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# Minority Rights and the Republic of Albania: Missing the Implementation

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# Summary

Albania has started its way to reform the newly established democratic system, since the early 90's. The legal system was one between others to be modified in compliance with the international standards set up in the international instruments. Among the reforms, the most important one was the establishment of the human rights standards, especially concerning minority rights, which is the focus of this thesis.

The thesis firstly gives a descriptive survey of the minority groups living in Albania and aims at defining the minority groups. It will also point out the issue of no recognition of two minority groups namely, Egyptian and Bosnian, which are considered as communities by the Albanian government. The thesis emphasises that the existence of the minority group is a matter of fact and not depending on the state's recognition. In that perspective, it recommends that the government should reconsider its policy towards the two aforementioned groups and it should confer them in the future the minority rights.

Furthermore, the issue of the lack of information about the accurate number of the members of the minority groups living in Albania will be examined. Bearing in mind the importance of such data with regard to the implementation and monitoring procedure of the minority rights, the thesis recommends that the Albanian government should undertake as soon as possible a general census including the ethnic data in it.

Afterwards the thesis surveys the international minority rights instruments, for instance ICCPR, ICESCR, ICERD, Declaration of the Minority Rights, FCNM, ECHR etc., aiming at indicating the international standard-settings and the international tendency towards the protection of the minority groups, which in turn Albania should respect as far as it ratified those instruments and committed itself to such international provisions.

After describing the international standards, the thesis shifts to the domestic legal framework on minority rights. Hence, it analyzes the national legal rules and examines the deficiencies and gaps in it.

Keeping in mind that the ensuring of the full enjoyment and realization of minority rights goes beyond the setting of the standards, the most important part of the thesis is the analysis of the actual implementation of those rights. The survey shows that Albania is missing the implementation of the minority rights in practice. It also indicates that the minority groups do not enjoy on the same footing, minority rights provided for them. Bearing in mind that the primary responsibility to ensure the respect, protection and fulfilment of minority rights lies with the state, the thesis at the end gives some recommendations aiming to improve the current situation.



*To my parents and Lorenzo...*

# Abbreviations

AHRG	Albanian Human Rights Group
Albania	Republic of Albania
CERD	Committee on the Elimination of Racial Discrimination
CoE	Council of Europe
CRC	Convention on the Rights of the Child
Declaration	United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
European Charter	European Charter for Regional and Minority Languages
FCNM	Framework Convention for the Protection of National Minorities
HRC	Human Right Committee
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on economic, Social and Cultural Rights
ICRCR	International Covenant on Civil and Political Rights
ISNTAT	Institute of Statistics of the Republic of Albania
NGO	Non-Governmental Organization

OSCE	Organization for Security and Cooperation in Europe
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
USA	United States of America
WWI	World War One
WWII	World War Two

# 1 Introduction

This thesis will consist of giving an analytical overview of the current legal framework and the actual implementation of the international minority rights' standards in the Republic of Albania (hereinafter Albania). Aiming at the assessment of the realization of the international legal commitments undertaken by Albania, the thesis will describe on the one hand the successes that have been achieved and on the other hand the problems which the government still has to face with. This examination will be done by giving the example of the situation of the different minority rights and standards in Albania and by describing the special measures taken by the Albanian Government to accomplish the international standards. It is impossible to consider all the Albanian minority issues in this thesis, therefore the latter will focus on and will give a reflection of the main current problems in this area from the perspective of the Albanian situation.

To achieve the foregoing aim, the thesis is constructed into four chapters. The first one will introduce and give a description of the Republic of Albania and the minority groups therein, with the aim to make clear which are the minorities and what kind of minorities exist in Albania. An historical background of the minorities will be reviewed to complete such description. In turn, it will be clarified that the minorities in Albania are national and linguistic ones and different minority groups exist namely the Greek, Macedonian, Montenegrin, Roma and Aromanian. Moreover the chapter will highlight the controversial issue and relevant opinions of the recognition of the Egyptian or Gypsy and Bosnian minorities. The Albanian government considers the foregoing groups as communities and it is reluctant to confer them the status of minority groups. In the end the chapter will deal with an ongoing issue, i.e. the lack of the accurate official statistics about the number of the minority population in Albania, bearing in mind that the statistical data is an indispensable and essential element for the protection, promotion and implementation of the minority rights.

The second chapter will introduce the international provisions and standards of minority rights laid down in the most important international and regional instruments, namely ICCPR, ICESCR, ICERD, ICRC, UNESCO Convention against Discrimination in Education, The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, FCNM, ECHR, European Charter for Regional and Minority Languages. The aim of analysing the abovementioned instruments is to highlight the international standards on minority rights, which in turn will be the implementation in practice in Albania in the later chapters.

The main body of the thesis will be the third chapter, which:

first, will seek to examine the Albanian legal framework on minority rights, aiming to illustrate the standards that Albania has accomplished in the area of minority rights,

secondly will discuss the concrete measures which have been undertaken by the Albanian government to implement in practice the minority rights, by examining in details the right to minority language, as an important element of the existence of the minority group. In this way, the chapter will introduce the achievements on the one hand and the deficiencies on the other, of the work of the Albanian government in the area of protection and respect of minority rights, in order to make evident the practical problems,

thirdly will observe the domestic monitoring system in order to underscore to what extent, this system guarantees the right to address the alleged violations of minority rights before a lawful body and the right to the remedy in case of such violation is committed, and

finally the chapter will consider the relation between the domestic law and the international law and also the international monitoring system, aiming to identify the Albanian situation with regard to the fulfillment of the international minority rights standards, through the observations done by the international monitoring bodies especially Human Rights Committee, CERD and Advisory Committee of the FCNM .

Bearing in mind that the current Albanian legislation has already been in line with international standards, the final chapter would seek to

summarize some conclusions and recommendations. Its aim is to point out the issues, which the Albanian government has to place greater emphasis and importance on during the process of the implementation in practice of the minority rights and subsequently to improve the situation in practice. In addition to that, the chapter is going to highlight the reasons of having the deficiencies on the implementation in practice of the minority rights.

## **2 Which are the minority groups in Albania?**

This chapter will firstly give a short and general description and historical background of Albania and the minority groups, which live in there. Aiming to achieve the basic knowledge and to obtain the essential information about the minorities the chapter will subsequently include a short summary with regard to each minority. Moreover, the chapter will examine the issue of the lack of the accurate statistical data in respect to the minority groups living in Albania.

### **2.1 General information, historical facts and demographic figures of Albania<sup>1</sup>**

Albania is a country situated in the western part of Balkan Peninsula and it has an area of 28.750 square kilometres. It borders with Montenegro and Kosovo in the North, Former Yugoslav Republic of Macedonia in the Northeast and Greece in the South. Albania is washed by Adriatic and Ionian seas in the West and Southwest.

The Albanian predecessors were the Illyrians. For some consecutive centuries, Albania was firstly under the Roman Empire and later under the Ottoman one. The independence from the Ottoman Empire was declared on November 28, 1912. After WWI, in Albania was established the parliamentary republic, which soon turned into a constitutional kingdom. King Zog ruled the country until 1939, when Albania was invaded by Italian fascists, and after by the Nazis. In November 1944, it was liberated from the

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<sup>1</sup> The data and information about Republic of Albania were taken from the Albanian State Report submitted to the Advisory Committee of the Framework Convention on the Protection of the National Minority, 2001,ACFC/SR(2001)2005; and Albanian State Report submitted to the Committee on the Elimination of Racial Discrimination, 2002, CERD/C/397/Add.1..

Nazi invaders and lived, for nearly 50 years, under a single-party system, communist one, in isolation and complete poverty. In 1990s the democratic changes in Eastern Europe, the pressure of the people and of the university students in particular, forced the Communist government to allow the establishment of independent political parties, which brought to the end of the half-century of the single-party system domination in Albania. It was after 1990s that Albanians won their fundamental rights such as civil and political rights, economic, social and cultural ones. Nevertheless, Albania is making steps to build and strengthen the democratic institutions and the rule of law through a long and difficult transition.

Nowadays Albania is a parliamentary republic<sup>2</sup>. The system of government is based on the separation and balancing of the legislative, executive and judicial powers<sup>3</sup>. The Assembly of Albania has the legislative power. The head of the State is the President, who is elected by the assembly for 5-years term, and represents the unity of the state<sup>4</sup>. The Council of Ministers is the highest executive organ and consists of the Prime Minister, The Deputy Prime Minister and the Ministers<sup>5</sup>. The High Court, the courts of appeals and the courts of first instance, which are established by law, exercise the judicial power<sup>6</sup>. The Constitutional Court guarantees the respect for the Constitution and interprets it conclusively<sup>7</sup>. The People's Advocate (Ombudsman) defends the rights, freedoms and legitimate interests of the individuals (the rights of minorities as well) from the unlawful and improper action or failure to act of the organs of public administration<sup>8</sup>.

Population of Albania amount at 3.182.417 inhabitants (the 1989 census) and the official language is Albanian, an Indo-European language. From the ethnic point of view, according to the Albanian government's

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<sup>2</sup> Albanian Constitution 1998, article 1;  
[www.euralius.org.al/laws/Microsoft\\_Word\\_Alb1998\\_Constitution\\_EUR\\_amended\\_130107.pdf](http://www.euralius.org.al/laws/Microsoft_Word_Alb1998_Constitution_EUR_amended_130107.pdf).

<sup>3</sup> Ibid, article 7.

<sup>4</sup> Ibid, article 86-88.

<sup>5</sup> Ibid, article 95-107.

<sup>6</sup> Ibid, article 135.

<sup>7</sup> Ibid, article 124.

<sup>8</sup> Ibid, article 60



reports, 98 percent of the population is Albanian and only two percent consist of Greek, Macedonian, Montenegrin recognized as national Minorities and Roma, Aromanian recognized as ethnic - linguistic Minorities by the Albanian state. As regard to the statistical data on the number of the minority inhabitants, there is not accurate information, as far as the ethnic element is not included in a recent general census. Below it will be discussed in more detail the controversial opinions of the representatives of the minority groups about this issue.

In Albania there exists also the Egyptian (called also Gypsy) minority, which is considered by the Albanian authorities as a community, not as a minority group. This issue will be addressed in detail<sup>9</sup> below. Another minority group exists in Albania and this is Bosnian minority, but Albania Government does not even mention it in its statistics and international reports as well<sup>10</sup>. Two religious groups coexist peacefully together in Albania: the Islamic and the Christian, with four main religious communities, Moslems, Bektashian, Orthodox and Catholics. Nowadays there are many other Christian associations such as Protestants, Evangelists, Adventists, Baha'i, Mormons, as well as a number of Islamic charity associations<sup>11</sup>.

## **2.2 General information and historical facts about minorities**

This sub-chapter will consider the historical background of the minority groups' existence during three different periods of time namely after WWI, after WWII, and after the democratic changes.

### **2.2.1 Status of the minorities after World War**

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<sup>9</sup> See "Report on National Minorities in Albanian", of the Republic of Albanian, 2001; ACFC/SR(2001)005;

<sup>10</sup> Ibid.

<sup>11</sup> "Report on National Minorities in Albania" of the Republic of Albania 2007, page 49; [www.coe.int/t/e/human\\_rights/minorities/Country\\_specific\\_eng.asp#P4\\_37](http://www.coe.int/t/e/human_rights/minorities/Country_specific_eng.asp#P4_37).

## One (WWI)

In the early stages of the Albanian state, minorities were not devoted any special importance as long as Albania itself was in its very first steps of state building. Thus, Albania's commitments towards the protection of minorities started after WWI, with its admission to the League of Nations in December 1920. However, this protection lasted for a short period and after that, Albania almost entirely neglected the minorities<sup>12</sup>, for instance Greek Minority and Macedonian one.

Albania became independent owing to the post-WWI treaties and consequently committed herself to the international law and organization (League of Nations) to protect the minority rights in conformity with the provisions of the Minority Treaties. Hence, on December 15, 1920, the Assembly of the League of Nations adopted the recommendation, which provided, that in the event of Albania state being admitted into the League of Nations, the Assembly requested that it should take the necessary measures to enforce the principles of the Minorities Treaties. According to the above recommendation, Albania should have arranged with the Council of the League of Nations the details required to carry this object into effect<sup>13</sup>. Albania was subsequently admitted to the membership of the League of Nations by a vote of the Assembly on December 17<sup>th</sup>, 1920. On October 2<sup>nd</sup>, 1921<sup>14</sup>, Albania made a special declaration<sup>15</sup> in accordance with the above resolution, before the Council, through which it pledged itself to protect and respect the rights of the national minorities within its territory.

In 1928, 185.000 persons in Albania belonged to Minorities (22.29% of total population)<sup>16</sup>. Sixty-five thousand of them were Serbs and

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<sup>12</sup> Patric Thornberry, "International Law and the Rights of Minorities", 1991, page 47.

<sup>13</sup> Advisory Opinion of the Permanent Court of Justice, April, 6<sup>th</sup>, 1935, page 7, series A/B, 64.

<sup>14</sup> Ibid.

<sup>15</sup> The Albanian declaration of October 2<sup>nd</sup>, 1921 set out the protection of minorities, general principles of the Minorities Treaties, the conception of "equality in law" and "equality in law and in fact", obligation to allow minorities to establish and maintain private schools.

<sup>16</sup> Ortakvski, Vladimir, "Minorities in the Balkans", 2000, page 114.

Montenegrins (7.83%), 55.000 were Aromaninans (Vlachs) (6.62%), 50.000 were Turks (6.02%), and 15.000 Greeks (1.8%)<sup>17</sup>. Macedonians, whose existence in that period was negated by the Albanian authorities, did not appear in those data<sup>18</sup>. Albania did not recognize the Macedonians their status as a minority in accordance with the Declaration it made before the League of Nations. Hence, it prevented them from enjoying the rights and the protection arising from it<sup>19</sup>.

The Albanian Constitution of December 1, 1928, which did not contain special regulations on minorities, was modified (specifically the articles 206 and 207) in 1933 by the Albanian National Assembly<sup>20</sup>. These articles set out the right to education, in terms also of the right to be educated in public or private schools. Therefore, they had provided for the opportunity to open the private schools. With the modification of these articles, the above right was abolished. The private schools of all categories at that time in operation were closed, because the instruction and the education of Albanian subjects were reserved to the State and would be given in state schools. In turn, the minority private schools (i.e. Greek minority schools) were closed<sup>21</sup>. After protest by Greek Government, the Albanian legislative initiative and its implementation in practice were subject of assessment by the Council of the League of Nations. The League asked by a resolution in January 1935, the Permanent Court of Justice for an advisory opinion, inter alia on the question:

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., page 115.

<sup>20</sup> The Constitution of 1928, Article 206 said: “*Elementary education is compulsory for all Albanian subjects and shall be given free of charge in the State schools*”; Article 207 said: “*1. Provided they conform with the laws, principles and curricula approved by the State for its own schools, and subject to the effective control of the Government, Albanian subjects, may found private schools. 2. Provided they comply with laws, foreigners may be authorized to found technical and agricultural schools only with theoretical and practical curricula. 3. Similarly, religious schools may be established by Albanian religious communities with the permission of the competent Minister and in conformity with the laws; the number of the religious schools of any community and of the pupils of such schools shall be fixed by the competent Minister after consultation with the Council of Ministers.*”. Advisory Opinion of the Permanent Court of Justice, April, 6<sup>th</sup>, 1935, page 13, series A/B, 64

<sup>21</sup> Ibid.

“whether, the Albanian Government is justified in its plea that, the abolition of the private schools in Albania constitutes a general measure applicable to the majority as well to the minority, it is in conformity of the stipulations laid down in Article 5, first paragraph<sup>22</sup>, and with the letter and the spirit, of the Declaration of October 1921, as a whole.”<sup>23</sup> The court in its advisory opinion in April 6<sup>th</sup>, 1935, found that paragraph 1 of Article 5 of the Declaration of October 2<sup>nd</sup>, 1921, ensured for the Albanian nationals of racial, religious or linguistic minorities:

*“ the right to maintain, manage, and control at their own expense or to establish in the future charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein”.*

The court explained as well that Article 5 gave to the minorities an unconditional right. Hence, the Court by interpreting the Article 5 of the above-mentioned Declaration found the Albanian plea and the amendments of the Constitution not in conformity with the provisions of the Declaration as a whole and the idea of the treaties for the protection of minorities. According to the Court, Albania had the obligations to provide private education in the languages of the minorities<sup>24</sup>. After the Court’s Advisory Opinion supported the Greek complaint, the Albanian government reopened the Greek Schools<sup>25</sup>.

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<sup>22</sup> Articles 5, paragraph 1 of the Declaration of the Republic of Albanian, in October, 2<sup>nd</sup>, 1921 said: *“Albanian nationals who belong to racial, religious, or linguistic minorities will enjoy the same treatment and security in law and in fact as other Albanian nationals. In particular they shall have an equal right to maintain, manage and control at their expense or to establish in the future, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.”*

<sup>23</sup> See further Advisory Opinion of the Permanent Court of Justice, April, 6<sup>th</sup>, 1935, series A/B, 64

<sup>24</sup> Ortakvski, Vladimir, “Minorities in the Balkans”, 2000, page 116.

<sup>25</sup> Ibid.

## 2.2.2 Status of minorities after World War Two (WWII)

Following the WWII, the policy of the communist government towards minorities was a cautious one. In service of its ideological and political goals to pose as an exemplary defender of the national minorities, the communist regime pursued a specific favourite policy for the national minorities in Albania, in particular the Greek and Macedonian ones<sup>26</sup>.

However, while on the one hand it showed tolerance and care, especially for the inclusion of minority population members into governance and for issues of their education and culture, on the other hand it manifested a visible differentiation of attention towards minorities in general<sup>27</sup>. As mentioned above the Greek minority and to some extent the Macedonian one were very much cared for, but there was almost no talk whatsoever for the other minorities: Vlachs, Romas, Egyptian (this community is treated in the same way nowadays and below this issue will be taken up), Bosnians or Serb-Montenegrins. The national legislation of that time, laid down some human rights, which incorporated the minority rights too. Accordingly, the Constitution of March 14<sup>th</sup>, 1946 guaranteed equality to all citizens regardless of nationality, race and religion<sup>28</sup> and the protection of the cultural development, and the free use of their language to national minorities<sup>29</sup>. In the Constitution of December 28<sup>th</sup>, 1976, the right of minorities to study their mother tongue in school was added to the abovementioned rights. The Constitution guaranteed to the minorities the equality in all areas of social life<sup>30</sup>. Nevertheless, in practice, during the communist regime there were clear violations of the human rights of all citizens, and therefore also of the rights of the members of minorities.

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<sup>26</sup>For further information see Report of AHRG on the situation of minorities in Albania "Minorities the present and the future", 2003, and also First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, ACFC/SR(2001)005.

<sup>27</sup> Ibid.

<sup>28</sup> Ortakvski, Vladimir, "Minorities in the Balkans", 2000, page 193

<sup>29</sup> Ibid, see also article 39 of the Albanian Constitution of 1946.

<sup>30</sup> Ibid, see also article 42 of the Albanian Constitution of 1976

Specific violations included the ban on religion, of changing the names of citizens and places, and the forced resettlement of citizens in Albania<sup>31</sup>. In conclusion, it can be said and must be stressed that the minority population have shared the fate of the majority of the population and have suffered the same limitations imposed by the regime.

### **2.2.3 Status of minorities after democratic changes**

Nevertheless, after the 90s with the democratic changes in Albania, the treatment of the national minorities assumed a new dimension, which is clearly expressed in Albania's membership in international organizations, such as UN, OSCE, the Council of Europe, etc., in the ratification or adherence to almost all the international conventions on human rights. Another reason for such new dimension is that after 1990s the long isolation ended and minorities had not only the possibility of movement (and the minority groups such as Greek, Macedonian, and Montenegrin Minority where supported with five years visa by the respective mother tongue neighbours country<sup>32</sup>) but also to think freely. Therefore, it was created the possibility for the minorities to establish links with the kin countries, to know their origins better, to have more contacts with the separated people of the families, the individual's spiritual connection with the past, the history of the kin, etc.

In the first half of 1991, minorities in Albania began to establish organizations and associations, for instance, the Organization of Macedonians "Prespa", Association of Greeks "Omonia" etc. These organization are focused on the promotion and protection of minority rights.

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<sup>31</sup> For further information see Ortakvski, Vladimir, "Minorities in the Balkans", 2000, page 193-194. See also Article 55 of the Albanian Constitution of 1976, which ban the religion; Administrative Decree no 5/339, in 1975 about the changing the names of the citizens; Decree no 225, in 1975 about the changing the names of geographical places; Decree no. 5/912, in 1979 about the internment of those who represent a danger to the social system.

<sup>32</sup> See First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 14; ACFC/SR(2001)005.

However the process of enacting and implementing human rights and in particular minority rights, which Albania is undertaking, is a long one and requires the fulfilment of the international commitments as well, and is still an ongoing one. A picture of this process will be given in detail in the fourth chapter of the thesis.

## **2.3 Specific information on minorities**

### **2.3.1 The Greek Minority**

#### **2.3.1.1 Location**

The Greek minority is settled in the southern part of Albania, bordering Greece. This minority is considered the largest and the most popular one, as for its number, territorial expansion and the level of national consciousness. According to the data from 1989 Population and Housing Census<sup>33</sup> the number of this population was 58.758 inhabitants or in other terms 90.6 percent of completely ethnic minorities' population. Geographically its majority is spread (almost 96.1 %) in the districts as Gjirokastra, Delvina, Saranda which are bordered to the Greek neighbour and the rest in other districts like Berat, Kucova, Fieri, Mallakstra, Gramshi, Lushnja, Permeti ect.

#### **2.3.1.2 Demographic changes**

The minority population usually lives in the rural areas, in villages, which are mostly composed only with Greek minority inhabitants. However, there are a considerable number of minority families settled in the cities. After the democratic changes in Albania the Greek minority people have moved from the rural areas to the big cities like the rest of the population did. The reasons for their transfer have been simply economic because of the big cities offer more possibilities for employment, especially in the field

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<sup>33</sup> This census is realized by the Statistic Department (after 1993 named as the Institute of Statistics – INSTAT, a body depending on the Council of Ministers)

of tourism and trade. Another fact influenced the demographic changes of the Greek minority and it was the great emigration. The emigration, which characterized Albania after the collapse of communist regime, had its impact on the minority population as well. The majority of the Greek minority population moved to Greece where it enjoys the status of the homogeneous population. They are equipped with identity cards and residents permits and enjoy privileges regarding employment, schooling of their children, medical treatment, etc. A small number of minority families might have immigrated to other European countries, and the USA and Canada.

### **2.3.1.3 The Way of living**

The members of the minority in many cases with the money earned from their work in Greece decided to build the houses for themselves, be engaged in small businesses, such as construction of hotels or restaurants, especially on the southern coastline of Albania. Members of the Greek minority almost in no case prefer to sell the houses or other immovable properties they have in Albania because they are settled in the most attractive and tourist part of the south of Albania<sup>34</sup>.

### **2.3.1.4 The number of the Greek minority population**

Under the demographic movement mentioned above, the official figures of the last population census carried out in 1989, according to which the number of Greek Minority population amounted to 58.758 members, have changed<sup>35</sup>. The issue of the exact number of the Geek minority remains object of debates and contestations of the representatives of the ethnic organization like for instance “OMONIA”<sup>36</sup>, which claim that the figure of this minority is 400.000 members. According to the Albanian authorities, the increase of this figure, with hundred thousands Greek

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<sup>34</sup>See First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 14; ACFC/SR(2001)005.

<sup>35</sup> Albania Helsinki Committee, “Minority in Albania”, 2003, page 11-12.

<sup>36</sup>OMONIA is an organization, a political forum, which represents the Greek national Minority in Albania.



minority members, is often based on the number of southern population belonging to the orthodox faith<sup>37</sup> and therefore does not reflect the accurate number of this minority.

## **2.3.2 The Macedonian Minority**

This minority did not enjoy before the WWII its minority status. After the WWII with the declaration of the Republic of Macedonia as a member of the Yugoslavian Federation<sup>38</sup>, the Macedonian community has been recognized by the Albanian authorities as a minority group.

### **2.3.2.1 Location**

The Macedonian national minority is concentrated in the area of Prespa situated 30 km northeast from Korca district. This area extends to the southeastern corner of Albania, bordering Former Yugoslav Republic of Macedonia and Greece. This area is 213.9 square kilometre. The population of this zone is 4.878 inhabitants. The population is settled in the Albanian border in the villages along the line of Lake Prespa. This minority lives in compact manner in the rural environment, but there are also inhabitants of this ethnicity settled in the cities namely Korca, Porgradec, and Tirana. The number of the villages is nine namely Lajthiza, Pstece, Zaroshka, Cerja, Shulini, Gollomboqi, Gorica e Madhe and a village in Devoll. From an administrative viewpoint, the nine villages, where the Macedonian minority people are living, make up a commune called the Commune of Prespa, which has as its centre the village of Pustec. Macedonian minority speaks Macedonian language.

### **2.3.2.2 Demographic changes**

After the 1990s, no great movement of population has occurred in the Prespa area, differently from other regions in Albania inhabited by national minorities, like the Greek minority mentioned above. Due to the close

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<sup>37</sup> First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 34-36; ACFC/SR(2001)005

<sup>38</sup> AHC "Minorities in Albania", 2003, page 37-38.

distance with Macedonian dwelling centres, many people from this minority go to work there during the day and return to their village in the evening.

### **2.3.2.3 Way of living**

The inhabitants of this minority are engaged mainly in agriculture, live-stock and fishing.

### **2.3.2.4 The number of Macedonian minority population**

According to the data from the Ministry of Education, in 1935-1936, there were 11.459 inhabitants, whose mother tongue was Macedonian, or else called Bulgarophiles. The population census of 1945 revealed 3.431 inhabitants of Macedonian ethnicity. The census of 1960 revealed 4.235 inhabitants and that of 1989 revealed 4.697 inhabitants<sup>39</sup>. After the latter census, no more official data exist and this situation leads to the controversial discussions about the accurate number of this minority. The representatives of Macedonian minority claim different figures with regard to the number of the inhabitants and it varies from 60.000 to 100.000 inhabitants<sup>40</sup>.

## **2.3.3 Montenegrin (Serbian-Montenegrin) Minority**

### **2.3.3.1 Location**

Montenegrin (known also as Serbian-Montenegrin) national minority lives mostly in the northwestern part of Albania near the lake of Shkodra and off the border with Montenegro. This minority is settled in various small villages in the area of Vraka namely Gril, Omaraj, Borici i Vogel, located in the north part of the city of Shkodra<sup>41</sup> and the majority of them is

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<sup>39</sup> Report of the AHGR on the situation of minorities in Albania, "Minorities: The present and the future", 2003, page 29.

<sup>40</sup> Ibid. See also [www.macedoniansinalbania.org/news/osce\\_albania05.html](http://www.macedoniansinalbania.org/news/osce_albania05.html).

<sup>41</sup> First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 14; ACFC/SR(2001)005.

settled mainly in the city of Shkodra, which is the Albanian centre closest to Montenegro. The Serbian- Montenegrin minority speaks Serbian language.

### **2.3.3.2 Demographic changes**

With the beginning of the democratic processes in Albania, almost all the Montenegrin minority left to Montenegro. The economic difficulties and the tensions created in former Yugoslavia urged a part of those who had left to return to their homes in Albania. About 600 of two thousand people, who moved to Montenegrin, have returned to their houses. The rest either continued to live in Montenegro (the majority) or moved to other countries of Western Europe, USA or Canada. Nevertheless, in most of the cases they keep regular contacts with the members of their families in Albania and continue to possess and maintain their houses and properties therein<sup>42</sup>.

### **2.3.3.3 Way of living**

After 1990s, the Serbian-Montenegrin minority had the possibility to travel freely to former Yugoslavia, which consequently intensified the commercial relations and positively affected the welfare of this community<sup>43</sup>. Besides, from the trade exchanges with Montenegro, the actual inhabitants of the villages earn their living through agriculture.<sup>44</sup>

### **2.3.3.4 The number of Serbian-Montenegrin minority population**

The statistical data on the number of this minority people were not defined specifically and accurately in the census of 1960, but according to the census of 1989, the number of Serbian-Montenegrin is 100 inhabitants. However, from the data in the survey held by Albanian Helsinki Committee in 2000, this minority consisted of about 2000 people<sup>45</sup>. The representatives of this minority claim a greater number of the members of Serbian-

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<sup>42</sup> First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 14; ACFC/SR(2001)005

<sup>43</sup> Ibid.

<sup>44</sup> AHC "Minorities in Albania", 2003, page 59.

<sup>45</sup> Ibid.

Montenegrin minority. Their controversial opinions will be looked at below.

## **2.3.4 The Roma Minority**

### **2.3.4.1 Location**

The Roma minority is widely scattered in Albania. Even though the Roma people are concentrated mostly in, central and southern part of Albania and the main reason is the mild climate of these regions. The arrival of Roma people to Albania is assumed to date back to nearly the 14<sup>th</sup> century. They arrived from Montenegro, Greece and Turkey, where they had settled after the nomad travels from far India. Roma minority consists of four main tribes namely: Kallbuxhinj located in Tirana, Elbasan, Progradeci, Korca, Bilishti, Gjirokastra, Saranda); Meckare located in Lushnja, Fieri, Vlora; Kurtofet – scattered; Cargaret – nomads<sup>46</sup>. They speak dialects of the same language. The community settled in middle Albania speaks up to 60-70 per cent of Albanian language<sup>47</sup>.

### **2.3.4.2 Way of living**

In general, they have large families and live in rural areas or in the remote areas of the cities. The characteristic of the Roma minority is its nomadic life and they are engaged in trading. According to seasons, they move from one region to another. This way of living during the dictatorial period created problems for the communist regime in power, because it could leave these people out of control<sup>48</sup>. For these reasons, beginning from the 1960s, the authorities of that time started to concentrate the Roma people in agricultural enterprises in rural areas, forcing them to be employed, while in the cities they have been working mostly in parks

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<sup>46</sup> AHC “Minorities in Albania”, 2003, page 43

<sup>47</sup> Ibid.

<sup>48</sup> First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 15-16; ACFC/SR(2001)005

maintaining enterprise or in public services<sup>49</sup>. The Roma of Albania, like the Roma across the world, are involved mostly in handicrafts<sup>50</sup>

### **2.3.4.3 Demographic changes**

With the democratic changes, many Roma families have moved from the cities and districts of Albania towards the suburbs of Tirana city (the capital of Albania). As the capital and the most developed city and located in the centre of Albania, Tirana offers them greater chances, especially for trading, which has been and remains the main occupation for the Roma people. A large part of the Roma minority has again started to lead a nomad life. Whole families emigrated to Greece or Former Yugoslav Republic of Macedonia for 6-7 months a year.

### **2.3.4.4 The number of Roma minority population**

The statistical data with regard to the number of Roma living in Albania do not exist because, they have never been included in any census and they have never been mentioned in any official records. This happened also in the 1989 population census. However, there are a series of data about their arrival to Albania. According to an Ottoman record in 1523, there were 374 Roma families<sup>51</sup>. There are opinions, which sustain that the number of the Roma minority in Albania is greater than 100.000 people<sup>52</sup>. However, one cannot rely upon this figure, as the studies have been partial<sup>53</sup> and a national census, which could include this minority, has not been undertaken yet.

## **2.3.5 Aromanian (Vlach) Minority**

### **2.3.5.1 Location**

Among the minorities in Albania are also the Aromanians (mostly known as Vlachs). All the Aromanians of Albania are one part of the large group of Aromanians throughout the Balkans. The settlements of this

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Report of AHRG "Minorities: The present and the future", 2003, page 91

<sup>52</sup> Prof. Bexholli Arqile, "Minority in Albania", 2003, page 128.

<sup>53</sup> Report of AHRG "Minorities: The present and the future", 2003, page 91

community in Albania date back in history. They came to Albania during two periods of time and consequently there are those called ancient Aromanians population (presumed to come around 6<sup>th</sup> century A.D.) settled in the rural areas of Myzeqe of Fier and Vlora, Frasher of Permet, Moker of Pogradec, Kolonja etc., as well as in some cities such as in Korca, Berat, Tirana, Elbasan and Durres<sup>54</sup>. Thus is evident that this minority mainly settled in the Southern and Middle Albania. Moreover, the other group called the later Aromanians population is considered to come to Albania perhaps at the beginning of the past century. The members of that group came from the high plateaus of Pindus in Greece<sup>55</sup>. Until 1950, this population retained its nomad livestock character and its stabilization was linked with the policies taken by the communist regime in Albania, which tried to integrate them within the Albanian society and population<sup>56</sup>.

Aromanian minority speaks the Vlach language, but from one generation to the next one, the number of people speaking the language was reduced, mainly due to the assimilation process over the years. Nevertheless, the language is still preserved and spoken, although nowadays by a smaller number<sup>57</sup> of people.

### **2.3.5.2 Way of living**

In the beginning the Aromanian minority emerged as a livestock nomadic population, and later through a gradual stabilization, they have been engaged in other economic activities, for instance in agriculture, etc<sup>58</sup>.

### **2.3.5.3 Demographic changes**

The situation with regard to this issue in respect to Aromanian minority is the same as Roma minority's one, mentioned above.

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<sup>54</sup> First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 16-17; ACFC/SR(2001)005

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

#### **2.3.5.4 The number of Aromanian minority population**

The data concerning the number of the Aromanian minority in Albania appeared for the first time in the 1950 census. In this census, the Aromanian population counted for 2381 inhabitants. While in the 1955 census, the number of Aromanian population was put at 4249. In the later censuses, no data were produced regarding the number of Aromanians in Albania. While in 1989 registration, the number of Aromanians living in Albania was reported to be of 782 inhabitants. Referring to the study of professor Berxolli, until the beginning of 2000, about 139.000 inhabitants or 3.6 percent of the Albanian population could be estimated as Aromanians<sup>59</sup>. However, there are no accurate official statistics for the entire country.

#### **2.3.6 Egyptian (Gypsy) minority**

##### **2.3.6.1 The existence of Gypsy minority**

Egyptians settled in the Balkan centuries ago. Their origin is controversial<sup>60</sup>. However, the representatives of this group claim to have Egyptian origin and they came from the nearer country in the Mediterranean, Egypt.

According to Albanian authorities, gypsy population is not a minority group but it is a community with racial differences from the rest of the Albanian inhabitants<sup>61</sup>. Referring to the Albanian government's assertion the Egyptian came to Balkan from India through Egypt and this is the only connection with this country<sup>62</sup>. The Egyptian embassy in Tirana has made a statement, according to which it does not recognize any Egyptian minority in Albania<sup>63</sup>. Based on this statement, and mostly on the international acts and also assessing the objective and subjective criteria, as the determinant elements of the recognition of a minority group as such, the Albanian

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<sup>59</sup> Prof. Berxolli Arqile, "Minority in Albania", 2005, page 121

<sup>60</sup> Ibid, page 129-132, and 189-190.

<sup>61</sup> Comments of the Albanian Government on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Albania, 2003, page 7; GVT/Com/INF/OP/I(2003)004

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

government states that there are no grounds for the creation of the liabilities in the recognition of the Gypsy as the national minority group<sup>64</sup>. According to the Albanian government, this group should not be considered as national minority, because it is well integrated into Albanian society, and its members speak only Albanian and they lost their minority language over the time. The only distinction from the other Albanians is their racial distinction, like skin colour etc<sup>65</sup>. The Advisory Committee on the Framework Convention for the Protection of National Minorities in its Opinion on Albania, in 2003 noted that persons belonging to the Egyptian community consider themselves as a national minority group. They declare their distinction from the Albanian community, based on the ethnic background, their historical roots as descendants of persons from Egypt, their traditions and their cultural heritage<sup>66</sup>. According to the Advisory Committee Albania should not exclude *a priori*, this group from the personal scope of application of the Framework Convention<sup>67</sup>.

As the Human Right Committee pointed out in its General Comment No. 23, the existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria<sup>68</sup>. Therefore, the existence of the minority is matter of fact and the group should fulfill the objective and subjective criteria<sup>69</sup> to be considered as such. It also depends on the ability

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Albania, 2002, page7; ACFC/INF/OP/I(2003)004

<sup>67</sup> Ibid.

<sup>68</sup> General Comment No. 23, HRC, The rights of minorities (Art. 27), 1994, paragraph 5.2.; [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument)

<sup>69</sup> See Catherin Brolmann, Rene Lefeber, Marjoleine Zieck.; "Peoples and Minorities in international Law", 1993; R. Wolfrum, "New Minorities as a result of Migration", page 160; see also Deirdre Fottrell and Bill Bowring; "Minority and group rights in the new millennium", 1999; Eric Heinze "The construction and contingency of minority concept", page 43; see also Nazila Ghanea and Alexandra Xanthaki (eds.), "Minorities, people and self-determination", 2005; Gudmundur Alfredsson "Minorities, Indigenous and tribal people, and peoples; Definitions of terms as a matter of International Law", page 163-172. The definition of the term "minority" is not adopted in the international law, but now it is accepted easily in international and national practices. The components of the definition of the minority can be classified into objective and subjective criteria, which in turn respectively are: 1. The joint affiliation of the members of the group as far as national or ethnic



of the minority group to maintain its culture, language or religion. If the state does not consider a group as minority, than the positive measures that might be necessary to be taken by the State to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group<sup>70</sup>, can not be fulfilled and obviously, the minority rights can not be respected and protected. Subsequently the state will violate and breach its obligations and commitments in international law. Consequently the Albanian government should carefully reexamine the Egyptian minority issue with respect to their different cultural heritage and way of living.

### **2.3.6.2 Location**

The Egyptians mainly settled in the south and centre of the country. Even though, nowadays they also live in the north, especially in Shkodra. A small part of the members of the Gypsy community lives in the rural areas, as the majority is located in the districts, in neighbourhoods with characteristic names, and thus historically known by everyone, as the Gypsy neighbourhoods<sup>71</sup>. Unlike the Rome minority (with whom they are often mistaken) they did not preserve their language. Therefore, Egyptians speak Albanian language.

### **2.3.6.3 Way of Living**

They are distinguished as good artisans, especially as shoemakers, tinsmiths, blacksmiths etc. Traditionally they are known as folk instrument players. Most of the bands in the Albanian weddings are composed of Gypsy singers.

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origin, language and/or religion are concerned; 2. self-identification; 3. the numbers; 4. long-term presence on the territory of the state.

<sup>70</sup> General Comment No. 23, HRC, The rights of minorities (Art. 27), 1994, paragraph 5.2.; [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument)

<sup>71</sup> AHC, "Minorities in Albania", 2003, page 66.

#### **2.3.6.4 Number of Egyptian minority population**

According to the representatives of this group, the number of Egyptians in Albania is around 200.000 to 250.000 people. No official data exist in respect to this minority, bearing in mind that Albania Government does not recognize this community as such.

### **2.3.7 Bosnian Minority<sup>72</sup>**

#### **2.3.7.1 Location**

Bosnians arrived for the first time in Albania in 1876. Actually, the breakdown of the Turkish transport ship in Durres, which is a coastline, city of Albania, gave another route to the 13 families travelling to Turkey in search of a better life. Almost all the comers were convinced that they would stay for a short time, but turned out that they settled in the very same spot as they have lived until now, around Shijak, which is part of the administrative area of the Durres district. This spot is located in the middle part of Albania in a village called Borak. Two years later, in 1878, other Bosnians, the rest of families arrived, and in 1884, some other families followed them. No more families arrived after that year.

Even this minority is integrated into the Albanian society, its members still preserve their language to such extend that it can be said that Albanian language as a second one in the village.

#### **2.3.7.2 The number of Bosnian minority population**

No statistical data can be found with regard to this minority, as far as it is not recognize as such by the Albanian government. The latter does not even mentioned this group in its reports to the international organizations. The Albanian government considers this minority as a community. Nevertheless, as it was mentioned above in case of Egyptian minority, the existence of this minority is matter of fact, not of the state recognition.

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<sup>72</sup> Information taken by the Report of the AHGR on the situation of minorities in Albania, "Minorities: The present and the future", 2003, page 66-74.

## 2.4 The lack of official data and records about minorities in Albania

In Albania, the official data about the number of the ethnic minorities appeared in 1950, when for the first time the registration process of the population was undertaken. In turn, other census followed that one, namely the registrations in 1955, 1960, 1969, 1979, and 1989. After the last census there do not exist, official data with regard to the number of the minorities' inhabitants living in Albania. Looking at the previous registrations, it can be observed that the data, which they contained were related to the ethnic minorities specifically Greek, Macedonian, Serbian-Montenegrin, Aromanian and there was not information about other minorities for instance Roma one.

Referring to INSTAT, the actual registered percentage of non-Albanian minorities is low and it varies between two percent to three percent, and the Greek minority is the dominant ethnic minority among others constituting 85% of their total number. The figures from the previous registrations, described in the tables become relevant:

**Table 1. General population registration data of ethnic minorities (ref. INSTAT)**

Years of Inhabitants Registration	Total Population	Non Albanian Minorities	Percentage of Non Albanian Minorities
1950	1.218.945	35.201	2.9%
1955	1.391.499	47.227	3.4%
1960	1.626.315	44.570	2.7%
1969	2.068.155	-----	-----
1979	2.590.600	54.687	2.1%
1989	3.182.417	64.816	2.01%

**Table 2. Data of ethnic and ethno – linguistic minorities (ref. INSTAT)**

*Non-Albanian minorities referring to respective registration years.*

	1950	1955	1960	1979	1989
Total	35.201	47.227	44.570	54.687	64.816
Greek	28.996	35.345	37.282	49.307	58.758
Macedonians	2.273	3.431	4.235	4.097	4.697
Serbia-Montenegrin	893	1.613	....	66	100
Aromanian	1.876	4.249	...	....	782
Other	1.163	2.589	3.053	1.217	479

Another registration process was undertaken in April 2001. However, the questions of individual identification regarding the nationality were not included in the questionnaire<sup>73</sup>. The Commission, “REPOBA”, took the same view during preparatory phase of registration process and decided that the individual identification information records were not to be included in the questionnaire during the registration process<sup>74</sup>. According to the foregoing registration, the number of the total population was 3.069.275 and the number of the emigrants was estimated to be about 600.000-700.000<sup>75</sup>.

During 2002, the Institute of Statistics, INSTAT, carried out a survey on minorities in Albania, based on the data gathered during the census of 2001, and on the Living Standard Measurement Survey, carried out with the help of World Bank<sup>76</sup>. According to the INSTAT survey, it resulted that there was a significant decrease in the number of the minority population compared to that of the census carried out in 1989.

The table below describes the estimation of ethnic minorities’ population living in Albania, done by INSTAT.

**Table 3. Estimation of ethnic minorities’ population living in Albania.**

Population	Number	Percentage%
Total population	3.069.275	100
Total Ethnic Minorities	42.892	1.4

<sup>73</sup> Report of AHRG on the situation of minorities in Albania, “Minorities: The present and the future”, 2003, page 148.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid., page 149.

<sup>76</sup> Second Report of Albania, “On the implementation of the Framework Convention of the Council of Europe for the Protection of National Minorities”, 2007, page 11

Greek	35.829	1.17
Macedonian	4.148	0.14
Serbo-Montenegrin	678	0.02
Aromanian	992	0.03
Other	1.245	0.04

In conclusion referring to this estimation, in 2001 the ethnic minorities constitute 1.4% of the total population of 3.069.275 inhabitants living in Albania.

Subsequently it is quite evident that there is lack of information and accurate official records about the number of the minorities' members, which are living in Albania.

The absent of published official statistical data on minorities impairs the application of related policies and practices in the protection and implementation of their rights. This situation leaves room for the controversial debates. On the one hand, there is the Albanian government's statement about the number of the minorities based on the official data of previews registrations and the estimation of 2002 and on the other hand, there are the representatives of the minority groups who claim other figures. The Greek minority claims that the number of the Greek minority in Albania is around 400.000 members. This figure was contested, as it was mentioned above, from Albania government by stating that the former includes wrongly in this data the orthodox people who live in Albania. The Macedonian representatives claim to be 60.000 – 100.000 members of the Macedonian Minority living in Albania. The estimation about Montenegrin minority is 2000 members. The estimation and the claim of the representatives of Roma minority is that the number of the members of this minority is more then 100.000. The Aromonian minority is estimated more them 130.000 members. Obviously, the above data are far from those considered by the Albania authorities.

The Advisory Committee on the FCNM also examined this issue. The Advisory Committee <sup>77</sup> was of the view that there is an important need for the Albanian authorities to gather further information, including statistical information, concerning national minorities and the issues affecting them <sup>78</sup>. In this respect, the Advisory Committee noted with concern that there is an extremely wide variation in statistics relating to the numbers of persons belonging to national minorities. These figures vary from 2 percent of the total population, according to Government sources, to over 20 percent according to some other sources <sup>79</sup>. In relation to the remarks of the Advisory Committee, the Albanian government in its comments <sup>80</sup> stressed that the Committee should be very careful on the claims about the number of the national minorities in Albania, and it should based its observations on reliable official data and sources <sup>81</sup>. Nevertheless, the necessity of having the accurate statistical data and information about minorities was also emphasized by the Committee of Minister of CoE, in is resolution in 11.05.2005 <sup>82</sup>.

Finally, it can be said that the Albanian authorities should undertake a national census, which shall include the question concerning ethnicity. Such general census will bring to an end and will clarify the contentious claims about the number of the minorities' inhabitants. At the same time, it will also provide the opportunity for the persons belonging to national minorities to express their identity. Additionally, the accurate statistical data and information on the number and location of persons, belonging to the national and linguistic minorities is necessary for the monitoring process and the design of policies in favour of minorities <sup>83</sup>. Finally, the statistical data are also important and essential for the monitoring process and the

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<sup>77</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion of Albania, 12 Sept. 2002, ACFC/INF/OP/I(2003)004.

<sup>78</sup> Ibid. paragraph 12.

<sup>79</sup> Ibid.

<sup>80</sup> Comments of the Government of Albania on the Opinion of Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Albania, 10 February 2003, GVT/COM/inf/op/1(2003)004.

<sup>81</sup> Ibid, page 5.

<sup>82</sup> Resolution of Committee of Ministers of the CoE, RecCMN(2005)2;

<sup>83</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion of Albania, 12 Sept. 2002, page 2, ACFC/INF/OP/I(2003)004.

assessment of the implementation of the minority rights laid down in the national and international legislation adopted by Albania. These rights and standards would be discussed in the following chapters.

# 3 International legal framework for the protection of Minority Groups

This chapter gives an overview of the international standards on minority rights, set out in the international instruments of the UN and CoE. The above international and regional organizations were chosen because they are of a relevant importance to the minority rights and Albania is also part of both organisations<sup>84</sup> and has ratified almost all the human rights instruments, which they adopted.

## 3.1 The United Nations standards

The United Nations human rights including the minority rights standards, laid down in the UN instruments, have formed during the years the backbone of the international human rights jurisprudence. Although the United Nations promoted and protected the category of the individual rights, instead of the notion of group rights and identity<sup>85</sup>, it could not also remain indifferent to the fate of the minorities<sup>86</sup>. The issue of minorities regained interest from the United Nations during the adoption of the Human Rights Instruments, which set out the protection of minority rights. This sub-chapter covers the standards envisaged in the UN instruments namely: ICCPR, ICESCR, ICERD, ICRC, UNESCO Convention against Discrimination in Education, The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

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<sup>84</sup> Albanian is a member of Un since December 14, 1955, and a member of CoE since July 13, 1995;

<sup>85</sup> See Rianne M. Letchert, "The Impact of Minority Rights Mechanisms", 2005, page 12; see also the Universal Declaration on Human Rights 1948, which does not refer to specific minority rights.

<sup>86</sup> See further Resolution 217 C(III) of 10 December 1948, of the General Assembly



### 3.1.1 The ICCPR Standards

The ICCPR was adopted in 1966 and entered into force in 1976. The Republic of Albania adhered to the International Covenant on Civil and Political Rights on October 4, 1991<sup>87</sup>, which entered into force on Jan. 04, 1992.

This Covenant is of a great importance to the minority rights, because it contains the Article 27, which is specifically devoted to minorities. Article 27 of the Covenant has been described as “the first internationally accepted rule for the protection of minorities”<sup>88</sup>. This article considers the recognition of the right to a distinct identity<sup>89</sup>, which remain a key element in any overall system to protect minorities<sup>90</sup>. Article 27 states:

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

As the HRC states in its General Comment no 23<sup>91</sup>, the Article 27 although is expressed in negative terms, does recognize the existence of a “right” and requires that it shall not be denied.<sup>92</sup> This right consists of that the persons belonging to ethnic, religious or linguistic minorities in community with other members of their group shall enjoy their own culture, to profess and practice their own religion, or to use their own language. In other words, it is the right to exist in community with other members of the group, although the article does not explicitly stipulate it.

Consequently, a State party to the Covenant is under the obligation to ensure that the existence and the exercise of these rights are protected

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<sup>87</sup> See Initial Albanian Report to the Human Rights Committee, 16/02/2004, page 4, para.3, CCPR/C/ALB/2004/1.

<sup>88</sup> See F. Capotorti, “*Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities I*” (U.N.Doc.E/CN.4?Sub.2/34?Rev.1.1979).

<sup>89</sup> See Patrick Thornberry, “International law and Minority Rights”, 1991, page 140.

<sup>90</sup> Ibid.

<sup>91</sup> See

[www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument)

<sup>92</sup> General Comment no 23, of HRC, paragraph 6.1.

against the denial or their violations. The protection of these rights is directed to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole<sup>93</sup>. Besides that, we should bear in mind that the rights protected under article 27 are individual rights, and therefore they depend on the ability of the minority group to maintain its culture, language or religion<sup>94</sup>.

Apart from Article 27 of ICCPR, there are other relevant provisions related to the protection of minority rights in the Covenant. Some of those are for instance article 2 on non-discrimination<sup>95</sup>, article 14 on equality before the courts and on language interpretation in criminal justice proceedings<sup>96</sup>, article 20 on the limitation of the freedom of speech if it constitutes advocacy of ethnic hatred<sup>97</sup>, and article 26<sup>98</sup> on the equality before the law and non-discrimination<sup>99</sup>.

These articles altogether inter alia set forth the standards of the equal enjoyment of human rights and the prohibitions of non-discrimination in that enjoyment as they are envisaged in the UN Charter<sup>100</sup>.

However, letting down the aforementioned standards is not enough to guarantee the protection of minorities. Special rights and preferential treatments are required to be taken by the States to insure the overcoming widespread discrimination and to put minority groups, as well as their

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<sup>93</sup> Ibid. para. 9.

<sup>94</sup> Ibid. , paragraph 6.2

<sup>95</sup> Article 2 of the ICCPR inter alia states: "1. *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language religious, political or other opinion, national or social origin, property birth or other status.*"

<sup>96</sup> See further article 14 of ICCPR.

<sup>97</sup> Article 20 of ICCPR states: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

<sup>98</sup> Article 26 of ICCPR states: "All persons are equal before the law and are entitled without any discrimination to the equal protection of law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." . This right is an independent right.

<sup>99</sup> See Gudmundur Alfredsson and Erika Ferrer, "Minority Rights: A guide to United Nations Procedures and Institutions", 1998, page 6.

<sup>100</sup> UN Charter, Article 1.

members on the equal footing compared with the majority population<sup>101</sup>. Thus, states should guarantee not only the equality under the law but must also translate it into equality in fact<sup>102</sup>. In this connection the measures taken by States with the aim at correcting conditions, which prevent or impair the enjoyment of the rights guaranteed under article 27 and under the Covenant, may constitute a legitimate differentiation under the Covenant, if they are based on reasonable and objective criteria<sup>103</sup>. The positive measures of protection are required not only against the acts of the State party itself, whether it is legislative, judicial or administrative authorities, but also against the acts of other persons within the State Party<sup>104</sup>.

### 3.1.2 The ICESCR Standards

The International Covenant on Economic, Social and Cultural Rights was adopted in 1966 and entered into force in 1976. The Republic of Albania adhered to the ICESCR on October 4, 1991<sup>105</sup>, which entered into force on Jan. 04, 1992.

Even this covenant does not have a specific provision related to the minority groups, due to the decision of the HRC in the *Lubicon Lake Band* case and *Kitok case*, it is clear that Article 27 of ICCPR, does, to some extent, protect economic rights<sup>106</sup> of the minority groups.

Even though the ICESCR has a particular importance, concerning the minority groups, because its provisions are firstly based on the principle of equality and non-discrimination for instance article 2 on non-discrimination<sup>107</sup> and secondly there are some specific provisions, which can address minority issues for instance:

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<sup>101</sup> See Gudmundur Alfredsson and Erika Ferrer, "Minority Rights: A guide to United Nations Procedures and Institutions", 1998, page 6.

<sup>102</sup> Ibid.

<sup>103</sup> General Comment no 23, of HRC, para. 6.2.

<sup>104</sup> Ibid.

<sup>105</sup> See [www.ohchr.org/english/bodies/ratification/3.htm](http://www.ohchr.org/english/bodies/ratification/3.htm).

<sup>106</sup> Asbjorn Eide, Catarina Krause and Allan Rosas, "Economic Social and Cultural Rights"-Anne-Christine Bloch-"Minorities and Indigenous People", 2001, page 378;

<sup>107</sup> Article 2 of the ICESCR inter alia states:"2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised

- article 13 on the right to education<sup>108</sup>, particularly in the native language. This right is a crucial one for minorities since it is one of the cornerstones of the preservation of group identity<sup>109</sup>.

- articles six and seven on the right to work and workplace, especially paragraph c of the latter on the equality in the work place. These provisions are also relevant since people belonging to minorities are often economically disadvantaged and discriminated against in the labour market<sup>110</sup>.

These provisions gain more weight bearing in mind the nature of states obligations laid down in the Covenant itself. Article 2 of the Covenant as the CESCR stated in the General Comment no 3<sup>111</sup> sets forth the obligation for the States Parties to take legislative, administrative, financial, educational measures by all appropriate means to guarantee the exercise of the rights in the Covenant without discrimination.

Therefore, in case of minority groups States should take positive actions to reduce the differences, which exist in reality between minority and majority of the population in order to achieve the equality within society for all the persons.

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*without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

<sup>108</sup> Article 13 of the ICESCR inter alia states: *“The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect of human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.”*

<sup>109</sup> See Gudmundur Alfredsson and Erika Ferrer, “Minority Rights: A guide to United Nations Procedures and Institutions”, 1998, page 15.

<sup>110</sup> Ibid. See also Article 6 of the ICESCR which in para. 1 states: *“The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”*, and also Article 7 of ICESCR which in para. 1 (c) states: *“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: ....(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;”*

<sup>111</sup> Article 2 of the ICESCR

### 3.1.3 The ICERD Standards

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted in 1965 and entered into force in 1969<sup>112</sup>. The Republic of Albania adhered to the ICERD on May 11, 1994<sup>113</sup>, which entered into force on Jun. 10, 1994.

This convention is concerned with racial groups in general and not specifically with minorities, nonetheless the minorities are the natural victims of racial discrimination in various States<sup>114</sup> Parties.

Article 1(1) of the ICERD stipulates the definition of the “*racial discrimination*” by stating as follow:

*“In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”*

It is evident that the scope of the racial discrimination prohibited under the Article 1(1) of the ICERD is very wide, and covers racial, national and ethnic minority<sup>115</sup>. The Convention includes also a number of provisions for instance Article 2(2), Article 5, which subsequently place the obligation on the states to adopt special measures for the benefit of individuals and groups when that is necessary to overcome discriminatory patterns in the cultural, economic, social and other fields.<sup>116</sup> The previously mentioned measures according to Article 1(4) of the ICERD shall not be deemed racial discrimination, when they are taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals aiming at ensuring such groups or individuals the equal enjoyment or exercise of human rights and fundamental freedoms. Such protection should

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<sup>112</sup>This Convention is supported by States to a greater extent . The number of ratifications is 173 states parties; see [www.ohchr.org/english/countries/ratification/2.htm](http://www.ohchr.org/english/countries/ratification/2.htm).

<sup>113</sup> See [www.ohchr.org/english/bodies/ratification/2.htm](http://www.ohchr.org/english/bodies/ratification/2.htm).

<sup>114</sup> See Patrick Thornberry, “International law and Minority Rights”, 1991, page 272.

<sup>115</sup> See Gudmundur Alfredsson and Erika Ferrer, “Minority Rights: A guide to United Nations Procedures and Institutions”, 1998, page 7.

<sup>116</sup> Ibid.

be necessary in order to take such measures. In Article 4, the ICERD outlaws incitement to racial hatred and related practices, as the ICCPR does.<sup>117</sup>

The General Comment no. 27 of the CERD has a particular importance with regard to the protection of the Roma minority against discrimination. Keeping in mind that Roma minority is one of the minority groups in Albania, this General Comment will be considered below. Through the General Comment, the CERD gives recommendations to the States Parties, to adopt for the benefit of members of the Roma communities, the measures described in the General Comment itself, always taking into account their specific situations. These measures are classified as:

- ***of a general nature***, which are for instance:
  - the review and enactment or amendment of the legislation in order to eliminate all forms of racial discrimination against Roma as against other persons or groups, in accordance with the Convention;
  - the adoption and implementation of national strategies and programmes, with a view to improve the situation of Roma and their protection against discrimination by State bodies, as well as by any person or organization;
  - the development and encouragement of appropriate modalities of communication and dialogue between Roma communities and central and local authorities; etc.
- ***of protection against racial violence***, which are for instance:
  - the protection of the security and integrity of Roma, without any discrimination, by adopting measures for preventing racially motivated acts of violence against them; by ensuring prompt action by the police, the prosecutors and the judiciary for investigating and punishing such acts; and ensuring that perpetrators, be they public officials or other persons, do not enjoy any degree of impunity;
  - the prevention of the use of illegal force by the police against Roma, in particular in connection with arrest and detention; etc.
- ***in the field of education***, which are for example:
  - by supporting the inclusion in the school system of all children of Roma origin, acting to reduce drop-out rates, in particular among Roma girls;

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<sup>117</sup> Ibid.

- adopting measures in favor of Roma children, in cooperation with their parents, in the field of education;
- by preventing and avoiding as much as possible the segregation of Roma students, while keeping open the possibility for bilingual or mother-tongue tuition;
- by taking urgent and sustained measures in training teachers, educators and assistants from among Roma students;
- by acting to improve dialogue and communication between the teaching personnel and Roma children, Roma communities and parents; etc.
- ***of improving living conditions***, which are for instance:
    - by adopting or making more effective legislation prohibiting discrimination in employment and all discriminatory practices in the labor market affecting members of Roma communities, and to protect them against such practices;
    - by taking special measures to promote the employment of Roma in the public administration and institutions, as well as in private companies;
    - by ensuring Roma equal access to health care and social security services and to eliminate any discriminatory practices against them in this field ensuring;
    - by implementing health programmes and projects mainly for women and children etc.
  - ***of media***, which are for example:
    - by acting as appropriate for the elimination of any ideas of racial or ethnic superiority, of racial hatred and incitement to discrimination and violence against Roma in the media, in accordance with the provisions of the Convention;
    - by developing educational and media campaigns to educate the public about Roma life, society and culture and the importance of building an inclusive society while respecting the human rights and the identity of the Roma;
    - by encouraging and facilitating access by Roma to the media, including newspapers and television and radio programmes, the establishment of their own media, as well as the training of Roma journalists; etc.
  - ***of participation in public life*** which are for example:

by taking the necessary steps, including special measures, to secure equal opportunities for the participation of Roma minorities or groups in all central and local governmental bodies;

by developing modalities and structures of consultation with Roma political parties, associations and representatives, both at central and local levels, when considering issues and adopting decisions on matters of concern to Roma communities;

by promoting more awareness among members of Roma communities of the need for their more active participation in public and social life and in promoting their own interests, for instance the education of their children and their participation in professional training; etc .

Albania government should make use of these recommendations and apply them to improve the situation of Roma minority in Albania. These recommendations should be applied in case of other minority groups, for instance Egyptians, Aromanians who suffer similarly the lack of implementation in practice of the minority rights. Next chapter will give a picture of this situation.

### **3.1.4 The CRC Standards**

The Convention on the Rights of the Child was adopted in 1989 and entered into force in 1990. The Republic of Albania signed the CRC on Jan.26, 1990, and ratified it on Feb. 27, 1992, which entered into force on March 28, 1992.

This Convention sets forth the standards for the protection of the child and the harmonious development of his or her personality. Notwithstanding it is also relevant for the minority children rights, due to its provisions, which contain the principles of equality and equality between sexes, non-discrimination, and because of the Article 30 of CRC that sets out a specific provision with regard to the minority child. This article is identical to the Article 27 of ICCPR with regard to minority rights, with the only exception that includes also the indigenous child rights. This article states:

*“In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a*



*minorities or who is indigenous shall not be denied the right in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.”*

Article 30 of CRC as the Article 27 of ICCPR, although is expressed in negative terms, and it does recognize the existence of a “right” and requires that it shall not be denied.<sup>118</sup> According to this right the child belonging to ethnic, religious or linguistic minorities and indigenous people in community with other members of his or her group shall enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language. Therefore, this article lays down a special right of the child belonging to the minority group to have his or her distinct identity.

The Convention has various relevant provisions regarding the rights of a child belonging to the minority group, which embody the principle of equality and non-discrimination, such as Article 2(1)<sup>119</sup>. The convention in Article 17(1) (d)<sup>120</sup> states the important role of the mass media in protection, and dissemination of the principle of equality, non-discrimination and the rights of the child belonging to the minority group and indigenous people.

Another essential provision with respect to the rights of a child belonging to the minority group is laid down in Article 29 of the CRC. This article stipulates the measures, which the States Parties should apply in the education system of the child. Thus, the education of the child shall be directed to:

*- the development of respect of human rights and fundamental freedom<sup>121</sup>;*

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<sup>118</sup> General Comment no 23, of HRC, paragraph 6.1.

<sup>119</sup> Article 2(1) of CRC states: “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

<sup>120</sup> Article 17 (1) (d) of CRC states: “States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall: Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;”

<sup>121</sup> Article 29 (1) (b) of CRC; [www.ohchr.org/english/law/crc.htm](http://www.ohchr.org/english/law/crc.htm)

- *the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own*<sup>122</sup>;
- *the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.*

### **3.1.5 The UNESCO's Convention against Discrimination in Education Standards**

The United Nations Educational, Scientific and Cultural Organization<sup>123</sup> Convention against Discrimination in Education was adopted in 1960 and entered into force in 1962. Republic of Albania ratified the UNESCO Convention against Discrimination in Education on Nov. 21, 1963

The Convention<sup>124</sup> is an important instrument in relation to the minority issues. It deals with the most important general means of preserving the identity of the group<sup>125</sup>.

The Convention in Article 1 (1) includes racial discrimination principle, directing itself against any distinction, exclusion, limitation or preference which being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, and which has the purpose or effect of nullifying or impairing equality of treatment in education.

Article 2 of the Convention sets forth the cases, in which the States Parties can take measures and can create different treatments between groups of people. However, these measures according to the article do not

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<sup>122</sup> Article 29 (1) (c) of CRC

<sup>123</sup> UNESCO is a specialized agency of the UN, and its competence relates to education, science, culture and communication and the organization's interest in human rights is limited to these four aspects.

<sup>124</sup> See, [portal.unesco.org/education/en/ev.php-URL\\_ID=27481&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/education/en/ev.php-URL_ID=27481&URL_DO=DO_TOPIC&URL_SECTION=201.html).

<sup>125</sup> Patrick Thornberry, "International law and Minority Rights", 1991, page 287.

constitute discrimination. Some of these measures are of a great significance for the minority groups, for instance:

*the establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions in accordance with article 2 (b) of the Convention;*

*the establishment or maintenance of private educational institutions in compliance with article 2 (c) of the Convention.*

In addition, Article 5 of the Convention lays down in paragraph 1 the agreement of the States Parties, to direct the education to the full development of the human personality, the strengthening of the respect for human rights and fundamental freedoms<sup>126</sup> and the promotion of the understanding, tolerance and friendship among all nations, racial or religious groups<sup>127</sup>.

Paragraph 1(c) of the above article is a cornerstone provision in respect to the education system for the minority groups. It states:

*“The States Parties to this Convention agree that:*

*(c) It is essential to recognize the rights of the members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on educational policy of each State, the use of the teaching of their own language, provided however:*

*(i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty;*

*(ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and*

*(iii) That the attendance of such schools is optional.”*

The same Article in paragraph 3 sets out the commitment of the States Parties to take all necessary measures to ensure the application of the principle enunciated in paragraph 1 of this article.

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<sup>126</sup> Article 1 (a) of the UNESCO Convention

<sup>127</sup> Ibid.

### 3.1.6 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities standards

The Declaration was adopted in 1992 and it is not a legally binding instrument by the very fact of it being a “declaration” (soft law). However, it is politically binding. The purpose of the Declaration was “*to promote more effective implementation of Human Rights of persons belonging to minorities and more generally to contribute to the realization of the principles of the Charter of the UN and of the Human Rights instruments adopted at the universal and regional level.*”<sup>128</sup> Therefore, the Declaration should be seen as a document to which the governments could turn for guidance and at the same time sheds light on the various implication of Article 27 of ICCPR, in addition to specifying the measures needed for observing the rights recognized by the Article.<sup>129</sup> The Declaration lists several specific minority rights, including:

- *the protection of the existence of minorities and their national or ethnic, cultural, religious and linguistic identity*<sup>130</sup>;
- *the rights to enjoy their own culture, to profess and practice their own religion, to use their own language*<sup>131</sup>;
- *the right to participate effectively in cultural, religious, social, economic and public life*<sup>132</sup>;
- *right to participate effectively in decisions which affect them on the national and regional levels*<sup>133</sup>;
- *the right to establish and maintain their own associations*<sup>134</sup>;

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<sup>128</sup> See Rianne M. Leschert “*The Impact of Minority Rights Mechanisms*”, 2005, page16; see also GA Res 47/135 and the Preamble of the Declaration on Minority [www.ohchr.org/english/law/minorities.htm](http://www.ohchr.org/english/law/minorities.htm); see also Eide, A., “*Final Text of the Commentary to the Declaration on the rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, E/CN.4/Sub.2/AC/2001/2, 2 April 2001

<sup>129</sup> Asbjorn Eide, Catarina Krause and Allan Rosas, “*Economic Social and Cultural Rights*”, Anne-Christine Bloch, “*Minorities and Indigenous People*”, 2001, page 378.

<sup>130</sup> Article 1 of the Declaration

<sup>131</sup> Ibid, Article 2 (1).

<sup>132</sup> Ibid, Article 2 (2).

<sup>133</sup> Ibid, Article 2 (3).

<sup>134</sup> Ibid, Article 2 (4).

- *the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties*<sup>135</sup>;
- *the freedom to exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination*<sup>136</sup>. As Rianne M. Letschert sustains this provision confirms the collective dimension of the protection, as similarly is expressed in article 27 of the ICCPR.<sup>137</sup>

Further more in Articles four and five the Declaration sets out the measures, which the States Parties should take to protect, guarantee and promote the rights, set forth in the Declaration itself. Those are:

- *measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law*<sup>138</sup>;
- *measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards*<sup>139</sup>;
- *measures to enable persons belonging to minorities to may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue*<sup>140</sup>;
- *measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory*<sup>141</sup>;
- *measures to enable the persons belonging to minorities to may participate fully in the economic progress and development in their country*<sup>142</sup>;

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<sup>135</sup> Ibid, Article 2 (5).

<sup>136</sup> Ibid, Article 3 (1).

<sup>137</sup> As Rianne M. Letschert , “The Impact of Minority Rights Mechanisms”, 2005, page 17.

<sup>138</sup> Article 4 (1) of the Declaration

<sup>139</sup> Ibid, Article 4 (2).

<sup>140</sup> Ibid, Article 4 (3).

<sup>141</sup> Ibid, Article 4 (4).

<sup>142</sup> Ibid, Article 4 (5).

- *the preparation and implementation of national policies and programmes with due regard for the legitimate interests of persons belonging to minorities*<sup>143</sup>;
- *the preparation and implementation of programmes of cooperation and assistance among States with due regard for the legitimate interests of persons belonging to minorities*<sup>144</sup>.

The Declaration has been criticised by several authors about its limit in its standards setting, about some textual deficiencies in an instrument it dedicated to advancing minority rights<sup>145</sup>, and about the vague and negative phrases, which the Declaration contains<sup>146</sup>. Even though, it is an instrument of great value for minority group owing to the fact that it is an outcome of setting standards in respect to minority rights, which in turn should be followed and applied by the States Parties.

## 3.2 The European Standards

The Minority issues are in the agenda of the CoE, which in turn has established its system for the protection of minority rights. This regional organization has adopted several human rights instruments with respect to minority rights, reflecting the principles of non-discrimination, equality and special measures to protect and implement those rights. Albania has signed and ratified a great number of European human rights documents regarding minority rights as well. Among them are ECHR and its Protocols; Framework Convention for the Protection of National Minorities (FCNM); European Charter for Regional and Minority Languages<sup>147</sup>, which subsequently this thesis will look at, aiming at describing the minority rights and the standards setting that these instruments enshrine.

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<sup>143</sup> Ibid, Article 5 (1).

<sup>144</sup> Ibid, Article 5 (2).

<sup>145</sup> Rianne M. Letschert, “The Impact of Minority Rights Mechanisms”, 2005 page 17; see also Thornberry, 1997, page 55-56.

<sup>146</sup> See further Ibid.

<sup>147</sup> This instrument has not been ratified yet by Albania, but it will be discussed due to its importance with respect to the obligations that States Parties should take to protect the regional and minority languages, by undertaking special measures.

### 3.2.1 The Framework Convention for the Protection of National Minorities standards

The Framework Convention for the Protection of National Minorities was adopted in 1994, and entered into force in 1998. Republic of Albania signed the FCNM on Jun. 29, 1995, which entered into force on Jan. 01, 2000<sup>148</sup>.

It was established as a legally binding instrument to embody the political commitments of 1990 OSCE Copenhagen Document and the 1992 UN Minority Declaration<sup>149</sup>. It is actually the first legally binding multilateral instrument concerned with the protection of national minorities in general and it aims to protect the existence of national minorities within the respective territories of the Parties<sup>150</sup>. The Convention seeks to promote the full and effective equality of national minorities by creating appropriate conditions enabling them to preserve and develop their culture and to retain their identity.<sup>151</sup> The FCNM contains mostly programme-type provisions which set out objectives that States Parties undertake to pursue<sup>152</sup>, leaving subsequently the states a margin of discretion in the implementation of the objectives which they have undertaken to achieve, therefore permitting them to take particular circumstances into account<sup>153</sup>.

It should be pointed out that the FCNM does not contain and does not imply collective rights<sup>154</sup>. The emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights

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<sup>148</sup> First Report of Albania to the Advisory Committee on the FCNM, 2001, page 4, ACFC/SR (2001) 005

<sup>149</sup> Rianne M. Letschert, "The Impact of Minority Rights Mechanisms", 2005, page 18; see also Vienna Summit Declaration 1993.

<sup>150</sup> The Summary of the Framework Convention for the Protection of National Minority; [conventions.coe.int/Treaty/en/Summaries/Html/157.htm](http://conventions.coe.int/Treaty/en/Summaries/Html/157.htm);

<sup>151</sup> Ibid.

<sup>152</sup> See the Explanatory Report of the Framework Convention for the Protection of National Minority; [conventions.coe.int/Treaty/en/Reports/Html/157.htm](http://conventions.coe.int/Treaty/en/Reports/Html/157.htm)

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

individually and in community with others.<sup>155</sup> In this respect, the framework Convention follows the approach of texts adopted by other international organizations<sup>156</sup> such as Article 27 of ICCPR, the UN Declaration, and the OSCE Copenhagen Document. However the FCNM does not prevent their collective exercise<sup>157</sup> and the Parties do recognize the protection of a national minority group through the protection of the rights of individuals belonging to such minority group.<sup>158</sup>

The standards contained in the FCNM are minimum standards. Thus the States Parties are free to broaden the application of the Convention<sup>159</sup>. It is also necessary to mention here that there are three provisions in the Convention, namely Articles 10 (2), 11 (2) and 14 (2) which limit the rights to persons belonging to minorities in relation to the fact that they have existed *traditionally* or in *substantial numbers*.<sup>160</sup> These limitations on the one hand are criticized, but on the other hand they have been seen as the cost aspects of the implementation of these rights making it reasonable to limit them as such.<sup>161</sup> Besides the controversial opinions about the FCNM, the latter is of a great importance to the minority rights because, as it is mentioned before, it is the first legally binding multilateral instrument concerned with the protection of national minorities in general and sets the standards and measures to be undertaken by the States Parties to protect national minority groups. Arriving at this point the thesis considers in more detail the standards and measures which are stipulated in section I and II (article 1- 20) of the FCNM.

The FCNM lists several general and specific minority rights such as:

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<sup>155</sup> See Article 3 (2) of the FCNM, which states: “Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.”

<sup>156</sup> Ibid.; See also Article 1 of the FCNM, which states: “The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.”

<sup>157</sup> Rianne M. Letschert, “The Impact of Minority Rights Mechanisms”, 2005, page 20.

<sup>158</sup> See the Explanatory Report of the Framework Convention for the Protection of National Minority; [conventions.coe.int/Treaty/en/Reports/Html/157.htm](http://conventions.coe.int/Treaty/en/Reports/Html/157.htm)

<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.



- *the right of every person belonging to a national minority to choose freely to be treated or not to be treated as such, and no disadvantage shall arise from the free choice, or from the exercise of the rights which are connected to that choice*<sup>162</sup>;
- *the right of equality before the law and of equal protection of the law and in this respect any discrimination based on belonging to a national minority shall be prohibited*<sup>163</sup>;
- *the right of persons belonging to national minority to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage*<sup>164</sup>;
- *the right of every person belonging to a national minority to manifest his or her religion or belief and to establish religious institutions, organizations and associations*<sup>165</sup>;
- *the right of every person belonging to a national minority to freedom of expression includes freedom to hold opinions and to receive and impart information and ideas in the minority language; the right to access to media and to create and use the media*<sup>166</sup>;
- *the right of every person belonging to a national minority to use freely and without interference his or her minority language, in private and in public, orally and in writing as well as its use before administrative authorities*<sup>167</sup>;
- *the right of every person belonging to a national minority to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, and to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public*<sup>168</sup>;
- *the right for persons belonging to national minorities to have equal opportunities for access to education at all levels and to foster knowledge of the culture, history, language and religion of their national minorities and of the majority*<sup>169</sup>;

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<sup>162</sup> See Article 3 (1) of the FCNM.

<sup>163</sup> Ibid. Article 4 (1).

<sup>164</sup> Ibid, Article 5 (1).

<sup>165</sup> Ibid, Article 8 (1).

<sup>166</sup> Ibid, Article 9.

<sup>167</sup> Ibid, Article 10 (1).

<sup>168</sup> Ibid, Article 11 (1).

<sup>169</sup> Ibid, Article 12 (1) and (3).

- *the right for persons belonging to a national minority to set up and to manage their own private educational and training establishments<sup>170</sup>;*
- *the right of every person belonging to a national minority to learn his or her minority language<sup>171</sup>;*
- *the right of every person belonging to a national minority to participate effectively in cultural, social and economic life and in public affairs, in particular those affecting them<sup>172</sup>;*
- *the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage<sup>173</sup>;*
- *the right of persons belonging to national minorities to participate in the activities of non-governmental organizations, both at the national and international levels<sup>174</sup>*

The special measures that States Parties should take to implement the rights affirmed in the FCNM are:

- *the adoption of 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, taking into account the specific conditions of the persons concerned<sup>175</sup>. This measure shall not be considered to be an act of discrimination<sup>176</sup>;*
- *the adoption of the measure to protect persons belonging to national minorities from assimilation against their will<sup>177</sup>;*
- *the adoption of appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity<sup>178</sup>;*

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<sup>170</sup> Article 13 (1)

<sup>171</sup> Article 14 (1)

<sup>172</sup> Article 15

<sup>173</sup> Article 17 (1)

<sup>174</sup> Ibid, Article 17 (2).

<sup>175</sup> Ibid, Article 4 (2).

<sup>176</sup> Ibid, Article 4 (3).

<sup>177</sup> Ibid, Article 5 (2).

<sup>178</sup> Ibid, Article 6 (2).

- *the adoption of measures to facilitate access to the media for persons belonging to national minorities and to ensure that the latter are not discriminated against in their access to the media*<sup>179</sup>;
- *the adoption of legal measures including, where appropriate, agreements with other States, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications, taking into account their specific conditions(in areas traditionally inhabited by substantial numbers of persons belonging to a national minority)*<sup>180</sup>
- *the adoption of measures in the fields of education and research to ensure the rights to education provided for in the FCNM*<sup>181</sup>;
- *the adoption of measures 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*<sup>182</sup>;
- *the adoption of measures to encourage transfrontier co-operation by concluding, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned*<sup>183</sup>

Finally it can be said that, even though there are persons who think that the Convention does not meet all minority rights aspirations, the latter can be seen as a practical instrument for practical circumstances, and should be judged on how far it has promoted the protection of national minorities through the principles set out in its Preamble<sup>184</sup> and unless governments, officials and minorities are motivated to work together practically to protect minorities, the FCNM is not worth the paper it is written on<sup>185</sup>.

### **3.2.2 The European Convention for the**

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<sup>179</sup> Ibid, Article 9.

<sup>180</sup> Ibid, Article 11 (3).

<sup>181</sup> See further Article 12.

<sup>182</sup> Ibid, Article 15.

<sup>183</sup> Ibid, Article 18.

<sup>184</sup> Alan Phillips, "The Framework Convention for the Protection of National Minorities: A Policy Analysis", [www.minelres.lv/publicat/FCNM\\_MRGPolyPaper2002.htm](http://www.minelres.lv/publicat/FCNM_MRGPolyPaper2002.htm).

<sup>185</sup> Ibid.

## Protection of Fundamental Human Rights and Freedoms standards

The ECHR was adopted in 1950 and entered into force in 1953. It is the first European instrument to launch the regional human rights system. Republic of Albania ratified the ECHR on Oct. 02. 1996. Albania has also ratified the protocols to the Convention Nos. 1, 4, 6, 7 and 12.

ECHR sets out fundamental rights and freedoms for the benefit of persons within the Europe<sup>186</sup>. Even the ECHR does not include specific provisions on minorities, taking the same approach as UDHR, its principles and rights to equal treatment and non-discrimination may reflect many minority concerns<sup>187</sup>.

Nevertheless, the only specific reference to minorities is to be found in Article 14 of the ECHR, where the latter simply refers to "association with a national minority" in the non-discrimination clause. Article 14 states:

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”*

Article 14 is a subsidiary article and not a free-standing right to non-discrimination. Therefore it may be raised only in connection with the alleged violation of another Convention's right. However a new Protocol to the ECHR, No. 12, was opened for ratification in November 2000. When it enters into force, it will create a general prohibition against discrimination in the application of any rights guaranteed by law or by any public authority.<sup>188</sup>

Although there is not a “minority right” *per se* asserted in the ECHR, and the word “national minority” is undefined, it is contrary to the ECHR to treat “any person, non-governmental organization or group of individuals”

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<sup>186</sup> See summary, Pamphlet no 7 on UN Guide for Minorities, page 1; [www.unhchr.ch/html/racism/minorpam7.doc](http://www.unhchr.ch/html/racism/minorpam7.doc)

<sup>187</sup> Ibid.

<sup>188</sup> Ibid, page 2.

in a discriminatory fashion with respect to one of the listed grounds without reasonable and objective justification<sup>189</sup>.

Moreover, the European Court of Human Rights has held that if a State takes positive measures to enhance the status of a minority group for example, with respect to their participation in the democratic process, the majority cannot claim discrimination based on such measures. In general, “a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position”<sup>190</sup>.

Many minority issues can be raised based on the ECHR provisions, for instance:

- **linguistic right** – even the ECHR does not provide for the existence of the right to use a particular language in contacts with government authorities, in the context of judicial proceedings, however everyone has the right to be informed promptly, in a language he/she understands, of the reasons for arrest<sup>191</sup> and the nature of any criminal charges<sup>192</sup>. There is also a right to a free interpreter if a defendant cannot speak or understand the language used in court<sup>193</sup>.
- **freedom of expression** – the right of freedom to expression is guaranteed under article 10<sup>194</sup> of the ECHR and it is relevant for the minority rights in the sense that it protects the right to use the minority language in private or among members of the minority group. Thus minority has the rights to publish their own newspaper, to use their own media without interference by the state or others<sup>195</sup>.

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<sup>189</sup> Ibid.

<sup>190</sup> Ibid.

<sup>191</sup> See further Article 5(2) of the ECHR.

<sup>192</sup> See further Article 6(3)(a) of the ECHR.

<sup>193</sup> See further Article 6(3)(e) ECHR and supra note, Pamphlet no 7 on UN Guide for Minorities, page 3.

<sup>194</sup> Article 10(1) of the ECHR states: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

<sup>195</sup> See further *ibid*; see also article 10 (1) of the ECHR that states: “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”.

- **education of children** - although there is no right to mother-tongue education under EHCR<sup>196</sup>, unless it previously existed and the State then tries to withdraw it<sup>197</sup>, the article 2 of protocol 1<sup>198</sup> of the ECHR can be a mean to protect the minority's identity through education of the children belonging to the group.
- **freedom of religion** – this individual right, provided for under article 9<sup>199</sup> of the ECHR includes the right to manifest that religion, which allows a minority the necessary degree of control over community religious matters<sup>200</sup>.
- the right to participate effectively in cultural, religious, social, economic and public life is stated in article 11 and Protocol 1, article 3 of the ECHR<sup>201</sup>. Minority groups need to be able to exercise this right. Formal or de facto exclusion from participation in the political processes of the State is contrary to the democratic principles that the Council of Europe espouses<sup>202</sup>.

Regardless, the States Parties may limit the aforementioned rights only for reasonable and objective reasons and such limitation should be prescribed by law and should be a necessary measure in a democratic society<sup>203</sup>.

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<sup>196</sup> See also the Belgian Linguistic Case, 23 July 1963, European Court of Human Rights Ser. A, No. 6

<sup>197</sup> Pamphlet no 7 on UN Guide for Minorities, page 3.

<sup>198</sup> Article 2 protocol 1 of the ECHR states: “No person shall be denied the right to education. In the existence of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

<sup>199</sup> Article 9 (1) of the ECHR states: “Everyone has the right of freedom of thought, conscience and religion; the right includes freedom to change his religion or belief or and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice or observance.”

<sup>200</sup> Pamphlet no 7 on UN Guide for Minorities, page 3.

<sup>201</sup> Article 11 (1) of the ECHR states: “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.” Article 3 of Protocol 1 of the ECHR states: “The high contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

<sup>202</sup> <sup>202</sup> Pamphlet no 7 on UN Guide for Minorities, page 4.

<sup>203</sup> See further Article 11(2), 10(2) of the ECHR.

### 3.2.3 The European Charter for Regional and Minority Languages standards

The European Charter was adopted in 1992 and entered into force in 1998. Republic of Albania has not ratified yet the European Charter.

The European Charter was adopted, on the one hand, in order to maintain and to develop the Europe's cultural traditions and heritage, and on the other hand to respect an inalienable and commonly recognized right to use a regional or minority language in private and public life<sup>204</sup>. For this reason it does not only contain a non-discrimination clause concerning the use of these languages but also provides for measures offering active support for them. The aim is to ensure, as far as reasonably possible, the use of regional or minority languages in the education and the media, to permit their use in judicial and administrative settings, in economic and social life and cultural activities<sup>205</sup>. The charter seeks to protect and promote regional or minority languages, and only indirectly it may be considered as a legal instrument to protect linguistic minorities<sup>206</sup>.

The general approach reflected in the charter is different from other international legal instruments in this field<sup>207</sup>. The charter does not establish any individual or collective rights for the speakers of regional or minority languages, but sets out obligations for States and their respective legal systems with regard to the use of these languages<sup>208</sup>. The categories of the languages the Charter is concerned about are defined as below:

- ***“regional or minority languages”*** - *there is any language that is traditionally used within a given territory of a State by nationals of that State who form a*

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<sup>204</sup> Summary of the European Charter for Regional and Minority Languages; [conventions.coe.int/Treaty/en/Summaries/Html/148.htm](http://conventions.coe.int/Treaty/en/Summaries/Html/148.htm)

<sup>205</sup> Explanatory Report of the European Charter on Regional and Minority Languages; [conventions.coe.int/Treaty/en/Reports/Html/148.htm](http://conventions.coe.int/Treaty/en/Reports/Html/148.htm)

<sup>206</sup> Eduardo J. Ruiz Vieitez, *The European Charter for Regional and Minority Languages/ Working Together – NGOs and Regional and Minority Language*; Council of Europe Publishing, page 28.

[www.coe.int/t/e/legal\\_affairs/local\\_and\\_regional\\_democracy/regional\\_or\\_minority\\_languages/5\\_publications/Working%20together\\_NGO\\_E.pdf](http://www.coe.int/t/e/legal_affairs/local_and_regional_democracy/regional_or_minority_languages/5_publications/Working%20together_NGO_E.pdf).

<sup>207</sup> Ibid.

<sup>208</sup> Explanatory report, supra note, 2005; see also Ibid.

*group numerically smaller than the rest of the State's population and different from the official language(s) of that State*<sup>209</sup>.

- *“non- territorial languages”- there are languages used by nationals of the State which differ from the language or languages used by the rest of the State's population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof*<sup>210</sup>.
- *“less widely used official languages” –there are official languages which are less widely used (by less than the rest of the population) on the whole or part of state territory*<sup>211</sup>

Further, the Charter stipulates two kinds of obligations for the States Parties, which have to undertake special measures to protect the regional and minority languages.

The first kind of obligations are described in Part II of the Charter as a series of objectives and principles which constitute a “common core” of obligations that must be the basis for the States Parties’ public policies on regional and minority languages<sup>212</sup>. According to article 2 (1) of the Charter the States agree to apply the provisions of Part II to all the regional or minority languages spoken within their territory and which subsequently fulfill the aforementioned categories as they are defined in Article 1.

The second group of obligations is provided for under Part III of the Charter which sets out a list of concrete measures to promote the use of regional and minority languages in public life for instance:

- *Article 8 concerns the education.*
- *Article 9 concerns the use of regional and minority languages before judicial authorities.*
- *Article 10 contains a wide range of measures to promote the use of regional and minority languages before or by the administrative bodies.*
- *Article 11 concerns the use of regional and minority languages in and by mass media.*
- *Article 12 concerns the cultural activities and facilities.*
- *Article 13 concerns the economic and social life.*

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<sup>209</sup> Article 1 (a) of the European Charter for Regional and Minority Languages

<sup>210</sup> Article 1 (c) of the European Charter for Regional and Minority Languages

<sup>211</sup> See Article 3 (1) of the European Charter for Regional and Minority Languages

<sup>212</sup> See further Eduardo J. Ruiz. Vielvtez, *supra* note, 206, page 31



- *Article 14 concerns the facilitation or promotion of co-operation across their borders, in particular between groups of speakers, or even between regional or local authorities of territories sharing the same language.*

The charter has a specific characteristic with regard to the application of the obligations stipulated in Part III of it. It creates a system called “*a la carte*” for the protection of the regional and minority languages, meaning that States Parties according to Article 2 (2) of the instrument, will undertake to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from Part III of the Charter for each of the languages specified at the time of ratification<sup>213</sup>. Among them, there must be at least three from each Articles 8, and 12 and 1 from Articles 9, 10, 11 and 13<sup>214</sup>. In any case, this system of protection “*a la carte*” does not mean that States have the freedom to choose arbitrarily. They must select the provisions from Part III of the Charter “according to the situation of each language”<sup>215</sup>.

### 3.3 Conclusion

The above analysis of the minority rights instruments shows that both organizations UN and CoE set the minority rights standards like non-discrimination, equally treatment in law and in fact. At the same time, these organizations create a system for the protection of the minority rights through the obligations of the States Parties to take measures to respect, fulfil and promote those rights.

Besides that it is evident that the UN approach of setting the standards is more general (for instance ICCPR) than the CoE approach, which is directed to a specific minority (as the FCNM does with respect to the national minorities), or to a specific element of the minority identity (as the European Charter does with regard to the language).

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<sup>213</sup> See article 3 (1) of the European Charter for Regional and Minority Languages [conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=148&CM=1&DF=28/04/04&CL=ENG](http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=148&CM=1&DF=28/04/04&CL=ENG)

<sup>214</sup> See Article 2 of the European Charter for Regional and Minority Languages;

<sup>215</sup> See further Eduardo J. Ruiz. Vielvtez, *supra* note, 206, page 32.

Apart from the different approaches taken by the international organizations, what unifies them is that they provide for and protect individual rights, that is to say the rights of the persons belonging to the minority groups to preserve their identity and they do not recognize the group rights, i. e. the minority rights as a group.

This situation shows that states, these main actors of the international legal system, are reluctant to recognize and protect the minority rights as the group rights, because they are afraid to give the minority groups the power to decide about the issues, which concern them. By doing so, States continue to protect the sovereignty principle. Apart from that, improvements towards minority issues have been done since the time of WWI and a very important aspect of such improvements is the establishment (through the international instruments) of the monitoring system aiming primarily to check the implementation of the standards adopted in the instruments. The monitoring system will be discussed in the next chapter in the context of the implementation of the international standards by the Albania government.

## **4 Albanian legal framework for the protection of minority groups, the implementation and the monitoring system**

After the democratic changes, the respect and the protection of human rights, particularly of the minority rights, have taken an increasingly importance in the policies of the Albanian government. Albania has had and still maintains to have a continuing commitment regarding the improvement of the standards related to the protection of human rights including the rights and freedoms belonging to minorities.

Such commitment is realised on the one hand by incorporating into the national legislation, the international standards stipulated in the international instruments of human rights in which Albania is part of, and on the other hand by implementing those standards in practice, making therefore the protection and fulfilment of these rights tangible. This chapter covers these issues by giving an overview of the situation of the minority rights in Albania.

Firstly it will be given a picture of the legal framework of the rights and principles with regard to minority groups, that are enshrined in the main legal document such as the Constitution and which are developed in more detail in the laws. After that, the chapter will present the issue of the implementation of the minority rights in practice. The right to the language will be the example for the foregoing survey. That right was chosen because on the one hand, it is a very important element for the minority identity, and on the other hand, it has a special relevance to the Albanian minority groups, bearing in mind that the Albanian minority groups are national and linguistic. Furthermore, the chapter will discuss the national monitoring

system with the aim to show how the members of the minority groups could address their alleged claims.

Secondly, the chapter will deal with the relation between the national legal system and the international law, bearing in mind that both are sources of legal system. Furthermore, the chapter will address the issue of the implementation by Albania of the international standards on minority rights stipulated in the international instruments. For that purpose, there are chosen three instruments namely ICCPR, ICERD (UN instruments) and FCNM (CoE instrument). In relation to that, it will be consider the Albanian State reports and the observations of the treaty bodies.

## **4.1 Albanian Legal Framework on minority rights and its implementation in practice**

This Sub-chapter seeks to give an overview of the legal provisions with regard to the minority rights and standards enshrined in the domestic legal system. Some data concerning the implementation in practice of the rights examined therein will also introduce.

Article 116 of the Albanian Constitution enumerates in the hierarchical way the normative acts, which are effective in the entire territory of the Republic of Albania<sup>216</sup>. These acts, which constitute also the sources of the legal system, are:

- *The Constitution;*
- *Ratified international agreements;*
- *The laws;*
- *Normative acts of the Council of Ministers.*

The Constitution says also in Article 3 that the fundamental rights of the individuals, including therefore the minority rights, are the bases of the

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<sup>216</sup> Article 116 of the Constitution

Albanian State and the latter has the duty to respect and protect them<sup>217</sup>. The Constitution, which is the main and basic legal document of the legal framework, stipulates human rights in a comprehensive way in Part II (art. 15-63) therein. The above provisions of the Constitution lay down the political, economic, social and cultural rights, which in the non-discriminatory way are also applied to the persons belonging to the minority group. However, this thesis will focus on the examination of those rights and principles that mostly affect the minority groups and provide for the preservation of their identity.

#### **4.1.1 Principles of equality and non-discrimination**

These two principles are of an important relevance for the protection and respect of the minority rights. The third chapter of the thesis shows in detail the international provisions of these principles enshrined in the international instruments. The Albanian legislation, which will be considered below, lays down such principles in compliance with the international standards.

##### **4.1.1.1 Constitutional Provisions**

Article 18 of the Constitution guarantees the general principle of equality before the law and prohibits the unfair discrimination. It, inter alia:

- *guarantees everybody's equality before the law (paragraph 1 therein),*
- *prohibits the unjust discrimination for reasons such as gender, race, religions, ethnicity, language, political, religion or philosophical beliefs, economic, educational and social status or ancestry (paragraph 2 therein)*
- *provides for the possibility to apply a positive discrimination in adopting favourable specific measures, and offering special chances of treatment or support to individuals or set categories of individuals or*

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<sup>217</sup> Article 3 of the Constitution

*groups, when reasonable and objective grounds exist (paragraph 3 therein).*

Hence, under paragraph 3, the above article allows the execution of positive discrimination, by taking specific favourable measures, and giving special opportunities or protection to those individuals or certain categories of individuals or groups, when there is a reasonable and objective legitimacy<sup>218</sup>. In this way, this provision could turn out to be a very useful tool, to legitimate the positive measures taken by the Albanian government with regard to accomplish the minority rights.

Moreover, Article 20 of the Constitution lays down a special provision regarding to the above principles with respect to the national minority rights. It states that:

*“1. Persons who belong to national minorities exercise the human rights and freedom in full equality before the law.*

*2. They have the right to express freely, without prohibition or compulsion, their ethnic cultural, religious and linguistic belonging. They have the right to preserve and develop them, to study and be taught in their mother tongue, and to unite in organizations and associations for the protection of their interests and identity.”*

On this basis, all national minority persons in Albania have the right freely to express or not their ethnic affiliation, and to exercise in full equality before the law and with no discrimination all the rights and freedom guaranteed by the law, individually or jointly with others. Hence, this article provides for the right of a person belonging to the minority group, to exist as a member of that group and to develop the minority identity.

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<sup>218</sup> Second State Report on National Minorities in Albania, submitted to the Advisory Committee, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, 2007, page 27.

#### 4.1.1.2 Law Provisions

Besides the Constitutional guarantees, the respect and protection of the aforementioned principles with regard to minority groups are assured by the legislation in power, for instance:

**The Code of Administrative Procedures** in Article 11(1) guarantees the principle of equal treatment in the field of the relations with the public administration for minority members. It states that:

*“In relation to private persons, the public is guided by the equity principle, i.e. no one shall be either privileged or discriminated against in view of gender, race, religion, ethnicity, language, political, religious or philosophical views, economic, academic, social situation or parental belonging.”*

**The Labour Code**, which covers the labour, issues both in public and private sectors, under Article 9, prohibit any sort of discrimination in employment or in the professional life<sup>219</sup>.

**The Law on Social Insurance**, such as health insurance or of all kind of pensions lays down the principle of equal rights to all citizens<sup>220</sup>.

In addition, **the legislation in the field of education** guarantees equal rights to all. Article 3 of Law no. 7952, dated on the 21<sup>st</sup> of June 1995 “**On Pre-University Education System**” ensures:

*“equal rights to all citizens to be educated at all education levels determined by this law, regardless of the social status, nationality, language, gender, religion, race, political belonging, health condition and economic level.”*

**Penal Code** provides for a series of provisions with regard to the protection of the persons belonging to minority groups, from being subjects to the threats or acts of racial and discriminatory nature, hostility or violence on grounds of their ethnic, cultural, linguistic or religious affiliation.

Article 73 of the Penal Code contemplates that:

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<sup>219</sup> See First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 21; ACFC/SR(2001)005

<sup>220</sup> Article 6 of the Law no.7703, 11.05.1993 on “The social insurance in the republic of Albania”.

*“ The application of a premeditated plan, aiming the complete or partial demolition of a national, ethnic, racial or religious group, targeted against group members and associated with the following acts, namely: deliberate murdering of group members, inflicting serious physical and psychological harm on them, imposing grave living conditions causing physical harm, imposing measures intended to prevent childbirth, or forced transfer of the children of one group to another group, is subjected to imprisonment sentences no less than ten years, or life imprisonment.”*

Article 74 of the Penal Code states that:

*“Murders, exterminations, enslaving, instances of internment and deportation, as well as any kind of inhuman torture or violence committed on political, ideological, racial, ethnic and religious grounds are subjected to imprisonment terms of no less than fifteen years, or life imprisonment.”*

Article 253 of the Penal Code punishes up to 5 years in prison:

*“A state administration of public service employee, when due to his or her duty and while is exercising his or her duty, inflicts discrimination on grounds of origin, gender, health situation, religious political convictions, involvement in trade union activity or on account of relevance to a certain ethnic group, nation, race or religion, which effects unjust privileges or the denial of a right or benefit under the law.”*

Article 265 of the Penal Code prohibits and punishes:

*“Instigating racial, national or religious hatred and disputes as well as the preparation of dissemination or keeping with the intention to distribute, writings relevant to them.”*

Article 266 of the Penal Code punishes:

*“Risking of public peace, calling for hatred against parts of population, by offending of slandering against them, demanding use of violence or arbitrary acts against them etc.”*

Law no. 9749, dated 04 Jun. 2007 **“On the state Police”** and Law no. 8291, dated 25 Feb. 1998 **“On Ethics Code of the Police”**, also offer the



protection against discrimination acts, which are committed towards persons belonging to minority groups. These laws foresee, inter alia, the responsibility of police forces for committing acts against the law, and also lay down the obligation for the policeman/woman to accomplish his/her duty in a non-discriminatory way<sup>221</sup>.

Law no. 8328, dated 06.04.1998, “**On the rights and treatment of the prisoners**” under Article 5 also guarantees the principle of the prohibition of discrimination. It states:

*“The treatment of the prisoners should have no discrimination against on grounds of gender, nationality, race, economic and social condition, political viewpoints and religious beliefs.”*

Finally, it can be stated that from a general assessment of the legislation, the latter is defined on the negative legal sense to prevent discrimination. However in the light of the development of the international standards (for instance the provisions of the ICERD, FCNM) it is required a legislation with an affirmative view that fights against discrimination and provides for the measures to be taken in that regard.<sup>222</sup>

## **4.1.2 The Rights to freedom of assembly and association**

These important rights are also guaranteed by the Albanian legal system, and furthermore they will be examined below.

### **4.1.2.1 Constitutional provisions**

The rights to the freedom of assembly and association are guaranteed in Articles 46 and 47 of the Constitution. Accordingly, to Article 46(1)

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<sup>221</sup> See further Article 3 of the Law no. 8291, dated 25 Feb. 1998 “On the ethics code of the police”.

<sup>222</sup> See further Second Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2007, page 84.

everyone has the right to be organized collectively for any lawful purpose. Under Article 47(1) the freedom to peaceful meetings, without arms, and to participate in them is guaranteed.

#### **4.1.2.2 Law provisions**

In addition to the Constitutional provisions Article 1 of law no. 8145, dated 11.09.1996 “**On the right of gatherings**” says that:

*“All citizens of the Republic of Albania without distinction as to gender, race, colour, language, religion, ethnicity, economic, financial, academic and social situation, political affiliations, ancestry or any other personal circumstances, have the right to public gatherings.”;*

By stating the above rule, it guarantees the right to freedom of assembly, and the use of it without discrimination.

#### **4.1.2.3 Political organizations**

Furthermore, Law no. 8580, dated 17.02.2000 “**On Political Parties**”, which is based on the constitutional right of the citizens to be organized collectively for any lawful purpose, leaves room also for the minority persons to create their political parties on ethnic basis. This right has a great importance, bearing in mind that it is the tool to ensure another right namely the right to participate in political and public life, which is not subject of this survey.

However, the only prohibition to the creation of a party is laid down in Article 7 of the law. It says that the political party is prohibited from engaging in activities promoting racial, religious, ethnic hatred. Hence, Article 7 of this law:

*“ prohibits the registration of the political parties when their internal organization runs against the democratic principles, when their creation is in conflict with the constitutional provisions, when*

*they incite and support racial, religious, regional or ethnic hatred, are based on totalitarian methods etc. “*

Generally, all the Albanian political parties protect the political, economic and social interests of the minorities since a considerable number of individuals belonging to minorities in Albania adhere to them<sup>223</sup>.

In addition to them, up to now, traditionally only the “Union for Human Rights” Party, which is founded by the Greek minority, has specifically represented the interests of the minorities in Albania<sup>224</sup>. Recently two new political formations, that have the support of minority population, were created. The first one is the “Human Rights and Freedoms Movement”, created after the split from the “Union for Human Rights” Party, and the other one is the political party representing the Macedonian minority, called “The Macedonian Alliance for European Integration” created in June 2005<sup>225</sup>.

#### **4.1.2.4 Associations and non-governmental organizations**

**The Civil Code** adopted by law no. 7850, dated 29.07.1994, amended by law no. 8536, dated 18.10.1999 and law no. 8781, dated 03.05.2001, provides for the right to establish the associations and foundations (thus non-governmental organizations also) in its Part I, from Article 21 to Article 63.

In addition to that, the specific law no. 7689, dated 07.05.2001 “**On the registration of the non-profit organizations**”, lays down the rules and the procedure to create the associations and nongovernmental organizations as well.

Based on these legal grounds the minority groups after the collapse of the communist regime, with the establishment of the democracy in Albania, have founded, and continue to set up a great number of associations and

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<sup>223</sup> Ibid, page 47.

<sup>224</sup> Ibid, page 48.

<sup>225</sup> Ibid.

NGOs aiming at the protection and promotion of minority rights. Furthermore, the thesis will introduce some examples of them.

#### **4.1.2.5 Greek organizations**

“Omonia” organization, founded in 1991, by representatives of Greek national minority, is well known among the minority organizations. It is a political-social forum aiming at to protect the rights of the Greek national minority, in conformity with the international acts and agreements of the protection of the minority rights<sup>226</sup>. This organization is very active and plays an important role in representing the Greek minority issues.

#### **4.1.2.6 Macedonian organizations**

Macedonian minority is organized in the Union of Macedonians, which is composed by the associations namely “Mir”, “Med”, “Gora” and the political and social organization for the protection of Macedonians in Albania, called “Druzho Prespa”.

#### **4.1.2.7 Serbo-Montenegrin organizations**

Serbo – Montenegrin minority has established the association “Moraca Rozafa”. This association was founded in 1991 and has always had only a cultural status. In 1995 it became more comprehensive and added other demands to its mission, for instance in the field of education<sup>227</sup>.

#### **4.1.2.8 Roma organizations**

Until 2000, three non-governmental organizations were established to represent the Roma minority at the national level. These are “The

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<sup>226</sup> See further First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 33; ACFC/SR(2001)005.

<sup>227</sup> See further Report of Albanian Human Rights Group on the Situation of Minorities in Albania, “Minorities: The present and the future”, 2003, pages 53-65.

democratic union of Roma in Albania” (Amaro Dives – Our day) which lobbies and advocates for human rights; “Romani Baxt” (Romani Chance), which works in the education field and with the young generation of Roma minority; “Amaro Drom” (Our Way) which is focused on culture and publicity issues. In the last seven years, some new Roma organizations were established namely “Romano Kham” Foundation, “Disutni Albania”, “Roma for Integration”, “I Romini e Tosjaraqi” (Roma women for the future); “Amaro Roma”, “Roma Active”, “Roma Active Albania” etc. These NGOs are active and very much involved in fighting for the rights of the Roma minority. They are also working to influence the government policies about the Roma minority<sup>228</sup>.

#### **4.1.2.9 Egyptian organizations**

The Egyptian organizations appeared after the collapsing of the communist regime. The first association was founded in the district of Korca in 1992, and was called “Association Kabaja”. It was followed by other regional associations such as the cultural and educational association “Orient” in Vlora, a Student’s Egyptian Association in Albania, which was later, in 1993, united in a cultural association of the Egyptians in Albania, called “Nefreta”. In 1999, the Association “Drita” was established, which from 2002 is named as organization “Vllazerimi”. Egyptian organizations in Albania are dealing mainly with issues of protecting the cultural identity, human and minority rights, and fighting against poverty and discriminations<sup>229</sup>.

#### **4.1.2.10 Bosnian organization**

The Bosnian minority is organized in an association, called “Lily”, since 1990. Nevertheless, this association is somewhat inactive<sup>230</sup>.

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<sup>228</sup> See further “On Minorities’ Policies and Funding Strategies in Albania”, Albania Helsinki Committee, 2007, pages 31-37.

<sup>229</sup> Ibid., pages 37-38.

<sup>230</sup> See further Report of Albanian Human Rights Group on the Situation of Minorities in Albania, “Minorities: The present and the future”, 2003, pages 70-71.

#### **4.1.2.11 Aromanian organizations**

Aromanian minority is also organized in an association named “Aromanian of Albania”. This organization is engaged with problems of this minority, and fights for the protection of its rights<sup>231</sup>.

### **4.1.3 Freedom of expression and freedom of the press**

Aiming to preserve and strengthen the cultural identity of minorities, and their political, social and cultural development, the Albanian legislation guarantees the right to the freedom of expression and envisages the access to both print and electronic media, in minority language.

#### **4.1.3.1 Constitutional provisions**

Article 22 of the Constitution guarantees the freedom of expression and the freedom of the press, radio and television to everyone including the members of the minorities. It also prohibits prior censorship of the means of communication<sup>232</sup>. These rights are very important to the preservation and strengthening of the identity of minorities, especially the right to have the full access in their mother tongue, to both print and electronic media, which will be further, elaborated below.

#### **4.1.3.2 Print media**

The law “**On the Press**” no. 7756, dated 11 Oct. 1993, which has been amended with the law no. 8239, dated 03 Sept. 1998 comprises only one article, which guarantees the freedom of expression and freedom of the press. This article stipulates:

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<sup>231</sup> See further Report of Albanian Human Rights Group on the Situation of Minorities in Albania, “Minorities: The present and the future”, 2003, pages 75-88.

<sup>232</sup> See Article 22 of the Albania Constitution.

*“The press is free. Freedom of press is protected by law.”*<sup>233</sup>

On the bases of the abovementioned existing law, the persons belonging to the minority groups, enjoy like all the Albanian citizens and without hindrance, the right to create their print media in their native language. The press of the minorities, like all the press in Albania, is not subject to prior censorship<sup>234</sup>. Below are some data with respect to each minority.

#### **4.1.3.2.1 Greek minority’s print media**

Actually the members of the Greek minority, living in the districts of Gjirokastra, Saranda, Delvina etc., have the following reviews<sup>235</sup>:

- “Lajko Vima”, a weekly newspaper that dates back to 1945.
- “I Fino tis Omonias” (Voice of Omonia), a weekly newspaper.
- “Tahidhromos tis Ipirus”, published from Oct 2005.
- “Vizion 2000” (Vision 2000), a monthly newspaper, published in three languages namely Albanian, Greek and English.
- “Bularati” and “Policani” newspapers have also been published since a few years ago.

Most of these newspapers are freely distributed in every village.

Furthermore, many other newspapers in the Greek language enter from Greece to this minority area<sup>236</sup>.

#### **4.1.3.2.2 Macedonian minority’s print media**

The Macedonian minority has its own print media, represented by the “Prespa” newspaper in Macedonian language<sup>237</sup>.

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<sup>233</sup> See further First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 37; ACFC/SR(2001)005

<sup>234</sup> Ibid, page 37.

<sup>235</sup> See further First and Second Albanian Reports on National Minorities; 2001 page 37 and 2007 page 53.

<sup>236</sup> First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 37; ACFC/SR(2001)005

<sup>237</sup> Second Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 53

#### **4.1.3.2.3 Serbo-Montenegrin minority's print media**

Currently in Albania there is not any print media intended for the Serbo – Montenegrin minority<sup>238</sup>.

#### **4.1.3.2.4 Aromanian minority's print media**

This minority has its own monthly newspaper “Frateria” (Brotherhood), which has been published since 10 years ago, in two languages namely Aromanian and Albanian<sup>239</sup>.

#### **4.1.3.2.5 Bosnian minority's print media**

This minority, likewise Serbo – Montenegrin minority does not have any print media.

#### **4.1.3.2.6 Egyptian minority's print media**

Egyptians have established their own print media. Hence, the association “Drita” publishes the newspaper “Papyrus”.

#### **4.1.3.2.7 Roma minority's print media**

Roma minority's media has a compilation of press articles (in a book pattern) called “Shqypi” (The Press). It comprises the headlines of all the articles published by Amoro-Drom association during all these years in magazines, newsletters and periodicals. These articles reflect concerns of Roma minority, for instance the issues of enrolment of Roma children in school, or the problem of the registration of Roma children in Civil State Office<sup>240</sup>. In case of Roma minority many Albanian newspapers and magazines namely “Albania”, “Gazeta Shqiptare”, “Korrieri”, “Panorama” have published supplements and articles focused on issues of Roma minority, such as their living conditions, economic problems they experience, the lack of statistics of Roma minority, the trafficking of Roma children etc.<sup>241</sup>

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<sup>238</sup> Ibid.

<sup>239</sup> Ibid, page 54.

<sup>240</sup> Ibid, page 55.

<sup>241</sup> Ibid.



### 4.1.3.3 Electronic media

As regards the electronic media, law no.8410, dated 30.09.1998 “**On Public and Private Radio and Television in the Republic of Albania**” guarantees the access to the electronic media for the minority groups. This law stipulates, inter alia, in Articles 5 and 6, that the radio – television activity shall observe in an unbiased manner the right to information, political opinions and religious faith, personality, dignity of human beings, as well as their fundamental freedoms and rights<sup>242</sup>.

Article 39 of this law by prohibiting “*the broadcasting of programs which incite violence, aggressive war, national and racial hatred etc.*”, gives protection to the minority groups as well.

Whereas Article 36 of the law says that:

*”public and private radio and television programs shall respect the personal dignity and fundamental human rights, the impartiality, entirety, truthfulness and pluralism of information, the rights of children and teenagers, public order and national security, the Albanian language and culture, constitutional and human rights of national minorities in compliance with international conventions signed by Albania, the religious diversity in Albania.”*

Article 37 of the law is important to minorities, due to its concern for the right to language and freedom of expression and the press. It states:

*“The use of the Albanian language is obligatory for all programs; except for ... programs intended specifically for national minorities and programs of local radio-television subjects licensed to broadcast in the language of minorities.”*

Under Article 69 of the law, the Albanian Radio Television (the Albanian public radio and television) program is obligated to ensure from the central and regional broadcasting studios the release of information for national minorities<sup>243</sup>.

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<sup>242</sup> Ibid, page 51.

<sup>243</sup> First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 38; ACFC/SR(2001)005.

Based on the above legal provisions the radio and television programs, which address minority issues and are broadcast in the minority native language, are mostly ensured through the local branches of Albanian Public Radio and Television, located respectively in Gjirokastra and Korca.<sup>244</sup> The branches of the Albanian Public Radio and Television in Shkodra, where the majority of Serbian – Montenegrins live, do not broadcast programs in minority native languages, because they do not operate regularly<sup>245</sup>.

Moreover, according to the aforementioned law, the institution called National Council of Radio and Television is established. It is in charge to regulate and monitor the radio – television activity in Albania<sup>246</sup>. In compliance with this task, the institution has the competence to grant licence to the radio and television’s private operators that broadcast in Albania. Consequently, the National Council of Radio and Television has granted licence to few radio and television’s operators that broadcast in the native language of the minority<sup>247</sup>. Furthermore, below it will be examined the situation of each minority with regard to the electronic media situation.

#### **4.1.3.3.1 Greek minority’s electronic media<sup>248</sup>**

Greek minority has their own electronic media namely:

- *“TV ALPO”, located in Gjirokastra, broadcasts programs intended for the Greek minority in its native language.*
- *“Radio Argjiropolis” and “TV CHANNEL 7”, located in Gjirokastra, broadcast information in Greek language.*
- *“ARMONIA TV” and “ARMONIA FM” broadcast information in Greek language in Dropulli and Gjirokastra.*

As it is already said the local branches of Public Radio Television of Albania broadcast in Greek minority language for instance:

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<sup>244</sup> Second Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2007, page 51

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 39; ACFC/SR(2001)005.

- *Radio Gjirokastra broadcasts a daily 45 minutes of informative editions in the Greek language and other programs of cultural character. In addition to that, the local television in Gjirokastra broadcasts 30 minutes per week programs in the Greek language<sup>249</sup>.*
- *Radio Saranda broadcasts 45 minutes two editions in the Greek language, every Sunday and Thursday. This program is entitled “The Greek ethnic minority today” and is produced by journalists of national minority origin. It contains news, music and information on cultural and social events.*

In addition to that, the national Greek minority can watch the Greek TV stations such as NET, ANT1, MEGA, ET1 etc., in the areas inhabited by this minority, because the local government organs have installed TV amplifiers in respective territories with governmental financial support. At the same time by the decision of the Albanian Council of Radio and Television, it has been installed an amplifier on Mount Dajti and the Greek TV station ET1, can be freely watched also in Tirana<sup>250</sup>.

#### **4.1.3.3.2 Macedonian minority’s electronic media**

This minority has its own radio, namely “Radio Prespa”, located in the centre of Liqenas Commune, which broadcasts in Macedonian language.

Additionally, the local radio – television of Korca broadcasts five times per week a daily program of 60 minutes in Macedonian language. It contains news, music, issues that concern this minority. The Albanian government finances this program<sup>251</sup>.

According to the representatives of this minority, the population in Prespa area watches also the Macedonian televisions<sup>252</sup>.

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<sup>249</sup> Ibid.

<sup>250</sup> First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 39; ACFC/SR(2001)005.

<sup>251</sup> Second Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2007, page 52

<sup>252</sup> Ibid, page 53.

#### **4.1.3.3.3 Serbian-Montenegrin minority's electronic media**

Currently in Albania there is not any electronic media intended to the Serbian – Montenegrin minority.<sup>253</sup> The Albanian local radio television as it is already mentioned does not broadcast programs in the native language of this minority.

However, the programs broadcasted by Serbian and Montenegrin TV stations are watched in Shkodra region, and subsequently in the area where this minority lives<sup>254</sup>.

#### **4.1.3.3.4 Bosnian minority's electronic media**

The situation of this minority, with regard to the use of the electronic media, appears the same as the print media, that is to say that Bosnian minority has not such media in their native language. The central and local public radio and television also does not broadcast programs in the native language of this minority.

#### **4.1.3.3.5 Egyptian minority's electronic media**

The situation of Egyptians appears the same as that of the Bosnian minority. They do not possess electronic media. Bearing in mind that these both minorities are not recognized by the Albanian State. Obviously, such position of the state has a negative effect on the protection and fulfilment of the rights of these minorities. Therefore, this right is missing the implementation in practice.

#### **4.1.3.3.6 Aromanian minority's electronic media**

This minority does not have its own electronic media. The only cases, in which the problems of this minority took place, were four programs produced by public Radio Tirana. These programs lasted 30 minutes each, and had broadcasted in Aromanian language. Another program of 30 minutes entitled “One day together with the Vlachs”<sup>255</sup>, was produced and broadcast by the private television “Koha”.

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<sup>253</sup> Ibid

<sup>254</sup> Ibid.

<sup>255</sup> Ibid.

#### **4.1.3.3.7 Roma minority's electronic media**

Roma minority likewise the Aromanian does not have its own electronic media. However, some representatives of Roma minority in cooperation with Radio Tirana, part of Albanian Public Radio Television, have broadcast three programs for Roma minority, in Roma language.

#### **4.1.4 The right to maintain contact with persons across the frontier**

Article 38(2) of the Constitution states that:

*“no one may be hindered from leaving the state freely”,*

By providing so it acknowledges the right for the members of the minority group to establish and maintain contacts freely across frontier, with people who are legally staying in other states; to go freely and meet them, their relatives, friends or personalities of the political, economic, cultural, educational life and administrative authorities of those countries.

This right as it is mentioned in chapter one of the thesis, is fully guaranteed in practice. Hence the members of the minorities especially national minorities namely Greeks, Macedonians, Serbian – Montenegrins have been given 5 years visa from the kin states and they freely move from Albania to the neighbouring countries, which are their motherlands, and with which the minorities have common characteristics, such as language, culture, costumes, traditions, religious, belief etc.

## **4.2 Implementation of the right to preserve and use the minority language**

This sub-chapter, as mentioned above will examine the implementation in practice of the minority rights by taking the example of the right to preserve and use the minority rights.

Albanian legislation also guarantees to the persons belonging to the minority groups, inter alia:

- *the rights to use freely their mother tongue in private and in public, orally and in writing;*
- *to study and be taught in their mother tongue;*
- *to have access to education;*
- *to foster knowledge of the culture, history language and religion;*
- *to use their surname and first name in the minority language,*

The foregoing rights are of a great importance to the protection and promotion of minority cultural and ethnic values. Let us see furthermore these rights.

### **4.2.1 The right to use freely the minority language**

#### **4.2.1.1 In public and private life**

The members of the national and linguistic minorities use their language freely in the daily life, with each other, in public meetings, in their associations, in the electoral campaigns, in different publications and in the religious ceremonies<sup>256</sup>.

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<sup>256</sup> First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 40; ACFC/SR(2001)005.

The right to use freely the minority language is guaranteed under the Albanian Constitution. Although the Article 14 of the Constitution says that *the official language in Albania is Albanian*, the national minorities for instance under the Article 20 have the right to use the mother tongue, and also to study and to be taught in their mother tongue.

Article 20 of the Constitution mentioned above guarantees to the members of the national minority group:

*“the right to express freely, without prohibition or compulsion, their ethnic cultural, religious and linguistic belonging. They have the right to preserve and develop them, to study and be taught in their mother tongue, and to unite in organizations and associations for the protection of their interests and identity.”*

#### **4.2.1.2 In judicial proceedings**

The right to use the minority language is guaranteed also in the criminal proceedings under Article 28 and Article 31(c) of the Constitution.

Article 28 (1) of the Constitution states:

*“Everyone whose liberty has been taken away has the right to be notified immediately, in a language that he understands, of the reasons for this measure, as well as the accusation made against him.”*

Article 31(c) of the Constitution states:

*“In a criminal proceeding, everyone has the right to have the assistance of a translator without charge, when he does not speak or understand the Albanian language.”*

The right to use the minority language is also foreseen in the Penal Procedure Code and the Civil Procedure Code.

Article 8 (2) of the Penal Procedure Code states:

*“In all phases of the juridical process, persons who do not know the Albanian language use their mother tongue, and through an interpreter, have the right to speak and be informed of the evidence, acts, and all the judicial procedure.”*

Article 98(2) of the same Code says:

*“The person who does not speak the Albanian language is interrogated in his/her mother tongue and the verbal process is kept in this language as well. The procedural acts given to this person, at his/her requests are translated in the same language.”*

Article 27(2) of the Civil Procedure Code states:

*“The persons, who do not know the Albanian language, use their language. They are informed of the evidence and of all the juridical procedure through an interpreter.”* The same principle is applied in case of witnesses.

Article 116(2) of the same Code says:

*“The court calls a translator when persons giving their testimony do not know the Albanian language or for the translation of documents written in a foreign language.”*

#### **4.2.1.2.1 In relation between the minority persons and the administrative authorities**

As it is mentioned in the comments above in this chapter, according to Article 14 of the Constitution, *“the Albanian is the official language”*. Hence, all the documentations in the central government organs and in the administrative unit bodies of the local government are drafted in the official language<sup>257</sup>.

While the verbal communication between national minority persons and the authorities of the local government administration in the areas inhabited by national minorities may be realized, according to their free choice, in their mother tongue, because in most of the cases these authorities are members of national minorities themselves<sup>258</sup>.

However, this rule of custom is not regulated and enshrined in a legal instrument. Therefore, the legislative measures should be taken in this regard.

The regulation of the Prisons in the Republic of Albania, adopted by the Decision of the Council of Ministers, no. 96, dated 09.03.2000, provides for a special rule concerning this issue. It provides for the right of a convict to

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<sup>257</sup> Ibid.

<sup>258</sup> Ibid.



be notified in the language he/she understands about the rules of the prison, the imprisonment term modality, the rights and obligations of the prisoners, etc<sup>259</sup>.

#### **4.2.2 The right to use the surname and first name in the minority language**

Members of the minorities living in Albania are free to put and hold their names and family names in their language and enjoy the right of their official recognition.

According to Law no. 8950 dated 10 October 2002 “**On the Civil State Offices**”, the registration of their names and the names of their family members is carried out in the Civil State Offices of the Municipalities and Communes where they live<sup>260</sup>. Law no. 9229 dated 29 April 2004, which amended the law “**On the Civil State Offices**” establishes that the change of the name and family name can also occur and be recorded in the Register, if the citizen requests so. The change can be done upon the approval of the clerk of the Civil State Office where the citizen is registered.

The registration is done in accordance with the minority language phonetic pronunciation, but always is based on the orthography of Latin alphabet, as the Albanian language is written. According to the Albanian First Report on National Minority submitted to the Advisory Committee on the FCNM in 2001, the reason for applying the abovementioned rule is also that the three national minorities living in Albania write their native languages based on the orthography of the Cyrillic alphabet. Consequently, the registration of the names and surnames of their members in their alphabet would cause numerous problems and confusion in their relation with other part of the public administration and with other different institutions in Albania<sup>261</sup>.

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<sup>259</sup> See further *ibid.*

<sup>260</sup> Second State Report on National Minorities in Albania, submitted to the Advisory Committee, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, 2007, page 57.

<sup>261</sup> See further the First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework

### **4.2.3 The right to display in minority language traditional local names, street names and other topographical indications intended for the public, signs, inscriptions and other information of a private nature visible to the public**

With regard to the signs of a private nature in private life of the minority groups, such as the naming of the trade units, shops or enterprises, schools, advertisements and labels, epitaphs, etc., the persons belonging to minority groups are free to chose and display them, even in places for public use. In all the communes or villages inhabited by persons belonging to national minorities, as well as in cities such as Delvina, Gjirokastra or Saranda, mostly populated by Greek minority in Albania, a good part of the inscriptions and names of the shops, restaurants, bars or hotels, owned by the minority persons, are written in their native language<sup>262</sup>. In addition, the names of the villages in the areas populated by national minority are in minority mother tongue, traditionally used by the minority persons.

However, there is not a specific law, which could regulate the public use and display of traditional local names, street names and other topographic signs.

According to the Albanian Government de facto there are no real obstacles that prevent the naming and using of such names, even when they are in the minority languages<sup>263</sup>. In cases, when requested, the local authorities of the minority areas are free to decide on these issues, certainly taking into account the limits related to the rules of urban planning management<sup>264</sup>.

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Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 42; ACFC/SR(2001)005

<sup>262</sup> Ibid.

<sup>263</sup> Ibid. pages 42-43.

<sup>264</sup> Ibid. page 43.

However, a complete legal improvement of all the matters mentioned above, as the Albanian Government acknowledges in its First Report on the FCNM, remains an issue to be dealt with in the future.

#### **4.2.4 The right to education in the minority language, to learn and be taught the minority language**

Considering the right to education in mother tongue as an essential element for the existence of the minority group, the Albanian Government's commitment to protect this right should be of a great care.

Albanian Constitution under article 20 provides in a special way for the members of the national minorities the right to study and to be taught in their mother tongue.

Moreover, the legislation in the field of education and especially Law no. 7952, dated 21 June 1995 "**On Pre-University Education System**" guarantees under article 3, as it is said above, equal rights to all citizens.

Article 10(1) of this law says also that:

*"Opportunities shall be created for persons belonging to national minorities to study and to be taught in the mother tongue, to learn their history and culture within the framework of the school curricula."*

The legal frame for this purpose is also complimented with other sub-legal acts. The Decision no. 396, dated 22 Aug. 1994, of the Council of Ministers "**On Elementary Education of National Minority in the Native Language**" and the Instruction no. 14, dated 03 Sep. 1994 of the Ministry of Education and Science, determine, among others,

- *the criteria for the opening and functioning of schools for persons belonging to national minorities,*
- *the ratios between the use of the mother tongue and the Albanian language,*
- *the teaching programs and subjects creating opportunities for the minority pupils in these schools to study their history, traditions and culture.*

The above legislation establishes that the education system for the minorities, like for Albanians, consists of three levels: pre-school, elementary, 9 – years system and general high education. With the establishment of the democracy in Albania, concrete achievements are recorded in the structure of the minority education, for instance the curricula and the special textbooks for the schools are enriched. The Ministry of Education and Science in collaboration with the representatives of the minority groups has drawn up syllabuses, subjects, teaching programmes, text books that create the opportunity and possibility for the children of the minority groups to study in their mother tongue and learn their history, traditions and culture. Subsequently some data about the schools of the minority groups<sup>265</sup> will be given.

#### **4.2.4.1 Schools belonging to the Greek national minority**

The schools belonging to the Greek minority are located in the districts of Gjirokatra, Saranda and Delvina, in areas inhabited by members of this minority in those districts.

In Gjirokastra district, there are 3 kindergartens, 3 elementary schools, 8 schools functioning with the 9-years system and 2 high schools.

All minority schools have less than 50 pupils and there are many schools, which have a minimal number of students such as Catista with 4 pupils, the Grapshi school with 4 pupils, and another in Polican with 5 pupils.

In Saranda district, there are 2 kindergartens, 2 elementary schools, 3 schools functioning with the 9-years system and 1 high school.

In Delvina district, there are 2 kindergartens, 4 elementary schools, 6 schools functioning with the 9-years system.

Furthermore, two branches of the Greek language were opened. The one in the “Eqerem Cabej”, University of Gjirokastra since 1993 and the other in the Faculty of Foreign Languages, University of Tirana, since 1997. Teachers of the Greek language are graduated in the above universities.

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<sup>265</sup> The data were taken from the First and Second Albania State reports to the FCNM.

In addition to that based on the Decision of the Council of Ministers, no. 404, dated 1 July 1998, the opening of the school “Arsakeio” in Tirana (A Greek- Albanian college) was approved. Children of Greek minority and Albanian children attend the school. Based on the Decision of the Council of Ministers no. 868, dated 30 Sept. 2004, and on the Order no. 405, dated 29 Dec. 2004 of Minister of Education and Science, a private pre-university educational institution of the 9-years school system, called “Omiros”, is functioning in the city of Korca. This institution was established on behalf of Greek Minority and the Greek language is being taught. Also through the Decision of the Council of Ministers no. 266, dated 05 May 2006 a 9-years private pre-university school “Omiros” is opened in the city of Himara, where is taught in Greek language.

#### **4.2.4.2 Schools belonging to the Macedonian national minority**

The schools that belong to the national Macedonian minority are located in the area of Liqenas, in the district of Korca, and in the area of Vernik, located, in the district of Devoll, where the members of Macedonian minority are settled.

In the commune of Liqenas there are 8 kindergartens, 6 elementary schools, and one high school.

In the Devoll district, there is one kindergarten and one elementary school.

#### **4.2.4.3 Schools belonging to the Serbo-Montenegrin national minority**

According to the First and Second State Reports of Albania to the Advisory Committee on the FCNM, there are no such schools. In 2003, the Serbian– Montenegrin organization “Moraca-Rozafa” had requested the Ministry of Education and Science to reopen the school in the Serbian language in the district of Shkodra<sup>266</sup>. Based on the above mentioned laws of the education, the Ministry of Education and Science made through the

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<sup>266</sup> Second report page 66.

regional Department of Education in the district of Shkodra, the requisite verification in the civil state centres and in some schools. It turned out that there were not students who belonged to the Serbian – Montenegrin nationality in the schools of that district. In such case, according to the Ministry of Education and Science the criteria for the opening the school in the language of this minority, as defined by the law in the field of education, are not satisfied.

According to the leaders of the Serbian-Montenegrin association, this minority is discriminated against in the realization of its rights compare to other minorities. Primarily, regarding the erratic number of the minority members, who live from Kamica in Shkodra, to Malesia e Madhe, Tirana, Durres, Fier, Korce, Berat, Shijak and have preserved their language and traditions<sup>267</sup>. According to representatives of this minority only in the district of Shkodra there are about 20.000 minority inhabitants and under these circumstances, the failure to open a school in Serbian – Montenegrin language, is not justified since in the northern villages of Shkodra and Malsia e Madhe, which have 200 pupils, lessons in Serbian – Montenegrin language can take place.

#### **4.2.4.4 Schools belonging to the Bosnian minority**

The first chapter of this thesis explains that this minority was not even mentioned in the Albania State Reports to the International Organizations, because it is not recognized as such by the Albania Government. This policy obviously is reflected in the respect and protection of the minority rights and the concrete measures that Albania should have been taken towards this group. Therefore, there are not schools, where the children of this minority could study in their mother tongue. The opening of just one minority school it is all what the Bosnian Minority inhabitants of the two villages ask. Hence, they can continue to keep their language alive.

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<sup>267</sup> See Further “Minority in Albania”, Albanian Helsinki Committee, 2003, page 61.

#### **4.2.4.5 Schools belonging to Egyptian (Gypsy) minority**

The situation of this minority appears the same as the Bosnian one. This minority is not recognized as such by the Albanian Government. Therefore, there have not been accorded minority rights to this group.

#### **4.2.4.6 Schools belonging to Aromanian (Vlach) minority**

Even though the Albanian Government recognizes this minority as a linguistic one, it does nothing towards this minority to implement in practice the right to study and be taught in mother tongue. The representatives of this minority have asked for the intervention of the Government on the education issue, otherwise the next generation will inevitably go towards full assimilation and will forget their language especially in the urban areas where the community life of this group is less compact and traditional<sup>268</sup>.

#### **4.2.4.7 Schools belonging to Roma minority**

In case of the Roma Minority, the Albanian Government, taking into account the difficult situation in which this minority finds itself, is engaged in the implementation of the national strategy “For the improvement of the Living conditions of Roma Minority”<sup>269</sup> (adopted by the Decision no. 633 dated 18 Sep. 2003 of the Council of Ministers)<sup>270</sup>.

The main purpose of the strategy is to improve the life standards of Roma people and to enhance the respect and protection of the rights of Roma Minority.

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<sup>268</sup> See further “Minorities in Albania”, Albania Helsinki Committee, 2003, page 83-90.

<sup>269</sup> Roma poverty and exclusion received much attention in the recent EU enlargement process, when minority protection was seen as a criterion for accession in the EU of the candidate states (Copenhagen criteria). The European Commission monitors the fulfillment of the criteria by the candidate states. Albania seeks to join the European Union and has adopted The Albanian National Strategy for the Improvement of Living Conditions of the Roma Minority with EU accession in mind. See further “On Minorities’ Policies and funding strategies in Albania”, Albanian Helsinki Committee, 2007, page 23.

<sup>270</sup> Second Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe’s Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2007, page 88;

The main goals of this strategy are<sup>271</sup>:

- *To create an intellectual Roma stratum aiming to represent in the most dignified way this minority in the society.*
- *To create an identity of the Roma minority in which the historic and cultural values can be appraised and come to light.*
- *To encourage this community to participate in an active way in the economic, cultural, social and politic life of the country, as well as the elimination of any kind of discrimination towards them.*

Aiming at the achievement of these goals, the Albanian Government in co- operation and continued discussion with the representatives of Roma minority and with other non-governmental organizations, chose the education field as one of the action areas, where measures will be taken.

Regarding the implementation of the Roma National Strategy in the Education area the Ministry of Education and Science has focused its work, inter alia, in these directions<sup>272</sup>:

- *Education of Roma children by opening classes or kindergartens especially for them as the Roma school in Morave of Berat, the class in Llakatund an in Novosele of Vlora, the school "Together" in Gjirokaster, the school "Liria" in Shkodra, a class in the Roskovec school in Fier, and the Roma kindergarten in Korca. Special classes for Roma children are opened in schools in the districts of Elbasan, Berat, Pogradec, Korca, and against illiteracy in Zhupan of Fier etc.*
- *Priority is given to opening of non-public institutions for the Roma children education as, kindergartens, and school "Amaro Tam" in Pogradec and Roma children school in Kruja.*
- *Scholarships were given for the professional and social-cultural schools for Roma children,*
- *Drafting of the Pre-School Education Strategy where one of its objectives is the involvement of the group age 5-6 years old in the obligatory education system, which will ensure a major involvement of Roma children in the obligatory education system.*

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<sup>271</sup> Ibid, page 89.

<sup>272</sup> Ibid.



- *Raising the knowledge and awareness of to the parents, especially to those whose children have dropped out or have the trend to abandon the school, about the law on obligatory education.*
- *The performance of different activities to promote the human rights and in particular of Roma children's' rights.*

Furthermore, work is undertaken by the organizations, which work with Roma minority, for instance<sup>273</sup>:

- *“Children of the world; Human Rights”, that offers daily services and school integration of Roma Children.*
- *Community Centre of the “Amaro Kham” organization serves as daily centre for children, where Roma language is learned.*

The illiteracy is an essential problem of the Roma minority in the education field, which the Albanian Government particularly is dealing with, within the strategy. Many Roma children do not go to school or drop out from it. Subsequently staying in their houses, they learn only to speak their mother tongue (not to write it) and they are lack of knowledge of the Albanian language as well. Notwithstanding the situation of the education of this minority and the measures taken by the Government in that regard, the opening of the minority schools where children could learn and be taught the Roma language remain still an on going issue.

## **4.2.5 Conclusion**

The above survey shows that the minority rights are laid down in different laws of the Albanian legal system. There is no compacted law about minorities. Despite the form of this legal framework, it should be kept in mind that the implementation in practice is missing. It is also evident that the Albanian government implement in practise the minority rights in a biased manner with regard to diverse minorities. It is obvious from the foregoing survey that the measures taken by the Albanian Government are not only different towards the different minority groups but also these

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<sup>273</sup> Ibid, page 94.

measures do not provide for some minorities namely Serbian – Montenegrin, Aromanian, Roma, Bosnian, Egyptian the full and proper enjoyment of their rights. Therefore, the Albanian government should improve such situation by taking positive measures toward those minorities that suffer more the lack of the implementation in practice of the minority rights recognized by law.

### **4.3 Albanian national monitoring system on minority rights**

The process of protection of the minority rights would be incomplete if the legislation provides only for the recognition of such rights and does not lay down:

- *firstly the monitoring system, which means that it does not establish the monitoring bodies (for instance administrative and judicial once), where the members of minority groups can address the alleged violations of their rights, i.e. the right to have the access to bring a formal complaint for the breach of the right recognized by law, to the defined body, and*
- *secondly the right to the remedy, which means in cases where the violation and the breach of the right (this right could be a minority right as well) is committed, the plaintiff which could be a member of the minority group, has the right to the remedy in compliance with the law.*

On these issues which are well established and known in the international human rights instruments for instance UDHR (article 8), ICCPR (article 3), ECHR (article 13), the sub-chapter will be focused.

### **4.3.1 The right to address complaints for the breach of the minority rights to a monitoring body**

The Albanian domestic legal system provides for the abovementioned right, as a general human rights principle, which could be exercised by a minority person on the same footing as every individual. According to the legislation an individual enjoys such right, i.e. to have access to file a complaint for the alleged violation of human rights stipulated in the law, to different monitoring bodies for instance to the judicial body (court), administrative body, Constitutional Court, Ombudsman. Moreover, these bodies will be considered.

#### **4.3.1.1 Judicial body**

The Constitution in its article 42 (2), provides for the right of a person (who could be a member of the minority group as well) to address complaints to the court (judicial body) in case of an alleged violation of his or her right (which could be a minority right too).

Article 42 (2) states:

*“ to protect his constitutional and legal rights, freedoms and interests, or in the case of charges against him, everyone has the right to a fair and public trial, within a reasonable time, by an independent and impartial court specified by law.”*

Moreover, this right, which is a fundamental principle in the human rights field, is elaborated in detail in the Civil Procedure Code. Additionally Article 1 of the Code lays down the general principle that the court should decide upon any complaint, which means that the legal procedure ground exists for an alleged violation of minority right to be addressed to the court and to be judged by the latter. Furthermore in the second part of the Code are stipulated in more detail the rules with regard to the right to file complaint and the procedure that a person should follow to submit the dispute to the court.

#### **4.3.1.2 Administrative body**

Pursuant to the Article 48 of the Constitution everyone has the right to address complaints to the administrative body in case of an alleged violation of the human right.

Article 48 states:

*“everyone by himself or together with others, may address requests, complaints or comments to the public organs, which are obliged to answer within the time periods and under the conditions set by law.”*

Furthermore, the Administrative Procedures Code elaborates this right. Article 18 states the general principle to file complaint before the defined administrative body, for alleged violations of the rights committed by an administrative body through an administrative act. Additionally part VI of the Code lays down this right thoroughly. It stipulates, inter alia:

- *the right of every person to complain for a violation of human rights committed by the administrative body, and*
- *the right to ask for the act to be null, or to be modified.*

According to the Article 137 (3) of the Administrative Procedures Code and Article 328 of the Civil Procedure Code, the complainant has the right to address further his allegation to the court, against the administrative decision.

Subsequently, in a given case, whether an administrative act could be a ground for the violation of minority rights, the member of the minority groups can claim the alleged violation of that act to the respective administrative body established by the law. After that, he/her could address the issue to the court, if he/she is not satisfied with the administrative decision. Nevertheless this is an individual right and only the interested person could claim.

#### **4.3.1.3 Constitutional Court**

The Albanian Constitution in its Part VIII constitutes the institution of the Constitutional Court. Its main competence is to guarantee the respect for

the Constitution<sup>274</sup>. The latter as it is previously said assures inter alia, the respect for the human rights, minority rights included. According to the Article 131 of the Constitution, the Constitution Court decides on, inter alia:

- *the compatibility of the law with the Constitution or with the international agreements which Albania is part of.*
- *the compatibility of the normative acts of central and local organs with the Constitution and international agreements.*

Moreover, according to the Article 134 of the Constitution, the Constitutional Court initiates a proceeding only on the request of, inter alia, the organizations and only for issues related to their interests.

The above legal grounds make achievable for the minority organizations, the right to address the alleged violations of minority rights committed by the law or normative (administrative) acts to the Constitutional Court. The latter, as the article 132 of the Constitution states, can invalidate the acts it reviews.

#### **4.3.1.4 People's Advocate**

The Albanian Constitution in Part II, chapter VI, establishes the institution of the Ombudsman, which is more elaborated by the specific law “**On the People's Advocate**” no. 8454, dated 04.02.1999, amended by the law no. 8600, dated 10.04.2002 and law no. 9398, dated 12.05.2005.

People's Advocate is another guarantee for the protection of the rights of persons belonging to the minority groups. Its main competence is to defend the rights, freedoms and legitimate interests of individuals from unlawful and improper action and failure to act of the organs of public administration<sup>275</sup>.

In addition to that, Article 12 of the law “On the People's Advocate” provides for a complaint procedure. It states that any individual, group of individuals or NGOs can address the claim to the Ombudsman for an alleged violation of their rights, freedoms or legitimate interests from the

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<sup>274</sup> Article 124 of the Albanian Constitution

<sup>275</sup> Article 60 of the Albanian Constitution

unlawful and improper action and failure to act of the organs of public administration.

The persons belonging to minority groups have been exercising this right by submitting complains to the People's Advocate, a contrary to the lack of the application of this right in relation to the judicial and administrative bodies.

Additionally, the data taken from the office of the Ombudsman show that from 2001 until May 2006, 14 complaints from the persons belonging to minority groups were submitted. These complaints are addressed mostly by the Roma minority organizations, but also by the Macedonian, Egyptian and Greek ones. The complaints were related to the alleged maltreatment by public police authorities, alleged abusive medical treatment by health care personnel in hospitals etc., based on the discrimination ground against minority groups<sup>276</sup>. The People's Advocate After did the investigation and found that 13 complaints were groundless<sup>277</sup>. Subsequently only one case was sent to the Prosecutor's Office to start penal prosecution towards two gynaecologists in Fier city hospital for careless medical treatment that brought about the death of a woman and her baby from Roma community during delivery. The Prosecution office registered the case and brought it to the Court. At the end of the court process, the Prosecutor's Office requested the doctors to declare guilty and to be punished with a fine. The Judicial District Court in Fier has declared the two doctors innocent<sup>278</sup>. So far, no other cases of alleged violations have been reported to the People's Advocate institution.

#### **4.3.1.5 The State Committee for Minorities**

This is a special institution, created to protect and promote the minority issues. The State Committee for Minorities is an administrative organ established by the Council of Ministers with the Decision no. 127, dated

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<sup>276</sup> Second State Report on National Minorities in Albania, submitted to the Advisory Committee, under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, 2007, page 32.

<sup>277</sup> Ibid, page 31.

<sup>278</sup> Ibid.

11.03.2004. The Committee has in its structure the representatives of the minority groups and actually, a woman, who is the representative of the Greek Minority, heads it. The Committee has as the main role to promote the participation of persons belonging to minorities in the country's public life<sup>279</sup>. Nevertheless, the Committee is focused on its work to improve the standards in respecting the rights of minorities in Albania. In respect to that, it proposes concrete measures for the economic, social and educational development of minorities. To achieve such goal the Committee cooperates on the one hand with central and local government organs and on the other hand with organizations and associations dealing with minority issues. Considering the important role of the State Committee for Minorities, although the decision no. 127, dated 11.03.2004 does not provide for a complaint procedure, nothing can prevent the members of the minority groups from addressing requests and complaints to this organ. Subsequently, the State Committee can establish the dialog with the government structures to work out the situations concerning the alleged violations.

### **4.3.2 The right to the remedy for the breach of the minority rights**

This right is also stipulated in the Albanian domestic legislation, and any individuals, persons belonging to minority groups included, can exercise it equally.

The Albanian Constitution states in its Article 44, that:

*“Everyone has the right to be rehabilitated and/or indemnified in compliance with law if he has been damaged because of unlawful act, action or failure to act of the state organs.”*

Moreover this principle is guaranteed and elaborated by the Civil Code 1994, which in its part IV, namely Article 625, provides for everyone the

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<sup>279</sup> See further the Decision of the Council of Ministers no. 127, dated 11.03.2004; [www.qpz.gov.al/doc.jsp?doc=docs/Vendim%20Nr%20127%20Dat%20C3%AB%2011-03-2004.htm](http://www.qpz.gov.al/doc.jsp?doc=docs/Vendim%20Nr%20127%20Dat%20C3%AB%2011-03-2004.htm)

right to be compensated, for the damages, caused by the breach of the non-contractual rights, that is to say moral damages, namely the harm of the personality and honour of an individual. This general legal rule could also be construed and applied in case of the violation of human rights. Nevertheless, the above legal provision is general. Therefore, a new specific law needs to be enacted to make this right tangible. Thus, obviously the legislation in this field is not complete to buttress the above principle.

In addition, Article 14 of the Administrative Procedures Code in compliance with the constitutional provision stipulates, that the organs of the public administration and their officials are responsible for the damages that they may cause to private persons through illegal decisions, illegal refusal to take decisions, and giving incorrect information to private persons, with respect to the status of their case, for any reason or as provided by law.

### **4.3.3 Conclusion**

Finally, it should be admitted that the foregoing rights are not fully exercised in practice by minorities, even though the legal possibility is there. Hence, there is not a single case, which would show that a member of the minority groups has addressed an alleged violation of minority rights to the court or to the administrative body. This situation does not legitimise the fact that there are not violations of minority rights in Albania and therefore the persons belonging to minority groups do not need such complaint procedure. The truth is that there are many other reasons with regard to this situation, for instance:

- *the judicial procedure costs,*
- *as outlined above, the Albanian legislation concerning minority rights is incorporated and spread in the general legal system and subsequently there is not a specific legislation which could help minorities to be more aware about their rights,*
- *the right to file complaints and to have the remedy in case on the violation of minority rights should be laid down in a specific law and should be*



*more elaborated, clear and promoted within minority groups . An example of such legislative technique is the People' Advocate institution, who was promoted to a great extent when it was established by undertaking many round-table discussions and campaigns within the individuals and groups of individuals, even by broadcasting special editions on the public television. As the consequence the members of minority groups utilize the People's Advocate institution to protect there rights.*

- *finally the individuals included the members of the minority groups are distrustful towards the judicial or administrative systems, due to the high level of the corruption in the country .*

## **4.4 Implementation of the international standards on minority rights in Albania analyzed through the international monitoring system**

This sub-chapter firstly seeks to explain the relation between the national legal system and the international law, bearing in mind that they are both sources of the Albanian legal system. Secondly, it examines the implementation in practice of the international standards of minority rights in Albania, by observing the respective assessments of the monitoring bodies of different international human rights instruments.

### **4.4.1 Relation between the national legislation and the international law**

The first issue this chapter raises is the relation between the domestic law and international legislation.

The Article 116 of the Constitution states, “*the second sources of the Albanian legal system are the ratified international agreements*”. The

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<sup>280</sup> For the information about corruption, see further [www.seldi.net/seldi\\_e.htm](http://www.seldi.net/seldi_e.htm).

Albanian Constitution confers a special status on the international instruments to which the Republic of Albania is a party. Of particular importance are the Articles 121 and 122 of the Constitution, which lay down the legal rule that any ratified international agreement is part of domestic legal system<sup>281</sup>. These instruments are directly applicable, except when they are not self-executing and their application requires the adoption of a law<sup>282</sup>. Article 122(3) states that the international agreements have priority, in case of conflict, over the laws of country when the direct application of the norms issued by an international organization is expressly contemplated in the agreement.

From this point of view, by adopting the international human rights instruments, Albania reinforces its commitment to respect and protect the human rights of all individuals in its jurisdiction, including the minority ones as well.

#### **4.4.2 Assessment through the international monitoring system of the implementation of the minority standards in Albania**

At this point, the chapter will deal with an important issue, explicitly the international monitoring system, aiming to point out the situation of the implementation of international standards by the Republic of Albania. On that regard, the sub-chapter considers the monitoring system of the treaty bodies of different human rights instruments of the UN and CoE organizations. The analysis is carried out on the one hand by examining the Albanian State Reports submitted to the monitoring bodies such as Human Rights Committee, CERD, and Advisory Committee on the FCNM. On the other hand, the analysis describes the observations of the latter bodies with regard to the accomplishment of Albania's commitments to implement the

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<sup>281</sup> Ibid. Articles 121 and 122 of the Albanian Constitution

<sup>282</sup> Ibid.

minority rights standards conceded in the respective instruments such as ICCPR, CERD and FCNM.

#### **4.4.2.1 Albania and the ICCPR standards**

ICCPR has created a monitoring mechanism and procedure for the implementation of the rights and standards stipulated therein. Referring to the Article 28 of the Covenant, the Human Rights Committee is established. According to Article 40 of the Covenant, the main tasks of the Committee are:

- *to study the reports submitted by the State Parties, and*
- *to make observations concerning the measures taken by the states on the adoption and implementation of the Covenant.*

Additionally, the First Optional Protocol to the ICCPR provides for the competence of the HRC to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State Party of any of the rights set forth in the Covenant<sup>283</sup>. Moreover, these issues with reference to the Albania case will be discussed.

##### **4.4.2.1.1 Albania's initial periodic report**

The initial Albanian report on the implementation of the ICCPR was submitted to the Human Rights Committee with a delay of 11 years<sup>284</sup>, in February 2004. A permanent group of experts from Albanian Government and NGO-s, after discussions on the relevant issues and information based on the articles of the Covenant drafted this report<sup>285</sup>. Written responses on different issues were submitted and discussions with the delegation and Committee members were undertaken to complete and further elaborate the information given in the report<sup>286</sup>. The report presents comprehensive information about the implementation of the rights envisaged in the

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<sup>283</sup> Article 1 of the First Optional Protocol of the ICCPR

<sup>284</sup> See Concluding Observations of the Human Rights Committee, 01/12/2004, page 1, para. 2; CCPR/CO/82/ALB.

<sup>285</sup> See Albanian Initial State Report to the Human Rights Committee, 2004, page 4, para 2, CCPR/C/ALB/2004/1.

<sup>286</sup> See Concluding Observations of the Human Rights Committee, 01/12/2004, page 1, para. 2; CCPR/CO/82/ALB

Covenant. With regard to the minority issues, especially related to the implementation of Article 27 of ICCPR, the report gives the thorough information about:

- *the domestic legal provisions on the principles of non-discrimination, equal treatment and equality before the law , and*
- *measures which are taken regarding the specific minority rights such as the participation in the political and social life, right to property, freedom of conscience and religion, use of mother tongue, freedom to free choice of residence and movement, use of mother tongue during the court proceedings, education in mother tongue, freedom of media and press etc.*

#### **4.4.2.1.2 Human Rights Committee observations**

The HRC on the ICCPR adopted its observations on Albania in December 2004. The positive aspects, the concerns and the recommendations of the Committee's observations are further examined.

##### **4.4.2.1.2.1 Positive aspects**

The HRC welcomed the progress accomplished in legislative and institutional reforms after the regime changed in the early 1990s, in particular the ratification by Albania of most of the main United Nations human rights instruments<sup>287</sup>. It also welcomed the enactment of the legal rules, which provides for the guarantee of the important principles of minority rights mentioned above namely non-discrimination and equality before the law. In regard to the minority groups, the Committee welcomed the measures taken to improve the protection and promotion of their rights, inter alia<sup>288</sup>:

- *the establishment of the State Committee on Minorities;*
- *the establishment of the “National Strategy for the Improvement of the Roma living conditions”*
- *the establishment of the People's Advocate, an independent institution for the defense of human rights and individual freedoms.*

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<sup>287</sup> Ibid.

<sup>288</sup> Ibid, page 2, para. 5, 8.

#### **4.4.2.1.2.2 Concerns and recommendations**

The Committee is mostly concerned about Roma minority. Therefore, while noting measures undertaken to improve the living conditions of the Roma community, the Committee was concerned that the former continues to suffer prejudice and discrimination, in particular with regard to access to health services, social assistance, education and employment which have a negative impact on the full enjoyment of their rights under the Covenant. Hence, in respect to this concern the Committee recommended that Albania should take all necessary measures to ensure the enjoyment in practice by the Roma of their rights under the Covenant, by urgently implementing and reinforcing effective measures to address discrimination and serious social situation of the Roma<sup>289</sup>.

Another concern of the Committee was related to the ethnic and linguistic minorities. Therefore, while noting progress made by the adoption of institutional measures to improve the rights of minorities the Committee was concerned about the practical enjoyment of the Covenant rights by members of the ethnic and linguistic minorities that is imperiled by a variety of factors and discriminatory practices. Consequently the Committee recommended that Albania should ensure that all members of the ethnic and linguistic minorities whether or not they are recognized as national minorities, are effectively protected against discrimination, and may enjoy their own culture and use their own language, have access to all social rights, participate in public affairs, and are provided with effective remedies against discrimination<sup>290</sup>.

Finally, the assessment of the implementation of the above recommendations and the general situation of minority rights in Albania, will be done by the Committee, after the Albanian government will submit to it the next report, within one year<sup>291</sup> (by 1 November 2008).

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<sup>289</sup> Ibid., page 4, para 21.

<sup>290</sup> Ibid, page 5-6, para 22.

<sup>291</sup> Ibid. page 6, para. 25.

#### **4.4.2.2 Complaint procedure of the First Optional Protocol to the ICCPR**

Albania adhered to the Optional Protocol to the ICCPR, by law no. 9725, dated 7 May 2007. As mentioned above the Protocol stipulates the right of the individuals to lodge complaints before the HRC for the alleged violations of the rights laid down in the ICCPR. Due to the fact that the Protocol was recently ratified by Albania, the complaint procedure has not been exercised yet by the Albanian individuals, included members belonging to the minority groups. Hence the promulgation of this monitoring procedure within the interested groups, minority groups included, is a very important avenue, to make the individuals aware of the existence of such procedure. The dissemination of such information on the one hand is the obligation of the Albanian government but on the other hand should be the concern for the minority representatives and NGOs as well. The future will show how this procedure will be approached by the Albanian minorities.

#### **4.4.2.3 Albania and the ICERD standards**

ICERD likewise the ICCPR has created a monitoring mechanism and complaint procedure for the implementation of the rights and standards stipulated therein. Pursuant to the Article 8 of the Convention, the Committee on the Elimination of Racial Discrimination is established. It is also empowered to monitor the fulfilment of the rights and standards recognized in the Convention, by the State Parties. The two main tasks of the Committee according to the Articles 9 and 14 of the Convention are respectively:

- *to receive and make considerations on the reports submitted by the State Parties with regard to the legislative, judicial, administrative, or other measures taken by the states on the adoption and implementation of the provisions of the Convention.*

- *to receive and consider communications from individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.*

Furthermore, the sub-chapter discusses the monitoring system of the ICERD in relation to the implementation of the ICERD's standards by Albania.

#### **4.4.2.3.1 Albania's initial periodic report**

The initial to forth periodic reports of Albania due in 1995, 1997, 1999 and 2001 respectively, was submitted as a single document, eight years after the ratification of the Convention. This report gives detailed information about the implementation and concrete measures undertaken by Albanian government in respect to each right envisaged in the Convention. It describes the legal framework for the protection of human rights in general and in particular the one which guarantees the protection from racial discrimination. With regard to the minority issues, the report presents an overview of national, cultural and linguistic minorities, namely Greek Macedonian and Serbo- Montenegrin national minorities, Roma and Aromanian linguistic ones. This description is followed by the information given with regard to the measures adopted to improve the situation of minorities in Albania especially in cases of discrimination. Such measures are, for instance:

- *the constitutional and other legal provisions which incorporate the non-discrimination principle, are enacted, aiming to prevent discrimination and intolerance.*
- *the concrete measures which are undertaken with regard to the improvement of the living conditions of Roma minority participation in the political and social life, the right to participate without discrimination in politic and public life, the right to education, to assistance, social and health care services, to use mother tongue etc.*

#### **4.4.2.3.2 The CERD observations**

The Committee on the ICERD adopted its observations on Albania in August 2003. Some of the positive aspects and recommendations of the Committee are analyzed below.

##### **4.4.2.3.2.1 Positive aspects**

The Committee welcomed the initial report and noted that the latter did not contain sufficient information on the practical implementation of the Convention<sup>292</sup>. Moreover the CERD likewise the HRC noted with satisfaction the progress achieved in legislative and institutional reform, particularly the ratification by Albania of many international and European human rights instruments<sup>293</sup>. In respect to the minority rights situation, the Committee welcomed the establishment of several institutions aiming to combat racial discrimination and to protect minorities, such as the People's Advocate, the Office for Minorities within the Ministry of Foreign Affairs<sup>294</sup> and the reform on the improvement of the living conditions of Roma minority (the national strategy at that moment was drafted)<sup>295</sup>.

##### **4.4.2.3.2.2 Concerns and recommendations**

The Committee is mostly concerned about the lack of the current statistics on minorities in general and on the Roma minority in particular. Therefore, regarding this concern the Committee recommended that Albania should collect precise statistical data on persons belonging to minority groups in Albania<sup>296</sup>.

Another concern of the Committee was related to the tendency of the Albanian government not to regard the particularly unfavourable situation in which certain minority groups in Albania live, believing that the social and economic problems encountered by persons belonging to the minorities are the same as those with which the rest of the population has to deal. In this regard the Committee recommended that Albania should determine whether

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<sup>292</sup> Concluding Observations of the CERD, 2003, page 1, para.2; page 4, para. 19, CERD/C/63/CO/1

<sup>293</sup> Ibid, page 2, para 4

<sup>294</sup> Ibid. para. 5

<sup>295</sup> Ibid. para.8

<sup>296</sup> Ibid. page 12.



or not and to what extent the unfavourable situation of some minorities is the result of racial and ethnic discrimination<sup>297</sup>.

The Committee expressed its concern about the Egyptian community, which is not considered as a minority by the Albanian government and recommended that Albania should provide for additional information about this community in its next report<sup>298</sup>.

The Committee is concerned about the information relating to discrimination against Roma minority in respect to the access to education health, housing, employment, and sufficient and adequate food and water. As regards the foregoing concern the Committee recommended that Albania should intensify its efforts on behalf of the Roma minority, by integrating the Roma children into Albanian education system, allowing the bilingual or mother-tongue institutions etc. In addition to that, Albania should communicate the results achieved by the national strategy on behalf of Roma minority, in its next report.

Additionally, the Committee is concerned, *inter alia*, about the conditions of Aromanian minority, and the implementation of cultural rights of Greek, Macedonian minorities. Hence it recommended that Albania should give additional information in that regard to the Committed in the next report.<sup>299</sup>

Finally, the Committee will do the assessment of the implementation of its recommendations, and the continuing implementation of the Convention, after the Albanian will provide the Committee with the next report, by June 2007<sup>300</sup>, which regrettably is not submitted yet.

#### **4.4.2.3.3 Complaint procedure of ICERD**

Article 14 of the ICERD establishes the complaint procedure. This procedure makes possible for an individual or a group of persons claiming to be victim of racial discrimination to lodge a complaint before the CERD against the States concerned. This may only be done if the State is a party to

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<sup>297</sup> Ibid, page 2 and 3, para 13.

<sup>298</sup> Ibid, page 3, para. 15.

<sup>299</sup> Ibid. page 4-5, para 14, 16, 27

<sup>300</sup> Ibid. page 5, para 32

the Convention and has declared that it recognizes the competence of CERD to receive such complaints. Albania has not made such declaration yet and for that reason it is preventing the Albanian individuals and groups of individuals, including the minorities, from exercising such international monitoring procedure in case of the alleged violations of human rights recognized by the Convention. In respect to the optional declaration provided for in article 14 of the Convention, the Committee in its observations encouraged Albania to complete this process<sup>301</sup>. The future will tell us whether or not Albania will undertake such commitment.

#### **4.4.2.4 Albania and the FCNM standards**

As already discussed in the second chapter, the Council of Europe organization has enacted an important instrument on the national minority field explicitly the FCNM, of which Albania is a party. This instrument lays down in its section IV a monitoring system of the implementation of provisions and standards of the Framework Convention by the Contracting Parties. The Committee of Ministers is entrusted with the task of such monitoring<sup>302</sup>. In order to ensure the efficiency of the monitoring of the implementation of the Framework Convention, the latter provides for the setting up of an Advisory Committee<sup>303</sup>. The task of the Advisory Committee is to assist the Committee of Ministers when it evaluates the adequacy of the measures taken by a Party to give effect to the principles set out in the Framework Convention<sup>304</sup>. In order to fulfill such task the Advisory Committee will observe the states reports and send the opinions to the Committee of Ministers. The latter, in turn will assess the state's implementation of the Framework Convention and will adopt the respective resolution. Furthermore the implementation of the Framework Convention by Albania is considered.

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<sup>301</sup> Ibid. page2 and 5, para 11 and 30

<sup>302</sup> Article 24 of the FCNM

<sup>303</sup> Explanatory report on the FCNM, para. 95;  
[www.coe.int/t/e/human\\_rights/minorities/2\\_framework\\_convention\\_\(monitoring\)/1\\_texts/H\(1995\)010%20E%20FCNM%20and%20Explanatory%20Report.asp#TopOfPage](http://www.coe.int/t/e/human_rights/minorities/2_framework_convention_(monitoring)/1_texts/H(1995)010%20E%20FCNM%20and%20Explanatory%20Report.asp#TopOfPage).

<sup>304</sup> Article 26 of the FCNM

#### **4.4.2.4.1 Albania's initial periodic report**

Pursuant to the Article 25 (1) of the FCNM, Albania submitted its first report on national minorities to the Advisory Committee in 2001 with a delay of seven months. The report was drafted on the basis of the materials prepared by the Ministry of Justices, Ministry of Education and Science, the Local Government Ministry, the Ministry of Culture, Youth and Sports, the Ministry of Labour and Social Affairs, the Institute of Statistics (INSTAT), the Albanian Helsinki Committee and other NGOs<sup>305</sup>.

The first report provides full information on legislative, executive and other measures which Albania has taken to give effect to the rights and standards stipulated in the Framework Convention. The report firstly contains a brief and general, *inter alia*, historical and economic description of Albania and national and linguistic minorities living in Albania such as Greek, Macedonian, Serbo-Montenegrin, Roma and Aromanian. Secondly it is focused on the implementation of each provision of the FCNM by giving the wide-ranging information about the legal provisions and specific measures taken by Albania in relation to the realization of the protection and respect of the rights enshrined in the FCNM. In order to obtain supplementary information on the implementation of the FCNM, Advisory Committee visited Albania from April to May 2002 and met the representatives of the Government, of NGOs and other independent sources<sup>306</sup>. Arriving at this point, the Advisory Committee's opinion on Albania will be examined.

#### **4.4.2.4.2 Advisory Committee opinion**

The Advisory Committee on the FCNM evaluated the adequacy of the measures taken by Albania to give effect to the principles of the FCNM and subsequently adopted its opinion and concluding remarks in September

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<sup>305</sup> First Report on National Minorities in Albania, submitted by the Republic of Albania, under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, to the Advisory Committee, 2001, page 4; ACFC/SR(2001)005

<sup>306</sup> Opinion on Albania, Advisory Committee on the FCNM, 2002, page 4, ACFC/INF/OP/I(2003)004.

2002. Furthermore, the positive aspects, concerns and remarks about the implementation of FCNM by Albania are pointed out.

#### **4.4.2.4.2.1 Positive aspects**

The Advisory Committee after taking into account the serious economic difficulties that Albania continues to face welcomed the efforts made by the Albanian authorities to implement the FCNM<sup>307</sup>.

As concerns the implementation of the FCNM, the Advisory Committee considered that Albania has, in many respects, made commendable efforts for the protection of national minorities, including the field of education and the provision of schools and classes for the Greek and Macedonian national minorities in set areas<sup>308</sup>.

It welcomed the legal reform undertaken by the government for instance on the establishment of the fundamental principles<sup>309</sup> such as

- *non-discrimination on the basis of ,inter alia, race, religion, ethnicity, language, social status or ancestry,*
- *equality before the law*

The Advisory Committee also welcomed the steps taken by the Albanian authorities to guarantee the freedom of expression and press, especially the measures taken in respect to the print and electronic media, as important means to protect and respect the right to the minority language<sup>310</sup>.

Notwithstanding the abovementioned examples of the positive aspects on the implementation of the FCNM, recognized by the Advisory Committee of a relevant importance regarding the future improvements of the protection and respect of minority rights are the concerns and remarks of the Advisory Committee which will be discussed below.

#### **4.4.2.4.2.2 Concerns and general remarks**

While noting the adoption of the important legal guarantees pertaining to some of the articles under FCNM, the Advisory Committee recommended that further efforts will be required to complete the legal and

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<sup>307</sup> Ibid, page 2

<sup>308</sup> Ibid, page 2

<sup>309</sup> Ibid, pages 9-11

<sup>310</sup> Ibid, pages 12-13.

institutional framework and to ensure its full realization in practice<sup>311</sup>, for instance:

- *the right to use the minority languages in relations with administrative authorities*
- *the right to display the traditional local names, street names and other topographical institutions*<sup>312</sup>.

With respect to improving the legal framework on minority rights, the Advisory Committee encouraged Albanian authorities to consider, at an appropriate moment, the preparation of a specific law on national minorities about the non-discrimination principle<sup>313</sup>.

A further remark of the Advisory Committee was about the lack of statistical information concerning national minorities. It considered that accurate statistical information on the number and location of persons belonging to national minorities can be gathered through a national census<sup>314</sup>. It also considered that the lack of statistical data can seriously hamper the ability of the State to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities<sup>315</sup>.

Furthermore the Advisory Committee was concerned about the *a priori* exclusion of the Egyptians from the protection of the FCNM, by the Albanian government. According to the Advisory Committee this approach is not compatible with the FCNM and it recommended that the Albanian authorities should in consultation with those concerned, examine this issue further<sup>316</sup>.

The Advisory Committee was also concerned about the supplementary measures which are required to improve minority language education, where there is a need and a demand, for Montenegrin, Roma, Aromanian minorities, and also Greek and Macedonian minorities in areas where such education is not available.

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<sup>311</sup> Ibid. page 24.

<sup>312</sup> Ibid. para. 118.

<sup>313</sup> Ibid. page 9, para. 27.

<sup>314</sup> Ibid. page 24, para 119.

<sup>315</sup> Ibid. page 9, para. 30.

<sup>316</sup> Ibid. para. 120.

Finally the Committee was sensitive particularly to reports of prejudice and discrimination faced by persons belonging to the Roma minority and Egyptians as well, in relation to education, housing, employment, access to social services, access to health care etc. It recommended that there is a need for further monitoring and greater awareness of the situation by government<sup>317</sup> and subsequently there is a need for further measures to be taken like the national strategy for Roma<sup>318</sup>.

In accordance with Article 26 of the Framework Convention the abovementioned concluding remarks were sent to the Committee of Ministers as the basis of the corresponding conclusions and recommendations, which were adopted by Committee of Ministers with the Resolution (2005)2, on 11 may 2005<sup>319</sup>.

#### **4.4.2.4.3 Albania's second periodic report**

After the first monitoring cycle, Albania submitted in 2007, its second report to the Advisory Committee with almost one year delay. The second report was drafted by the Ministry of Foreign affairs in cooperation with State Minorities Committee and the central and local institution covering minority issues<sup>320</sup>. The second report contains the information in respect to the minority rights in Albania during the period from the submission of the first report to July 2006<sup>321</sup>. The report also contains comments on the measures taken by Albania for the implementation of the Committee of Ministers' recommendations and those of the Advisory Committee<sup>322</sup>. Some of these measures are discussed below, aiming to identify the realization in practice of the above recommendations, for instance:

- *on the improvement of the legislation on minorities:*

*Regarding it a Working Group for the review of the legislation on minorities was established in March 2002<sup>323</sup>. The Working Group*

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<sup>317</sup> Ibid. para 29.

<sup>318</sup> Ibid. para. 122.

<sup>319</sup> Resolution of Committee of Ministers of CoE, ResCMN(2005)2;

<sup>320</sup> Second State Report on National Minorities in Albania, submitted to the Advisory Committee, under Article 25, paragraph 1, of the Council of Europe's Framework Convention for the Protection of National Minorities, 2007, page 4.

<sup>321</sup> Ibid.

<sup>322</sup> Ibid. page 5.

<sup>323</sup> Ibid.

identified the shortcomings in the legislation on minorities, aiming to complete and improve it in the future regarding the use of minority language in relations to administrative authorities.

An expression of the continuous care towards the demands and concerns of the minorities was also the amendment of the Law no. 8950, dated 10 October 2002 "**On the Civil State**"<sup>324</sup>. Initially the Law changed, not including the ethnic origin as an element of the civil status of the individuals. As a consequence the above element would not appear in any document issued by civil state offices in the future. The amendment caused disputes among persons belonging to minority groups due to the eventuality of loss of data regarding national minority. Subsequently the aforementioned law was changed with Law no. 9029, dated 13 March 2003, concerning the inclusion of the ethnic origin category in the documents issued by the Civil State Offices<sup>325</sup>.

- **on statistical data on minorities in Albania**

Concerning the statistical data on minorities Institute of Statistics in cooperation with the Ministry of Foreign Affairs has published in February 2004, the results of the statistical evaluations at the national level on minorities in Albania<sup>326</sup>. Based on such evaluation the percentage of national minorities in the population of Albania is estimated at 1.4 percent<sup>327</sup>. However this is an evaluation carried out by INSTAT and the statistical figures are not gathered through a general census. So the issue of the accurate number of the minority population is still to be dealt with.

- **On the improvement of living conditions for the Roma minority**

As it is mentioned in the beginning of this chapter, the Albanian Government approved in September 2003 the national strategy "For the improvement of the living conditions for Roma minority". This strategy is a long-term one and includes an implementing of 15 years<sup>328</sup>, aiming to improve housing, employment, culture, infrastructure, participation in political and social life, and public services<sup>329</sup> with regard to the Roma minority. However this strategy has noted some discrepancies for instance, in relation to the cooperation with representatives of Roma community and

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<sup>324</sup> Ibid. page 10

<sup>325</sup> Ibid. page 11.

<sup>326</sup> Ibid.

<sup>327</sup> Ibid.

<sup>328</sup> Ibid.

<sup>329</sup> Ibid.

*NGOs in the implementation of the Government policies. Another shortcoming is concerning the monitoring body for the implementation of the strategy, which was established in 2004, and attached to the Ministry of Social Affairs<sup>330</sup>. The monitoring body should have been composed by experts including Roma ones, but in practice none are Roma. On the other hand the monitoring body's mandate appears blurred due to the fact that it monitors the realization of the strategy and at the same time it coordinates the implementation of the strategy.*

- ***On the recognition of Egyptian minority***

*As it is shown from the comments made by the Advisory Committee in its Opinion<sup>331</sup> and from the Second State Report, the Albanian government does not consider the Egyptian community as a minority. This issue has been discussed in more detail in the first chapter of the thesis, but what should be emphasized is that the Albanian government's statement concerning this issue has not changed, even though the consequence of being a minority is not a matter of the state recognition but it is the de facto existence of the minority group.*

### **4.4.3 Conclusion**

Summing up the foregoing survey on the implementation of the international minority rights, it can be stressed that regardless of the achievements of Albania in this regard, the latter should continue its process to implement and to promote the international standards.

Consequently Albania should complete the process of ratifying the international monitoring system provided for in the international instruments such as the complaint procedure before the CERD. Additionally, the international complaint procedure should be promoted and promulgated within the interested individuals and groups of individuals. Albania should also keep on working to realize in practice the rights and standards of the minorities as already mentioned above.

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<sup>330</sup> See further Alpha Abdikeeva and MRG partners, "Roma Poverty and Roma National Strategies: the Cases of Albania, Greece and Serbia" MACRO, Minority Rights Group International, Sep. 2005, page5.

<sup>331</sup> Comments of the Government of Albania on the Opinion of the Advisory Committee of the FCNM, 203, page7, GVT/COM/INF/OP/I(2003)004.



After concluding the examination of the Albanian legal framework on minority rights and the assessment of such legal system with regard to the implementation of the international standards, some conclusions and recommendations will be considered in the coming and final chapter of the thesis.

# 5 Conclusions and Recommendations

The minority groups likewise the majority of the Albanian population begun to enjoy human rights after '90s, the time when the democratic system was established. The challenges have been enormous but the progress made since 1990 will be of little significance if Albania does not undertake more efforts to recognize special rights and employ positive measure to implement the minority rights recognized by the legislation so far. The main problems that the minority and majority have to face with are the difficult economic issues, the low level of the recognition of the human rights in practice and the corrupt practices in everyday life, which subsequently harm the enjoyment of their rights. Besides the foregoing, the minority groups deal with further and different insufficiencies in the implementation of their rights and they have been a marginalized stratum due to that fact. Furthermore, some conclusions and recommendations in that perspective will cover this issue.

This thesis highlighted from its beginning (in the first chapter) a major problem, which the Albanian Government has to face with in relation to the minority groups. The issue regards the lack of accurate statistic about the number of the minority persons who live in Albania. Even such situation was criticised by the Advisory Committee on the FCNM in its opinion in 2002 on the implementation of the FCNM, and by the CERD in its observations in 2003 on the implementation of the ICERD, it has not been resolved. Albania government has not undertaken yet the general national census that could include the ethnic data. Bearing in mind that the accurate statistical data regarding the minority population are necessary, *inter alia*, for the implementation of the minority special rights, for the monitoring of policies in favour of minorities and for the assessment of this implementation, the Albania goverment must carry out a national census as soon as possible.

As already discussed in the third chapter, it is glaring that Albania has made notable progress in the legislative and institutional reform after the regime change in the early 1990s. This progress could be proved by the incorporation into the domestic legal system of the international minority rights' standards and by the ratification of the main international human rights instruments. Even though Albania should continue to complete this ongoing process:

- firstly by ratifying other international human rights instruments including minority ones also, for instance the European Charter for Regional and Minority Languages,
- secondly by making possible for the individuals or groups of individuals belonging to the minority groups to address their claims and alleged violations of their rights to the defined international monitoring bodies. With regard to the forgoing, Albania for instance should make the declaration provided for in article 14 of the ICERD. Therefore, the CERD will have the competence to receive and consider the communications from individuals and groups of individuals within its jurisdiction claiming to be victims of a violation by Albania State of any of the rights set forth in the ICERD. Hence no communication shall be receives by the Committee as far as Albania has not made such declaration yet.
- thirdly by incorporating in the domestic law the international standards already undertaken by the Albanian government, the lack of which can become grounds for hindrance of the implementation in practice of the minority rights. Therefore, the national legislation should stipulate, for instance, rules in relation to the criteria concerning the display of traditional local names, street names and other topographical indications in minority languages intended for the public in compliance with FCNM for example. It also should provide for, as it is said in chapter IV, a specific legislation with regard to the right of the minorities to have effective remedy, in case of the violations of minority rights. Albania should take another legislative initiative with the aim to bring together all the relevant legislation concerning non-discrimination principle into a comprehensive body of legislation aimed at combating discrimination, as the Advisory Committee on FCMN suggested in its Opinion on the implementation of

the FCNM<sup>332</sup>. For that reason a specific and comprehensive law in relation to the non-discrimination principle, which would not only allow the authorities to fill certain gaps in the legislation, but would also give visibility and raise awareness of the Albanian authorities' commitment and policy towards the protection and promotion of the rights of persons belonging to national minorities in Albania<sup>333</sup>. Another improvement with regard to the implementation in practice to the minority rights is related to the enactment of the legal rules that will lay down the rights to use the minority language between national minority persons and the authorities of the local government administration in the areas inhabited.

Besides the need for further elaboration of the above legislative reform, the international minority rights' standards for instance equality, non-discrimination and affirmative action are set out in the domestic legal system. Albeit the domestic legislation lays down the international standards for the protection and respect of the minority rights, the implementation in practice is missing. Therefore, the relevant issue concerning the minority rights, as the survey mentioned in chapter IV, is the improvement of the situation on the implementation in practice of these rights.

The chapter will discuss below the reasons for having such situation, aiming to point out some recommendations concerning the future improvements, which the government and other institutions in Albania have to carry out.

Among various measures, Albania should develop and improve the judiciary system based on the rule of law and the democratic principles of independence and impartiality, to make so possible for the members of the minority groups to file complaints to the courts and ask for judicial remedies in cases of the violations of their rights. On the one hand the judiciary system has been improve due to the qualification of the judges (for instance the establishment of the Magistrate School, special school for training of the judges), the judicial control of administrative practice, and the disciplining and dismissal proceedings for judges etc. On the other hand, many issues

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<sup>332</sup> See Opinion on Albania, Advisory Committee on the FCNM, 2003, page 8, ACFC/INF/OP/I(2003)004.

<sup>333</sup> Ibid, page 9.

remain problematic. Problems are widely believed to remain in such areas as the independence and professionalism of the courts, the enforcement of decisions and the infrastructures needed to support the judiciary, such as the postal services, police and state administration<sup>334</sup>. Widespread corruption also pervades the judicial system<sup>335</sup>. This situation affects the application of legislation in the area of the minority rights as well as in other areas and subsequently jeopardizes the members of the minority groups to enjoy their rights. The situation of the judiciary system becomes consequently the reason why the members of the minority are reluctant to make use of such monitoring body to protect their rights.

The State should also take other measures with regard to the improvement of the implementation in practice of the minority rights, in relation to the presence of members of the minorities in legislative, administrative and judiciary system, especially in the police forces that in practice can discriminate and use unlawful force towards minority members.

Another factor which can imperil the implementation in practice of the minority rights is the general lack of knowledge or serious will on the side of the minority members to use legislative, executive and judicial measures to improve their situation. Human rights education is a key element to improve such situation and promote the minority rights. Measures should be taken in this regards to enhance the awareness of the members of the minority groups.

Bearing in mind the different treatment of the different minority groups, for instance members of Roma minority and Egyptian community are not equal to other members of society, and other minorities, already considered in chapter III, there is no significant commitment of the Albanian state to improve their situation. The members of the Roma minority and Egyptian community figure disproportionately among the poorest segments of Albanian society and suffer an unemployment rate well above the national average, whereas the situation of the Greek and ethnic Macedonian minorities for instance seems to have been positively affected by improved

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<sup>334</sup> Observasion on Albania, Europian Comition Against Racism and Intolerance.

<sup>335</sup> Ibid.

relations between Albania and the governments of Greece and "the Former Yugoslav Republic of Macedonia".

Another recommendation will be given in particular to the deficiencies on the implementation in practice of the economic rights of the minority groups. In that perspective, as the CERD has said in its opinion, the Albanian government should give an end to the tendency not to regard the unfavourable situation in which certain minority groups in Albania live. Albanian government should stop arguing that the social and economic problems encountered by persons belonging to the minorities are the same as those with which the rest of the population has to deal. Therefore, Albanian government has the obligation to improve the economic situation of the whole population but in particular should undertake special programmes to improve the situation of the minority groups, which are the most vulnerable and marginalized part of the society.

Finally, it could be admitted that a general spirit of tolerance between the majority and minority prevails in Albania<sup>336</sup>. Notwithstanding that there are cases that incidents of hostility also occur, from time to time, with regard to minority groups especially Roma and Egyptian communities<sup>337</sup>. Regarding this situation the Albania government should pay more attention to it and take additional measures to tackle this problem, including for example, the education to encourage tolerance and raise awareness of the needs of the minority groups, in particular among professional groups such as law enforcement officers, the judiciary and the media.

The enhancement of the awareness of the population about the minority issues and the difficulties that the minority groups encounter in the society compare to the majority is another important path that the Albanian government should pace.

Finally it can be said that the process of the implementation in practice of the minority rights is an ongoing one and there is always the need to look at it aiming to improve the current situation.

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<sup>336</sup> Advisory Committee of the FCNM, "Opinion on Albania", 2003, page 21. para. 94, ACFC/INF/OP/I (2003) 004.

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