup> According to the FCNM Explanatory Report, Article 15 aims above all to encourage real equality between persons belonging to national minorities and those forming part of the majority. Not surprisingly, the Advisory Committee has regularly linked Article 15 with Article 4 of the FCNM, which states that:

*‘The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.’*

Although minorities are entitled to the same rights as all other persons and groups in society, they often experience difficulty in actually accessing those rights. The inaccessibility of these rights, including the right to work, is not necessarily linked to direct or indirect discrimination. Structural disadvantages, such as lower educational levels or segregated housing, impede their access to employment and the realization of their human rights on an equal footing with other members of society.

As a result, in 2000 the Committee for the Elimination of Racial Discrimination issued a special recommendation on discrimination against Roma in which it recommended that state parties adopt positive

action measures. For example, it recommended that they ‘take special measures to promote the employment of Roma in the public administration and institutions as well as in private companies’.<sup>29</sup>

Similarly, the Convention No. 111 of the International Labour Organization provides that the states must ensure the basic conditions that enable all to benefit from equal opportunities to obtain training and employment. The Convention allows for special measures in respect of underprivileged groups, including affirmative action in favour of ethnic minorities. The Committee of Experts has regularly addressed the higher unemployment rates of ethnic minorities, including minority women, and their disproportional lack of training and educational opportunities and their over-representation in low-paid jobs.<sup>30</sup>

Therefore, in order to ensure minorities’ inclusion in the labour market and in economic life in general, states need to adopt special measures, as mandated by minority rights law.

## Right to education

Education is a universal human right, asserted by most significant international human rights instruments, such as the UDHR, the ICESCR, the Convention on the Rights of the Child, CEDAW and the UNESCO Convention against Discrimination in Education.

The European system of human rights protection further reaffirms the right to education through Protocol 1, Article 2 of the ECHR. Within the EU’s legal order, Article 14 of the EU Charter of Fundamental Rights sets out a right to education, while Article 21 sets out the rights to equality before the law and prohibition of discrimination on various grounds, including membership of a national minority. It also provides for the rights of the child, equality between men and women, and cultural, religious and linguistic diversity. Furthermore, Article 3(1.g) of the EU Racial Equality Directive provides protection against direct and indirect racial discrimination in the area of education.

Education is not only a human right on its own. It is an ‘empowerment right’, a ‘vehicle’ for the realization of other fundamental rights and freedoms, such as the right to health, to work, to vote, to free speech, etc. Education is an indispensable means for the full realization of the human personality. For marginalized communities it is a means of lifting themselves out of poverty and towards full participation in society.<sup>31</sup>

International human rights instruments set out the minimum standards for the respect, protection and fulfilment of the right to education. The minimum core of the right to education covers free and compulsory primary education, equal access to education, including secondary education, and liberty of parents to choose the education of

their children according to their own religious, moral or philosophical convictions. Furthermore, the right to education is subject to the principle of ‘progressive realization’ whereby standards can be extended but cannot be reduced.

A most comprehensive analysis of the right to education has been provided by the Special Rapporteur on the right to education,<sup>32</sup> later reaffirmed by the CESCR with its *General Comment No. 13*.<sup>33</sup> They clarify the content of the right to education and the state duties arising from it. Under international human rights law states are under obligation to make education available, accessible, acceptable and adaptable (the so called four-A scheme):

- **Available:** there should be sufficient number of schools and teachers within the state.
- **Accessible:** schools should be accessible to all, especially the most vulnerable groups. Accessibility has three dimensions: non-discrimination, physical accessibility and economic accessibility (affordability).
- **Acceptable:** to both students and parents in form and content, including curricula and teaching methods, and to be relevant, culturally appropriate and of good quality.
- **Adaptable:** schools should be able to respond to the needs of students within their diverse social and cultural settings, as well as the needs of changing societies and communities.

Indisputably, international human rights apply to everybody, to both majority and minorities. At the same time, due to the particular situation of minorities, international human rights law also provides for special minority rights, including within the educational context. While the first two factors are of equal relevance to all children and students, the Advisory Committee on the FCNM has concluded that the notions of acceptability and adaptability are of particular relevance for persons belonging to national minorities.<sup>34</sup>

In that sense, on the one hand, *minority rights to education* cover ‘the universal requirement for a good quality, free primary education as well as general and equal access to secondary education’.<sup>35</sup> On the other hand, *minority rights in education* set standards on:

*‘how such education should be shaped in terms of content as well as form in order to facilitate the development of the abilities and personality of the child, guarantee child safety and accommodate the linguistic, religious, philosophical aspirations of pupils and their parents.’*<sup>36</sup>

In addition to the above universal human rights instruments, minority rights *in education* have been developed



in a number of documents. For minorities in Europe, the most relevant has been the FCNM – the first and only legally binding minority rights treaty. There is not a single model with regards to the realization of minorities' language rights in education. The OSCE has incorporated the best practices through its thematic recommendations, and more specifically the Hague Recommendations Regarding the Education Rights of National Minorities (1996)<sup>37</sup> and the Oslo Recommendations Regarding the Linguistic Rights of National Minorities (1998).<sup>38</sup> As to minority languages in education, the Council of Europe has elaborated a special instrument: the European Charter for Regional or Minority Languages (ECRML).<sup>39</sup>

Thus, in addition to the general duties vis-à-vis the right to education under international human rights law, states also have special duties towards minorities' education. These are the duty to promote a multicultural education and provide teacher training and quality textbooks for minority languages teaching;<sup>40</sup> to respect and protect the right of minorities to set up and to manage their own private educational and training establishments;<sup>41</sup> to respect, protect and fulfil the right of minorities to learn their minority language and to provide instruction *of* or *in* the minority language;<sup>42</sup> In addition, the state should use education as a tool of tolerance.<sup>43</sup>

Significantly, in certain circumstances minority rights law mandates the state to adopt positive action measures in order to live up to their commitments towards minorities. For example, in the field of education, Article 4 obliges states to adopt in certain circumstances positive measures to promote full and effective equality for persons belonging to national minorities. As put by the Advisory Committee: 'The Framework Convention presupposes that States actively pursue the goals embodied in the Convention. A passive attitude may amount to a violation of the obligations provided for under the Convention.'<sup>44</sup>

## Conclusions

The Copenhagen criteria require the Commission to monitor the minority rights record of the enlargement countries. Moreover, human rights are values on which the EU is based (Article 6, EU Treaty) and an objective of its foreign policy (Article 11, EU Treaty). With the exception of its anti-discrimination framework, the EU lacks a human and minority rights *acquis* of its own, therefore in order to accomplish this monitoring it must rely on the standards elaborated in the legal instruments within international human rights law. The European Commission itself has referred to the standards elaborated within the Council of Europe and the OSCE.

As to the non-discrimination standards, the EU should push the enlargement countries harder to adopt, long before their accession date, a comprehensive anti-discrimination law on the basis of the EU Anti-Discrimination Directives. Anti-discrimination is one of the few areas in human rights where the EU actually has a clear, and good, model to offer to the SEE countries. So far the EU has consistently identified that the problem of discrimination exists; nevertheless it has not consistently insisted that, to solve the problem, the anti-discrimination legal framework be adopted, and effectively implemented, by the SEE countries. For example, it has not set a concrete deadline for the transposition of the EU anti-discrimination *acquis* by the candidate and potential candidate countries.

Consequently, there exists a wide range of legal norms, recommendations and benchmarks available which the European Commission could use for the purpose of its pre-accession monitoring of the enlargement countries. The following section explores how strictly the above elaborated standards on participation, employment and education have been followed in the EU Reports on the Western Balkans. It also explores how discrimination, particularly on the grounds of gender and ethnic origin, has been addressed.

# Minority rights in the EU Reports on SEE: a country-by-country overview

## Bosnia and Herzegovina

Bosnia and Herzegovina signed the SAA with the EU on 16 June 2008. Although the SAA technical negotiations were successfully completed in December 2006, the signing of the SAA was delayed because of BiH's failure to implement key reforms, in particular to create a unified police force at state level. The Agreement was initialled in December 2007, following the long-awaited parliamentary approval of the controversial police reform in April 2008.

The monitoring of human rights and minority protection in BiH reports struggles with the complexity of ethnic issues in BiH. The constitutional framework of BiH specifies three constituent peoples as Bosniaks, Croats and Serbs, and merely mentions the 'others'. The term is supposed to include members of minority communities, as well as those who do not wish to identify as members of a specific group.

It would be logical for EU monitoring to cover all groups who are in a non-dominant position because of their numerically inferior and/or disempowered status. These groups thus include both members of minorities, individuals not identifying as members of a specific group, as well as members of the constituent peoples who in practice constitute a numerical minority in a certain area. While the EU Reports make some attempt to be inclusive, this effort has been inconsistent. They include minor references to the 'others' without specifying which groups are covered, and make no mention of the substantial group of people living in BiH who do not wish to identify as members of a specific group and as such suffer discrimination in employment and violation of their right to participation, for instance. As the practice in BiH has shown, the use of 'others' is exclusionary and discriminatory, and this is replicated in EU Reports. When a member of the Polish minority community in BiH was asked to comment in a focus group on the Reports and what they should cover, he said, 'First and foremost, we should not be "others".'<sup>45</sup>

The treatment of relevant minority issues has lacked a strategic and consistent approach. While political participation is addressed in all Reports, the focus is primarily on the participation of the three constituent peoples. Employment and education are virtually disregarded in the initial Reports and start being considered more substantially only from 2005 on. Moreover, such a crucial

issue as the lack of a comprehensive anti-discrimination law in BiH legislation is first reported only in 2007.

The one issue that receives constant attention is the return of refugees, in particular minority returns; that is the return of refugees belonging to a certain group to areas in which they constitute a numerical minority. In that context, the discrimination in employment and education are often cited as a key obstacle to their sustainable return.

## Minority representation and participation in public life

Political participation is discussed in all Reports since 2002. The focus, however, has been primarily on the legal framework for political participation, pointing to the discriminatory provisions enshrined in the Dayton Peace Accord, which prevent persons who are not members of one of the three constituent groups standing in elections for the Presidency and the House of the Peoples, or voting for a candidate of different ethnicity. BiH's failure to implement constitutional amendments that would enable the participation of non-constituent peoples as well as satisfy the preconditions for the signing of the SAA has been regularly highlighted. The need to introduce amendments to the Election Law to allow for representation of minorities has also been highlighted. The adoption of the Law on the Protection of Rights of Persons Belonging to National Minorities is monitored; the comments on its implementation, however, are very limited. More recent Reports make reference to the setting up of the consultative council of national minorities, but do not include much commentary on the adequacy and effectiveness of this mechanism. The 2005 Report thus indicates that, 'Procedural problems mean members of minorities rarely participate in the parliaments and municipal assemblies.'<sup>46</sup> Gender-based discrimination is mentioned in passing in some Reports, as is the limited participation of women in politics. No reference is made to minority women.

The Advisory Committee on the FCNM issued its Opinion on BiH in May 2004. The Advisory Committee discusses at some length the exclusion of minorities from political posts and representation because of the discriminatory provisions in the Constitution. It also highlights that national minorities do not benefit from the 'vital national interest' mechanism which in effect gives a right of veto to the constituent peoples on cer-

tain issues, since the former do not have the right to invoke a violation of their own vital national interest in the Parliament, either at the state or the entity level. The Advisory Committee points out the inhibiting impact that allocation of posts based on ethnicity has on effective participation of minorities. It also makes reference to the insufficient representation of minorities in the civil service, particularly for Roma. Moreover, it emphasizes the discrimination faced by the Roma communities in housing, healthcare, employment and education.<sup>47</sup> But the annual EU Report that followed in autumn 2004 makes no reference to the Advisory Committee's findings, or to minority issues.

Discriminatory constitutional provisions and their incompatibility with international legal standards are addressed by both the Human Rights Committee and the Committee on the Elimination of Racial Discrimination in their 2006 Recommendations. CERD goes on to express concern that insufficient resources are allocated to the Roma Council, a consultative body, and that the Council of Ministers of BiH rarely consults it.

Members of minority communities highlight participation as a vital issue. In the words of one representative, 'In my personal opinion, until Roma start sitting on the benches of the assemblies and municipal councils, the situation of Roma in this area will not improve.'<sup>48</sup> This was echoed by another representative:

*'In my view, many problems will be resolved once representatives of national minorities are in place so that we are not represented by some other or third parties who exploit this position for their own interests or that of the political party, or for window dressing so that they can say they have a minority representative.'*<sup>49</sup>

It is therefore imperative that participation of minorities be given adequate space and coverage in the Reports.

## Employment

In spite of the importance of the non-discrimination in employment and access to employment issues, the EU Reports start looking at the problems affecting the employment of minorities only from 2005 on. The references are largely general, dealing either with Roma who continue to be exposed to discrimination and face difficulties in the field of employment, among others, or stating that discrimination in employment remains a key obstacle to the sustainable return of refugees and displaced persons.<sup>50</sup> The Reports never go beyond mere statements that discrimination exists, such as in the 2007 Report that in the 'Employment' section declares, 'Ethnic discrimination in employment remains an issue.'<sup>51</sup> The same Report also states that no particular action has been

taken to favour the employment of women, people with disabilities and minorities.<sup>52</sup> No reference, however, is made to minority women.

The comments and the opinions of the treaty bodies during the same period offered much more guidance in this regard. In 2006, the Committee on Economic, Social and Cultural Rights was deeply concerned about the high unemployment rate, in particular among the disadvantaged and marginalized groups such as Roma and ethnic minorities. CERD notes with concern the unresolved situation of many workers belonging to ethnic minorities who were dismissed from their jobs during the war because of their ethnicity, as well as the low representation of ethnic minorities, in particular Roma, in the labour market. Finally, the Human Rights Committee recommends in the same year that the state party should increase its efforts to create the necessary conditions for sustainable returns by also ensuring the minority returnees' equal access to employment.

The Opinion of the Advisory Committee on the FCNM in 2004 discusses the issue of employment at some length. It addresses discrimination in access to employment in the entities where it remains difficult for members of minority groups to access positions in the judiciary, police and a range of public enterprises. It highlights discrimination in employment against minority returnees, as well as the negative impact of continuous reference to one's ethnicity in the allocation of public posts and employment more generally. It recommends that greater attention should be paid to tackling discrimination in practice, notably in access to employment, a problem affecting all those not belonging to the constituent people in a numerical majority in the area concerned, and in particular the members of the Roma community.<sup>53</sup>

## Education

As with employment, the Reports began paying more substantial attention to the issue of minorities and education only from 2005 onwards. Yet education has repeatedly been identified as a crucial issue by members of minority communities, who view it as a vehicle both for empowerment and for the preservation of identity. The education-related issues raised in the Reports are limited in scope. The 2005 Report highlights that the relevant legislation at the entity level was harmonized, allowing for further development of minority-language education, however its implementation remained insufficient. Reference was made to the discrimination against Roma in education.<sup>54</sup> The 2006 Report, like the 2005 one, notes that separation of children in schools along ethnic lines continued. 'Ethnically neutral education has not been achieved and pupils and students in a minority position

frequently face a hostile environment.<sup>55</sup> The 2007 Report pays more attention to the discrimination against Roma in education. It claims that, 'The implementation of the action plan on educational needs of Roma and other minorities led to an increase in the so far very low enrolment rate at all educational levels.'<sup>56</sup> The Report, however, fails to indicate the source of this information or indicate how much of an increase was achieved and how sustainable it was. Overall, education is never assessed from the standpoint of availability, accessibility, acceptability and adaptability. Moreover, the position of minority girl children, who, according to focus group findings, are disproportionately excluded from access to education, is never addressed.

The treaty bodies again provide a more comprehensive overview. The UN treaty bodies unanimously talk of discrimination in access to education for minorities, especially the segregationist practice of 'two schools under one roof'. In many such schools, Bosniak and Croat children, as well as their teachers, have no mutual contact. Students often enter these schools through different entrances, they take separate breaks, and the teachers have separate common rooms.<sup>57</sup> The treaty bodies also emphasize the apparent lack of opportunities for Roma to receive instruction in and of their language and culture, as well as the low rates of primary and secondary school attendance by Roma children.<sup>58</sup> The 2004 Opinion of the Advisory Committee on the FCNM provides a detailed analysis of the implementation of the Framework Convention's educational provisions. The Opinion thus elaborates on the need for the integration of the educational systems whereby the elements of segregation in 'two schools under one roof' are eliminated and a common core curriculum is introduced. It finds that the measures to foster knowledge of the culture and history of national minorities are insufficient and that a review of textbooks needs to continue. The Advisory Committee expresses deep concern about the access of Roma children to education, which is hindered both because of the low socio-economic status of the parents but also because of their shattered confidence in the school system, in which their children are exposed to discrimination, prejudice and verbal harassment. The Advisory Committee notes that the percentage of Roma girls attending schools is much lower than that of the boys. It also analyses the relevant legal provisions and expresses concern over provisions that require potentially high numerical thresholds for receiving instruction in certain minority languages. It stresses the need for the increase of state support for teachers of minority languages and their training, and the provision of textbooks in minority languages. It also notes the general lack of teaching of the Roma language.<sup>59</sup>

## Croatia

Although it initially trailed behind Macedonia in the EU accession process, Croatia has by now become the most advanced EU candidate in all the Western Balkans. Its negotiations with the EU began in October 2005, following a delay of several months because of Croatia's insufficient cooperation with the International Criminal Tribunal for Former Yugoslavia, one of the political criteria for accession.

Croatia signed its SAA with the EU in October 2001, and this entered into force in February 2005. Croatia submitted its application for EU membership in February 2003. In April 2004, the Commission published an Opinion on Croatia's Application for Membership of the European Union, as required by Article 49 of the EU Treaty.<sup>60</sup> The Opinion concludes that, 'Croatia is a functioning democracy, with stable institutions guaranteeing the rule of law. There are no major problems regarding the respect of fundamental rights.'<sup>61</sup> Although it reiterates that Croatia needs to make additional efforts in the field of minority rights and refugee returns, among others, the Commission Opinion confirms that, 'Croatia meets the political criteria set by the Copenhagen European Council in 1993 and the Stabilization and Association process conditionalities established by the Council in 1997.'<sup>62</sup>

The minority rights coverage in the Reports on Croatia is limited to general descriptive statements of fact, for the most part an overview of the various legal provisions in the field of minority protection, with little to no analysis or evaluation.

While the space allocated to minority rights in the Reports has progressively increased, this has generally not been reflected in the quality of its content. The monitoring of minority representation and participation in public life is limited to the reference to the Constitutional Law on National Minorities (CLNM), Croatia's principal legal instrument for the protection of minority rights.

Education and employment of minorities are discussed exclusively within the minority rights section of the Reports, with no reference made to these issues in the chapters on 'Employment and Social Policy', and 'Education and Culture' of the Reports.<sup>63</sup>

The Reports focus their attention principally on two minorities only: Serbs and Roma. Croatia's 20 remaining officially recognized minorities and their specific problems are not addressed. The Reports largely fail to mainstream minority rights into other sections and chapters, such as women's rights, employment and education; nor do they mainstream gender in the minority rights section.

## Minority representation and participation in public life

In all Reports, the adoption in 2002 and the subsequent implementation of the CLNM is reviewed. This law provides the principal legal framework for minority participation in Croatia. In its 2003 Report, the Commission expresses its regret that 'the government excluded minority representatives from the work of the drafting group of this Law, and a compromise was reached only due to international pressure'.<sup>64</sup> Subsequent Reports highlight that its inadequate implementation has resulted in under-representation of minorities in state administration, the judiciary and the police. Since the law guarantees the representation of eight minority members in the Parliament, the implementation of its political representation provisions is deemed more successful. Little attention, however, is paid to the issue of participation of minorities in local-level elected bodies, which continues to be unsatisfactory. The 2005 Report thus mentions that 'Problems have arisen in connection with the application of those provisions of the CLNM concerning reserved seats for minority representatives in local and regional governments'.<sup>65</sup> The problem related to the discrepancies in the 2001 census lists in comparison with the 2005 voters lists, and the government's decision, in spite of the legal requirements, to use the former when establishing the numbers of minority representatives in local bodies. This resulted in the lower level of representation in the representative bodies of the Serb minority in particular, effectively curtailing their participation rights.

Reports also refer to the consultative councils of national minorities established in line with the CLNM. This mostly relates to the lack of institutional relations between the local authorities and the councils, the latter being under-resourced and not always clear about their role. The Reports mention the very low voter turnout in both the 2003 and 2006 rounds of elections for the councils.

The Advisory Committee on the FCNM was unable to provide substantive guidance on effective public participation of minorities since the second cycle of its monitoring took place shortly after the establishment of the councils of national minorities.<sup>66</sup> Acknowledging that the legal framework for the participation of minorities in elected and consultative bodies was significantly improved with the adoption of the CLNM in 2002, the Advisory Committee stressed the need for constructive cooperation to be established between the councils and the respective authorities.<sup>67</sup> Both the HRC and CERD in their concluding observations of 2001 and 2002, respectively, highlight the inadequate legal framework for the participation of minorities, which was largely remedied with the adoption of the law. Moreover, CERD expresses concern over

reported discrimination against the Roma in accessing political representation and citizenship rights.<sup>68</sup> The latter issue is not raised in the Commission Reports.

The EU Reports barely scratch the surface when dealing with obstacles to minority participation in public life. Consultation with members of minority communities in Croatia revealed a range of issues that go largely unnoticed in the Reports.<sup>69</sup> First, it should be kept in mind that political representation by minority representatives does not translate automatically into genuine and effective representation of minority communities. As one minority representative states, 'Political parties represent only one segment of a particular community that accepts its party program'.<sup>70</sup> Moreover, regarding the effectiveness of the councils of national minorities as means of consultation and communication with local and national authorities, a major challenge remains in that the councils are not recognized as advisory bodies and the negotiation often shifts to the political domain. According to the representative of the Serb national minority in Županja:

*'Local authorities simply do not want to hear minority representatives. It has been one year that I have served as the Serb representative in Županja and I have not received a single invitation or query or information on any projects in Županja. The only information I have is what I find myself.'*<sup>71</sup>

At the same time, these consultation bodies remain dependent on the power of the purse of the local authorities with whom they are supposed to engage, which has a significant impact on their independence and influence. In the words of the President of the Council of the Serbian national minority in Beli Manastir, 'As long as minority institutions depend on the budget adopted by the town authority or council, we cannot speak of their influence'.<sup>72</sup> A number of structural issues affecting the effective participation of minorities in public life thus remain outside the coverage of the EU Reports.

## Employment

Discrimination against minorities in employment has been highlighted in the EU's and human rights bodies' reports alike. It remains one of the major concerns of minority communities, as illustrated by a member of the Bosniak community who serves as the President of the Municipal Council of Gunja:

*'For example, the primary school in Gunja is attended by some 530 students of whom some 250 children belong to Bosniak and Serbian minorities. Yet out of the 56 employees in that school, only one person belongs to the Bosniak minority – the cleaning lady.'*

*In my opinion, the problem of national minorities is employment.*<sup>73</sup>

Discrimination in employment is mentioned as one of the most important obstacles to minority return affecting primarily the Serb community in all Reports. The social and economic discrimination against Roma is also noted. The under-representation of minorities in public administration, the judiciary and police is consistently highlighted. The government is also criticized for the lack of adequate statistical data, which would facilitate the monitoring of the situation and the design of adequate policies to remedy the situation.

But while the human rights bodies are explicit in expressing their concern at the serious discrimination in economic life that affects mostly the members of the Serb community, and in recommending that additional positive measures be launched aimed at eradicating the negative consequences of the past discriminatory practice in employment, the EU Reports are more neutral. In its Second Opinion issued in 2005, the Advisory Committee on the FCNM stresses that it was not made aware of any positive, targeted government programmes in this context, so it urges Croatia to introduce special measures aimed at guaranteeing full and effective equality in the field of employment, and to seek financing for such an initiative. The Advisory Committee, moreover, expresses regret that a number of areas of public sector employment are not covered. Similar sentiments continue to be echoed by representatives of minority communities as well, as the government is still lagging behind in the implementation of these crucial initiatives.

The 2005 Report highlights the limited implementation of those provisions of the CLNM regulating minority representation in state administrative and judicial bodies and in the police, where there is clear under-representation of minorities, especially Serbs. The Report is explicit, stating that: 'Discrimination appears to be commonplace when new vacancies arise, and no programme has been developed by the government to ensure implementation of the provisions for minority representation laid out in the CLNM.'<sup>74</sup>

The 2006 Report is more critical of the government, clearly stating that, 'The political will to develop a long-term strategy to implement the CLNM's minority employment provisions is lacking.'<sup>75</sup> It goes on to demand concrete action from the government in the form of recruitment plans at all levels of state administration and a civil servants registry to allow for systematic statistics collection, as well as reiterating the need for the government to issue clear instructions on how to proceed.

Regrettably, this line of argumentation is not maintained in the subsequent 2007 Report. Although reference

was made to issues raised in the previous Report, such as 'some steps' taken to collect data on ethnic affiliation, and continued inaction in setting up a civil servants' registry, the Commission's position is weakened by a glaring contradiction. The Report first says that, 'The Central State Administration Office prepared for the first time a recruitment plan for minorities in the state administration', providing concrete figures as to the planned employment of minority members in the state administration in the course of 2007.<sup>76</sup> Then in the next paragraph it asserts that, 'A long-term strategy to implement the CLNM's minority employment provisions is lacking.'<sup>77</sup>

Since the 2004 Commission Opinion and Croatia becoming a candidate country, the Reports have included a separate chapter on 'Employment and Social Policy'. With the exception of a cursory mention in the 2007 Report, however, minorities are not discussed under this section. This is of particular relevance in the case of non-discrimination: while it is repeatedly mentioned that minorities are victims of discrimination in employment, the obligation of the government to develop a solid and comprehensive anti-discrimination legislation, coupled with effective non-discrimination policies, has not been stressed sufficiently and references to it are dispersed in different sections of the Report. While sporadic reference is made to gender equality and discrimination against women in employment, the precarious situation of minority women is not addressed.

Discrimination against Roma in employment is highlighted continuously, however with mixed messages at times. While the Advisory Committee on the FCNM, for instance, notes with deep concern the shortcomings hindering the effective participation in social and economic life of Roma in general, and Roma women in particular, and expresses its disappointment over the overall implementation of the National Programme for the Roma in its First and Second Opinion, respectively, the 2006 Report asserts that, 'The position of the Roma minority in Croatia is slowly improving.' The basis on which such a statement was made remains unclear as, in the following paragraph, the Report states that, 'Most Roma remain excluded from mainstream Croatian society. Unemployment remains endemic. [...] Discrimination of Roma in Croatia continues, whether in terms of access to employment, in schooling, or in general attitudes in society.'<sup>78</sup>

## Education

EU Reports regularly address the education of minorities. The issue is mostly approached from the standpoint of education in minority languages and the different models adopted by Croatia in this respect.

Discrimination against Roma in the educational system has been a constant, though not very elaborated

theme. The 2003 Report thus mentions some steps taken by the government towards better integration of Roma pupils into the Croatian school system, particularly in Međimurje County. The Report does not specify which steps contributed to better integration. It is also not clear what is meant by 'better integration', especially since now, five years later, segregation in education in Međimurje County remains as acute as ever and no results in desegregating education have been achieved by the authorities.<sup>79</sup> Regrettably, the following year, the 2004 Report makes no reference to segregation of Roma in education, however in the 2005 Report, in spite of 'some steps' reported in 2003, the Commission declares that, 'serious difficulties remain, not least in the area of education and employment where discrimination is widespread and the problem of segregation in schools remains'.<sup>80</sup> The 2006 Report goes further, explicitly stating that:

*'Discrimination of Roma in Croatia continues, whether in terms of access to employment, in schooling, or in general attitudes in society, many obstacles still exist, especially at grass roots level with the various efforts aimed at desegregation often met by opposition from the parents of non-Roma children.'*<sup>81</sup>

The same language is repeated in the 2007 Report.<sup>82</sup> Paradoxically, the same Report also states that, 'The Roma community also needs to make a greater effort to participate in the programmes for education.'<sup>83</sup> It is never explained what this effort should consist of and how the lack thereof is manifested.

The Reports also address a number of other issues that affect the exercise of the minority right to education. These include practical financial and logistical problems in the implementation of minority education;<sup>84</sup> the adequacy of coverage of minority issues in national curricula, especially history textbooks, and a degree of legal uncertainty over implementation of legal provisions on education.<sup>85</sup> The 2005 Report raises another major issue that relates both to minority access to employment as well as minority education, 'There appear to be many cases, particularly in the education area, where adequately qualified Serbs were refused jobs even where no non-Serbs had applied.'<sup>86</sup> But the 2004 Commission Opinion had concluded that the principles under which the educational system operates and is incorporated in the Croatian legislation, 'are consistent with the basic principles contained in the Council of Europe's FCNM and ECRML'.<sup>87</sup>

As with the chapter on 'Employment and Social Policy', the chapter on 'Education and Culture' does not address the issue of minority education. Several Reports, nevertheless, highlight the need to align primary education with the EU Directive on education of children of

migrant workers, and the 2007 Report notes some limited progress related to the introduction of the principle of non-discrimination in access to education for EU citizens in higher education legislation.

Human rights treaty monitoring bodies, in particular the Advisory Committee on the FCNM, are more comprehensive, and consistent, in their assessment of Croatia's compliance with the international legal standards on the right to education and minority education. The 2004 concluding observations on Croatia of the Committee on the Rights of the Child express concern about the different access to education of children belonging to minority and the most vulnerable groups, including Roma children.<sup>88</sup> In 2002, CERD was concerned about the continued practice of segregation of Roma children within the educational system and recommended that Croatia take active measures to prevent the segregation of Roma children within the educational system.<sup>89</sup>

The Opinions of the Advisory Committee cover a broad range of issues under Articles 12–14 of the FCNM.<sup>90</sup> In particular, the Opinions highlight problems in the portrayal of minorities in history textbooks, as well as the inadequate availability of textbooks in minority languages. The lack of qualified teachers in minority languages is also noted. Taking a more structural viewpoint, the Advisory Committee notes the lack of clear criteria to trigger the introduction of instruction in minority languages, as well the difficulties faced by the newly established minorities in accessing education in their minority language. The Advisory Committee also devotes significant attention to the education of Roma, in particular the segregation in schools to which Roma children are subjected, and other forms of discrimination.

## Kosovo

On 17 February 2008, the Kosovo Assembly adopted a resolution declaring the independence of Kosovo. The following day, the Council of the European Union took note of that resolution, also noting that member states would decide, in accordance with national practice and international law, on their relations with Kosovo.<sup>91</sup> By 21 May, the newest European state was officially recognized by 20 of the 27 EU member states, and 21 others, including the United States. Though Kosovo is a potential candidate country with no contractual relationship with the EU, in its March 2008 Communication to the European Parliament and the Council, the Commission nevertheless reaffirmed that, 'Kosovo has, like the rest of the Western Balkans, a clear and tangible EU perspective.'<sup>92</sup> How exactly this perspective will be realized remains unclear given that several EU member states, including Cyprus, Greece, Romania, Slovakia and Spain, have refused to rec-

ognize Kosovo. At the same time any future accession treaties, including the one with Kosovo, are to be ratified by all member states. The reluctance of these states implies not so much their opposition to Kosovo independence as such, as much as their inability to manage minority issues and safeguard minority rights in their own states.

The European Commission began publishing separate Reports on Kosovo in 2005. Before that, Kosovo was monitored within the Serbia (FRY, Serbia and Montenegro) Report. As with other country reports, the main focus of attention for minority rights monitoring is, in the case of Kosovo on the two largest groups, Albanians and Serbs. Smaller minorities such as Ashkalia, Egyptians, Roma or Turks are given only scant attention.

### Minority representation and participation in public life

All Reports highlight the Kosovo Serbs' refusal or acceptance to participate in local elections and in the work of the elected bodies. The representation of minorities in the judiciary, police and government is highlighted, a positive trend in recruitment having been recorded in 2005. The almost complete absence of Roma, Ashkalia and Egyptians in public institutions is noted in the 2005 Report.<sup>93</sup> This Report monitors participation issues in its 'Democracy and the Rule of Law' section. While it is commendable that minority participation is discussed under this heading, outside the 'Minority Rights' section, its major shortcoming is its almost exclusive focus on the Albanian and Serbian communities. The participation of other minorities is virtually ignored. The same approach is taken in the 2006 and 2007 Reports.

Gender equality issues and direct and indirect discrimination against women in employment are raised, as is the inadequate representation of women in government structures. The 2007 Report cites that, '36 out of the 120 members of the Assembly of Kosovo are women. Only one of the 14 ministers is female.'<sup>94</sup> No reference, however, is made to minority women and their public participation.

The 2007 Report notes that a working group to draft the future Kosovo constitution was set up and included representatives from minority communities among others; however, Serb representatives refused to participate. The effectiveness of the participation of other minorities in this process is not assessed.

Pursuant to a technical agreement between the Council of Europe and UNMIK, the monitoring of the implementation of the Framework Convention was extended to Kosovo.<sup>95</sup> The Advisory Committee issued its Opinion in 2005. The Committee was highly concerned by the fact that minorities other than Serbs were excluded from the negotiations on the future status of Kosovo and recom-

mends that they be meaningfully included. It notes that the consultation mechanism established within the Assembly to safeguard the rights and interests of the communities was not effectively utilized by the governmental structures. Regarding local-level participation of minorities in political bodies, the Advisory Committee highlights the difficulties for numerically smaller minorities to be adequately included and gives the example of the Roma community members who were not represented among the members of the municipal assemblies in Kosovo. The Advisory Committee underlines that decentralization and local self-government reform are clearly relevant for minority communities and should be carried out in a manner that involves minorities. According to the Advisory Committee, the participation of minorities in the municipal civil service, government, judiciary and police remained 'disconcertingly low'. The Advisory Committee stresses the impact of the process of privatization on the economic participation of minority communities whose interests should also be safeguarded. Finally, the Advisory Committee expresses its concern over the inadequate implementation of the anti-discrimination legislation in Kosovo.

### Employment

Overall, the Reports pay very little attention to the issue of employment of minorities, in spite of the 'Employment and Social Policy' section included since 2005. The 2005 Report indicates that, 'More efforts are needed by the employment services to engage the Roma and Ashkali communities.'<sup>96</sup> The 2007 Report states that the level of employment of the Roma, Ashkali and Egyptian communities is much lower than the average, but it does not address other issues or other minority communities. General references are made to women as 'disproportionately represented among the unemployed'<sup>97</sup> and 'victims of discriminatory practices in economic and social life',<sup>98</sup> however the precarious position of minority women is not discussed.

The Advisory Committee on the FCNM in its 2005 Opinion offers more substantial guidance on the problems affronted by minorities in the area of employment. The Committee highlights that the participation of minority communities in the public sector remains disconcertingly low in spite of targeted advertisement campaigns and other measures. Moreover, the effective participation of minorities in economic life was hindered by security considerations and language obstacles. Crucially, the Advisory Committee also stresses that the process of privatization and the successful settlement of property claims have long-term implications for the participation of minority communities. It therefore recommends that these processes be carefully monitored in order to ensure that minority communities have fair and equal access to them and that all communities can benefit from them.<sup>99</sup>



## Education

The issue of education is addressed in the Reports to a very limited degree. In the 2005 Report, the Commission concludes that the Kosovo education system is facing serious quality problems. In addition to highlighting the important fact that the 'University of Mitrovica remains inaccessible for Kosovo Albanians'<sup>100</sup> the Report only mentions in passing that mostly Serbs and Roma face discrimination in access to education.<sup>101</sup> In 2006, it states, 'the situation of the Roma, Ashkali and Egyptians continued to be difficult. Most members of these communities live in informal settlements with serious lack of access to public services, income generating activities and education'.<sup>102</sup> Nevertheless, efforts by the Ministry of Education to offer Albanian and Serbian language classes to all communities in order to integrate them into the Kosovo educational system are also mentioned, as is the fact that pre-primary, primary and secondary education was available in Albanian, Serbian and Turkish languages, while Roma language school courses were being developed.<sup>103</sup>

The 2007 Report notes the adoption of the Ministry of Education strategy for the education of the Roma, Ashkali and Egyptians, and the adoption of the strategy for pre-university education with 'inclusive and progressive measures for minorities in Kosovo'.<sup>104</sup> While the Report does not state what the strategy was about, how it would be evaluated and how the minorities participated in its design, it does note that 'the strategies for pre-university and higher education, particularly for minorities, were not budgeted for and minority communities continue to face restrictions of access to education, particularly as regards being taught in their mother tongue'.<sup>105</sup> Regarding the education of Roma, Ashkali and Egyptian children, the 2007 Report goes on to say that their school attendance is poor at all levels of education.<sup>106</sup> Reference to minority education is also made in the 'Education and Research' section, 'The minorities lack the teachers, books and teaching materials necessary for them to study in their mother tongue. Often they also face problems of access to higher education'.<sup>107</sup>

Though efforts are made especially in the 2007 Report to provide more substantive input on the issue of minority education, several important remarks made by the Advisory Committee on the FCNM in its 2005 Opinion are not incorporated. The Advisory Committee concludes that no comprehensive approach to the issue of minority education existed and this has had a negative impact on the numerically smaller communities. The continuous operation of separate schools for Albanian and Serbian pupils hinders the process of reconciliation between the two communities. In relation

to this, the educational materials need to be updated to take into account the contribution of all communities to the Kosovo society. The Advisory Committee expresses particular concern with the situation of the Roma, Ashkali and Egyptian pupils with regard to their access to education, characterized by extremely low enrolment rates and a high drop-out rate. The Advisory Committee notes that the schooling situation is particularly alarming among girls belonging to these communities, and recommends that, since large numbers of Roma, Ashkali and Egyptians have been outside the school system, it is imperative to secure their re-integration by providing catch-up classes. Moreover, harassment, intimidation and stigmatization of pupils belonging to these communities is highlighted as a serious concern. Availability of higher education in one's mother tongue is considered a key factor for the sustained existence of minorities in Kosovo and the fact that higher education in the University of Pristina is available in Albanian only is seen as inconsiderate of the needs of the Serbian- or Bosnian-speaking communities. Restrictions on freedom of movement and inaccessibility of educational facilities with mother tongue teaching are identified as recurrent problems. Moreover, the shortage of textbooks and teaching staff to teach in the mother tongue is a problem faced by all minority communities. The Advisory Committee also recommends that a participatory approach in the running of the schools should be ensured and that the ethnic diversity of schools should be adequately reflected in their decision-making structures.

## Macedonia

Similarly to Croatia, Macedonia has acquired the status of a candidate country for EU membership. As of June 2008, however, it has not started negotiations with the EU. Following the Greek veto on Macedonia's entry into NATO, its EU integration prospects look grim.

Macedonia was the first country in the Western Balkans to sign an SAA with the EU in April 2001. It entered into force in April 2004. Macedonia presented its application for EU membership on 22 March 2004. Afterwards, the Commission prepared its Opinion on Macedonia's application. It reaffirmed Macedonia's preparedness to become a candidate for EU accession. It did not identify any major problems in Macedonia's human rights record, 'There are no major problems in the area of respect for fundamental rights. A number of constitutional and legislative changes have been made providing a high level of protection of the rights of minorities'.<sup>108</sup> On the basis of this Opinion, the European Council decided on 17 December 2005 to grant the status of candidate country

to Macedonia. But as discussed below, some major problems linger in Macedonia's minority rights record.

### Minority representation and participation in public life

A substantial part of the EU monitoring relates to minority representation and participation in public life. Almost entirely, however, the EU Reports cover the tensions in the political dialogue between the ethnic Macedonian and Albanian communities. While this is of crucial importance for the political stability in the country, it does not necessarily reflect the state of minority rights. The EU has used the Ohrid Framework Agreement, which ended the 2001 conflict in Macedonia, as a benchmark for minority rights and minorities' political participation. The Commission has rightly noticed on several occasions that the Albanian standpoint is largely marginalized in many areas, including judicial organization, use of minority languages and rules of procedure in the Parliament among others.

The EU has monitored the establishment of local-level Committees for Inter-ethnic Relations, whose task is to promote the concerns of the various minority communities. However, the EU has failed to reflect on their contribution to the participation of minority communities in public life. Minority NGOs have continuously warned that these Committees have been marginalized and in reality are being used as window-dressing.<sup>109</sup>

In line with the concerns expressed by minority NGOs,<sup>110</sup> the EU has acknowledged that the smaller minorities, such as Roma, Serbs, Turks and Vlachs, are politically under-represented. Most EU Reports mention the exclusion and under-representation of non-majority communities in public administration and public enterprises, and acknowledge that 'progress has been uneven across the various communities'.<sup>111</sup> The 2007 Report on Macedonia further concludes that, 'if there was some increase in representation of the non-majority communities, it has remained uneven among individual ministries',<sup>112</sup> and that 'ethnic Albanians have made significant gains but other groups have seen little or no gains'.<sup>113</sup>

The EU has criticized the government because 'the number of non-majority communities' members in the army remains low'.<sup>114</sup> Likewise, it has looked closely into the ethnic composition of the police. In its 2007 Report, the Commission concludes that, in terms of minority representation, 'slow progress has been made within the police overall, and none in senior ranks, in particular within the criminal police and the department for security and counter-intelligence'.<sup>115</sup> This is in line with the observations of the Advisory Committee on the FCNM, as well as with the views of minority NGOs in the Macedonia focus group. Nonetheless the EU has failed to address the increased intolerance towards Roma and other minority

groups by police and law-enforcement officials in Macedonia. This has been an area of concern for minority NGOs.<sup>116</sup> NGOs have spoken against racist practices and abuse against minorities in the police, including the unit trained by the EU ALTEA mission,<sup>117</sup> saying, 'We never find even soft criticism against this unit, which is one of the worst police structures that abused minorities. We only read generalizations on police discrimination against Roma'.<sup>118</sup>

According to minority NGOs, smaller minorities in Macedonia are excluded, even from the channels meant to facilitate civil society engagement with the government. However, when commenting on the government's efforts to cooperate with civil society organizations in policy development processes, the Commission has not mentioned the importance of involving the minorities. Minority NGOs are rarely successful in obtaining the funds distributed by the government to civil society organizations. In an NGO intervention at the European Parliament, minority representatives revealed information about a Fund for Civil Society Organizations which the Ministry of Finance in Macedonia had recently made available:

*'Out of the 68 organizations which received funding there were no Roma or Turkish ones. The same holds true for the large part of the EU-funded projects... The anticipation is that the problem will increase, having in mind that national institutions... will manage the Instrument for Pre-Accession Assistance (IPA).'*<sup>119, 120</sup>

MRG and partners will discuss the way the EU financial instruments address minority rights in a forthcoming report. At this stage, it is worth only recommending that the EU should ensure that minority NGOs take part in the design, implementation and evaluation of EU-funded projects. If necessary, special action needs to be taken for strengthening the capacity of some minority NGOs.

Minority NGOs in Macedonia are critical towards the EU assessment, which they find superficial and carried out with no reference to international human and minority rights standards.<sup>121</sup> While criticizing the government for turning a blind eye to the smaller minorities, the EU itself has neither assessed what their problems are nor put forward any specific recommendations. For example, the EU has not suggested any measures to be taken for the representation of smaller communities dispersed throughout the territory of Macedonia who have not been able to elect their representatives within the existing electoral system.<sup>122</sup> It has overlooked the political participation of other smaller ethnic minorities, including Bosniaks, Roma, Turks and others. Roma are the focus of a lot of attention in the EU Reports but the EU considers them

purely from a socio-economic rather than a political perspective, while these are interrelated. Once political participation is improved, some improvement in terms of social inclusion and poverty alleviation might be expected. Though the EU has been continuously committed to gender equality issues, its Reports on the enlargement countries, including Macedonia, do not look into the gender balance in the field of minority representation.

## Employment

The Commission is extremely critical towards the government with regards to Roma unemployment:

*'Unemployment among the Roma remains extremely high, and social and civic marginalisation is common. No specific measures have yet been taken to promote access to the general employment programmes. No solution has yet been found to address the issue of lack of legal status of Roma without citizenship or with denied refugee status.'*<sup>123</sup>

The criticism is very much in line with feedback from minority NGOs represented in the focus group.

However, neither the Macedonian government nor the Commission have focused in particular on how unemployment affects minority women. The 2007 EU Report gives a gender, but not a minority, perspective on discrimination in access to employment in Macedonia, 'Women remain vulnerable to discriminatory practices and further efforts are needed to promote women's rights notably to increase female participation on the labour market.'<sup>124</sup> Only the 2006 Report mentions minorities, in a section on women's rights; however, it too does not address the severe problem of unemployment and discrimination in access to employment against Roma and other minority groups.<sup>125</sup> Despite this, the 'Employment chapter' concludes, 'Preparations in this area are well advanced.'<sup>126</sup>

In 2007, however, the Commission addresses the Roma issue in the 'Employment' chapter as well, which is a positive sign that Roma rights are beginning to be mainstreamed into consideration of socio-economic policies in the Commission's monitoring. The chapter states, 'Unemployment among the Roma remains extremely high, and social and civic marginalisation is common. No specific measures have yet been taken to promote access to the general employment programmes.' And also:

*'Implementation of activities related to the strategy for inclusion of Roma and the action plans prepared by the Ministry of Labour and Social policy has not advanced, apart from the opening of two Roma centres by the Ministry in cooperation with local Roma nongovernmental organisations.'*<sup>127</sup>

Minority rights NGOs, however, are very critical toward the Commission's role in the area of employment. As put by the leader of a Roma NGO:

*'The Commission should also criticise the EU-funded state programmes in Macedonia. The best example is the National Action Plan on Employment (NAPE), which was supported by CARDS where EU experts contributed to the drafting process. We were very critical that the NAPE contained no Roma integration measures but these were taken on board neither by the government nor the EU experts. So the criticism in the EU Report sounds hypocritical given that the EU has agreed with our institutions on these employment policies.'*<sup>128</sup>

Finally, other minority groups also excluded from the labour market are not mentioned in the Report. For example, there are significant numbers of Turks in the eastern part of Macedonia and they face similar problems to the Roma. They experience severe poverty and marginalization. Perhaps because they are a minority and receive less international attention, they have remained out of the sight of EU institutions.<sup>129</sup>

## Education

The question of university education in the mother tongue has acquired political significance over the decade. As a result, most of the EU attention in the area of education is devoted to it.

From a human and minority rights perspective, the state duties in primary and secondary education are much more numerous and substantial. However, the Commission concludes in its 2006 Report that, with regard to primary and secondary education, the right to instruction in mother tongue has been implemented in Macedonia, as provided by the Constitution. Thus no attention is given to it in the 2007 Report. At the same time, the Advisory Committee on the FCNM has warned that there are serious deficiencies as regards instruction *of* and instruction *in* minority languages.<sup>130</sup> The Committee of Ministers of the Council of Europe has therefore called on the Macedonian government 'to take better account of the needs for teaching in minority languages'.<sup>131</sup>

Furthermore, one needs to look at not only whether there are textbooks *in* the language of a particular community, but also whether the textbooks reflect and respect the culture and identity of all minorities in the country. That is not the case in Macedonia. Roma continue to be portrayed through various stereotypes. Unfortunately, this problem has not been picked up within the EU monitoring.

The EU rightly expresses concern that the complete separation of ethnic communities in the educational sys-

tem in Macedonia might jeopardize diversity, intercultural dialogue and interaction between the different communities in the country. Hence, it criticizes the government for not having a comprehensive policy to bridge the gap between the different communities through the educational system.<sup>132</sup> However, the Commission does not present a specific recommendation and has not put forward a model of how the government could achieve this objective. In other areas in which the EU has explicit competences and expertise the Commission offers useful advice and clear steps for the enlargement countries to follow. Yet, in minority rights this has not been the case.

The right to *accessible* education, as mandated by international human rights law, has been examined only vis-à-vis Roma people. The Commission has recognized that Roma are the poorest and most marginalized minority in Macedonia. Importantly, it has linked Roma disadvantage to racial discrimination, 'Roma [...] continue to face very difficult living conditions and discrimination, especially in the areas of education, social protection, health care, housing and employment.'<sup>133</sup>

NGOs in Macedonia, and particularly MRG partner the Roma Democratic Development Association Sonce, have voiced serious concerns that the EU monitoring has failed to include a gross violation of the right to education – the segregation of Roma children without any learning disabilities in special institutions for pupils with mental disorders. No particular attention has been paid to the access to education and high drop-out rates of Turkish and Albanian children either. UN treaty bodies also single out the particularly vulnerable position of Roma but do not ignore the other minorities. For example, in 2006 the UN CRC said, 'The Committee recommends that the State party pursue its efforts to increase the enrolment levels of all children from minorities in primary and secondary schools, with special attention to girls in general and children from the Roma minority in particular.'<sup>134</sup>

The 2006 EU Report only identifies that, 'Romani children are frequently denied the right to education and comprise the majority of the country's street children'.<sup>135</sup> The monitoring of Roma access to education in 2007 was backed up by statistical information disaggregated by both ethnic origin and gender, 'Discrimination against Roma people continues. The enrolment rate in primary education is below 30%, and high drop-out rates are still recorded, in particular among girls.'<sup>136</sup> Minority NGOs however doubted the accuracy of the data. According to Sonce, the number of Roma children in primary education is not that low.

As a rule, the EU Reports do not mainstream minority education into the general chapter on 'Education and Culture'. For example, despite acknowledging that Roma children are denied the right to education and comprise

the majority of street children, when examining Macedonia's educational reform the general chapter does not mention the Roma plight and makes no reference to Roma or any other minority children.<sup>137</sup> Similarly, when it discusses children's rights minority rights issues are not included. For example, on children the 2007 Report states only the following, 'Implementation of the action plan for the protection of children's rights, adopted by the government in 2006, is slow.'<sup>138</sup> Also, for people not accustomed to the Commission's jargon it is impossible to comprehend why, despite the acknowledged destitute situation of Roma children, the EU Reports conclude that 'as regards education, progress has continued'.<sup>139</sup>

## Montenegro

Montenegro is a potential candidate for EU membership. The EU recognized the independence of Montenegro in June 2006. The SAA between Montenegro and the EU was signed in October 2007. Until the SAA has been ratified by each EU member state and by Montenegro, community matters and free trade will be governed by an Interim Agreement that entered into force in January 2008.

The EU has found that overall, 'there has been progress on establishing the necessary framework on minority protection. However, implementation is lagging behind in some fields. The conditions of refugees and displaced persons, including Roma, are giving cause for serious concern.'<sup>140</sup>

Perhaps the reaction in Montenegro towards the EU Reports and their usefulness for minorities has been the most pessimistic of all the countries analysed. All minority NGO representatives at the Montenegro focus group said that they had much higher expectations from the EU monitoring on their country. As put by one participant:

*'Europe must be stricter in its relations with the Government of Montenegro, it should pose more demanding and more complex tasks. The accession to the EU should not be allowed until minimum rights are realized by all the minorities.'*<sup>141</sup>

## Minority representation and participation in public life

Since the EU started monitoring Montenegro's minority rights performance (to begin with as part of the State Union of Serbia and Montenegro), it has been acknowledging that under-representation of minorities in public services and in Parliament is 'an outstanding issue'. For example in 2004 the Commission made the following comment, 'Montenegro's legislation includes some affirmative provisions for the Albanian minority, such as

set-aside seats. Widening these provisions to other minority groups needs to be considered.<sup>142</sup>

In April 2006, a new Law on Minority Rights and Freedoms was adopted. The law sets out the general framework for the protection of minorities, including non-discrimination, education in minority languages, and participation of minorities in public and social life. It also provides for the establishment of a Republican Fund for Minorities and minority National Councils. The envisaged provisions for parliamentary representation of minorities however were struck down by the Constitutional Court.

The new Constitution of independent Montenegro was adopted in October 2007. It includes a number of minority rights provisions, such the right to receive education in their language and representation in public bodies, including through affirmative action.

The 2007 EU Report does however accept the lack of implementation of the promising legal provisions in the 2006 Law on Minority Rights and Freedoms. But it does not comment on the developments around the establishment of government-funded minority National Councils or the establishment of a Republican Fund for Minorities. It does not address the issue of the under-representation of minorities in public bodies within the executive branch. In comparison to other countries in the region, such as Macedonia for example, the Report on Montenegro does not question the ethnic composition of the police or the judiciary. Minority representation was one of the key recommendations of the Council of Europe's Committee of Ministers in 2004 towards the then State Union of Serbia and Montenegro. It stated, 'Further improvements should be achieved in the representation of the Bosniak and other national minorities in the law-enforcement agencies as well as within the judiciary.'<sup>143</sup> While the FCNM has been recognized by the EU as one of its benchmarks in terms of minority rights standards, the EU has not consistently followed the concerns raised by the experts in the Advisory Committee and by the Council of Europe's Committee of Ministers.

## Employment

The overall employment rate in Montenegro is below the EU average. Unemployment is structural and long term.<sup>144</sup> Women's participation in the labour market is very low.<sup>145</sup> Unemployment among Roma is high at 82 per cent.<sup>146</sup>

Nonetheless, despite the difficulties of minorities, women, and other vulnerable groups in the labour market, the EU has concluded that both the legislation *and practice* (authors' emphasis) in the field of social rights remains largely in line with the revised European Social Charter.<sup>147</sup> The EU has fallen short, however, in assess-

ing the actual implementation of economic and social rights in its section dedicated to these rights.

The 'Minority Rights' sections of the EU Reports acknowledge that minorities are particularly vulnerable to poverty and unemployment. Due attention is paid to some groups, such as the Roma and displaced persons from Croatia, Bosnia and Herzegovina and Kosovo, still lacking full access to employment, health insurance, social welfare and property rights.<sup>148</sup> The EU rightly notes that discrimination against displaced persons for employment purposes and in relation to unemployment benefits persists. It criticizes Montenegro for making too little progress towards the European Partnership priorities to 'repeal all discriminatory provisions' in key fields affecting refugees and displaced persons. It urges the Montenegrin authorities to regularize the status of its large populations of displaced persons and thus to facilitate their integration in society, including to access the labour market.<sup>149</sup> In the 'Employment' section of its 2007 Report, the EU welcomes the targeted approach towards active labour market and human resource development policies, covering long-term unemployed, redundant workers, disadvantaged groups, youths, women and minorities.<sup>150</sup>

Most importantly, it calls for stepping up the preparation of the anti-discrimination legislation reflecting the two EU directives in the employment field,<sup>151</sup> which is very much welcomed by minority communities and civil society in Montenegro.

## Education

The EU Reports pay a lot of attention to the plight of the Roma people in Montenegro, including in the area of education. In terms of the right to accessible education, the 2007 EU Report states, 'Roma continue to face difficult living conditions and discrimination, especially in education, healthcare, social protection and employment. Under a third of all Roma children attend primary school, and only about 20% complete primary education.'<sup>152</sup> The EU has also found very problematic the social condition of refugees and internally displaced persons (IDPs), including in the context of education. These have remained however isolated criticisms within the 'Minority Rights, Cultural Rights and Minority Protection' section of the Report. Similarly to the other enlargement countries' Reports, the section on 'Education', in which the EU reviews the general educational framework in Montenegro, there is no mention of IDPs, Roma, or any other minority group for that matter.<sup>153</sup> The marginalized position of minority girls, and particularly Roma girls in education has not been given attention. This is despite international concerns, including on the part of the UNDP and UNICEF, in this respect.<sup>154</sup>

Having covered the Roma vis-à-vis the right to accessible education, the EU has omitted them in the examination of the right to education of and in the mother tongue proclaimed by both international human rights law and Montenegro's domestic laws. In general, the EU Reports do not give enough attention to the issues of education in and of minority languages, and the promotion of tolerance, minority culture and multiculturalism through education.

During focus group discussions, minority representatives expressed disappointment that there were no classes of or in the Croatian language, and that this was a violation of the FCNM. Many NGOs questioned why it was possible for Croats to study their language in Serbia, but not in Montenegro. Even in the few places where such lessons existed, they were never part of the formal education curriculum.<sup>155</sup> As to the state duty to provide teacher training and textbooks in order to promote minority rights in education, MRG partners find a number of weaknesses. For example, they stated that the translation of school textbooks into Albanian was of very low quality and this makes them inappropriate as teaching tools. They also reported that there was no adequate and sufficient training for minority teachers. None of the above issues was covered by the EU in its Reports on Montenegro.

## Serbia

Serbia is a potential candidate for EU membership. The negotiations on the SAA between Serbia and the EU started in October 2005. However, the signing of the SAA has been delayed because of Serbia's failure to fulfil one of the EU key conditions: full cooperation with the ICTY. In an attempt to boost the position of pro-EU forces in Serbia ahead of the May elections, the agreement was signed in April 2008 on condition that Serbia will not get any concrete benefits from it until Belgrade is judged to be fully cooperating with the ICTY.

In general, the EU assesses positively Serbia's minority rights record. Its language since 2002, when the monitoring started, has become gradually more positive. The last EU Report reaffirms that '[t]he overall conditions for respect of minority rights have continued to improve'.<sup>156</sup>

### Minority representation and participation in public life

Most of the Commission's attention has been drawn towards minority representation and participation in public life.

For years the EU Reports have been calling on the Serbian government to regulate the status and duties of the National Councils for Minority Groups (based on

the 2002 Minorities Law, no longer in force). In 2006 the Constitution finally provided a legal basis for them, but still there is no law governing the election and obligations of the National Councils. In its last Report the Commission continued to push the government to address this legal vacuum. The continuous insistence by the EU on this important issue is very much supported by minority NGOs, worried how legitimate the National Councils and their members are.<sup>157</sup>

As early as 2004, the Commission acknowledged that the under-representation of minorities in Parliament is an outstanding issue.<sup>158</sup> In 2007 both the Commission<sup>159</sup> and minority NGOs in Serbia<sup>160</sup> welcomed the increased minority representation in the Parliament (that was dissolved in March 2008), including a Deputy-Speaker, and the provisions on minorities in the new Constitution. Hopefully, these developments will continue following the May 2008 elections that came as the Serbian government had split over the questions of Kosovo and Serbia's relationship with the EU.

The Commission has not developed a clear and strong position on minority participation in public services (such as the police, judiciary, etc). While it states in its 2004 Report that this is an outstanding issue, it only praises the government for a multi-ethnic police project that had continued successfully, and compliments 'a welcome step by the Serbian Ministry of Interior which provided for the translation of the new Code of Conduct into minority languages'.<sup>161</sup> A later Report only mentions that the 'implementation of the 2006 government conclusions on minority representation in public services has continued, with an enhanced role for the human resource management Agency'. This is in contrast with the FCNM Report on Serbia, which specifically examines the areas where the problems are, 'representation of national minorities in law-enforcement bodies and in the judiciary'.<sup>162</sup>

Finally, the Commission does not look into the gender aspects where issues of minority representation and participation are discussed. Minority women's participation in minority and public bodies is an area where Serbia, like other countries in the region, scores poorly. At the same time, as acknowledged by minority NGOs, women's involvement in public and political issues should be a priority. Minority women face numerous difficulties participating in politics, especially at the local level.<sup>163</sup> As put by one focus group participant, 'Roma women suffer from double discrimination ... both within local institutions and the family. Inside a Roma family and inside Roma settlements mostly men are making decisions'.<sup>164</sup> In fact, according to NGOs, there are only three municipalities which have Roma women as coordinators for Roma issues.<sup>165</sup>

## Employment

Minorities' rights to participate in economic life have been examined by the EU mostly from the perspective of discrimination in access to employment. The EU has not examined the structural disadvantages in the areas where particular minorities live. The EU has praised Serbia for including constitutional guarantees for affirmative action.<sup>166</sup> The latter refer, however, to minority representation and do not apply to educational or employment schemes to lift minority groups stricken by poverty and exclusion.

The EU has acknowledged on several occasions that unemployment is highest in the Roma settlements but no recommendations have followed. In 2007, however, concerns regarding unemployment and economic exclusion of those Roma who live in the settlements did not appear in the EU Report. According to minority NGOs, there have not been improvements in the Roma settlements and therefore criticism should not have been stopped.

The situation of other minority groups, also affected by unemployment and poverty, is not scrutinized in the EU Reports on Serbia. When the EU looks at the situation of minorities in particular areas, it only assesses their inter-ethnic relations but not the socio-economic situation of the people who live there. For example, in the 2006 Report it is stated that the situation in Vojvodina has improved while in Southern Serbia and Sandžak it has remained tense. However, no observations were made about the education and employment of minorities there.

The EU has criticized Serbia on a number of occasions<sup>167</sup> for failing to ratify the Revised European Social Charter (RESC).<sup>168</sup> At the same time the EU itself does not use the Charter as a benchmark for assessing Serbia's (and the other enlargement countries) performance concerning minorities' rights to economic participation and employment.

As in the other SEE countries, while minorities are disproportionately affected by unemployment and poverty, minority women are much more affected by them than minority men. However, the EU has explored this gender gap neither in its women's rights section nor in its minority rights section. The EU could have taken on board the issues related to multiple discrimination against minority women addressed by the United Nations Committee on the Elimination of Discrimination against Women. The written comments to this committee<sup>169</sup> submitted in March 2007 by a coalition of minority and women NGOs would have been also an excellent point of reference. According to minority NGOs represented in the focus group, 'Women's rights and especially minority women's rights are the least present in international reports on Serbia.'<sup>170</sup> The

general section on employment of the EU Reports does not address the particular unemployment patterns and discrimination experienced by minorities either.

## Education

The EU has recognized the discrimination faced by Roma in various fields of social life, including education. A substantial part of the monitoring on education examines Roma children's access to education. In its 2007 Report the Commission states, 'Over 80% of Roma children living in Roma settlements are poor and suffer from various forms of discrimination and exclusion. On average, around one third of Roma children complete primary education.'<sup>171</sup> It has also touched upon the right to accessible education of children of IDPs from Roma, Ashkali and Egyptian communities.

A gross violation of the right to education remains disregarded by the EU: the channeling of Roma children without any learning disabilities into schools for those with mental problems. This issue has gained prominence on the European human rights agenda and the EU needs to address it more firmly. It was for example one of the key criticisms of the then State Union of Serbia and Montenegro by the Council of Europe's Committee of Ministers.<sup>172</sup>

The minority representatives within the focus group were surprised not to see any specific criticism on the situation on Roma girls. As put by one participant:

*'It is important to give them [Roma girls] a chance to obtain education. There should be affirmative measures for Roma girls' education at all levels. ... The EU must in its recommendations strongly influence our government to enable equal access to education for Roma girls.'*<sup>173</sup>

The worries about the situation of Roma children, and particularly girls, have been voiced by a number of human rights bodies, including the UN Committee on the Elimination of Discrimination against Women in its Concluding Comments on Serbia.<sup>174</sup> The Committee requested that:

*'urgent efforts be undertaken to ensure equal access to education for both sexes, at all levels of education. It requests that special attention be paid to achieving equal access for marginalized groups of women and girls, in particular of the Roma minority, with special urgency at the elementary school level.'*<sup>175</sup>

Similar concerns are identified by UNICEF in its report, *Breaking the Cycle of Exclusion: Roma Children in South East Europe*.<sup>176</sup>

Throughout its Reports the EU pushes the government to comprehensively address the problems regarding Roma settlements and the lack of identity documents which further obstruct *inter alia* the realization of Roma children's right to education. The lack of documentation is a very serious issue which has been raised for many years by various treaty bodies and human rights NGOs. For example, the UN CESCR has expressed its concern about:

*'the uncertain residence status of and the limited access by refugees, returnees from third countries and internally displaced persons, including internally displaced Roma, to personal identification documents, which are a requirement for numerous entitlements such as eligibility to work, to apply for unemployment and other social security benefits, or to register for school.'*<sup>177</sup>

It is vital that the EU focuses more on this issue. Quite rightly, the EU links the educational problems of Roma with Serbia's commitment within the Decade of Roma Inclusion. However, the EU has not explored or assessed what the Decade Action Plans actually contained. According to Roma NGOs:

*'[the Decade of Roma Inclusion] plans and work of the government should be monitored by the European Commission. Government and European Commission must determine clear indicators to measure success. Those indicators are not well developed in the Action Plans and that is one of the most important criticisms against Serbia.'*<sup>178</sup>

Also the Commission states that Roma teaching assistants are employed in a number of schools. According to representatives of the minority communities this is too much of an overstatement: the Roma assistants' project has not fulfilled its goal and most of the assistants have not secured regular jobs at schools. Similarly, NGOs have challenged some of the information which appeared in the last EU Report, including the number of adopted Decade of Roma Inclusion Action Plans and the number of Roma coordinators appointed in municipalities.

Apart from minorities' access to education, the EU has explored the minorities' right to education in minority languages. It has monitored the availability of school textbooks in the Croatian, Hungarian, Slovak and Bulgarian languages, as well as approval of the use of textbooks from Kosovo in Southern Serbia. The EU has not addressed, however, whether school curricula and textbooks mainstream minority culture and identities. In fact, minority NGOs have criticized the way minorities are portrayed at school. According to one focus group participant: '[the school] system unfortunately develops the sense of a less value in minority population. School books mention representatives or culture of national minorities only in the negative or pejorative context.'<sup>179</sup>

As with the other Reports on the SEE countries, minority rights have not been consistently mainstreamed within the EU Reports on Serbia. Despite the precarious situation of Roma children in education, the sections which deal generally with education in Serbia do not put forward any specific policy recommendations vis-à-vis the educational rights fulfilment of any minority community. Again, the educational rights of minorities appear only in the 'Minorities' section but not in the 'Education' one.



# Concluding remarks and ways forward

The EU monitoring and assessment of the capacity of the candidate and potential candidate countries in SEE has been an important generator for change. The priorities identified by the EU Reports are easily embraced by governments aspiring to bring their countries into the EU. In that respect, whether an issue would be brought onto, or dropped from, a government's agenda largely depends on its assessment in the EU Report. While in general the EU enlargement process and its various political and financial aspects are not well understood among citizens in the candidate and potential candidate countries, the EU Reports, published each autumn by the European Commission, receive a lot of political and media interest and their conclusions are brought to the attention of societies at large. For minority rights activists seeking to achieve changes in the life of minority communities in SEE, the EU Reports are an important advocacy tool. For them it is crucial that the minority sections in the Reports take minority rights commitments seriously, cover the real concerns of minority communities and put forward clear and unambiguous recommendations to governments. Therefore, it is necessary that the EU recognize the weight given by NGOs to the EU Reports and respond to their expectations through a more comprehensive, participatory, and human-rights-based monitoring.

## Substance

When reading the Reports on the Western Balkan countries one inevitably notices the insufficient information and, in general, how little space is set aside for minority rights. More focus on minorities is badly needed, given that until recently the main concern of the EU regarding the region was inter-ethnic conflict prevention. Significant portions of the population of all the countries belong to minorities and the stability of the region depends on good inter-ethnic relations.

The minority rights criterion has been perceived by minorities as particularly important, yet this is not reflected in the Reports in terms of space allocated, choice of issues, coverage of minorities and the drafting process. Consequently expectations are created primarily among minorities, which then remain unfulfilled.

Apart from not being central in the EU monitoring, minority issues are not consistently reviewed and assessed from the perspective of rights. The EU Reports have covered to a varying degree all three issues under examination

in the current study – participation, employment, education. However, the analysis has revealed that the Reports do not employ the language of human rights and the monitoring does not follow the content of the three rights, as developed within international human rights law.

Important aspects of human rights, such as the right to economic participation or the right to acceptable and adaptable education have not been systematically addressed by the Commission. While they refer to international human rights instruments, the Reports do not follow their contents. Identity aspects of minority rights, particularly in the context of education, have been ignored within the monitoring. At the same time, these aspects are an integral part of minority rights law. Not surprisingly, a number of members of different minorities stress that cultural preservation of their communities is important to them.

Perhaps the accessibility aspects of the three examined issues – participation, employment, education – have been most covered and criticized by the EU Reports. Anti-discrimination is one of the key pre-requisites for the access of minorities to education, employment and participation in society. Therefore the EU Reports should require that the SEE countries align domestic legislation with the EU anti-discrimination *acquis*. The EU should also require that resources for implementation be secured (mechanisms, tools, capacity), including support for strategic litigation.

In spite of certain attempts, manifested for instance in the well articulated 2007 Kosovo Report, in general minority rights are not mainstreamed in the EU Reports, including the chapters on 'Employment and Social Policy' and 'Education and Culture'. Also, when the Reports discuss women's rights and gender equality, they do not mainstream minority rights; similarly, when they review minority protection, they pay no special attention to the specific situation of minority women.

The EU does not call for the collection of data disaggregated by ethnicity. Ethnic data makes it possible for decision-makers to understand the extent to which minorities are affected by discrimination and to decide on relevant measures to overcome it.<sup>180</sup> The drafting of minority rights policies, and particularly the adoption of positive action measures, are hard issues to tackle without ethnic data.<sup>181</sup>

Minority NGOs find the language used by the Commission in the Reports unclear and ambiguous. When it is indicated that some – limited or significant – progress has been achieved in a certain area, it remains unclear what the baseline was for such assessment. The Reports should clearly identify shortcomings, gaps and failures, and provide good recommendations on how to overcome them with clear indicators for measurement.

Some sections of the Reports use the same language year on year in what seems to be a cut-and-paste approach applied to drafting. While the benefits of such an approach might include a degree of consistency, in that the same issues are addressed each year, a clear pitfall is that the impression is given that the issue was monitored superficially rather than thoroughly, and was therefore considered unimportant.

## Process

Minorities' participation in any decisions and measures that affect them is a fundamental pre-requisite of minority rights law. The European Commission needs to establish regular institutional mechanisms for involving local minority communities in the preparation of its Reports. Virtually all members of minority communities consulted in the focus groups stated that none of them had ever been consulted by the Commission or its Delegations in the region. They would like to be involved and contribute to the process and requested communication on this. In the authors' view, this can be dealt primarily by the Delegations of the European Commis-

sion; however, it should not be their exclusive domain: the European Commission, DG Enlargement in particular, should engage in direct consultation as well.

Some positive developments have taken place recently that are very much welcomed. For example, in June 2007 DG Enlargement organized a consultation meeting with a selected group of international human rights organizations. Tables with issues were prepared in order to ensure continuity with the previous year. At the time of writing, the Commission was planning a similar event in June 2008. This points towards a strategic approach and consultation with civil society. A shortcoming, however, was that in 2007 mostly international NGOs were invited, instead of minority NGOs from the region. In MRG's view, consultation without the involvement of local minority NGOs might result in the presentation of superficial or inaccurate data. It is recommended therefore that a wide range of minority NGOs from the SEE countries be invited in future consultations. Moreover, in April 2008 DG Enlargement organized a conference on 'Civil Society Development in Southeast Europe: Building Europe Together', where a commitment was made for better cooperation between SEE civil society and the EU institutions within the framework of the enlargement. The EU Reports need to reference and explain their methodology and process of preparation better. Otherwise, minority NGOs are left with the impression that the EU refers mainly to information coming from government officials but not from minority communities.

# Recommendations

## To the Council

- Without promising a concrete date of accession, establish a clear accession action plan for each candidate and potential candidate country. The plan should spell out precise targets that each state must meet before accession is possible and a clear commitment by the EU that accession will take place once the set targets are met. When setting the targets, due attention must be paid to human and minority rights, including the rights of minority women.

## To EU member states

- Ratify the Lisbon Treaty by the target date of 1 January 2009 in order to create the legal and institutional framework which makes the EU accession of the Western Balkan countries possible.

## To the European Commission

- Strengthen the capacity of DG Enlargement and the Delegations of the European Commission in terms of minority rights and participatory monitoring. This includes increasing the financial resources, the number of staff in DG Enlargement and the Delegations, as well as providing them with the skills necessary to undertake minority rights monitoring.

## To DG Enlargement

- Devote more attention to minority rights within the EU monitoring on the enlargement countries.
- Adopt a rights-based approach within its monitoring on the enlargement countries. International minority rights standards need to be incorporated and used as a point of reference within the monitoring process.
- The EU Reports should adopt a comprehensive approach to minority rights, including non-discrimination, positive action for vulnerable minority groups, special minority rights, and full and effective participation.
- Given that the EU has developed a comprehensive anti-discrimination *acquis*, more pressure should be put on the enlargement countries to transpose it

within national law. The deadline for transposition should not be the date of accession, but significantly earlier.

- Minority rights need to be mainstreamed throughout the EU Reports, and particularly in areas such as employment and education.
- The EU Reports need to focus more attention on multiple/intersectional discrimination. Gender issues should be mainstreamed in the EU Reports, including in the section on minority rights.
- The process of preparation of the Reports and the methodology used should be described at the beginning of the minority rights section as this would give more credibility to the Reports.

## To DG Enlargement and the Delegations of the European Commission in the enlargement countries

- As participation is a fundamental minority right, minority communities need to be involved in the monitoring on minority rights in their own country. For that aim, institutionalized, as opposed to *ad hoc*, mechanisms for minority communities' participation within the EU accession process should be established.
- The participation of minority women should be ensured within the accession processes. The EU should aim at ensuring diversity (across age, sex, disability, religion, sexual orientation) in the process so that intersectional discrimination issues are given a voice.
- Clear minority rights benchmarks and indicators need to be developed with the participation of minority communities in each enlargement country.
- The choice of issues to be addressed and recommendations put forward need to be agreed with minorities.
- Smaller minorities should not be excluded from the process. All minority rights, including freedom from discrimination, rights to representation, to political and economic participation, and to education need to be examined from their perspective as well.

# Country-specific priorities

## Identified by minority NGOs for consideration in subsequent rounds of monitoring

### Bosnia and Herzegovina

- Adoption of a comprehensive anti-discrimination law.
- Legal and financial measures to ensure the proper operation of the national minority councils.
- Elimination of the segregation in the educational system.

### Croatia

- Action Plan to secure the implementation of the Constitutional Law on the Rights of National Minorities, with clear indicators for measuring progress and wide public discussion and minority participation in the drafting process.
- Establishment of a transparent monitoring system over the implementation of the Constitutional Law on the Rights of National Minorities and the Action Plan.
- Adoption of a comprehensive anti-discrimination law and a national strategy for the elimination of discrimination.

### Kosovo

- The Mitrovica camp issue to be resolved.
- Sustainable return of the displaced Roma, Ashkalia and Egyptians should be facilitated.
- Mechanisms which would enable successful implementation of the anti-discrimination law must be established by developing and strengthening the victims' access to judicial remedies, building the capacity of the courts and judicial officers (judges, prosecutors, and lawyers) to effectively apply the law.
- Full and effective participation of smaller minorities in the political, social, economic and cultural life to be secured through inclusive policy making and programming, participatory processes, legal framework which safeguards minorities and their participation.

### Macedonia

- Full realization of the right to education of smaller minorities, in particular for women, people with disabilities, minorities from rural areas. The first monitoring priority needs to be preparatory (preschool) and primary education; the second priority should be secondary and adult education.
- Inclusion of minority and vulnerable groups in the labour market. Mainstreaming of minority rights should be promoted and targeted actions should be recommended by the Community.
- Adoption of a comprehensive anti-discrimination legislation, along with strong and effective implementing mechanisms.
- Minority participation (including smaller minorities) in the design, implementation, monitoring and evaluation of public policies. The participation of minorities in the EU accession processes should be particularly emphasized.

### Montenegro

- Accurate information disaggregated by ethnicity should be made available.
- The Delegation of the European Commission should open up more towards minorities and involve minority NGOs in its consultations with civil society.
- The situation of smaller minorities without political representation should be addressed, especially in terms of education, employment and participation in processes that affect them.

### Serbia

- Gender-based approach in the monitoring of minority rights policies, including consultation with minority women's NGOs. Minority women should also be involved in the EU accession processes.
- Adoption of a Comprehensive Anti-discrimination Law.
- Adoption of a Minority Rights Law.

# Notes

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- 19 *Ibid.*, para. 26.
- 20 *Ibid.*, paras 30, 33.
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- 50 *Bosnia and Herzegovina 2005 Progress Report*, p. 21–24.
- 51 *Bosnia and Herzegovina 2007 Progress Report*, p. 28, [www.ec.europa.eu/enlargement](http://www.ec.europa.eu/enlargement) accessed 8 January 2008.
- 52 *Ibid.*, p. 37.
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- 58 *Concluding Observations: Bosnia and Herzegovina*, Committee on the Rights of the Child, 2005; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Bosnia and Herzegovina*, Economic and Social Council, 2006; *Concluding Observations of the Human Rights Committee*, Human Rights Committee, 2006; *Concluding Observation of the Committee on the Elimination of Racial Discrimination: Bosnia and Herzegovina*, CERD, 2006, [www.ohchr.org](http://www.ohchr.org) accessed 10 March 2008.
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- 78 *Croatia 2006 Progress Report*, p. 13.
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- 85 *Croatia 2005 Progress Report*, p. 21.
- 86 *Ibid.*, p. 22.
- 87 Opinion on Croatia’s Application for Membership of the European Union, p. 25.
- 88 Committee on the Rights of the Child, *Concluding Observations on Croatia*, 2004.
- 89 CERD, *Concluding Observations on Croatia*, 2002.
- 90 Advisory Committee on the FCNM, First Opinion on Croatia, 2001, Second Opinion on Croatia, 2004.
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# working to secure the rights of minorities and indigenous peoples

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## Pushing for Change? South East Europe's Minorities in the EU Progress Reports

As the countries of South East Europe move towards EU accession, the European Union's annual country Progress Reports offer a unique opportunity to improve the daily lives of the region's marginalized minorities.

The Reports, and the priorities they identify, carry significant political weight, which creates implementation obligations on governments aspiring to bring their countries into the EU. They also provide an important advocacy tool for human rights and minority rights activists.

But close examination of these Reports and consultation with minority groups in Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia, shows a wide divergence between the EU messages and the realities that minorities face in their day-to-day lives.

This report considers three crucial areas for minorities: participation in public life, employment and education. Lack of equality in these areas serves to keep minorities disadvantaged over generations: if this goes consistently unaddressed, the seeds for future conflict can begin to grow. Given that one of the main concerns of the EU in this region has been inter-ethnic conflict prevention, it is vital that more attention is given to reporting on minorities.

The greatest weakness of the Reports is that EU officers do not engage with minorities themselves in a systematic and structured manner while the Reports are being written. Here, alongside in-depth analysis of the Reports and comparisons with treaty body monitoring, grassroots minority rights organizations give their views and show how the EU Reports could be strengthened to effect real change.