

**THE SLOVAK STATE LANGUAGE LAW
AND THE ACCOMODATION OF MINORITY RIGHTS:
THE IMPACT OF INTERNATIONAL ORGANIZATIONS ON
THE RESOLUTION OF LANGUAGE DISPUTES**

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Introduction

The 1st May 2004 was a momentous day both for the European Union and its ten new member states. For the eight of these states it meant the final recognition of their ‘return to Europe’ after communism. However, the path to achieve accession was not free of obstacles. Several criteria had to be fulfilled, and accordingly, various political and economic reforms had to be adopted and executed in order to qualify for membership. One of such policy areas affected by external pressures was the protection of minorities. Due to the violent ethnic conflicts in the 1990s international interest in ethnic minority populations increased¹ and resulted efforts to internationalize rights and issues surrounding the topic.

Slovakia, one of the democratizing states aspiring to join the EU was subjected to special international supervision in the field of minority protection, as a series of conflicts arose between the titular Slovak nation and the Hungarian national minority. One of such conflicts occurred during the adoption of the “Law on the State Language in the Slovak Republic” (Law No. 270/1995 of Coll.), which regulated the use of languages within the borders of the state. In comparison to the previous act on official language it did not set out the conditions of the use of minority languages. Therefore, there was no legal regulation on when and where the members of minorities were allowed to practice their linguistic rights granted in the Constitution of the Slovak Republic. The case was resolved only four years later, in 1999 by passing the Law on Use of Languages of National Minorities (Law No. 184/1999 of Coll.). The adoption of the law required the involvement of the Council of Europe, the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe and the European Union.

¹ Will Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford : Oxford University Press, 2007), p. 49

In 2009 the issue of state language was raised once again as the Ministry of Culture proposed numerous amendments to the act. The amended law regulated the use of state language with similar rigor as the State Language Law from 1995 by re-introducing high sanctions in case of breach. The law guarantees and respects the linguistic rights of minorities. The Act on the Use of Languages of the National Minorities was limited to the scope of official contact with the administrative bodies, while the amended State Language Law refers to other spheres of communication. Particularly in areas of public communication it created several misunderstandings and ambiguities. This might create disparate and variable treatment of minorities and their languages. Thus, the OSCE High Commissioner on National Minorities became engaged in the dispute of the amended language law. Furthermore, the Council of Europe's Commission for Democracy through Law was requested to investigate the law's compliance with international standards. From that time several measures were taken to clarify the ambiguous legal provisions.

Given the circumstances described above, it is important to consider if the re-opening of the language issue can be considered as a reversal of previous legislation? The firm involvement of international organizations in the case of the initial language law had great impact on the institutionalization of minority rights. However, the recent adoption of restrictive clauses weakens the ability to exercise the linguistic minority rights previously granted in the national legislation, the Framework Convention for Protection of National Minorities² and

² Council of Europe, Framework Convention for Protection of National Minorities, CETS No.: 157, opening for signature in Strasbourg on 1.2.1995, Slovakia signed on 1.2.1995, ratified on 14.9.1995, the treaty has entered into force on 1.2.1998 (hereinafter Framework Convention)

European Charter on Regional and Minority Languages³. Accommodation of minority rights was mostly improved and extended prior to the EU accession as “respect for minority rights” was incorporated into the Copenhagen criteria. Therefore, I consider it relevant to analyze how institutional strategizing of minority rights has changed after joining the EU? Also, what are the implications of adopting basic norms in the pre-accession period on the domestic policies of the new member states?

The thesis intends to examine the impact of the international organizations on the formation of minority policies in Slovakia by comparing the pre- and post-accession period. I aim to place the whole issue of state language law into the wider theoretical framework of international socialization of states into the European international organizations.

The theory of triangular relationship between the home-state, kin-state and national minorities proposed by Rogers Brubaker is often complemented by a fourth actor – international organizations. However, the main argument of Brubaker remains valid, because all of these actors have been perceived as dynamic political fields⁴. The attitudes of the political elites in the home-state, the strategies of the representatives of the national minorities, the involvement of international authorities and the politics of the kin-states are changing. Minority policy is constantly shaped by the interactions of these actors. The decisions made reflect all of these factors. In the following thesis most attention will be paid to the domestic political scene including political elites as representatives of both majorities and minorities; and to the international actors. Focus on the involvement of the kin-state will be limited.

³ Council of Europe, European Charter of Regional or Minority Languages, CETS. No.: 148, opening for signature in Strasbourg on 5.11.1992, Slovakia signed on 20.2.2001, ratified on 5.9.2001, the treaty has entered into force on 1.1.2002 (hereinafter the European Charter)

⁴ Rogers Brubaker, *Nationalism Reframed: Nationhood and the National Question in the New Europe* (Cambridge: Cambridge University Press, 1996), p. 60

During the pre-accession period the EU devoted special attention to the respect of minority rights, despite of the fact that the *acquis communautaire* lacked even reference to minority protection. The Council of Europe and the OSCE High Commissioner provided the substance of requirements and the necessary expertise in this field, while the EU's role was to enforce these rules⁵. I consider it highly relevant to analyze all three international actors as their involvement and impact was rather complementary and hardly detachable from each other.

The mechanisms of influence developed by the cooperation of the three international organizations proved to be quite successful, though not without fault in the pre-accession period. However, after the accession this mechanism has been altered significantly as the EU does not control respect for minority rights anymore. Therefore, the analysis of the post-accession period can reveal the extent of attained socialization in the new member states.

The first chapter of this thesis will be devoted to demonstrating the process of socialization, which constitutes of rule adoption reflecting the main values of international communities and internalization of policy paradigms⁶. The theory tries to exemplify the main influencing mechanisms employed by the international organizations and their potentials to shape the policies of the (prospective) member states.

In this thesis the date of accession is treated as a turning point, which constitutes the essence of the comparison. The second and third chapter will elaborate on the two State Language Laws. After the brief depiction of the scope of the laws, the involvements of the

⁵ Bernd Rechel, 'Introduction', in *Minority Rights in Central and Eastern Europe*, ed. Bernd Rechel (London : Routledge, 2009), p. 4

⁶ Tim Haughton, "When Does the EU Make a Difference? Conditionality and the Accession Process in Central and Eastern Europe." *Political Studies Review* Vol. 5 (2007), p. 233, Frank Schimmelfennig, Stefan Engert, Heiko Knobel, *International Socialization in Europe – European Organizations, Political Conditionality and Democratic Change* (New York : Palgrave Macmillan, 2006), p. 2

international organizations are examined in parallel with the reactions of the domestic political elites and the affects of international pressure on domestic minority policies. I have collected the primary sources necessary for the analysis during my research in the Diplomatic Archives of the Ministry of Foreign Affairs of the Slovak Republic. I have mainly focused on the documents of the Permanent Missions of the Slovak Republic to the OSCE, to the Council of Europe and to the European Union from 1995 to 2000. In addition to this, the specific reports issued by the European Commission, the expert committees of the Council of Europe and the recommendations of the OSCE High Commissioner will be scrutinized.

The fourth chapter will be devoted to the comparative analysis of the engagement of the international organizations in the pre- and post-accession cases. Taking into consideration all external and internal factors, I intend to analyze to what extent did international organizations manage to shape minority policy formulation in the two observed periods.

I will argue that willingness of states to comply with and duly implement the adopted norms decreased after the accession. In contrast, the optimistic and often naive views of the pre-accession period the candidate states are expected to show behavioral change or even ideological shift to pro-minority attitudes through diminishing the use of nationalistic rhetoric. Even in the pre-accession period the commitment to minority rights norms was very fragile. It is widely held that the EU conditionality prompted changes in minority policies. However, it is questionable whether the EU's often inconsistent attitude to minority rights and its contentment with the formal adoption of these norms was successful. Even if it was, we must wonder whether it was effective enough to launch democratic conciliation as a solution to the minority rights issues? And whether the adherence to minority rights in the new member states even after the accession were stable?

This thesis is devoted to examine a recently less-observed post-accession phase of minority protection. The comparative analysis contributes to the study on the integration of post-communist member states into the European international organizations and the impact of external pressure on the institutionalization of minority rights.

1. International socialization of associating states

The 1990s were a decade of democratization in most of post-communist states in Central and Eastern Europe (CEE). During this time period a series of new domestic policies had to be developed to adjust to a new political system. The whole process of policy formulation is influenced by several factors, one of which is the impact of international organizations (IO). The theory of international socialization is especially devoted to provide explanations of how and under which conditions were the international communities able to shape the phase of democratization within CEE states and affect the behavior of these states.

International socialization⁷ is “a process in which states are induced to adopt the constitutive rules of an international community”⁸. The purpose is to spread liberal values and norms, in the expectation norm-conforming behavior will occur within the candidate states. The outcome of the process of international socialization is rule adoption, which is often the essential condition of joining IOs. In general it is held that international socialization is successful when the compliance with the adopted norms is guaranteed by domestic enforcement mechanisms without the pressures of the international communities⁹. However the real success depends on the degree of rule adoption. Schimmelfennig and Sedelmeier assert that there are three types of rule adoption. Formal rule adoption constitutes a transposition of these and often lacks the ‘real’

⁷ The same process is studied by the Europeanization theories. However in order to avoid the fallacies of the term such as the deceptive association with the EU and the transposition of the community law or the biased sentiment that the member states of the organizations are more ‘European’ than the association states. For these reasons I intend to refer to international socialization, which is in several respects a more neutral and correct term.

⁸ Frank Schimmelfennig, Stefan Engert, Heiko Knobel, *International Socialization in Europe – European Organizations, Political Conditionality and Democratic Change* (New York : Palgrave Macmillan, 2006), p. 2

⁹ Ibid., p. 20

implementation. Therefore, it can be considered as partially successful international socialization. The purpose of many socialization agencies is to prompt rule-conforming behavior of states, i.e. behavioral rule adoption. The highest stage of socialization is the discursive rule-adoption, which results in identification with and advocacy of the adopted norms¹⁰. These types of rule adoption are not exclusionary. Judith Green Kelley argues that mere internalization of norms does not generate behavioral change¹¹. While Risse and Sikkink state that adoption of a norm reflect a certain understanding and set of beliefs, which is followed by norm-conforming behavior as well¹².

IOs, as socialization agencies, employ different strategies in order to influence policy changes in the prospective states. Two great categories of influencing mechanisms are distinguished. The first one is the principle of membership conditionality, often defined as the power on incentives, which is based on the rational actor theory. The other is the tool of normative pressure or the power of norms, which is enhanced by constructivist theories.

1.1. The power of incentives

IOs often use their leverage and the advantages of membership as an incentive for the associating states; thus, posing several criteria to be fulfilled before accession. The strategy of membership conditionality is based on the rational behavior of actors and on precise cost-benefit

¹⁰ Frank Schimmelfennig and Ulrich Sedelmeier, eds. *The Europeanization of Central and Eastern Europe*, (Ithaca, NY : Cornell University Press, 2005), p. 7-8

¹¹ Judith Green Kelley, *Ethnic politics in Europe: The power of norms and incentives*, (Princeton, N.J. : Princeton University Press, 2004), p. 30

¹² Ibid, p. 31

calculations. Therefore, the whole pre-accession period represents a bargaining process, where each actor is willing to increase the utilities of the cooperation¹³.

The organizations use rewards to enhance rule adoption. The final reward is membership; however, even during the accession process special assistances, particularly material support is provided to further motivate rule-conforming behavior and anticipate political and economic reforms¹⁴. In contrast, in the case of rule violation the states can be punished. However, in most cases the withdrawal of rewards or suspension of accession negotiation was enough to address the problematic issues. The purpose of international communities is not to coerce any state, but to create such incentives to make external pressure on states more effective.

The main tools of socialization by power of incentives are privileged trade and additional aid, conclusion of association agreements, setting deadline for fulfillment of the conditions and regular monitoring of these actions and continuous negotiations and interactions between the IO and the prospective member states¹⁵.

Due to the asymmetrical interdependence the dominant actors are the IOs. However, the socialization agencies also have to respect certain rules in order to promote socialization. The most determining factors are to set legitimate conditions, to treat the associating state equally and impartially and to act consistently throughout the socialization¹⁶.

Although the principle was often successfully applied during the democratization, its effects are a bit overvalued. In fact it has several limitations. Firstly, the linkage of membership to policy changes is usually efficient only in cases where benefits of norm-conforming are higher than the domestic costs. In policy fields where the political elite view the domestic costs too

¹³ Frank Schimmelfennig, Stefan Engert, Heiko Knobel (2006), p. 19

¹⁴ Judith Green Kelley (2004), p. 38

¹⁵ Ibid., p. 20

¹⁶ Frank Schimmelfennig, Stefan Engert, Heiko Knobel, (2006), p. 24

high, they tend to disregard the requirements and the concerns of the IOs¹⁷. Secondly, it is questionable whether the power of incentive is able to produce long-term changes, that is, whether the policies are further developed after accession. On the other hand, some scholars argue that the pressure from the IOs has limited public debate on concrete policy changes; thus, also limiting the enduring adherence to these norms and policy paradigms¹⁸.

1.2. The power of norms

Some of the IOs prefer to use the power of norms in order to trigger policy changes. The principle is based on the theory of social constructivism. According to this model socialization is driven by the logic of appropriateness, i.e. the states endorse rules, which they consider appropriate and with which they identify themselves¹⁹. Therefore, the purpose of socialization agencies is to convince the states that the norms and values of the community are relevant and then to deploy social influence in order to achieve policy changes.

The IOs are engaged in standard setting, providing training for the officials of the states with the goal of them endorsing the substance and importance of these norms. By signing treaties the interference between the community and the state becomes expanded. The IOs' advisory function is of high relevance during the process of socialization as well as their mediation in case of domestic conflicts. The IOs continuously monitor the implementation of

¹⁷ Ibid, p. 47

¹⁸ Darina Malová, Branislav Dolný, 'The Eastern Enlargement of the European Union: Challenges to Democracy?', *Human Affairs* Vol. 18 (2008), p. 67

¹⁹ Schimmelfennig and Ulrich Sedelmeier (2005), p. 18

these rules by sending expert teams in the field, publishing reports, and issuing official statements and declarations.

The states' compliance with the rules is ensured by means of social reinforcement – using socio-psychological rewards. Non-compliance is rebuked by shaming and shunning. In contrast to this, states conforming to the rules enjoy the social support, recognition and praising of the IOs²⁰.

Schimmelfennig and Sedelmeier argue that rules and policies adopted due to international normative pressure are in the long-term more successful as they “are much less contested domestically. Implementation is more likely to result in behavioral rule adoption and sustained compliance.”²¹ However, the greatest limitation of this model is that persuasion of states is a very complicated task, which without political incentives is difficult to achieve, especially when the state interest overrides norms. Although international recognition is highly important for the states, by means of soft-diplomacy it is much more difficult to achieve any kind of behavioral change.

1.3. Minority policy as the target of socialization strategies

During the 1990s the IOs viewed ethnic conflicts as one the biggest dangers to the security of Europe. The presence of minorities was often perceived as a barrier to democratization processes carrying potentials for political instability²². In polarized societies stability can be restored by institutional accommodation of diversity, which entails group-

²⁰ Frank Schimmelfennig, Stefan Engert, Heiko Knobel (2006), p. 33

²¹ Frank Schimmelfennig and Ulrich Sedelmeier (2005), p. 219

²² Gwendolyn Sasse (2009), p. 3

specific minority rights²³. This was the main strategy the Council of Europe, the OSCE and later the EU chose and tried to pursue during the 1990s. The main expectation was that consolidation of democracy and adoption of minority rights norms would lead to democratic conciliation of minority issues. Thus, decreasing the use of nationalism as a tool of political mobilization and improving majority-minority relations.

Minority policy is often presented as a crucial concern of national politics, as the political elites tend to perceive minority issues as a threat on the sovereignty and stability of the state. Such perceptions were even more prevalent after the fall of the communism as nationalism was revived. Titular nations tended to engage in nation-building, while national minorities were claiming more – sometimes even collective – entitlements. In such a situation the IOs faced the very difficult task of imposing any kind of influence on the accommodation of minority rights. Each of the three IOs in the focus of the thesis employed different strategies and later on represented different roles in their joint action in the field of minority rights.

1.3.1. Organization for Security and Cooperation in Europe (OSCE)

The OSCE can be considered an inclusive IO as there are no hard conditionalities required to join the community except the geographical location of the state. The organization's concern with the minority issues were revealed early in 1990 with the conclusion of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE²⁴. Its engagement was deepened by the creation of the mandate of the High Commissioner on National Minorities (High Commissioner) in 1992 on the Helsinki Conference of the

²³ Arend Lijphart in Gwendolyn Sasse (2009), p. 3

²⁴ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, concluded in Copenhagen, 29 June 1990

Organization for Security and Cooperation in Europe. The commissioner's main task is to become involved in intra- or interstate conflicts concerning national minorities as well as prevent the escalation of the conflict by initiating dialogue and promoting confidence and cooperation²⁵.

The OSCE and the High Commissioner promote the means of normative pressure – persuasion and social influence²⁶. The High Commissioner gets involved on a case-by-case basis. Although his authority is high and his expertise well-respected, his recommendations are not as effective as expected. They are not legally binding and the adoption of the recommendations depends highly on the member states, causing them oftentimes to be disregarded²⁷.

1.3.2. Council of Europe (CoE)

Although CoE initially implied membership conditionality, such conditions were lowered to mere commitments to change policies in the future. The logic behind easing the membership criteria was to make the states feel welcomed in the international community with the expectation that once they are included, they would be more willing to adapt to the new rules²⁸. This led to a decline of organizational leverage, as many illiberal states were admitted and the CoE was unable to enforce its own rules and standards.

The high credibility of the CoE in the protection of human rights is mainly accredited to the European Court of Human Rights, which is unique in its character and has earned the

²⁵ Diana Chigas, Elizabeth McClintock and Christophe Kamp, "Preventive Diplomacy and the Organization for Security and Cooperation in Europe: Creating Incentives for Dialogue and Cooperation," in *Preventing Conflict in the Post-Communist World*, eds. Abraham Chayes and Antonia Handler Chayes (Washington, D.C.: The Brookings Institution, 1996), p. 51

²⁶ Judith Green Kelley (2004), p. 15

²⁷ Ibid., p. 17

²⁸ Milada Anna Vachudova, *Europe Undivided: Democracy, Leverage, and Integration After Communism* (Oxford : Oxford University Press, 2005), p. 132

respect of member states. However, minority rights are not enforceable in front of the court. In this field the CoE, similar to the OSCE, employs the power of norms. It is mostly engaged in standard setting. In the field of minority protection two instruments are highly relevant – the European Charter for Regional or Minority Languages²⁹ and the Framework Convention on the Protection of National Minorities³⁰. The states which ratified the treaties are continuously monitored by the Advisory Committee and the Committee of Ministers respectively.

In addition, the European Commission for Democracy through Law (Venice Commission) was created to assist states in structuring constitutionalism through normative and advisory activities and mediation³¹. Its involvement concerns minority issues as well.

1.3.3. European Union

The EU incorporated minority rights as a condition of accession despite the fact, that the community law did not contain any reference to the protection of minorities at all³². As a result it was often accused of applying double standards, which differentiated the old member states and the new associating states. Due to the absence of EU minority policies, the European

²⁹ Recently 25 out of 47 member states have ratified the charter. The condition of entering into force was the ratification by at least five member states. It took six years while the criterion was met.

³⁰ Recently 39 out of 47 member states have ratified the Framework Convention, however three years lapsed while the convention entered into force as the requirement was to be ratified at least by twelve member states.

³¹ Giorgio Malinverni, “The Venice Commission of the Council of Europe”, *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 96 (MARCH 13-16, 2002), p. 390

³² Gabriel N. Toggenburg, ‘Minority Protection in a Supranational Context: Limits and Opportunities’ in *Minority Protection and the Enlarged European Union: The Way Forward*, ed. By Gabriel N. Toggenburg (Budapest: 2004), p. 7

Commission closely cooperated with the CoE and the High Commissioner in requiring the standards established by these organizations.

The three organizations perfectly complemented each other. The combination of the two mechanisms of influence were employed during the pre-accession period. The CoE and the High Commissioner resorted to the power of norms, while the EU applied the power of membership incentive. Kelley rightly observes that “the aim [of conditionality] is to lure government to do something it would not have chosen to do without the offer of payoff”³³. This assumes the enforcing role of the EU in minority policy changes in the pre-accession period and explains the rise of leverage of the formerly mentioned organizations as well.

The EU was quite successful in prompting states to adopt and extend minority rights. However it often failed to enforce the real implementation of these laws. As demonstrated in the reports of the European Commission (EC), where more focus is devoted to the formal, legislative requirements as opposed to the implementation and its effect on the minority members. In contrast to other criteria, in the field of minority rights the EU monitoring mechanism was not well-developed, which resulted inconsistency and ad hocism³⁴. The EU monitoring mechanism will be scrutinized in details in the following chapters.

Despite all of its limitations the EU contributed to moving the issue of accommodating minority rights to the center of attention in many of the associating states. Thus, they slightly achieved rule adoption to a certain degree. However Gwendolyn Sasse raises a

³³ Judith Green Kelley (2004), p. 38

³⁴ James Hughes, Gwendolyn Sasse, ‘Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs’ *Journal of Ethnopolitics and Minority Issues in Europe*, Issue 1/2003, p. 16

highly important question as to “whether the EU has created a certain momentum which carries over into the post-accession period”³⁵.

1.4. The domestic political scene

The level of adoption and commitment to the rules of international communities depends on the associating state, respectively on the political elites. Rule adoption can be constrained by several factors – especially in the case of minority protection – which takes priority over the international norms. Bernd Rechel primarily considers the ethnic composition of the state; historical legacy and pattern of transition; the state nation-building and use of nationalism by the political elite; state capacity; party constellation; the presence of minority parties and minority NGOs; the public opinion and popular attitudes toward the minorities; and minority rights as the most influential factors³⁶.

Kelley also concludes that the domestic opposition can easily constrain rule adoption if it is perceived domestically to be more costly than the (social or material) benefits provided by the socialization agencies. However, the political opposition, vibrant civic society and firm involvement of veto players have the potential to influence decision-making to a more conformist path³⁷.

In the following chapters I turn to the specific case of language laws in Slovakia and elaborate on the involvement of IOs in the disputes. I will then continue by analyzing the impact

³⁵ Gwendolyn Sasse, “Tracing the construction and effects of EU conditionality”, in *Minority Rights in Central and Eastern Europe*, ed. Bernd Rechel (London : Routledge, 2009), p. 19

³⁶ Bernd Rechel (2009), p. 5

³⁷ Frank Schimmelfennig and Ulrich Sedelmeier (2005), p. 16

of the employed socialization strategies on the development of minority policies and on the current tendencies in the accommodation of minority rights.

2. Slovakia's path to the European Union

The 1st of January 1993 is the date of creation of the Slovak Republic. This gaining of independence involved nation-building efforts and the articulation of nation-state character. The political elites preferred to follow “the traditional unitary nation-state model and pursued centralized territorial-administrative control of the institutions of national reproduction”³⁸, which reveals in the Preamble of the Constitution of the Slovak Republic as well. Besides nation-building, Slovakia intended to establish and, later on, strengthen its relations with IOs as well. Although one project does not exclude the other, the international organizations insisted on basic democratic norms and principles, which tended to pose limits to the scope of nation-building.

In 1993 Slovakia joined the CoE and the CSCE (now OSCE) and became an EC/EU associate by signing the Europe Agreement³⁹. Despite the high interests in joining these IOs, the prospects of Slovakia's accession to the EU decreased year by year due to the domestic political conditions. The IOs proposed several changes to achieve consolidation of democracy in Slovakia. However, the government,⁴⁰ led by Vladimír Mečiar, was inclined towards authoritarian means of governance and disregarded the division of power, rule of law, or respect for minority rights. They manifested only limited interest in fulfilling the IOs' requirements. In response to such non-compliance with democratic principles the EU issued *demarches* in May

³⁸ Zsuzsa Csergo, *Talk of the nation : language and conflict in Romania and Slovakia* (Ithaca : Cornell University Press, 2007), p. 26

³⁹ Europe Agreement – association agreement between the EU and the associating states. The agreement was rather trade agreement. However the political condition to respect democratic principles and human rights was incorporated as well, which could have been the reason for suspension of accession process. Despite of this the EU focused mostly on the compliance with trade provisions instead of the political criteria (Vachudova, p. 126)

⁴⁰ The government was constituted of the populist party Movement for Democratic Slovakia (HZDS), the extreme right-wing Slovak National Party (SNS) and the Association of Workers of Slovakia (ZRS).

1994 and October 1995 to warn the Slovak political elite of the risks of suspension of its cooperation with the EU⁴¹. The Slovak government did not take seriously these demarches, as they were convinced of Slovakia's particularly advantageous geopolitical position, which according to them would assure accession to the EU⁴². The Slovak government often applied formal compliances – promising but not executing improvements in policy areas which were integral to the sources of their political power. Or they used selective rule-conformance – transposing the *acquis*, but simultaneously violating basic democratic principles⁴³.

The respect for human and minority rights was one of the main concerns of the EU regarding the political conditions of accession. Responding to the requirement of the EU in 1995, Slovakia signed and ratified the Framework Convention on the Protection of National Minorities. In the same year after long-lasting negotiations Slovakia and Hungary signed Bilateral Treaty on Good-Neighborliness and Friendly Cooperation. However, Slovakia attached its reservations regarding the collective rights of minorities and delayed the implementation of the treaty.

Soon after the second *demarche* was delivered the National Council of the Slovak Republic adopted the Law on the State Language of the Slovak Republic (SLL), which generated doubts about Slovakia's commitment to democratic principles in respect to the protection of national minorities.

⁴¹ Frank Schimmelfennig, Stefan Engert, Heiko Knobel (2006), p. 113

⁴² Ibid., p. 115

⁴³ Milada Anna Vachudova (2005), p. 155

2.1. The Law on the State Language of the Slovak Republic

During the adoption of the Law on the State Language of the Slovak Republic⁴⁴ the use of nationalistic rhetoric was dominant. The language issue was linked to the sovereignty of the state. The law declared the Slovak language:

“the most important attribute of the Slovak nation’s specificity and the most precious value of its cultural heritage, as well as an expression of sovereignty of the Slovak Republic and a general vehicle of communication for all its citizens”⁴⁵.

The law polarized the political scene – distinguishing pro-Slovak and anti-Slovak language camps. This categorization was reinforced so much that the roll-call vote on the legislation in the National Council was broadcasted in the Slovak Television. One of the HZDS deputies even stated that “anyone who votes against that bill is against the fulfillment of the Slovaks’ desires and deserves public contempt”⁴⁶. The law was passed on the 15th of November 1995 by an overwhelming majority – 108 deputies out of the 140 present members of the Parliament supported it⁴⁷. Only the representatives of the Hungarian ethnic parties voted against the law. The opposition parties were divided on the question – either they voted in favor of or abstained from voting on the bill. The Christian Democratic Party (KDH) submitted the law to the Constitutional Court for supervision.

⁴⁴ The Law on the State Language of the Slovak Republic⁴⁴ (Law No. 270/1995 of Coll.), adopted on 15 November 1995, entered into force on 1 January 1996, Art. 10 is enforceable from 1 January 1997

⁴⁵ Ibid.

⁴⁶ Zsuzsa Csargo (2007), p. 52

⁴⁷ Telegram – Resolution of the EP on the situation in SR – No. 3550/95 in in Diplomatical Archives of the Ministry of Foreign Affairs of the Slovak Republic (DA MZVSR), Permanent Mission of Slovak Republic to the European Union Brussels 1995, No. 305-104, Folder no. 34

The SLL aimed at strengthening the status of the state language, making it superior to all other languages (Art. 1). The previous Act on Official Language (Law no. 428/1990 of Coll.) in line with Art. 34 par. 2b of the Constitution entitled members of minorities to use the minority language in official communication in municipalities where minorities exceeded 20% of the population. However, the adopted language law repealed the whole act. Hence, the 20% threshold ceased to exist. Art. 1 par. 4 clearly stated that the legal guarantees of linguistic rights of minorities were stipulated in other legislation. This provision was incorporated into the law despite the fact that no such legislation existed in the Slovak Collection of Laws, creating a legal vacuum.

The law was based around the official communication. The law obliged state authorities, territorial self-government authorities, and other bodies of public administration to use state language in official communication. The same was valid for the official communication of employees of transportation services, members of armed forces, armed security corps, and fire brigades. The proof of the command of Slovak language was requirement of employment in the public administrative bodies. All legal acts, government ordinances, and regulations issued by any of state authorities had to be written in the state language. Similarly, citizens were obliged to use the state language in written communication intended for public-legal administration as well⁴⁸. The use of state language was prescribed at the meetings of governing boards. The whole documentation of public administrations – including the information intended for the public – was required to be in Slovak as well. In the absence of a law on minority language-use, the minority languages were totally excluded from the official communication, both in oral and

⁴⁸ This provision was later on held unconstitutional by the Constitutional Court of the Slovak Republic. See below p. 28

written form. The members of minorities had no access to any kind of document issued by the state authorities in the minority language. In addition, the proof of Slovak language skills could have negative effects on the employment opportunities of members of national minorities in the civil service.

Art. 4 concerned language use in education. The main change the law introduced was the compulsory use of the state language in the entire pedagogical documentation. In comparison to the previous practices, all official documents had to be issued in the state language even in schools with minority language instruction.

Moreover, the law intended to ensure the use of state language in the public sphere as well. The requirement for the use of state language mainly concerned documentations of associations, societies, political parties, political movements and companies. The use of state language was mandatory especially in documents with legal effect in employment and related working relations. The law required the labelling of the products, the instructions to the goods to be presented in state language. Information intended for the public had to be displayed primarily in the state language. Other language versions could follow as well as long as the fonts were of the same size (Art. 8.).

The law assigned the Ministry of Culture to supervise compliance with the law. The law prescribed seven specific provisions⁴⁹, the violation of which could entail financial sanction, unless the compliance with the law is restored within a pre-determined time limit. Fines are imposable on authorities, legal entities or natural persons-entrepreneurs with fines reaching up to half million Slovak Crowns (approximately 16500 EUR). The financial sanction was determined

⁴⁹ Art. 4 par. 4, Art. 5 par. 2 and 4, Art. 8 par. 1, 3, 5 and 6

on the basis of the seriousness of the breach. The high sanction proposed by the law had deterring effect, especially as most of the citizens were not well-informed about the law.

2.2. International responses, recommendations and requirements

Even during the preparation of the draft IOs demonstrated their interest in the issue. In June 1995 Mrs. Gunther, a member of the European Parliament, initiated the monitoring of Slovakia's compliance with the Europe Agreement, especially in regard the rights of minorities. According to her the law on the state language would lead to systematic discrimination of Hungarian minority language⁵⁰.

In a letter to the Minister of Foreign Affairs, the OSCE High Commissioner, Max van der Stoel, dealt with the proposed draft on the state language. He emphasized the importance of maintaining balance between the protection of the state language and the guaranteed linguistic rights of the members of the minorities as emphasized in international conventions. Van der Stoel recommended to incorporate a reference to Slovakia's international commitments; and to restore the conditional provision under which the use of minority language in official contact is enabled as guaranteed in the Constitution. Van der Stoel drew attention to the possible misinterpretations of certain provisions and suggested their reformulation. These mostly concerned the requirement to master the state language from university professors, or the use of state language by teachers during instructions. He also referred to the provisions dealing with the supervision of the law. According to him a separate document or decree should have detailed the

⁵⁰ Letter of Ján Lišuch to Vojtech Tkáč – No. 2402/95 – in DA MZVSR, Permanent Mission of Slovak Republic to the European Union Brussels 1995, No. 305-104, Folder no. 34

way of implementation⁵¹. Some of his recommendations had been incorporated into the law. However, the most remarkable suggestions were disregarded.

The day after the SLL was adopted the European Parliament (EP) passed a Resolution on the need to respect human and democratic rights in the Slovak Republic. The resolution clearly stipulated if Slovakia continued to “show insufficient respect for democracy, human and minority rights and the rule of law” on the basis of the Europe Agreement the EU might be forced to suspend the flow of assistances and the cooperation between them⁵².

The Slovak delegation in Brussels very quickly responded to the motion and tried to prevent the adoption of the resolution by sending an open letter expressing procedural reservations to the resolution and denying the accusations. It stated that in opposition to the clauses of the Europe Agreement they were deprived of the possibility to provide relevant information and discuss the issues mentioned in the resolution. In relation to minority rights, they assured that the SLL did not interfere with the linguistic rights of minorities⁵³.

The issue of minority languages was often raised in the forums of IOs⁵⁴. Several speeches were delivered by the representatives of the Slovak delegations. In defense of the SLL it was often asserted that the adoption was necessary in order to ensure effective functioning of the state and to guarantee general linguistic communication within the state. The government had

⁵¹ Letter of Max van der Stoep to Juraj Schenk, dated on 24 August 1995 in the Hague – Ref. HC/9/95, in DA MZVSR, Permanent Mission of Slovak Republic to the OSCE Vienna 1995, No. 306-131, Folder no. 24

⁵² Telegram – Resolution of the EP on the situation in SR – No. 3550/95 in DA MZVSR, Permanent Mission of Slovak Republic to the European Union Brussels 1995, No. 305-104, Folder no. 34

⁵³ Ibid.

⁵⁴ It has to be added that Hungary as the kin-state of the Hungarian national minority of Slovakia tried to generate discussions on the issue and appealed to the IOs to get involved in these conflicts.

never admitted that the SLL might have infringed upon the rights of members of minorities, which were granted by the Constitution and other binding international conventions. They argued that the extension of these rights, which the Hungarian national minority coveted, would lead to linguistic and ethnic separatism and threaten the integrity of the state. The representatives of the Slovak delegations tried to legitimize the law by stating that the CoE expert committee as well as the OSCE High Commissioner was involved in the preparation of the law and that their recommendations had been taken into account⁵⁵.

Although all of the IOs recognized the legitimacy of the state to enact regulations on the use of official or state language, they insisted on the adoption of a law on the use minority languages. They argued that a legal vacuum was created by repealing the provision on the use of minority languages in official contact, which was guaranteed in the Constitution of the Slovak Republic. Art. 34 par. 2b of the Constitution stipulates that the details of the application of these rights are covered by a separate legal act. The law often referred to other separate legal acts governing the respective issues. However, the legal stance of such laws in relation to the SLL was not clearly specified. The EU especially objected that the SLL did not comply with the Bilateral Treaty with Hungary, which required one general law on the linguistic rights of minorities.

The government assured both the CoE and EU that they would propose a law on the use of minority languages. The Minister of Foreign Affairs early in December 1995 responded to the objections of the High Commissioner that the law on the use of minority languages was

⁵⁵ The High Commissioner in one of his letters to the Minister of Foreign Affairs confirmed that some of his recommendations were taken into account, however the most substantial arguments for the incorporation of provision on the conditions of minority language-use were disregarded

already under preparation⁵⁶. However, this willingness soon changed. In April 1996 the Minister of Foreign Affairs announced that as long as the rights of minorities were covered in various legal acts, the government did not consider it relevant to enact a separate legislation on minority language-use⁵⁷.

During the implementation of the law several issues evolved mostly related to the Hungarian minority. In the beginning of 1997 the Ministry of Education prohibited the issuance of bilingual school certificates on the basis of the SLL. Schools with minority language instruction were obliged to issue school certificates exclusively in Slovak language. Hungarian civic organizations organized public protests. Several teachers of Hungarian nationality refused to issue the certificates only in Slovak and as a result two head-masters were dismissed⁵⁸. Bilingualism of documentation was banned. Even bilingual stamps had to be changed.

On the basis of the clauses of the SLL the Ministry of Culture decreed the use of Slovak and English language in all museums in Slovakia, constraining the use of minority languages⁵⁹.

In April 1997 the OSCE High Commissioner, Max van der Stoep, and the Secretary General of the CoE, Daniel Tarschys, visited Slovakia. Both visits proved to be for the purpose of information collecting. Their discussions with the representatives touched upon similar topics. In contrast the domestic tensions, the Slovak authorities continued to pretend openness to extend

⁵⁶ Letter of Juraj Schenk to Max van der Stoep, dated on 18 December 1995 in Bratislava, in DA MZVSR, Permanent Mission of Slovak Republic to the OSCE Vienna 1995, No. 306-131, Folder no. 24

⁵⁷ Judith Green Kelley (2004), p. 129

⁵⁸ Commission of the European Communities, '1998 Regular Report on Slovakia's Progress Toward Accession', Brussels, p. 12.

⁵⁹ István Lanstyák, *A magyar nyelv Szlovákiában* [The Hungarian Language in Slovakia] (Osiris Kiadó – Kalligram Kiadó – MTA Kisebbségkutató Műhely, Budapest-Pozsony, 2000), p. 102

language rights of minorities. Both Mr. Vollebaek and Mr. Tarschys were informed about the concerns of the government in adopting the European Charter on Regional and Minority Languages and their qualms in regard to the law on the use of minority languages. The Secretary General raised the possibility of common assistance of the EU, OSCE High Commissioner and CoE in preparation of the legislation on minority language-use⁶⁰.

During the High Commissioner's meeting with the President of Slovakia, Michal Kováč, the President admitted that certain provisions of the SLL could have curtailed the rights of persons belonging to national minorities. According to him the government delayed enactment of the law, because they could not reach a consensus on it. He also expressed that the activism of the Hungarian political parties heightened the tensions within Slovakia. However, fortunately this was present at the level of formal politics and not in everyday cohabitation⁶¹.

The Deputy Prime Minister, Katarina Tóthová, during her talk with Mr. Tarschys stated that the political situation was not appropriate for passing such a law, as insufficient support for it existed. In opposition to the President she claimed that the SLL had no negative implications as it was purported. Moreover, she argued that the SLL, by repealing the 20% threshold for the application of linguistic minority rights, extended the entitlements of persons belonging to minorities on the basis of Art. 2 par. 3 of the Constitution – which states anyone can act in a way not forbidden by law.

On 15 July 1997 the Agenda 2000 – Commission Opinion on Slovakia's Application for Membership of the European Union was published. A separate subchapter was devoted to

⁶⁰ Report on the visit of the CoE Secretary General Daniel Tharschys in Slovakia from 13 to 16 April 1997, No. 123.248/97-OLPR, in DA MZVSR, Permanent Mission of Slovak Republic to the CoE Strasbourg 1997, No. 305-111, Folder no. 11

⁶¹ Information on the visit of OSCE High Commissioner, Max van der Stoel in Slovakia, 15-16 April 1997 – No. 109.98/97-POLF, in DA MZVSR, Permanent Mission of Slovak Republic to the OSCE Vienna 1997, No. 306-131, Folder no. 72

minority rights and protection of national minorities. The EC noted that minority rights were primarily guaranteed by international conventions such as the Framework Convention. In relation to the SLL the EC objected the delay of the adoption of the law on the use of minority languages, despite the promises of the government. The EC ascertained that the use of minority languages was covered in certain fields, but there was no general legislation on it. The EC concluded that Slovakia did not qualify for opening accession negotiations⁶². This was the first time the government was shocked of their exclusion from the first group of associating states. The government responded by depicting the report unbalanced. Vladimír Mečiar blamed the EU and claimed that even if the government would have passed the law on the use of minority languages it would not be sufficient for the EU⁶³.

The EC highlighted, however, that this did not mean the exclusion of Slovakia from the whole enlargement. Therefore the three IOs soon agreed on their joint action to provide legal expertise in order to enhance the preparation of the legislation on the use of minority languages. In October the High Commissioner visited Slovakia. On behalf of all three institutions he emphasized the importance of adopting the minority language law. In addition, he highlighted that it was in the interest of Slovakia to resolve the issue in order to reduce the tensions between the titular nation and national minorities⁶⁴.

In November the Slovak government issued a Memorandum concerning the questions relating to the use of languages of persons belonging to national minorities. The memorandum enumerated legislations covering the issue of minority languages and invited the three IOs to

⁶² Agenda 2000 – Commission Opinion on Slovakia's Application for Membership of the European Union, concluded on 15 July 1997 in Brussels, DOC/97/20

⁶³ Judith Green Kelley (2004), p. 130

⁶⁴ Information on the visit of OSCE High Commissioner, Max van der Stoep in Slovakia, 13-15 October 1997 – No. 152.780/97-POLF, in DA MZVSR, Permanent Mission of Slovak Republic to the OSCE Vienna 1997, No. 306-131, Folder no. 72

examine the legal stance of minority languages in Slovakia and make suggestions if improvements were necessary. The representatives of the CoE welcomed the memorandum, although they considered its delivery delayed⁶⁵. In contrast, according to the EU the Memorandum showed the unwillingness of the government to adopt separate legislation. Its intention was to convince IOs that the current pieces of legislation constituted sufficient regulation of the use of minority languages.

In the beginning of December both Daniel Tarschys and Max van der Stoel sent their replies to the Memorandum⁶⁶. Both authorities expressed their willingness to work with and contribute to the resolution of the issue. These replies were aimed to provide a basis for future discussions by elaborating on the main objections to the SLL – the lack of regulation of the use of minority languages in certain fields, especially in official communication, the unclear standing of the current legislations concerning minority language vis-à-vis the SLL, etc. Both of them referred to the ruling of the Constitutional Court, which found Art. 3 par. 5⁶⁷ unconstitutional. Therefore, the provision was repealed⁶⁸. In respect to the issue of school certificates, the High Commissioner suggested to ensure the freedom to issue school-certificates in the language of minorities⁶⁹.

⁶⁵ Record of Conversation, 24.11.1997 - Ref. 1334/97 in DA MZVSR, Permanent Mission of Slovak Republic to the Council of Europe Strasbourg 1997, No. 110-100, Folder no. 11

⁶⁶ Interestingly quarter of the two texts is completely identical.

⁶⁷ Art. 3 par. 5 stipulated that the use of state language is mandatory in written communication intended for public-legal administration

⁶⁸ Ruling of the Constitutional Court of the Slovak Republic, delivered on 28.8.1997 in Košice, No. PL. ÚS 8/96

⁶⁹ Letter of Max van der Stoel to Mrs. Zdenka Kramplová, Minister of Foreign Affairs, dated on 2 December 1997 in the Hague – Ref. 682/97, in DA MZVSR, Permanent Mission of Slovak Republic to the OSCE Vienna 1997, No. 306-131, Folder no. 87; Letter of Daniel Tarschys to Zdenka Kramplová, dated on 1 December 1997 in Strasbourg – 1380/97-EP in DA MZVSR, Permanent Mission of Slovak Republic to the Council of Europe Strasbourg 1997, No. 305-111, Folder no. 11

The IOs, especially the EC changed its attitudes toward Slovakia. Before the meeting Mrs. Golberg – expert representing the EC asserted that being aware of the low support for the adoption of separate act, she would not initiate such a solution⁷⁰. During the meeting of CoE, EC and OSCE experts in March 1998 all of the institutions stated many times that they were interested in finding a solution only if the government was willing to take the necessary steps, otherwise their involvement would be meaningless. The attitude of the IOs clearly demonstrated that they were not willing to continue struggling with the government. The meeting was not successful, as no real consensus was reached on the issue⁷¹.

Taking into account the approaching parliamentary elections the CoE intended to abstain from the pre-election campaigns. In contrast, the EU took the opposite stance, supporting the opposition by all available means. Its condemnation of Mečiar and his way of governance became obvious and was an important tool for the opposition parties in order to discredit the coalition. Vachudova argues that although the EU did not manage to compel policy changes by its demarches and criticism, it created fertile ground for the opposition and civic society to contest the power of the coalition⁷². Civic activism increased and intensified in 1998. The so called ‘Civic Campaign OK ‘98’ tried to raise civic consciousness by various means. Many of these activities were co-financed by the IOs through several grants for democratization and other

⁷⁰ Consultation on the issue concerning the use of minority languages, 23.1.1998 – No. 1158/98, in DA MZVSR, Permanent Mission of Slovak Republic to the European Union Brussels 1999, No. 305-103, Folder no. 68

⁷¹ Information on the meeting of experts of the CoE, EC, OSCE and the SR on questions concerning the use of languages of national minorities, 9-10.3. 1998, Bratislava, in DA MZVSR, Permanent Mission of Slovak Republic to the OSCE Vienna 1998, No. 306-131, Folder no. 87

⁷² Milada Anna Vachudova (2005), p. 172

sources⁷³. Although HZDS proved to be the most popular party (27% of votes) in the Parliamentary elections, the moderate parties managed to create a coalition, which was constituted by Slovak Democratic Coalition (SDK), Party of Civic Understanding (SOP), Party of Democratic Left (SDL) and the Party of Hungarian Coalition (SMK). The coalition represented a high degree of pro-EU attitudes. Accession to the EU was the most important priority of the coalition. On the agenda of the government was democratization of the country, introducing the necessary economic reforms, and fulfilling the EU requirement in order to qualify for membership as soon as possible.

2.3. The Law on the Use of Languages of National Minorities

The Council Decision of the 30th of March 1998 provided clear instruction for the new government in identifying the short- and medium-term objectives. Among the short-term objectives appeared the enactment of “legislative provisions on minority language-use and related implementing measures.”⁷⁴ The improvement of policies and institutions for the protection of minorities was enlisted to the medium-term objectives. Therefore, accommodation of linguistic rights of minorities was one of the primary conditions of Slovakia’s association to the EU.

The Dzurinda government adopted political and economic reforms with remarkable speed. Prime Minister Mikuláš Dzurinda in his letter to the High Commissioner expressed the concerns of the government in solving questions related to national minorities and adopting the

⁷³ Ibid., p. 173

⁷⁴ Council Decision of 30 March 1998 on the principles, priorities, intermediate objectives and conditions contained in the accession partnership with the Slovak Republic (98/262/EC)

European Charter. He requested that the High Commissioner to continue his involvement and contribute to the improvement of minority protection in Slovakia⁷⁵. During the fifth EU-Slovak Association Council the EC urged the Slovak representatives to resolve the issue of linguistic minority rights⁷⁶.

The preparation of the law was assisted by the experts of CoE, EC and OSCE High Commissioner. It soon turned out that the coalition was divided on the issue of minority language-use. The coalition partners could not reach a consensus on the scope of the law, nor on the threshold size for the application of the law. The tension between the SMK and SDL so much increased that the latter even threatened to leave the coalition. The Slovak moderates proposed regulation of the minority language-use in official contact and determined 20% threshold, reflecting the pre-1995 practice. The Hungarian party was dissatisfied with the draft as they conceptualized a comprehensive act on minority language-use, which regulated the field of education, culture and media. They proposed to lower the threshold to 10%. In the end, due to the mediation of the High Commissioner, some propositions of the Hungarian party were incorporated into the law⁷⁷.

The pressure on the government was enormous, as the adoption of the law was the last requirement Slovakia needed to fulfill in order to open association negotiations with the EU. The draft was presented in the National Council on the 23rd of June 1999. In the meantime, the

⁷⁵ Letter of Mikuláš Dzurinda to Max van der Stoep, dated on 12 November 1998 in Bratislava, Ref. HCNM.GAL/11/98 in DA MZVSR, Permanent Mission of Slovak Republic to the OSCE Vienna 1998, No. 306-131, Folder no. 87

⁷⁶ Conclusions of the 5th SR-EU Association Council meeting, 28.1.1999, No. 1182/99, in DA MZVSR, Permanent Mission of Slovak Republic to the EU Brussels 1999, No. 305-103, Folder no. 74

⁷⁷ Zsuzsa Csergo (2007), p. 100

leaders of the opposition pursued nationalist mobilization against the law. They collected signatures for a referendum⁷⁸ on minority language legislation and organized public demonstrations against it⁷⁹. Despite of the numerous remarks the law was adopted on the 10th of July 1999 without the support of the SMK.

The purpose of the Law on the Use of Languages of National Minorities⁸⁰ was to set the conditions under which members of national minorities could practice their rights to use minority language in official contact. Art. 2 par. 1 determines that in municipalities, where the rate of persons belonging to national minorities exceeds 20% of the population the use of minority languages on official communication is allowed. The members of national minorities are entitled to submit their requests in the minority language and public administrative bodies are obliged to respond in the minority language in addition to the state language. The public administrative bodies are required to make available its resolutions and official forms in the minority languages if requested. According to Art. 3 minority languages can be used at the meetings of governing boards if all of participants consent to it. In municipalities meeting the above-mentioned conditions the representatives of the local administrative bodies are entitled to use the minority language. The interpretation has to be ensured by the municipality. Art. 4 permits these municipalities to display minority language equivalents of the geographical denominations and to exhibit important information – warnings, security or health related information – in the language of minorities. The employees of public administrative bodies are

⁷⁸ The referendum was rejected by the President as Constitution prohibits holding referendum on human rights issues

⁷⁹ Zsuzsa Csergo (2007), p. 125

⁸⁰ Law on the Use of Languages of National Minorities (Law. No. 184/1999 of Coll.), adopted on 10 July 1999, entering into force on 1 September 1999

obliged to use the state language in official contact and they may use the minority language as well. The employees are not required to speak the minority language; however, the public administrative body has to ensure the necessary conditions to enable the use of minority languages. The law repealed Art. 10 of the SLL.

The law reflects a minimalist approach toward the linguistic rights of minorities and a limited inclusion of the minority languages. It re-introduced the pre-1995 practice. The law was often criticized especially by the Hungarian national minority, who claimed that the law did not, in fact, ensure the right to use the minority language as it is conditioned by several criteria⁸¹. Furthermore, they complained that due to the general 20% threshold linguistic rights are practicable only at local level – in bigger towns and centers of counties and regions, the threshold is hardly reached. It is often mentioned that international pressures dominated the preparation of the law more than any real effort to improve the protection of linguistic minority rights⁸². The adoption of the law complied with the constitutionally guaranteed entitlements. However, it is questionable whether the law sufficiently responded to the problems members of national minorities faced.

The EU welcomed the adoption of the law. Three days after the enactment of the law the EC announced that Slovakia was allowed to join the so called ‘fast-track group’ at the end of

⁸¹ István Lanstyák (2000), p. 104

⁸² Farimah Daftary and Kinga Gál, *The new Slovak Language Law: Internal or external politics?* (European Center for Minority Issues, 2000), p. 54

the year⁸³. The High Commissioner also approved the law. He considered it as an important step forward, but admitted that further measures were needed as well⁸⁴.

In the Report on Honouring of obligations and commitments by Slovakia the CoE positively assessed Slovakia's progress as well. Nevertheless it objected that the absence of one recommended provision intended to ensure legal certainty, as various legislations existed on linguistic rights of minorities. The CoE expressed its discontent that the law did not cover more diverse fields, especially education. Therefore, it suggested adoption of further legislation. It denoted that problems regarding the freedom of expression deriving from the SLL needed to be addressed as well⁸⁵.

2.4. Monitoring of the implementation of the law

In its 1999 Report the EC welcomed Slovakia's progress both in institutional developments, such as the establishment of the post of Deputy Prime Minister for Human and Minority Rights, as well as the adoption of the above mentioned law. Moreover, it positively valued the correction of the violations of the State Language Law⁸⁶. The report verified Slovakia's commitment to interpret and apply the law as *lex specialis*, meaning that the provisions of the law on minority languages prevail over the SLL. The report gently referred to

⁸³ Schimmelfennig, Frank, Engert, Stefan and Knobel, Heiko (2006), p. 123

⁸⁴ Walter A. Kemp, ed., *Quiet Diplomacy in Action: the OSCE High Commissioner on National Minorities* (The Hague: Kluwer Law International, 2001), p. 257-58

⁸⁵ Parliamentary Assembly of the Council of Europe, Report on Honouring of obligations and commitments by Slovakia, 6 September 1999, Doc. 8496

⁸⁶ Commission of the European Communities, '1999 Regular Report on Slovakia's Progress Toward Accession', Brussels, p. 17

the need for further legislation on use of minority languages especially in the field of education and culture.

In 1999 Slovakia submitted its first report on the implementation of the Framework Convention. The Opinion of the Advisory Committee (AC) was issued on the 22nd of September 2000, in which they generally admitted that “Slovakia has made valuable efforts to support minorities and their cultures”⁸⁷. Nevertheless, the AC highlighted certain shortcomings and recommended to increase the legal guarantees and pay close attention to the implementation. The AC questioned Slovakia’s compliance with Art. 5 par. 2 of the SLL concerning the right to receive and impart information and ideas in minority languages. The provision prescribed the use of state language in occasional publications intended for public and in programs of cultural events. The use of minority language was allowed if it was required. According to the AC the provision reflected legal uncertainty, thus, it could easily lead to the limitation of the above mentioned right of minorities. Therefore, the AC suggested amending the SLL and considering the adoption of a comprehensible law on the rights of minorities⁸⁸. In relation to the law on minority languages, the AC pointed out problems with implementation of the law, especially the lack of language skills in public administrative bodies. The AC recommended allocating resources for training and other measures to ensure smooth implementation. The government was asked to inform the public and the officials about the *lex specialis* character of the law⁸⁹. It was also recommended to expand the legislation on education in minority languages. In response to the critical points Slovakia announced its aim to adopt the European Charter, which would address the possible shortcomings.

⁸⁷ Advisory Committee on the Framework Convention for Protection of National Minorities, Opinion on Slovakia, adopted on 22 September 2000

⁸⁸ Ibid., p. 9

⁸⁹ Ibid., p. 10

From the reports of 2000, 2001 and 2002 it can be discerned that the EU did not manage to accomplish improvements in other areas of communication. The EC continuously stressed the gap between the law and its implementation as the members of minorities rarely made use of their rights. Slovakia was asked to enhance the protection of minorities at local levels⁹⁰. This request as an intermediate purpose was incorporated even into the Council Decision passed in 2002. In 2001 Slovakia ratified the European Charter on Regional and Minority Languages; however, the real implementation was lacking. In the 2002 Report the EC also noted that certain provisions of the Framework Convention had to be strengthened.

It can be concluded, that after Slovakia fulfilled the criteria of opening the accession negotiations, the Slovak political elites' interest in extending the minority rights. It soon turned out, that their compliance was rather formal, lacking real effects. This implies that the Dzurinda government took the measures for the sake of the incentive to join the EU.

2.5. Development of minority policy in the pre-accession period

The effect of IOs on Slovakia's democratization and minority policies was significant. However, the case of Slovakia shows how much domestic political actors and their interests can enhance, but also limit, the effects of international socialization agencies. The success of the IOs' efforts depended and continues to depend on domestic conditions and on the willingness of political elites.

⁹⁰ Commission of the European Communities, *'Regular Report on Slovakia's Progress Toward Accession'*, Brussels, 2000, 2001, 2002

The Constitution of the Slovak Republic grants essential minority rights, ranging from the right to maintain and develop culture to the right to receive and impart information in minority languages, to use their language in official communication, and the right to education in minority language, etc. The constitutionally guaranteed minority rights are the pillars of the minority policy in Slovakia, which then have the possibility of being further detailed and extended by specific laws. There is a limited number of separate legal acts on minority rights. The custom is rather to insert special provisions into any issue that requires special treatment of minorities.

The mere membership of Slovakia in the CoE and OSCE opened up new channels for the exchanging of views, sharing best-practices and providing expert assistance. By signing the relevant conventions the member states adopted norms, the states not only committed to adjust their legislations and policies to these norms, but also consented to the monitoring of their compliance with these norms.

One of the main requirements of the EU in the field of minority rights was the adoption of the Framework Convention on the Protection of National Minorities. Slovakia was among the first states to ratify the convention. Although the protection of minorities was a highly sensitive issue for the Mečiar government, especially the HZDS preferred to manifest a pro-Western attitude while falsifying their willingness to comply with the human rights norms. The ratification of Framework Convention was rather taken as a formality, a tool to prove their commitment to the EU. The Framework Convention is a soft-law instrument, it does not prescribe strict application of the norms. The real exercise of the rights is conditioned by several criteria, which is later determined by the state. In addition, the convention is full of dualities as it is intended to balance the majority and the minority claims. This especially enables the states to

interpret the norms variously serving their own purposes. The government often referred to those provisions supporting the majority, while preferred the minimalist interpretation of the clauses favoring the minorities. The Framework Convention entered into force only in 1998. However, even until then the experts relied on the incorporated norms, which sometimes proved to be ineffective as the case of SLL shows.

At the beginning of the international dispute on the SLL the government made promises to adopt the law required by IOs. However, it never admitted that the law might have curtailed the rights of minorities. Later on, it refused the enactment of a special law by arguing that those rights were guaranteed by the international commitments of Slovakia.

Besides the power of norms, the EU, by the demarches and the resolutions of the European Parliament intended to increase the pressure on the government. However, it remained reluctant to any policy changes. The EC clearly expressed its dissatisfaction with Slovakia's limited progress – or rather retreat, however the EU diffused mixed messages. Whenever the EC disapproved the 'developments' in Slovakia, a concrete deterrent measure never followed. Despite the demarches the EC never suspended the Europe Agreement. This may have had a more significant effect on Slovakia than social pressure, as the state relied on trade with EU and on the flow of EU assistances in great deal⁹¹. This attitude of the EU could make government more immune to international criticism. Moreover, international criticism hardly reached the public. The media was controlled by the government. Therefore, it could manipulate the interpretations of the Slovakia's international relations.

The most effective measure the EU had taken was to exclude Slovakia from the group of states invited to start accession negotiations. In respect to minority rights this was of key

⁹¹ Milada Anna Vachudova (2005), p. 158

relevance as the EU conditioned the opening of accession negotiations with Slovakia through the adoption of the law on the use of minority languages. On the one hand, this measure contributed to the victory of opposition parties. On the other hand, it ensured that the new government would endeavor to adopt the law if it wanted to fulfill the requirements.

After the 1998 parliamentary elections the impact of the IOs was multiplied. The government intended to prove its commitment to the EU by all possible means. This is the reason for the openness of moderate parties to invite the SMK into the coalition⁹². The advisory and conciliatory activities of the CoE and the High Commissioner were also highly appreciated and utilized by the Dzurinda government.

Several institutional changes were introduced and executed. Particularly important was the establishment of the post of Deputy Prime Minister for Human Rights, National Minorities and Regional Development, the establishment of the Government Council for National and Ethnic Minorities as well as the creation of minority units within the Ministry of Education and the Ministry of Culture.

The government was determined to pass the law. However, the Slovak parties supported minimalist approach to the issue. All three institutions participated in the drafting of the law, though one of the most relevant recommendations of the institutions was not incorporated to the law (provision on the ‘specific law’ character of the law). It was replaced by a simple promise by the government. Conversely, it seems that neither of the institutions insisted on more comprehensible law. The CoE promoted the extension of the law to education and culture, but the EU and High Commissioner did not object to the limited scope of the law. A kind

⁹² Frank Schimmelfennig, Stefan Engert, Heiko Knobel (2006), p. 122

of uncertainty was revealed even during the entire engagement of the institutions. It was never really detailed what should be the scope of the law or what guarantees it should include. The High Commissioner suggested the regulation of official communication would suffice; however, he later supported the idea of more extensive legislation. The EU was inconsistent on the formal character of the regulation – once requiring an overall act⁹³, later only legislative provisions on minority language-use⁹⁴. The IOs accepted the law despite the Hungarian minority clearly expressing discontent with the law. This revealed that even the IOs demanded formal adoption of norms instead of legislations, which could resolve the arisen conflicts between the majority and national minorities.

Due to the time-pressure on the government the law was adopted within a very short period of time. The controversial character of the law was demonstrated by the fact that 130 deputies of the 150-member National Council made 400 remarks on the law. Despite this the law was enacted, which was soon rewarded by the EU as Slovakia was invited to open accession negotiations. It was even claimed that the government – at least the Slovak parties – benefitted from the accelerated adoption of the law. “If Slovakia can please the European Commission without giving the Hungarians all they want, the government might evade domestic accusations of selling out to Hungarian demands”⁹⁵.

After the enactment of the regulation of the minority language-use in official contact the EU and the other two institutions did not manage to prompt the government to enhance the

⁹³ Agenda 2000 – Commission Opinion on Slovakia’s Application for Membership of the European Union, concluded on 15 July 1997 in Brussels, DOC/97/20

⁹⁴ Council Decision of 30 March 1998 on the principles, priorities, intermediate objectives and conditions contained in the accession partnership with the Slovak Republic (98/262/EC)

⁹⁵ Michael J Kopanic, ‘The New Minority Language Law in Slovakia’, *Central Europe Review* Vol. 1, No 2, 5 July 1999

implementation of the law. Thus its real impact lacked in effectiveness. The IOs also recommended the extension of the law. However, instead of drafting legal acts on education or culture, the government signed and ratified the European Charter. Slovakia undertook remarkable commitments in relation to the Charter. However, it did not lead to any significant progress as its implementation was insufficient.

It seems probable that the Dzurinda government – except the SMK – was not fully committed to the protection of minority rights. Rather the incentive of the EU membership directed its efforts. These efforts were constrained to take minimalist measures with limited regard for the claims of minorities. This led to limited interest in constructive involvement to solve the ethnic conflicts in the state.

3. Slovakia's path within the European Union

After the accession to the EU it was expected that the new member states would obey the basic principles of democracy and that any arisen conflicts would be handled according to these democratic norms and principles. The reason for requiring adoption of basic minority rights norms was to reduce the potential of ethnic conflicts and to diminish all possible barriers to democratization. On the one hand, rule-adoption served to provide guidelines to the accommodation of minority rights. On the other, it aimed to reduce the use of nationalist rhetoric in politics and the polarization of society on ethnic lines.

The 2006 Parliamentary elections brought into power the party Smer – Social Democracy (Smer), the Slovak National Party (SNS) and the People's Party – Movement for a Democratic Slovakia (HZDS). The coalition was inclined to use national-populist rhetoric. The return of the national-populist politics generated doubts on the state and quality of democracy in Slovakia⁹⁶. Smer faced high criticism due to its alliance with the SNS, which is considered an extreme right-wing nationalist party⁹⁷. The Prime Minister Robert Fico, the leader of Smer responded to the critical voices by assuring their ability to control the SNS and moderate their conduct⁹⁸. They guaranteed compliance with the international human rights norms and the status quo of minority rights. Despite the government's promise, the issue of minority rights and Slovakia's commitment to international norms was raised during their four-year long governance.

⁹⁶ Darina Malová, Branislav Dolný (2008), p. 67

⁹⁷ Especially the Party of European Socialists (PES) drew attention to the risks of cooperating with such a party. The membership of the Smer in the PES was temporarily suspended. In 2008 the Smer succeeded and their membership was rehabilitated.

⁹⁸ Tibor Kis, "Smer: Success Story or Scandal?", *The Analyst - Central and Eastern European Review*, issue: 01 / 2008, p. 62

3.1. The amended Law on the State Language of the Slovak Republic

The most serious conflict occurred under the amendment of the State Language Law. The Ministry of Culture argued that since the adoption of the Law on the Use of Minority Languages, the State Language Law has almost ceased to be applied, severely limiting its effects. The state language was considered to be a means to internal stability of the state, the status of which is threatened due to the processes of globalization and social transformation. The Ministry decided to raise the effectiveness and enforceability of the law, thus strengthening the status of the state language⁹⁹. Nationalist tendencies were revealed mainly during the parliamentary debates. At these debates, deputies of the coalition parties explicitly stated that the reason to amend the law is the non-respect of the state language in ethnically mixed territories; and also to prevent the discrimination of members of the dominant nation in those territories¹⁰⁰.

The Law on the State Language of the Slovak Republic¹⁰¹ was adopted on the 30 of June 2009 by the support of 70 deputies representing the government out of the 136 deputies present at the session. The representatives of the opposition parties voted against or abstained from voting.

The amended law made several provisions stricter and strengthened the enforcement mechanisms of the law. The law applies to state and municipal authorities, self-governing bodies, legal persons, self-employed natural persons, and private individuals. The state authorities are obliged to protect the state language law and actively participate in the supervision of the

⁹⁹ Report of the Minister of Culture to the National Council of the Slovak Republic, signed by Robert Fico, Prime Minister and Marek Maďarič, Minister of Culture, on 11 March 2009

¹⁰⁰ 35th Session of the National Council of the Slovak Republic, 16 April 2009,

¹⁰¹ Law on the State Language of the Slovak Republic – Law No. 357/2009 of Coll., adopted on 30 June 2009, entered into force 1 September 2009, later modified to 1 January 2010

compliance with these rules (Art. 2). The provision on the linguistic rights of minorities is redefined as such:

“Unless this Act provides otherwise, the use of the languages of national minorities and ethnic groups are governed by separate regulations.”

The law regularly refers to the rights of persons belonging to national minorities ensured in other legal acts. In addition, it introduces new rules for the use of minority languages especially in the public sphere.

In official communication no major changes were adopted. The employees of state authorities, territorial self-government authorities, and other bodies of public administration use state language in official communication. The employees of transportation services, members of armed forces, armed security corps, and fire brigades are required to have command of and use the state language. In comparison to the previous SLL the proof of Slovak language skills are no longer conditions for employment in the civil service. One improvement made is that the provision refers not only to other legislations, but also to international treaties.

Similarly to the 1995 SLL, remarkable changes were applied to the previous regulations on documentation in schools and educational institutions. Entire documentations now have to be bilingual in schools with minority language of instruction. In respect to this clause, the question of proportionality arises as the administrative tasks of teachers in such schools are twice as much as in other schools.

In the public sphere the law allows the use of other languages as well. It prescribes primacy of the state language. Information intended for the public can be displayed in a minority language after the information is provided in the state language. Occasionally printed materials intended for cultural purposes published in minority languages have to include the identical text

in the state language as well. It is contestable whether the text in the state language has to be identical in content or it would be enough to summarize the issue. Art. 5 par. 7 prescribes that the inscriptions on monuments, memorials and memorial plaques have to be in the state language. Inscriptions in other languages can follow after the text in the state language, but they have to be written with same or smaller fonts. Also, the texts have to be identical in content. The developer is obliged to request a binding opinion from the Ministry of Culture on the compliance of the inscription with the law. This clause is not valid for historical inscriptions on monuments, memorials and memorial plaques.

The law allows the use of other languages, including minority languages in all documents and written communication with a legal effect in: employment or a similar working relationship (Art. 7 par. 2); account and financial statements; technical documentation and bylaws of associations; societies; political parties; political movements; and companies necessary for registration (Art. 7 par. 3). In proceedings before state authorities and legal entities the concluded contracts can be issued in any of the official languages of the EU. In case of a dispute the text in the state language applies (Art. 7 par. 5). In relation to healthcare and social service facilities, the law makes compulsory the use of state language in communication between the personnel and patients. In case the patient does not understand the state language, the communication can be conducted in other languages as well. Persons belonging to minorities in municipalities where the rate of members of minorities exceed 20% of the population are entitled to use the minority language in healthcare and social service facilities as well.

Similarly to the previous SLL, the Ministry of Culture is charged with the supervision of the compliance with the law. However, the scope of enforcement by sanctions is extended. While the previous act prescribed sanctioning of seven provisions, the amended law proposes

sanctioning for the breach of Art. 3 and 4, Art. 5 par. 3, 4b- 7, Art. 6 and 7, Art. 8 par. 2-6 with the exception of communication in healthcare and social service facilities. The fines range from 100 to 5000 EUR. Only the authorities and legal persons, self-employed natural persons, and legal persons can be subjected to sanctioning.

The strict enforcement of the provisions distorts the balance between the status of state language and minority languages. The use of minority languages lacks such enforcement, while the requirements in relation to the state language are high. The law also spurred positive by introducing bilingual practices. However, the reasonability of bilingualism can be questionable in certain respect.

The amended law engendered a huge dispute over whether its provisions were in compliance with the international commitments of Slovakia. Mostly the Hungarian national minority opposed the amendments, as they claimed the provisions discriminated against the members of minorities and violated certain minority rights. The dispute over the amended law grew into international magnitudes as Hungary was also very critical about the law. As their attempts to resolve the case bilaterally did not succeed, they turned to international forums. Firstly, the OSCE High Commissioner was requested to analyze the law and contribute to the resolution of the issue.

3.2. The involvement of international organizations in the dispute

3.2.1 The evaluation of the OSCE High Commissioner

The OSCE High Commissioner, Knut Vollebaek, published his opinion on the amendments to the law on the 22nd of July 2009, examining the law and its possible implications. He admitted that the purpose of the amendments to strengthen the position of the state language and to protect the language is legitimate; and that the provisions of the law are in line with the international norms. However, he raised several problematic issues.

Firstly, he stressed the necessity to restore the balance between the state language and linguistic rights of the members of minorities. Although there are frequent references to special regulations concerning the national minorities, he noted that several provisions can be easily misinterpreted, thus, imposing disadvantages on the minority members. As an example he mentioned Art. 3 par. 2, which sets the compulsory use of state language in official contact for employees in transportation services. This provision can be interpreted that in such cases communication (e.g. between bus-driver and passengers) in minority language is not allowed, which would mean the breach of non-discrimination on ethnic lines¹⁰². The SLL refers to areas which are not regulated by the Law on the Use of Minority Languages. Therefore, it creates legal uncertainty in relation to the minorities. In order to avoid this, he recommended amending and improving the Law on the Use of Minority Languages. In addition, he considered it relevant to formulate a comprehensive law on the rights of the members of national minorities as well.

In relation to language-use in official communication, the High Commissioner welcomed the ban of language requirements for officials. He addressed the issue of a 20%

¹⁰² Opinion of the OSCE High Commissioner on National Minorities on amendments to the “Law on the State Language of the Slovak Republic”, the Hague, 22 July 2009, p. 3

threshold as well. He ascertained that, deriving from the previous censuses, the rate of national minorities was in constant decline. Therefore, he requested the re-examination of the suitability of the 20% threshold¹⁰³.

Another provision which according to Vollebaek implied the exclusive use of state language is Art. 6 on language-use by police and military services. The High Commissioner recommended to consider the possibility of minority language-use in areas inhabited by members of minorities in accordance with the High Commissioner's Recommendations on Policing in Multi-Ethnic Societies.

In relation to the supervision and sanctions, he stated that to impose sanctions in case of breach is legitimate; however, it could not lead to the discrimination of persons belonging to national minorities. He advised that "sanctions should be exceptional, clearly defined and regularly monitored as to their effect"¹⁰⁴.

The High Commissioner's opinion was welcomed by the government as it recognized that the law is in compliance with the international norms. This was significant as within heightened dispute between Slovakia and Hungary this issue seemed to be the most important for the government. This attitude revealed the government's selective interpretation of the issue's visibility to the public. They emphasized the law's compliance with the international norms, but had not mentioned possible problems raised by the High Commissioner. The government even declared the SLL as Slovakia's international victory, which showed how important it was for the

¹⁰³ Ibid.

¹⁰⁴ Ibid.

government to defend the law¹⁰⁵. Although during the meeting of the Slovak and the Hungarian Prime-Ministers, the two parties committed themselves to follow the recommendations of the High Commissioner, the government had not shown a willingness to amend the Law on the Use of Minority Languages.

On the 16th of December 2009 the Slovak government adopted the Principles for the implementation of the amended State Language Law (Principles), thus fulfilling one of the recommendations of the High Commissioner¹⁰⁶. The Principles address the implementation of problematic provisions. For instance, in relation to the above-mentioned case of communication with employees of transport services, it allows the use of minority languages in municipalities exceeding the 20% threshold – only if all participants of the discussion consent to the use of minority language. Similarly, reading of other provisions are contained in it as well. Such interpretations however cannot be assumed from the text of the SLL. The Principles, as a government decree, are binding only for the bodies of state execution. It does not entail any rights or duties for natural persons. Therefore, in case of breach, the interpretation of the law in the decree cannot be used as a legal argument.

¹⁰⁵ “Slovenčinu v Európe chápu [The Slovak language is understood in Europe]”, “OBSE sa jazykový zákon pozdáva[The Language law seems good to the OSCE]” (SME 17/168);

¹⁰⁶ Both the representatives of the Hungarian minority in Slovakia and the Hungarian delegation objected the adoption of the principles. The representatives of the Hungarian minority claimed they were not consulted in proper way, so their suggestions could not be expressed in the document. The Hungarian delegation also wished to continue the discussions about the principles, they did not considered it a finished issue.

3.2.2. The evaluation of the European Commission

In relation to the adoption of the Slovak State Language Law the European Commission declared itself incompetent to evaluate the law. Only Slovakia's violation of the human rights incorporated into the EU legislation would serve as sufficient grounds for the EU to take measures. Nevertheless, in the beginning of January 2010 an unofficial analysis of the EC's legal experts was published, in which the experts analyze the SLL and the Principles solely on the basis of the Non-discrimination Directive and other EU legislation. The analysis was prepared to assist the adoption of Principles. Although these recommendations were not taken into account, it uncovers the weaknesses of the law in respect to discrimination.

The legal experts of the European Commission stressed mainly three provisions which could easily lead to discrimination. The law makes the command of and use of state language compulsory for the employees of state institutions. The legal experts emphasized that these language criteria have to be proportional to the scope of activities of the employee and cannot form the basis of discrimination¹⁰⁷.

The experts also questioned the respect for principle of proportionality in relation to the periodical and non-periodical publications, where the use of state language was requested. They asked to exempt publications in minority and foreign languages from supervision¹⁰⁸.

In relation to the health care and social service facilities the experts emphasized, that in order to prevent the discrimination of persons belonging to minorities, these facilities

¹⁰⁷A Bizottság jogászhai kifogásolták a szlovákok tervezetét [The lawyers of the Commission objected the draft of the Slovaks], Bruxinfo, 7 January 2010

¹⁰⁸Ibid.

should be obliged to create necessary conditions to enable the use of minority languages in municipalities meeting the pre-determined criteria¹⁰⁹.

The legal experts admitted that the document clarified the possible misconceptions of the law, however expressed one formal objections in relation to the above mentioned character of the Principles.

3.2.3. The evaluation of the Venice Commission

The government requested also the Venice Commission to examine the law in conjunction with the Principles of the government. The analysis of the Venice Commission of the CoE is more extensive. The findings of the Venice Commission can be divided to two major categories. In the first category are the provisions, which are not in compliance with the international norms. To the second category belong clauses in relation to which the experts raised the question of proportionality of the measures.

According to the experts of the Commission the obligation to use the state language in official contact in areas not fulfilling the 20% threshold is not in line with Art. 10-1-a-iii of the European Charter and Art. 10 par. 2 of the Framework Convention, which determines more flexible conditions regarding the language rights in official contact, and require positive attitude of the state. In the view of the Venice Commission the application of 20% is insufficient¹¹⁰. The Commission further objected the obligation to use the state language in judicial proceedings, administrative proceedings and proceedings before law-enforcement authorities if one has

¹⁰⁹ Ibid.

¹¹⁰ European Commission for Democracy through Law, Opinion on the Act on the State Language of the Slovak Republic (opinion no. 555/2009), adopted on 15-16 October 2010, Strasbourg, p. 12 par. 51-54

sufficient command of the state language, as Slovakia's undertaking in relation to the European Charter provides more favorable provisions. Lastly, the non-recognition of contracts drafted in minority languages is not in line with Art. 9 par. 2 of the European Charter according to which Slovakia is committed to recognize the validity of legal documents concluded in minority languages¹¹¹.

In relation to some provisions the Commission required further elaboration in order to prevent misinterpretations of the law. These provisions concern the duty to use the bilingual documentation of the churches and schools; the duty to use the state language in documents and written statements with legal effect in employment and other working relations; the use of state language in financial and technical documentations and bylaws of associations, societies, political parties, political movements, and companies. The Commission stated that the use of state language should be required in "documents and communications, which must be accessible to the state authorities for public order needs"¹¹². Therefore, they recommended the re-examination of the proportionality of these measures. The proportionality of the duty of the compulsory use of the state language in cultural activities, the obligation to present all signs, advertisements and notices intended for the public in the state language was also questioned. Similarly to the High Commissioner, the experts of the Commission highlighted that it would be desirable to ensure the use of minority languages in Armed Forces, Armed Corps and Fire Brigades. Last, but not least the analysis elaborated on the system of fines. On the one hand, it fully recognized the standpoint of the government that without sanctions the law could be easily ignored. On the other hand, the experts noted that the correct application of the law should not be

¹¹¹ Ibid.

¹¹² Ibid., p. 23

achieved by sanctioning, but rather through cooperation and confidence-building. The Commission recommended the imposition of fines in very exceptional cases¹¹³.

3.3. Compliance with the recommendations of the international organizations

After the parliamentary elections in 2010 a moderate, center-right government was formed by the Slovak Democratic and Christian Union (SDKÚ), party Freedom and Solidarity (SaS), Christian Democratic Movement (KDH) and Party Most-Híd. The government engaged in “correct[ing] the legislative and political deformations inherited by Fico’s government”¹¹⁴ including the amendment of the SLL and initiation of amendment of the Law on the Use of Minority Languages.

The government led by Iveta Radičová proposed only minor changes to the SLL. The amendments intended to reduce the excessive limitations on the use of other languages. Despite the initial expectations, that the government would cancel sanctioning of the law, it only posed additional conditions to the imposition of financial sanctions. According to the current version of the SLL, sanctioning is possible only if the non-compliance concerned information of the public administration intended for the public, or if it concerned information regarding the threat to the life, health, safety or property of the citizens (Art. 9a).

The Analysis of the Venice Commission was delivered at the same time as the proposed amendments were debated in the National Council. However, the government with the exception of the party Most-Híd tended to disregard the recommendations of the Venice

¹¹³ Ibid.

¹¹⁴ Grigorij Mesežnikov, ‘Post-election Slovakia’, *KAS International Reports* 4/2011, p. 114

Commission. The government kept arguing for the sufficiency of the proposed changes despite of the fact that the suggestions of the Venice Commission concerned such provisions, which remained valid in the amended law as well.

Most of the recommendations of the High Commissioner and the Venice Commission were incorporated to the Draft of the Law on the Use of Minority Languages prepared under the supervision of the Deputy Prime-Minister of the Slovak Republic for Human Rights and National Minorities, Rudolf Chmel (representing party Most-Híd). The draft intends to remedy the shortcomings of the State Language Law, to restore the created balance between the status of the state language and minority languages, and to accomplish the unfinished implementation of the European Charter on Regional and Minority Languages ¹¹⁵. The driving principle of the government is to ensure effective equality of all citizens of Slovakia.

The main novelties the draft introduces concern the lowering of the 20% threshold to 15% ¹¹⁶, extension of the scope of the law by extending the rights of persons belonging to minorities, the duties of the administrative bodies in the official communication and by introducing special regulation in the public sphere as well. Last but not least, in response to the SLL the draft proposes bolstering of the enforcement of the law by the means of monitoring its implementation of the law and also by financial sanctions in case of breach.

The draft was debated in the National Council on 25 May 2010. During the parliamentary debates the political opposition highly criticized the law and even one of the

¹¹⁵ Explanatory Report of the Draft of the Law on the Use of Minority Languages and related legislations, signed by the Prime-Minister Iveta Radičová and Deputy Prime-Minister Rudolf Chmel, 1 March 2011, Bratislava

¹¹⁶ The initial proposal suggested 10%, however even coalition parties were disrupted on the issue and compromise was reached in form of 15%. Recently KDH initiated to consider the application of 18% threshold.

coalition parties, the KDH was inclined to question the certain provisions of the law. Finally, Igor Matovič, an independent deputy, proposed several amendments to the initial draft, which was supported by KDH. Therefore, it became clear if the government wanted to pass a law on the use of minority language, compromise had to be made. The amendments were adopted and the law was passed. Due to the amendments the initial draft was restricted in several respects – the 15% is applicable only if in the municipality the rate of minority members reaches 15% at least in two censuses, i.e. the lowering of the threshold will be applied in 10 years, the public administrative bodies will not be obliged to hire employees mastering the minority language, etc. Still the adopted law can be considered as a progress as it introduces positive changes as well – e.g. municipality can lose the entitlements of minority language use only if three censuses prove that the rate of members of minorities decreased below 15%¹¹⁷. The adopted law still has to be approved by the President. If the President disapproves and sends it back to the Parliament, the probability the Parliament adopts it once again is very low. Even now the law was adopted by a very slight majority. If the three missing deputies of the opposition parties would have been present, the law would not have been adopted. This implies that the case cannot be considered resolved yet.

3.4. The impact of international organizations on the minority policy

The guarantee of the Fico government to maintain the status quo of the protection of national minorities had not been obeyed. Although the government claimed that the rights of minorities remained intact and the law did not curtail their rights, the rights of members of

¹¹⁷ <http://www.nrsr.sk/Dynamic/Sprava.aspx?MasterID=51084>

national minorities were reduced due to the amended SLL. Nevertheless, it has to be positively assessed that the government was willing to turn to international authorities to resolve the dispute. Moreover, the Slovak government voluntarily requested the Venice Commission to examine the law. This reveals that compliance with the human and minority rights standards are considered as values or at least it is perceived important in order to maintain the credibility of the state. While openness toward the engagement of IOs was ensured, the compliance with the norms was not perceived as urgent responsibility. The selective interpretation of the High Commissioner's opinion implied selective compliance with his recommendations and minimalist approach to the taken measures. Although the Principles concluded by the government were useful in the sense it made clearer the application of the law, due to its formal character of government decree it was not applicable for natural and legal persons in case of dispute. As the recommendations of any IOs are not enforceable it is questionable whether the rhetoric of human rights compliance was only used to repress international criticism.

The new government following similar pattern as in 1998 committed to correct the restrictions introduced by the previous government in line with the principles of non-discrimination and to restore the state of accommodation of minority rights as it used to be in 2006¹¹⁸. In accordance with this statement was the SLL amended. Although previously all of the coalition parties were against the sanctioning, they decided to let them in the law and to restrict the conditions, under which fines can be imposed. It is more probable that the intension to amend the SLL was much more motivated by the government's preference to distance themselves from the previous national-populist government rather than because of the international norms as then

¹¹⁸ Cultural policy and infrastructure - Government Statement of Policy of the Slovak Republic for 2010-2014 in the area of culture

the analysis of the Venice Commission would have got bigger emphasis during constructive debates on the amendments.

In opposition to this the draft of the law on the use of minority languages clearly reflects the recommendations of the IOs and the willingness to comply with these norms. Meantime the draft was amended and adopted by the National Council. However, even the amended law and its implementation would mean progress in the accommodation of minority rights. The case is still not resolved as the President has to approve the law, which can bring new turns into the lengthy disputes on the language issues in Slovakia.

4. Comparative reflection on the impact of the international organizations on the minority policies

Comparing the two cases, the two language laws many parallels as well as differences can be discerned depending on which factors we want to highlight and examine. In this section I intend to focus primarily on the comparison of the involvement of the IOs and their effects on the minority policy changes with regard to the specificities of the domestic scene and the attained changes.

The source of conflict in both cases was the adoption of restrictive regulation on the use of state language. By strengthening the state language, the language choices were significantly reduced, which put additional burden on members of national minorities. In this respect the 1995 SLL more seriously violated the rights of minorities as it introduced exclusive use of state language in official communication and limited use of minority languages in certain areas of public communication. Though several clauses did not correspond with the minority rights norms, the main purpose of the IOs was to diminish the legal vacuum and recommended the government to adopt a law on the use of minority languages. Due to the reluctance of the government the IOs applied all available means to prompt changes. However, neither the normative pressure nor the threat of suspension of association agreements accomplished policy change. The reasons for such a result can be searched on both sides.

From the perspective of the IOs in 1995 the international instruments for the protection of minorities were not well-developed. The Framework Convention was opened for signature in February 1995, i.e. eight months before the law was adopted and it entered into force

only in 1998. Moreover the willingness of the state to comply with the recommendations was further decreased by the double standards prevailing in the EU by imposing norms on associating states, which are not valid to the old member states. Thirdly, the EU tended to treat the case inconsistently, as despite the warnings, it never interrupted negotiations or withheld the EU financial support.

Till 1995 the government expressed willingness to comply with the EU requirements to a certain degree. This was proved as Slovakia signed and ratified the Framework Convention as well as the Bilateral Treaty with Hungary was concluded. However, from the date of the adoption of the SLL the government completely disregarded any kind of recommendations or requirement to improve the accommodation of minority rights. The powers of the government were based on nationalist mobilization and use of nationalist rhetoric, which excluded the identification with minority rights and increased the costs of promoting minority rights for the government so much that those even outweighed the foreign policy priority to join the EU¹¹⁹. Moreover any requirement concerning protection of minority rights was viewed by the government as fulfilling the claims of the Hungarian minority¹²⁰. Another domestic aspect is that the strongest party, the HZDS due to its abuse of political power completely distanced itself from the oppositional political parties and thus, from future allies as well. Therefore, it was in the interests of the party, if it wanted to stay in power to maintain good relations with its coalition partners and to correspond with their interests¹²¹. In this respect the SNS could give considerable impetus to disregard the claims of national minorities regardless whether such claims are imposed by the EU or not. The role of SNS in regard the language policies was even more

¹¹⁹ Judith Green Kelley (2004), p. 4

¹²⁰ Ibid., p. 120

¹²¹ Frank Schimmelfennig, Stefan Engert and Heiko Knobel (2006), p. 120

suspicious as in 1990 another language law was initiated – the so called Matica law¹²²-, which aimed at limitation of the use of minority languages. The bill was rejected and a more liberal language law was adopted¹²³. The SNS that time pursued campaigns in favor of the law, which might have had implications on the 1995 act and later on the firm denial of the government to enact law on the use of minority languages.

Under such domestic conditions any effort of the IOs was ineffective. The EU finally acknowledged this and made its dissatisfaction with Slovakia's progress explicit in 1997, when the EU refused to open accession negotiations with Slovakia.

The newly elected government in 1998 proved to be a reliable partner of the IOs, which increased also the effectiveness of the IOs on rule adoption and policy changes. The government was willing to fulfill the requirements necessary to proceed in the accession process. In case of the law on the use of minority languages, the pressure of the IOs, especially the EU proved to function well as it seems probable that without the international pressures, the law would not have been passed. The adoption of the law revealed the division of the political parties on the issue of national minorities and limited interest in improving the conditions of national minorities. The pressure imposed by the IOs was rather directed to the passing of the law and less to the character of the law. Although the IOs participated in the preparation of the bill, many of the recommendations were not incorporated to the law. The government rather took a

¹²² The law was initiated by the Matica slovenská, which is a cultural institution for the promotion of the Slovak nation and culture. The law was presented in the Parliament by the representatives of SNS. The law intended to introduce exclusive use of Slovak language in the Slovak part of Czechoslovakia. According to it minority languages would be restricted to informal communication – Zsuzsa Csergo (2007), p. 39

¹²³ Zsuzsa Csergo (2007), p. 43

minimalist approach to the language rights and remained less interested in extension of minority rights and liberalization of minority policies.

Although the adoption of the Law on the Use of Minority Languages was recognized as great achievement of the IOs, still it reflected their weakness as well. Even in such taut situation, where the interdependence of Slovakia was so high, the IOs were unable to make their recommendations accepted and to promote a more extensive act, which would have responded more to the needs of the national minorities. This weakness was caused by the poorly defined conditions of the EU. It was difficult to decide both for the state and the EU as well, when the requirement was fulfilled¹²⁴. In contrast to other areas included in the *acquis* the EU lacked any benchmarks in minority protection, which resulted that the candidate states were “free to pick and choose (or ignore) Western models”¹²⁵. Moreover, as the accession progressed so decreased the EC’s focus on the minority protection. The compliance with the political conditions of the Copenhagen criteria had been much more dominant before the opening of accession negotiations, before the emphasis was shifted to the chapter-by-chapter screening of the associating state’s compliance with the *acquis*¹²⁶. The EC failed to build up a strong monitoring mechanism in the protection of minorities, which became unfold in the EC’s regular reports of the upcoming years. The EU made further recommendations; however, little progress was made. On the one hand it was the result of the state’s unwillingness to extend these rights. On the other hand it showed that the EU did not put big weight on the fulfillment of these demands. So the effect of EU conditionality was rather formal with limited implication on the improvement of minority issues, which made the whole accommodation of minority rights very fragile.

¹²⁴ James Hughes, Gwendolyn Sasse (2003), p. 12

¹²⁵ Bernd Rechel (2009), p. 8

¹²⁶ James Hughes, Gwendolyn Sasse (2003), p. 14

After the accession the CoE continued to be involved in monitoring of the accommodation of minority rights. Promotion of minority rights stagnated since the accession. In 2005 the report of the Advisory Committee of the Framework Convention also denoted several shortcomings in relation to the application of the convention¹²⁷. The Advisory Committee commented that although progress was observed in relation to the implementation of the Law on the Use of Minority Languages, but it raised some issues. With respect to the 20% threshold the committee asked for easing the conditions of application of the law. It especially recommended not sticking to census data exclusively, when deciding about the conditions. It was suggested to provide language trainings for the officials in order to facilitate the implementation of the law¹²⁸. In addition, the AC asked to prevent limitations imposed by the undue interpretation of the SLL¹²⁹.

The first report of the Committee of Experts (CE) of the European Charter also raised several objections in relation to the lacking implementation of the Charter. Similarly to the AC opinion the CE also found the 20% threshold too strict and asked for its reconsideration. The CE denoted that the provisions of the SLL stayed valid and often violated the rights ensured in the Charter. Therefore, it recommended amending the law. Further shortcomings were found in the field of justice and in administrative communication as well¹³⁰.

Instead of improving these conditions or at least maintaining the status quo the SLL was amended in a way, which strengthened the status of the state language on the expenses of linguistic rights of minorities. The strict regulations on the use of state language in conjunction

¹²⁷ See p. 35

¹²⁸ Advisory Committee on the Framework Convention for Protection of National Minorities, Second Opinion on Slovakia, adopted on 26 May 2005, ACFC/OP/II(2005)004, p. 22-23

¹²⁹ Ibid., p. 33

¹³⁰ Committee of Experts on the European Charter on Regional and Minority Languages, Opinion on Slovakia, adopted on 21 July 2007, ECRML (2007)1, p. 134

with the proposed enforcement mechanism could easily lead to the discrimination of persons belonging to national minorities and infringement of their minority right. However, the negative effects of the law cannot be belittled, in comparison with the constitutional breach of the previous act, it was much more norm-conform law.

A significant difference between the two cases is the fact that the participation of the High Commissioner and the Venice Commission were requested by the state. The intensions behind this decision can be various; however, it reflected that the states rely on the specific international instruments established for such purposes. The dispute on Slovakia's compliance or non-compliance with the international human rights also shows that these norms possess certain leverage, as the government made efforts to prove that they complied with the norms and the SLL corresponded with all international standards.

In opposition to the pre-accession period, where concrete incentives were attached to compliance with the recommendations (e.g. opening of negotiations with the EU) in the post-accession period the only mechanism applied is the power of norms, no enforcement is available. The decision to follow the pieces of advice depends fully on the respective state.

The High Commissioner stated that it was in compliance with the international norms; however, the more elaborate analysis of the Venice Commission revealed there are violations of the norms included in the European Charter. This especially demonstrates the weakness of norms, that the same law can be easily interpreted differently by two distinct institutions, and how this influences the interpretation of the government. The government manipulated the public by its partial and distorted interpretation of the High Commissioner's opinion and aimed to dispel the accusations directed against the law. The willingness of the government to follow the recommendations was limited. The Fico government tried to address

the problematic issues by a guideline to implementation of the law, which although recommended by the High Commissioner, was constrained as it was binding only for the bodies of state execution, but did not applied to legal and natural persons.

The strategy of the current government led by Iveta Radičová was to reduce the negative effects of the SLL and address the pending problems by the amendment of the Law on Minority Language-use as recommended. The effects of the High Commissioner's involvement and the Venice Commission's analysis are reflected in the proposed draft. The draft once again unfolded how much the issue of minority rights divided the political elites within the coalition and in the Parliament even more. The draft was subjected to critical voices even within the coalition parties. The parliamentary debates also proved the polarizing effect of the draft, which even in a much restricted form was adopted with slight majority of the deputies. However, it still needs to be approved by the President of the republic.

When examining the effects of the IOs on the institutionalization of the minority rights in Slovakia certain fluctuation is observable with respect to the degree of IOs' success in influencing policy changes. The main determinant of this dynamic is the character of the government and its willingness to comply with the international norms.

In the pre-accession period the EU in cooperation with the CoE and the OSCE High Commissioner prompted changes and sometimes the international pressure was necessary to modify the policies of the governments. The IOs tended to devote much attention to the endorsement of the minority rights norms. Their effect in this respect was high, as most of the candidate states adopted the international instrument of minority protection. However, the IOs were much less effective in achieving the implementation and the application of these norms in

the domestic policies. The soft powers of normative pressure were often insufficient to compel the states to correspond to these norms. Although the EU strengthened the powers of IOs in the field of minority policy, it also employed softer means of influence, especially in comparison with the strict enforcement of the transposition of the *acquis*.

Even in the pre-accession period, the external pressure on the states was significant in achieving policy changes; however, it was not the most determining factor. The domestic opposition against the claims of minorities highly complicated the institutionalization of minority rights in Slovakia. It is discernable that minority policy and the accommodation of minority rights highly depended and even now depends on the fact, which political parties were in power. In Slovakia two main groupings of political parties alternate in government – the national-populists and the center-right moderates. The national-populists put emphasis on strengthening the articulation of national characteristics of the state and restrain pro-minority measures and extension of their rights. The center-right moderate parties support limited liberalization of minority policies, many times taking measures to remove the limitations of the previous government. It is relevant to mention, that parties representing national minorities are usually present in center-right governments, which can enhance developments, but it can intensify the differences in the stances on minority policy. In general the polarization of the political elites in relation to the minority issues is so high, that it was difficult to achieve any progress in minority policy both in the pre- and post-accession period. In this respect is the involvement of the IOs crucial to provide objective evaluations, normative support and incentives to improve the accommodation of minority rights.

The states' openness to seek assistance of IOs in the resolution of the majority-minority conflicts can be viewed as a positive tendency. However, it has to be beard in mind, that this does not inevitably guarantees the compliance with the recommendations of the IOs.

The main purpose of socialization in the field of minority protection was to promote stabile institutional design for the accommodation of minority rights in the accession states in order to ensure consolidation of democracy and to improve the majority-minority relations and reduce the conflicts between them. Although the basic minority rights norms were adopted, this in itself did not mean the application of these norms in domestic policies. Moreover the often vaguely defined norms enabled the parties to interpret the norms differently serving their own purposes.

The naïve expectation that the application of conditionality will settle the minority question did not come true. Stabilization of the institutionalized minority rights has not yet been accomplished. On the one hand, neither the IOs take the minority protection seriously enough, which mostly revealed in the poor monitoring and enforcement mechanisms. On the other hand, as long as in the domestic political scene national-populist political forces are able to gain political power, reversals in minority policy are due to happen.

Conclusion

During the 1990s the protection of minorities went through a serious development due to the growing concerns of international organizations. The Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe contributed the most to the internationalization of minority rights. In relation to the European Union (EU) the turning point was 1993, when the protection of minority rights appeared within the Copenhagen criteria as one of the political conditions to join the EU.

In Slovakia the adoption of the Law on the State Language of the Slovak Republic attracted the attention of the IOs, as the law in the absence of separate law on the use of minority languages enacted the exclusive use of the state language in the official communication and in certain areas of public communication as well. As this regulation contradicted the constitutionally granted minority rights, the EU in cooperation with the CoE and the OSCE High Commissioner got involved in the resolution of the case, which was achieved in 1999 by the adoption of the Law on the Use of Minority Languages.

The language issue was re-opened in 2009, when the Ministry of Culture initiated several amendments to the law. In response to the amended law, the question of Slovakia's compliance with the minority rights norms was raised as well.

This thesis was intended to examine the two language laws with particular focus on the engagement of the IOs in the dispute. The language issue and especially its effects on the protection of minority rights, was one of the conditions of opening accession negotiations in the pre-accession period in 1998. Therefore I considered it relevant to examine how institutional strategizing of minority rights has changed after joining the EU? Also, what are the implications

of adopting of basic norms in the pre-accession period on the domestic policies of the new member states?

In the pre-accession period all three institutions – the CoE, the OSCE and the EU – sought the resolution of the minority issues in developing institutional accommodation of diversity in the associating states. The main expectation was, that adoption of basic human and minority rights norms would result norm-conforming behavior and the ethnic conflicts be gradually resolved by the application of the endorsed minority rights norms and democratic conciliation.

The success of IOs to influence the resolution of the issue of the State Language Law in Slovakia was widely recognized in 1999¹³¹. However, the analysis of the law revealed that the law is limited in its scope and did not respond to the problems of persons belonging to national minorities. The government took a minimalist approach. Even such a law was considered so controversial in the domestic political scene, that without the external pressures of the IOs it was hardly conceivable to pass the law. Although the IOs tried to push for further extension of the linguistic rights to other areas of communication, they failed to create such incentives to prompt further changes. Neither had they achieved proper implementation of the adopted laws. In respect to minority policy rule adoption remained rather formal. Even though at least it created the basic international channels, which later on could shape the domestic minority policy and adherence to these norms.

The amended State Language Law introduces stricter regulation on the use of state language, which had direct implications on the use of minority languages as well. The IOs recognized the legitimacy of the state to strengthen the status of the state language, but they also

¹³¹ James Hughes and Gwendolyn Sasse (2003), p. 26

required the restoration of the balance between the state language and the linguistic rights of minorities. The national-populist government took limited measures in order to address the arisen issue. Similarly to the case of 1995 State Language Law, the change in government brought new prospects of amending the Law on the Use of Minority Languages in line with the recommendations of the IOs. The case is still in process. After long debates in the Parliament, the restricted version of the draft was already adopted, but it needs to be approved by the President in order to enter into force.

From the analyses of the State Language Laws and the impact of IOs in the resolution of the language disputes it can be concluded, that the effectiveness of the IOs' involvement is highly conditioned by the domestic political constellation and conditions. Both in the pre-accession and the post-accession period it is observable that the main determinants of the changes – positive or negative – in the minority policies are the character and political orientation of the government and its willingness to comply with the minority rights norms. The government can both enhance, but also diminish the effects of the IOs in prompting liberalization of the minority policies.

In contrast to the naïve expectations of the IOs pre-accession conditionality was not successful enough to establish stabile institutional design of accommodation of minority rights. Although the EU in cooperation with the CoE and the OSCE High Commissioner attained changes in minority policies in Slovakia, these were mostly limited to formal rule-adoption. As political elites are still highly polarized on the issues concerning the national minorities, continuous fluctuation of minority policies is observable depending on which political parties are in power.

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