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Minorities, Identities and the Law: What It Takes to Be Recognized and Protected on Both National and Supra-National Levels

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1. *Introduction*

This chapter aims to provide some alternatives to "traditional" legal procedural regulation of minorities' rights.

Our approach goes beyond the legal framework for including a number of factors, such as identities and political cultures, while considering group psychology, participatory and conflict resolution theories. As teachers in the field of minorities' rights, which is a part of the course taught for decades at Public Policy Department of National Research University "Higher School of Economics" within the specialization in "Human Rights and Democratic Governance" of the Public Policy analysis' program, we strongly believe in a multidisciplinary approach to this topic. Indeed, it has proved to be more successful than a perspective based only on the analysis of legal norms at national or international level.

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This is not to say that legal mechanisms and judicial protection are not effective tools, since they are the necessary steel-frame on which the minorities' guarantees are based. At the same time, it is true that law is implemented by subjects, as individuals or collective bodies, with different values and social background. Hence, other reinforcing elements are needed to ensure that minorities' rights are accepted as citizens' rights rather than in the prism of majority/minority distinction. To this end, we refer to the historical civilizational analysis and the cultural diffusion theory where minorities' norms and traditions have acquired normative capacity, irrespective of their composition or their number.

2. *Is minority always a problem?*

To begin with, we want to highlight the various patterns of the negative image built up about minorities. In other words, is minority always a problem?

If we go back to the origin of the term minority, we may recall that this concept has its roots in the democratic political theory which is based on the "majority rules" thesis[1]. It is common knowledge that representative democratic theory was elaborated during the enlightenment by Montesquieu, Diderot and Rousseau who recognized a political actor in the masses of people opposed to the king as supreme authority. French intellectuals spoke on behalf of the "people", being them the majority of the population who have the power. As such, they have rights that every country and its government should protect and implement. However, once these theories have been refined, they made very clear that recognizing only the majority as the main actor of the political process may hamper the enjoyment of minorities' rights. Here it is sufficient to recall the oppression suffered by Protestants at the hand of Catholic majorities or the case of Muslims who, in turn, were oppressed by Christian majority's groups. For this reason, Tocqueville stated that the rule of the majority is the result of the "tyranny over the minority".

Therefore, for a "better quality of democracy", it was suggested that minorities should be protected by law leading, during the last century, to the development of a number of human rights instruments: among

[1] J.J. Rousseau, *Discourse on Political Economy and the Social Contract*, translated with introduction and notes by C. Betts, Oxford, 2008.

others, the Universal Declaration of Human Rights (1948), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the International Convention on the Elimination of All Forms of Racial Discrimination (1969), the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992) and the Declaration on the Rights of Indigenous Peoples (2007).

This historical development of minorities' rights escapes from the analysis of a very important question: does the existence of minorities always create real problems and demand legal regulation?

To answer this question, we suggest that minorities become a problem only when several factors are combined:

1. Minorities are identified as such both from "outside" and "inside";
2. Minorities are large enough to be "visible" within the public space;
3. Minorities' behavior is largely different from the majority's approved patterns of public behavior;
4. Minorities' behavior is seen, or can be interpreted, as a "threat" to majority's patterns of living.

In order to deal properly with this problem, we should acknowledged that there are two major obstacles which prevent a correct approach to minorities issues.

3. *Limits in legal means of conflict resolution and ADR theories*

First of all, we should examine the role of law in regulating identity conflicts and minority's rights protection. An important factor is related to the limits of legal measures of protection which, in some cases, can even be provocative because they incite more violence and aggression. It suggests to address the problem through equally effective approaches such as the Conflict Regulatory Systems, including minority's rights conflict regulation. According to our previous statement, this is appropriate because legal means of conflict resolution are considered as less effective, should be used with great cautions and, if possible, should even be avoided and substituted by Alternative dispute resolution (ADR) techniques[2].

[2] S.L. Carpenter, W.J.D. Kennedy, *Managing Public Disputes: A Practical Guide for Professionals in Government, Business and Citizen's Groups*, Jossey-Bass, 2001; M. Kes-

All ADR theories prove that, among the techniques used in conflict management, such as direct parties negotiations, third-parties involvement, multi-stake holders negotiations, involvement of a moderator or facilitators, adjudication through the mutual agreed arbitrator and actions before a Court, legal remedies are the less effective for a number of reasons:

1. Legal regulation needs coercive power, which may provoke counter aggression;
2. Legal regulation is slow and inertial, which makes it ineffective when an immediate solution is needed;
3. Legal regulation is based on concept of sovereignty, which may be in question;
4. Effective Legal regulation is based on dominant values, that may be not in favor of minorities to be protected.

Moreover, minority's rights protection does not depend very much on Courts' decision but on the attitude of anti-migration aggressive publics which is much more difficult to deal with. Legal ineffectiveness has been more and more compensate by the emerging of soft law regulations.

Indeed, in a world driven by huge flows of migrants, shaping new identities and changing the existing ones, minorities' issues are strongly connected to migration and international protection. For this reason, taking the analysis on identities as a background, a good approach to minorities' rights must include different perspectives.

A first step should be connected to legal analysis of both national and international law with an important additional focus on comparative law, especially **comparative constitutional law**. This comparative constitutional study would make possible to analyze the formulation of the legal principles for being considered a minority. It cannot be excluded the existence of different rules or regulations for being identified as a minority. It may happen, for example, that the same people are part of the majority in the country where they have lived permanently and included in minorities' groups within the host society.

HAVJEE, *Islam, Sharia & Alternative Dispute Resolution: Mechanisms for Legal Redress in the Muslim Community*, London, 2013; R. RIDLEY-DUFF, A. BENNETT, *Towards Mediation: Developing a Theoretical Framework to Understand Alternative Dispute Resolution*, in *Industrial Relations Journal*, vol. 42, 2011; EBA ALTERNATIVE DISPUTE RESOLUTION COMMITTEE, *ADR at RTOs, ISOs, and Power Pools*, in *Energy Law Journal*, no. 2, 2007, 517-542.

A second step should include the **political analysis** of governing systems of the countries at stake. Even when clearly stipulated in national law, formal existing rules do not provide an adequate picture because they may be either ineffective, or put on hold, or strongly abused by ruling authorities. Hence, the implementation of those rights can be seriously hampered. For this reason, a considerable weight should be attached to a number of factors: among others, the level of pluralism, the acting parliamentary style of work, the freedom of media and the existence of an independent judiciary. This complex evaluation is able to verify if minorities' rights, as specified in legislation, are "recognized" as such both by society and authorities, if vulnerable groups may express their concerns through media and if judicial authorities are able to sanction abuses.

In this framework, we may also refer to the **public policy analysis** which is close to political analysis but is mostly shaped around public actorness. Following this approach, we can identify at least three types of "concerned publics" in relation to minorities' rights.

The first type is given by the **members of the minority community** itself, whose rights are violated, who suffer from discrimination and who are willing and able to come together as a joint "protest public" asking for the protection of their rights. For example, in Moscow there are many Tajik citizens that are employed by local authorities as street cleaners. They are a self-organized community and voice their concerns to competent authorities as a group.

The second type of public is composed by those who strongly oppose the recognition of minorities' rights for several reasons, including fear and prejudice, and by those who are driven by intentional hate speech, such as skinheads and aggressive militant, national or religious groups. This wide group can be called **anti-minority public**. It reproduces negative attitude and poses a direct threat to minorities. For example, a well-known Russian case is related to foreign citizens trading fruits and vegetables in the "Beaurlevo" market, situated in the Russian populated suburbs of Moscow. Their presence has created anti-migrant sentiments and has led to aggressive behavior, such as smashing out migrants' kiosk[3].

The third type, which can be called **minority respectful public**, is composed by human rights supporters and people who recognize the threat to the collective public good of peaceful living together carried out

[3] See www.reuters.com/article/2013/10/13/us-tp-russia-rioting-idUSBRE99C06W20131013.

by abusive and aggressive anti-minority groups. This third group of public can also be reunited in pro-migrant/pro-tolerance NGOs, local support groups or general democratic peaceful rallies in support of human rights. Examples of such a minority respectful public are the "Grajdanskoe Sodeystvie"[4], working on the rights of slaves in Galianovo, and the charity project "Help", under the Foundation "Mosaic of happiness"[5].

The analysis of the behaviors, the history of their creation, the structure and the consolidation of these three groups of public actors is fundamental for the study of minorities' rights and of the dynamics related to their violation and protection. For example, they may explain why, even when migrants and their defendants can sue national Courts and have their rights protected, the aggressive behavior of anti-migrants public is not be defeated but, on the contrary, is intensified. This is the case of the Dagestan boxer Rasul Merzaev, a champion who was found guilty of an accidental killing. When the domestic Court released him, the anti-migrant public demanded aggressively his further punishment. The Court reconsidered his criminal case and, finally, prolonged his detention.

We consider the above listed approaches as an absolutely necessary minimum to be taken into account before analysing any serious questions of minorities' rights violation in a particular country or between countries when minorities are being formed of recent refugees or with having a long standing gradual ethnic balance shifts.

4. *National practices as counter-productive impediments*

Secondly, attitudes at national level continue to constitute counter-productive impediments in different ways.

In fact, the attitude for minority identity rights has been very tricky on the subject of regulation and law enforcement over the years in different periods of national States' development in Europe and, even previously, in the large confederative and quasi-confederative States and empires. The rights of the minority in places as Europe, characterised by an extremely multi-ethnic/multi lingual and multi-religious society, are a

[4] Civic Assistance Committee is the first non-profit charitable organization aimed at helping refugees and forced migrants. It was set up in 1990 before the establishment of Federal Migration Service. More at: http://refugee.ru/.

[5] See http://mozaikaschastya.ru/.

special case where diversity is celebrated and European's normative power for the equal respect for the rights of the majority and the minority is enshrined through various legislations and conventions. Yet, on the other hand, there has been an increasingly disturbing tendencies at the State levels where the implementation of the EU laws has been either left indifferently or made ineffective by very contradictory laws and regulations.

These impediments prove that legal tools are not the only and, in many cases, the best solutions for granting the enjoyment of minorities' rights. It is thus necessary to investigate them. To further substantiate the capacity limitation of legal mechanisms, we want to present the collection of country cases derived from the existing literature on minority rights failures. These cases provide for examples of the problems experienced by different kinds of minorities like sexual minorities, ethnic minorities, linguistic minorities and ethno-religious minorities.

It has been observed that, when the adaptation and the implementation of the laws on minorities' rights have been conditioned and heavily endorsed by the international community, in many occasions they have failed to achieve the desired results and in some cases they have created further alienation. As in the case of sexual minorities (LGBT), a normative power conflict between the European Union's institutions and the member States' legislative and judiciary powers has resulted into an yawning gap for the integration and harmonization of European law.

Similarly, on the issue of the rights of ethnic minorities in an European State, Turkey (not a member of the European Union but a candidate State) is a good example. Despite the encouraging beginnings made under the incentivization program as a potential member of the European Union, such as a series of laws concerning the right of expression, education and cultural space for the minorities being enshrined in the Constitution, simultaneously the enjoyment of the rights of minorities has been hampered by the setting up of monopolizing agencies and actors which have to represent these ethnic minority groups' demands and desires related to their rights of language, education and media space. The malaise of this situation is further compounded in the articulation of minorities' rights that somehow annuls the effectiveness of the collective rights of the citizenry in the State.

Thirdly, it is equally important to see how the legislative and law enforcement of the rights of minorities in a fragile and newly born country in quest of consolidating its State's identity based on the ethnic majority population gets into a major challenge and threat when the demand for

the mere institutionalization of the linguistic and cultural rights of the minority is superimposed by a hegemonic neighborhood, as in the case of Ukraine.

Finally, questions of identity (which includes Self-identity, Multiple Identities and Identity formation and manifestation) are particularly important. We contend that if the rights of the minorities are being applied without providing incentives for joining the common civilizational space or creating the co-habitation of cultural space, it shall always create potential inter-ethnic/inter-identity conflict. With the passage of time, it rolls and turns into a separate community inside the State and gradually the ideational and cultural ghettoization gets institutionalized. This creates a platform of combat rather than a platform of co-operation, a space of strife instead of a space for societal cohesiveness. The burning example of such insidiousness resulting into forced/voluntary ghettoization is provided by the newly arrived Muslims minorities from Arab and North-African countries (MENA countries). As we have witnessed in the latest tendencies across the European and Western countries with different examples, this lack of encouragement along with the newly arrived minorities turns into the separate cluster of the larger host society.

Summing up, we can provide four types of objective difficult and intentional impediments by the national law implementing agencies that results into counter-productive practices regarding minorities' rights:

- impediments in the implementation by authorities, as exemplified by the implementation of EU law in its member States;
- impediments derived by the monopolization by the State of the realization of minorities' rights;
- impediments due to the cultural and historical heritage of the nation State building process when the newly born states with the constituting nations feel threatened by the overwhelming minority;
- impediments caused by mutual exclusivity by host States and minorities, when the latter refuse to get integrated in the predominant cultural environment and behavioral patterns.

This paper makes an effort to explain through the analysis of these four mentioned issues on the rights of the minority and tries to examine how the legislative acts as well as the law enforcement capacity is compromised and diluted by the dissonance in the multi-level governance in some cases and by taking the piecemeal approach on the rights of minority being separated from the collective human rights of the entire

citizenry in others. At the same time, while in some cases the existence of numerically significant minorities in newly born States with its fragile statehood and the protection of their rights further creates a societal cleavage leading the larger majority of the population to feel existentially threatened by such approach, in others the newly arrived migrant minority if not integrated with the universal rights of humanity can create a parallel space thus challenging the very idea of the human rights!

4.1. Impediments at the regulatory level

The first kind of impediment is related to the activity of the regulatory authority at the national level when it acts against the very basic tenet and objective of EU laws and when it doesn't act in consistency with EU laws and principles as in the case of **sexual minorities' rights**. One can easily discern that it has been bottlenecked through the *implementation inconsistency*. On the one hand, the official statements give the impression that the EU is in the vanguard of institutionalizing and promoting sexual minorities' rights. Not only all EU representatives stress the importance of human dignity and that homophobia constitutes a breach thereof. Their statements are also rife with references to the principles, articles and legal documents upon which the EU is founded.

The ratification of the Lisbon Treaty made the Charter of Fundamental Rights of the European Union (CFR) the first international document that explicitly prohibits "any discrimination" based on, *interalia,* sexual orientation (Article 21). As such, the EU appears to be leading by example.

If seen even further about the **normative power** of Europe to create a model and an example for the outside world, although it is acknowledged that different conceptions of power continue to coexist, norms and values have become a relatively more eminent part of the EU's international identity. The emphasis has thus shifted away from security and defense matters onto the trade realm and subsequently onto 'the ability to define what passes for "normal" in world politics'[6]. This norm-setting ability is considered to be the defining feature of NPE.

This normative power of Europe is not declarative in spirit but this normative difference is at the heart of the Union's collective identity,

[6] I. MANNERS, *Normative Power Europe: A Contradiction in Terms?*, in *Journal of Common Market Studies*, no. 2, 2002, 236.

which in turn enables the EU to shape what is 'normal' in the global realm. It flows from three inter-connected sources. Firstly, it points to historical context: the Union emerged out of, as well as constitutes, a rejection of the nationalist antagonism that generated the Second World War[7]. The second fountainhead concerns the Union's institutional hybridity, which turns the EU into a polity that defies classification both as a Westphalian State and as a standard international organization. Thirdly, arguing that the EU is a value-based community is not a mere declarative statement; the genesis and the development of the EU as a collective entity that is founded in and guided by fundamental principles is reflected by its legal constitution. This normative difference is illustrated by several treaty articles (see Articles 3, 6 and 11 of the TEU), as well as by references to international documents such as the European Convention on Human Rights (ECHR) and the Universal Declaration of Human Rights (UDHR) in EU legislation.

The **NPE framework** depicts the EU's normative basis as consisting of nine core normative values: sustainable peace, social freedom, consensual democracy, associative human rights, supranational rule of law, inclusive equality, social solidarity, sustainable development and good governance. While these norms often overlap and impact upon each other, they were legally enshrined at different times, reflecting the norms' historical contingencies. The Charter of Fundamental Rights of the European Union "restates and re-emphasizes" all norms and can therefore be regarded as the culmination of the legal articulation of the EU's normative difference.

An example is the issue of the EU norm advocacy for the repeal of the death penalty. Manners argues that the EU successfully managed to frame capital punishment as a human rights issue that falls within the scope of the international community, and as such uncoupled it from the realm of the sovereign States[8]. This case study also illustrated the wide set of policy tools that the Union can make use of in the pursuance of its core and subsidiary norms.

It is painful to observe that the CFR is being flouted regularly by EU member States that adopt at a state level contradictory legislations/ decrees that undermine the whole spirit of the CFR. "It is observed that the ability of the EU to shape international norms and values concerning

[7] *Ibid.*, 236 and 240.
[8] *Ibid.*

this policy issue is severely undercut by a set of internal, institutional and conceptual inconsistencies. Only by overcoming this confliction and inconsonance can the EU develop into a full-fledged, credible and effective normative power in the case of sexual minority rights"[9].

This hybrid identity is thus often associated with tensions and inconsistencies between roles and associated practices, which constrain the EU's external projection of power. While the EU propagates values such as equality and non-discrimination internationally, it frequently violates these principles due to the complex nature of its internal and institutional dynamics. This contradiction of outward saintliness and internal noncompliance might consequently hamstring the Union in its exercise of normative power.

The EU Parliament partly lauded the many member States that have gone beyond the minimal legal requirements, but was particularly critical of the legal uncertainty surrounding transgender people in the EU, owing to the fact that discrimination of this group is not treated as either sex or sexual orientation based discrimination in almost half of the member States. In 2006 and 2007 the European Parliament adopted a series of resolutions in which it remarked upon the surge of homophobia, in its many forms, in Europe[10]. These resolutions reveal that homophobia is notably rampant in the Eastern member States, in particular in Poland and Lithuania. In Poland, leading politicians incited hatred and violence against LGBT people and the government announced a number of discriminatory measures in the field of education, such as drafting legislation 'punishing "homosexual propaganda" in schools' and firing openly homosexual teachers.

Such differentiation is further evident in the *de facto* treatment of sexual minorities. While some countries consider homophobic intent an aggravating factor in the practice of hate speech or hate crimes, thirteen member States treat it as "neither a criminal offence nor an aggravating factor"[11]. The variance also becomes visible with respect to gay pride marches: while leading politicians in some EU member States actively take part in such parades, in recent years the freedom of assembly has been infringed in several Baltic and Eastern European States. These find-

[9] M. Mos, *Conflicted Normative Power Europe: The European Union and Sexual Minority Rights*, in *Journal of Contemporary European Research*, no. 1, 2013.

[10] *Ibid.*, 83.

[11] *Ibid.*, 84.

ings, in short, unveil the EU's motto of *Unity in diversity* as a double understanding and are suggestive of an ethical internal divide.

Coherence and consistency are also found wanting in the EU's policies towards sexual minorities from a conceptual level. Both the Union's definition and application of the 'LGBT' concept evidence a lack of parallelism. Fundamentally, most European-level policies referring to sexual orientation and gender identity fail to define these concepts altogether. In the light of the academic debate surrounding these concepts, this lack of reflexivity is bewildering. Such debate has displayed a growing tendency to describe these terms as located on a spectrum rather than as categorical identity markers. This suggests against a straightforward classification and points to the need for clear and consistent definitions when they are put to policy use. However, all EU documents exhibit a lack of definitional clarity, which prepares the ground for arbitrariness and legal uncertainty.

4.2. Impediments at the implementation level

The second type of impediment concerns the State monopoly of the realization of minorities' rights. Turkey is an example where the backdoor withdrawal of the rights of the minorities points out about the simultaneous hardening of the position of the majority, thus creating the bottlenecks in the true implementation of the rights of the ethnic minority.

The European Commission's first progress report stated that "there is a *de jure* and *de facto* difference in the treatment accorded to minorities officially recognized under the Lausanne Treaty and those outside its scope"[12]. It pointed out that the entitlement of a minority status is limited to merely the Armenians, Jews and Greeks. Hence, the Kurds are excluded from the status of being a minority.

The European Union's quest for a normative change in this field put pressure on Turkey, with the incentivization in the form of the European Union membership in future. Thus, Turkish authorities implemented a set of laws between 1999-2005. For example, on 3 October 2001, Turkish authority amended 35 articles of the Turkish Constitution; in particular Articles 26 and 28 loosened the restrictions on the use of minority languages. Similarly, the broadcasting of the programs in languages other than Turkish was also implemented.

[12] *Ibid.*, 86.

Yet, while these laws were implemented, the regulatory mechanisms remained State centric. For example, the national Radio and Television Corporation was given the regulatory power for the broadcasting in minorities' languages[13]. Non-State actors, foreign broadcaster and publishers were barred from the dissemination *in other minorities' languages*. At the same time, a minority language has been even refused to be addressed with its proper name "**Kurdish**", while it has been identified by the *mystic naming/labelling* of the "living language". This law was further amended on 30 July 2003. The expression "any language other than Turkish cannot be taught as mother tongue" was added in Turkish education and training institutions, restricting the teaching of minorities' languages to only private courses.

Therefore, while the harmonization efforts were unleashed by the coalition government of Turkey in the last years of the 20th century, a set of legislations were passed and many constitutional amendments were enacted, on the other side, at the societal and communitarian level, the widening of the gulf between the majority and the minority got much wider. It can be seen from the emergence of AFK party in power and the parallel sharpening of positions between the conservative majority and the hyper secessionist minority of Kurds. So what was more a political problem and a challenge at the power sharing/power distribution worsened into a problem of the inter-ethnic/intercommunity strife and struggle.

Interestingly, those groups themselves don't want to be *labeled as a minority* despite their demands for education in the mother tongue. This is due to the fact that the minorities themselves consider the status of being a minority as being "second class" citizens. In addition to this, the constitutional amendments in accordance with the demands of the EU are still far from meeting the standards. Besides, the reforms have failed to change the essential features and the constitutional structure remains unchanged since Turkey's vision based on "one central state, one nation and one language" continues to form the preeminent understanding of the Turkish republic.

Turkey still handles the issue of universal human rights and refuses to instigate the understanding of "Group rights or collective rights". The recognition of groups like Kurds, Alevis and Arabs living in Turkey has

[13] See ZELAL KIZILKAN-KISACIK, *European Diversity and Autonomy Papers*, EDAP, issue no. 1, 2010, available at: www.eurac.edu/en/research/autonomies/minrig/publications/Pages/European-Autonomy-and-Diversity-Papers-%28EDAP%29.aspx.

created the consolidation of strong nationalistic feelings in Turkish society which until recently was much indifferent about the existence and at peace with other minorities. Besides, the pressure from the EU has indirectly resulted in a "societal exclusion" which then led to a strong emergence of anti – minority discourses and discriminatory practices towards minorities, especially Kurds. The continuous strengthening of the political capital of the right to the center, conservative nationalistic party and the increasingly belligerent idea about the majority Turkish identity as a the nation State rather than a Republic with diverse ethnic groups have diluted whatever gains the Europeanization plans wanted to achieve.

4.3. Impediments resulting from the nation building process

A third sort of impediment in the full realization of minorities' rights is strictly connected with the nation-building process, especially when new independent States go through the process *of decoupling from the meta history* of a big Empire/union state with the potential consequences in terms of strong cleavages.

In new born States any guarantee related to minorities' rights may aggravate the fragile peace that exists in this peculiar condition. Any hasty implementation of legal mechanism to ensure the rights of minorities, if not accompanied by civic discourse as well as cultural and educational synergy, is able to create a boomerang effect where the majority feels its new acquired status and privileges being deprived.

Indeed, a posthaste regulation of minorities' rights by a vote bank politics seems to bring society into a major deadlock. Instead, a method based on conflict analysis and conflict resolution may be more appropriate for a multi-level policy implementation.

Let's take the example of Ukraine. Since the dissolution of the Soviet Union, issues concerning minorities (such as language rights, rights of freedom of education in the mother tongue and social collective rights) have been a major problem in each of the new independent nations/republics in the Eastern front of Europe. In many of those countries, security concerns (defined here in terms of sovereignty, internal stability and territorial integrity) have been a very important factor in Governments' decision making on minorities-related issues.

At the same time, as recent studies on EU accession conditionality have showed, there is a substantial variation in how conditionality on minority matters was applied to individual candidate States in the last

wave of EU enlargement and in how these candidate States approached the question of their obligations towards their national minorities[14].

Although not always articulated explicitly, the fear of separatism, secession, country breakdown and disintegration has seen the efforts to revive the Ukrainian language as only one aspect of the continuing struggle over competing definitions of what constitutes a majority in Ukraine.

The unifying features of the ethnic Ukrainian identity are the Ukrainian language and culture. Its core beliefs include preference for Ukrainian language, culture, history and symbols. This type of identity frequently is associated in the literature with concepts such as indigenousness, colonialism and Russification. On the other hand, owing to the large size of the group, its influence, long-standing residence and strong beliefs in Ukraine, the ethnic Russians being a part of Russia's civilizational space refuse to accept minority status and claim to be an integral part of a majority group that they describe as being constituted jointly by Ukrainians and Russians.

After the Orange revolution in 2004, the idea of a national reawakening has been promoted by the pro-Western and pro-democratic Government of Victor Yuschenko. The discourse on the national consolidation in the sphere of education and media was continuously questioned by organizations and prominent individual members of the Russian minority who supported the idea of one Single Russian Civilizational space[15]. Being also financially supported from abroad, this contrast has created an existential threat for the majority of Ukrainian citizens in relation to the struggle for a full independence as a State.

This continued controversy on the identity and the territorial and political sovereignty of the State is also exemplified by the monopolization of the Russian language in electronic and printed media. More than 70 percent of broadcasting has been aired in Russian, which had already a competitive advantage in the political and intellectual space of the Ukrainian State. Although the law provided that all minorities' languages in Ukrainian territory (namely, Hungarian, Romanian and Tatar) should be equally promoted, it was obvious that the use of Russian could influence the electorate.

[14] J.G. KELLEY, *Ethnic Politics in Europe: The Power of Norms and Incentives*, Princeton University Press, 1998.

[15] T. KUZIO, *Nationalism, Identity and Civil Society in Ukraine: Understanding the Orange Revolution*, in *Communist and Post-Communist Studies*, no. 3, 2010; Y.M. BRUDNY, E. FINKEL, *Why Ukraine Is Not Russia: Hegemonic National Identity and Democracy in Russia and Ukraine*, in *East European Politics & Societies*, no. 4, 2011.

It is not surprising that, in 2010, the national consolidation policy came to a shuddering halt when the Southern and the Eastern parts of Ukraine, massively Russian speaking territory, voted for Victor Yanukovich. This was a smooth transition of power produced by the ballots as a consequence of the unsuccessful former regime's European choice and of the unpopular economic reforms, aggravated by the lack of unity and the global financial crisis.

When in 2012 the issue of the Russian as a second official language was fast tracked in the pro-Russian Parliament, the new situation shocked even those Ukrainian citizens that were indifferent until then. Interestingly, the law was introduced following the recommendation of the Framework Convention on the rights of minorities' languages. A strong reaction made difficult the use of Russian. However, being it the language *de facto* spoken by the majority in the day to day communication, this move eroded the already fragile common space of co-habitation.

Thus, the legal attempts made by the anti-Ukrainian and pro-Russian regional Governments to grant language-related rights to their "minority" have originated a significant social divide. At the same time, the national Government has always seemed to promote this issue as a Western value in connection to the association agreement, in the framework of the European Neighborhood Policy, to be implemented through law and legal mechanisms. Probably, the enjoyment of these rights could have been easily granted through cultural dialogue, civic society discourse and mutual trust building, without creating national territorial integrity concerns to the majority of Ukrainians.

As a result, the implementation of a good law in terms of minorities' rights within the context of a fragile State, which does still need to consolidate its cultural identity in the post-Soviet Union space vis-à-vis its hegemonic neighbor, was blown away for electoral purposes by a highly discredited political élites. They finally used the sheen and the halo of human rights/minorities' rights to create larger cleavages in the Ukrainian peaceful and highly democratic civic society.

4.4. Impediments caused by mutual exclusivity by hosting State and incoming ethnic minority

A final impediment is caused by a mutual exclusivity by the hosting State and new minorities, being this the case of incoming migrants of different ethnic origins.

An example which seems very useful to illustrate this kind of dynamics comes from Australia, where a conflict has emerged between Muslim youth and the rooted white population. Clashes between non-Muslim and Muslim groups, who considered the Australian way of life in contrast with their religious norms, have led to the rise of anti-Muslim migrant sentiments within the host society. The reaction from Australian youth against Muslims was particularly strong. Researches show that they felt threatened by the new arrived immigrants who imposed a very different way of living in comparison to their "traditional" habits. They deemed that, as new immigrants in a Western society, this minority has no right to impose their own traditions and habits in Australia. Only by mutual negotiation between youth teams, organized by local communities and local police, this conflict has been resolved.

This case proves that, in civilized societies, anti-migrant sentiments and attitudes do not upsurge unless the migrant groups' behavior is not considered, objectively or subjectively, "threatening" the normal way of life of the host community. This aspect should be taken into account not only for the protection of minorities' rights but also for the adoption of preventive measures aimed to combat aggressive attitudes.

Instead, if we look to European countries, especially in the aftermath of the Charlie Hebdo case in 2015, we may notice how this kind of elements do not receive appropriate consideration. Starting with France, problems of arson and violence in the suburb of Paris, where the North-African migrants have been allowed to create their own communities in the past half a century, are still unsolved. The building up of their own block of ghettos and identities space has been fostering by the implementation of the rights of minorities, while they were not encouraged or given incentives to get integrated due to social and cultural reasons. The passage of time has now created a certain level of cultural dissonance which, although subtle, may rise problems for the harmony in the inter-ethnic equation of the French society.

Other concerns are evident in Denmark and Germany. In Copenhagen, there was a fierce demonstration showing a growing opposition between different part of the current Danish society: the majority Danish population was in combative spirit against the equally combative Muslim minority. In Germany, the lack of adaptation and of common cultural space between Muslim migrants (mainly Turks) and the host majority became apparent when large demonstrations were held by ultra-nationalists raising the issue of cultural preservation of the majority in their

own homeland. As a result, it does not seem casual that, in the past few years, many right- and center-wing political parties across EU countries have gained electoral consensus thanks to the less friendly proposals on minorities and migration issues.

5. *Transcending the majority/minority space*

A quite different approach is provided by the **conflict resolution theory**. The issue of minorities' rights looked upon the prism of human rights protection in almost all the cases is connected to the conflict analysis and conflict resolution. Conflicting parties regarding minorities' rights could be very different and they need to be properly recognized: who are the minority groups themselves; who provoke conflicts in certain circumstances; were the minority groups themselves or the aggressive anti-minority groups responsible for rising the conflict?; what were the behaviors of Government's organs and officials on different levels of administration (from household administrations to migration registration offices, labor administrations, police)?; what was the role of each of those Government's organizations and authorities while dealing with minorities' rights? Conflict management theories produce useful insights for the analysis of the problems and the elaboration of proposals for the most adequate protection of minorities' rights.

All conflict theories authors, while analyzing the best techniques of possible conflict resolution (from direct negotiation to facilitation and third-parties involvement before Courts), consider adjudication the least successful because it is costly and largely ineffective and does not bring satisfaction to both parties (it makes one party win and other party is always unhappy and may continue to fight).

This provides for an important conclusion that even for people with legal education who is well familiar with judiciary, and comfortable analyzing judicial decisions, it is still useful and advisable to look for alternative conflict resolution techniques, rather than insisting on courts' adjudication.

Different cases show that minority rights were violated to a lower degree before the starting of their protective legislations. On the opposite, these protective legislations have led to more cleavages, more division within society, energizing anti-minority public that pro-minority community cannot successfully cope with. This is not a particular execution;

rather, it may be considered as a rule given the fact that legal regulation as a tool of minority protection is quite rigid with uncertain and less predictable outcomes. Facing growing Legal Ineffectiveness, it may be suggested to recognize the rise of new mechanisms of Soft Law Regulation, based on commonly agreed local norms of behavior which do not need coercive legal power.

In this context, we can see that soft laws mechanisms, social regulation, invocation and implementation of collective rights of the citizenry can contribute to a very judicious and careful approach for the development of a common cultural and identity space between the majority and minority demography.

The world has always been multi-ethnic and multi-confessional and there are bright spots where the majority inside the State opted for the minority culture or where the ethnic and linguistic minorities have been brought to the common cultural/identity space, thus removing the potentialities for aggravation of the inter cultural conflict. As the tension between inclusivity and exclusivity remains unresolved and finds frequent different expressions in the different ethno – religious formation of the modern States, the majoritarian community at times has been able in a softer way to envelope itself with the minorities' identity, although overwhelmingly covering the space of the privileges and rights.

6. *Brighter spots: co-habitation of the majority and minority ideational space and common cultural platform*

Examples of what we have said above can be identified in the historical development of Iran and India.

The principal pillars of nationalism that permitted the resuscitation and accessibility of ancient Iran were language, literature and the celebration of selective historical sites as belonging to the ancient (and thus the current non-Islamic/non-Arab) national identity. Although Iran absorbed the Arabic religion (Islam), its cultural and civilizational edifice remained very much Pre-Islamic with many significant traits being Zoroastrians. Interestingly, this "minority" cultural identity has been promoted as common identity to create a different cultural space. The *Shahnameh* was seized upon and promoted by nationalists as the quintessential Iranian epic, written in "pure" Persian, and capturing the nostalgia for the pre-Islamic era of Iranian greatness. The *Shahnameh*

clearly differentiates Iranians from non-Iranians, and identifies Arabs with Islam (and implicitly, Islam as an Arab and thus foreign religion). It should also be noted that *Shahnameh* commemorates and identifies itself with the values of royalty, nobility and an ethical system that differs markedly from Islamic-based virtues. For examples, the knight-hero is the ideal man, aristocratic privilege trumps equality of faith and women are reported in a way which resemble to early Islamic models of political action and power. However, instead of rising the conflict, this identity process has provided for a common cultural platform characterized by the co-habitation of the majority and minority ideational space.

If we examine the Indian society, we may easily find that Sikhs are a significant low percentage of the population (less than 2%). They do not only have been granted the same rights and possibilities of majority, but they also provided for a platform for the majoritarian community through their socio-religious and cultural congregation in order to update and enrich themselves on the two way traffic of civil communication. Although enforced and substantiated by laws and regulatory mechanism, this civil communication is hardly dependent on it. It relies more on the level of inter-community, inter-ethnic and inter-religious confidence building mechanisms and on measures which are more societal and culture-conventional in their foundation in order to ensure the free and unrestrained practice of the rights of the minority. This range of minorities' rights is holistic and all inclusive in the sense that it covers the rights of languages, the rights of religious freedom and its propagation, the distinctive social and cultural peculiarities, with some parallel in civil law. The Uniform civil code is not held supreme if it contravenes with the spirit of the traditions and conventions of the minorities civil law. This pattern is evident in the context of the Muslim Personal Law Board that takes care of the day to day civil legal issues, while the secular legal norms of the State does not take the precedence over Muslim law.

7. *Conclusion*

When we face identity issues and multi-identity social spaces, the capacity of the law is not universal and, in many cases, it does not bring the desired results. Sometimes, it brings unwelcomed results even in tolerant societies which do not appreciate that their civilizational and cultural platform is threatened either by the newly arrived minorities or

by long established minorities with certain clouts and disproportionate levers of power, both political and economic. The ideational space, that creates the condition of mutual exclusivity and may be further aggravated by the need to protect the cultural and identity of minorities' rights through legal mechanism, has to be increasingly cemented and substantiated through civil and cultural engagements. Hence, there is a need to work on the preparation of the civil and educational common identity platform for avoiding that one identity annuls other identities or that are mutually exclusive, and consequently in order to create the conditions where minorities identity questions are co-habituated in a multilayered formation of a macro identity. In nutshell, although legal tools and norms are the basic minimum for safeguarding the rights of minorities, in many cases they complicate the overall situation while in few others they even aggravate the whole objective for which these laws and regulations have been established…