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The Conceptualization of Minorities in the Practice of UN Treaty Bodies – A Case Study from the Alpine-Adriatic-Pannonian Area

Abstract

International law regularly operates with the term minorities and related concepts when recognizing group-specific rights, without setting out definitions of the protected groups. However, while the law itself is largely silent on the issue of conceptualization, the practice of monitoring organs can provide guidance in this regard. Therefore, this paper draws on the doctrinal and comparative legal analysis of the case-law of UN human rights treaty bodies. Specifically, concluding observations are analysed in the context of the Alpine-Adriatic-Pannonian area, including Slovenia and its neighbours as well as other states of the former Yugoslavia. The paper aims to show the emerging consensus within the approaches of the individual treaty bodies and to identify elements of the minority concept which appear systematically in the practice of all treaty bodies in the region under examination, thus contributing to the conceptualization of minorities in the framework of international human rights law.

Keywords

conceptualization of minorities, UN treaty bodies, Alpine-Adriatic-Pannonian area, legal regulation of the status of ethnic communities

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1. Introduction: The Definitional Problem

Despite decades of scholarly effort, there is still no universally accepted definition of minorities and other identity-related concepts, such as ethnicity, race or nationality. Yet, international law customarily operates with these terms when recognizing group-specific rights or providing protection from discrimination, without actually setting out definitions on the protected groups (conceptualization) or membership criteria therein (operationalization). According to Alfredsson (2004, 163), comprehensive definitions of the beneficiaries of group rights are missing from international human rights instruments because States are reluctant to deal with rights of groups. Furthermore, ignorance, lack of tolerance and racism play a role in the absence of codified definitions.

This is not merely an unresolved theoretical issue but a practical deficiency with crucial importance for the protection of minorities. The lack of international regulation leaves States with too much discretion in determining which communities, based on what criteria and under what labels, are officially recognized as (certain types of) minorities in their territory. In this process, in addition to the subjective self-identification of individuals and communities, as well as certain objective criteria, political considerations play an important role. Top-down interventions into group identities and boundaries, manipulation, increasing the number of minorities, fragmentation of certain categories or, conversely, blocking the paths to recognition, and the dilemma of recognition/non-recognition are common phenomena in the Alpine-Adriatic-Pannonian area.[1]

Divergent views are well reflected in the national legal regulations on the status of ethnic communities not only in the region under study, but elsewhere, too: some States simply refuse to recognize the existence of any minorities in their territory (e.g. France, Egypt); others recognize only certain groups (e.g. Austria, Slovenia); still others apply a narrow concept, confining protection only to their linguistic (e.g. Italy) or national (e.g. Russia, Ukraine[2]) minorities (Nagy & Tóth 2025; Nagy & Vizi 2024; Spiliopoulou Åkermark 1997, 142). In addition, most States differentiate in the rights and status of traditional vs. modern (migrant) communities (Medda-Windischer 2008). Furthermore, whereas the lack of an internationally binding definition could provide space for generous protective measures, in practice it usually leads to a lower level of protection.[3] Finally, a universal definition would have the benefit of strengthening the standard-setting nature of international law.

The main question is: can something be effectively protected if it is not defined? (Marko et al. 2019, 37). To put it more elaborately, "ambiguity in terms of the targeted communities and membership boundaries for minority protection mechanisms and social inclusion measures may hinder the achievement of policy goals. In addition, the potential for abuse can open avenues for further discrimination and marginalization" of these already vulnerable groups (Pap 2021, 214). For example, several abuses occurred during the 2002–2003 elections of minority self-governments in Hungary. There, in the absence of formal identification or registration, anyone could participate: not only persons belonging to the given minority, but practically anyone was able to vote and be elected. Although registration on the minorities' electoral list has since been introduced as a legal requirement, the process is based exclusively on self-identification without any objective criteria and abuses still occur. The possibility of making false declarations about minority affiliation not only interferes with the right to establish minority self-governments, but it also negatively affects the exercise of other minority rights. Unfortunately, the phenomenon of ethnobusiness is widespread in Central and Eastern Europe (Dobos 2020; Korhecz 2022; Nagy 2022, 40–46), and is deplored by UN treaty bodies.[4]

Following from the above, addressing the problems of conceptualization and operationalization is vital for the protection of minorities. Whereas it is extremely difficult

> to identify common elements which are able to grasp the plurality of existing relevant communities […], the prevailing view is that it is possible to find some elements of the concept of minority endorsed by international law and therefore to determine the scope of application of the respective rules *ratione personae* (Pentassuglia 2002, 55).

True enough, while international legal regulation in general is silent on the issue of conceptualization of groups,[5] the practice of monitoring organs can provide guidance in this regard. It would be convenient to rely on the extensive monitoring work within the Council of Europe – i.e. that of the Advisory Committee of the Framework Convention for the Protection of National Minorities and of the Committee of Experts of the European Charter for Regional or Minority Languages – but this has been widely discussed in scholarship (see, e.g. Craig 2016; for a recent assessment, see Bašić 2023). Less known are the contributions to the definitional problem of minorities offered by monitoring organs within the framework of general international human rights instruments (per-

haps with the exception of the UN Human Rights Committee, which is quite broadly discussed). Therefore, this paper draws on the doctrinal and comparative legal analysis of the case-law of the UN human rights treaty bodies, i.e. independent expert organs monitoring the implementation of the nine core human rights treaties adopted under the auspices of the United Nations.[6]

The main source of analysis consists of concluding observations, but a few views on individual communications and general comments/recommendations are also included where relevant. Specifically, concluding observations on State reports will be analysed in the context of the Alpine-Adriatic-Pannonian area, including Slovenia and its neighbours as well as other States of the former Yugoslavia. The selection of countries is aligned to the geographical focus of *Treatises and Documents, Journal of Ethnic Studies,* for which this paper is intended.

The paper has two aims. First, to investigate whether there is an emerging consensus or split between the approaches of the individual treaty bodies, and hence in the UN human rights system as a whole. Second, to identify elements of the minority concept which systematically appear in the practice of all treaty bodies in the examined countries, thus constituting a possible basis for setting forth an all-encompassing definition of minorities within the framework of international human rights law. Considering the paper's geographical focus, both of these aims can only be achieved partially, and my findings should be considered as preliminary results of a broader research project with a universal scope.

2. Research Method

As mentioned above, the research applies doctrinal and comparative legal analysis to reveal the practice of the UN human rights treaty bodies, including first and foremost the Human Rights Committee (CCPR), the monitoring organ of the International Covenant on Civil and Political Rights (ICCPR), which is the only international treaty with universal scope and general application to contain a minority-specific provision (see below).

In addition, the practice of the Committee on the Elimination of Racial Discrimination (CERD); the Committee on Economic, Social and Cultural Rights (CESCR); the Committee on the Elimination of Discrimination against Women (CEDAW); the Committee against Torture (CAT); the Committee on the Rights of the Child (CRC); the Committee on Migrant Workers (CMW); the Committee on the Rights of Persons with

Disabilities (CRPD); and the Committee on Enforced Disappearances (CED) will be examined.

From the abundant practice of treaty bodies, the paper will scrutinize the concluding observations adopted on the basis of nine selected States' reports from the Alpine-Adriatic-Pannonian area, namely Austria, Bosnia and Herzegovina, Croatia, Hungary, Italy, Montenegro, North Macedonia, Serbia (including Kosovo)[7], and Slovenia. Concluding observations on former Yugoslavia were also analysed, offering the opportunity to examine historical trends and possible changes in approaches.[8]

Table 1: Entry into force of the core human rights treaties in the examined States

	ICERD	ICCPR	ICESCR	CEDAW	CAT	CRC	ICMW	CRPD	CPED
Austria	1972	1978	1978	1982	1987	1992	x	2008	2012
Bosnia&Herzegovina	1993	1993	1993	1993	1993	1993	1996	2010	2012
Croatia	1992	1992	1992	1992	1992	1992	x	2007	2022
Hungary	1967	1974	1974	1980	1987	1991	x	2007	x
Italy	1976	1978	1978	1985	1989	1991	x	2009	2015
Montenegro	2006	2006	2006	2006	2006	2006	x	2009	2011
North Macedonia	1994	1994	1994	1994	1994	1993	x	2011	x
Serbia	2001	2001	2001	2001	2001	2001	x	2009	2011
Slovenia	1992	1992	1992	1992	1993	1993	x	2008	2021
Yugoslavia	1967	1978	1978	1982	1991	1991	x	x	x

Source: United Nations Treaty Series. (Prepared by author).

Tables 1 and 2 present descriptive statistics of the research: the date of entry into force of the individual treaties in the examined States (Table 1), and the number of concluding observations adopted during all monitoring cycles completed until the date of writing and in total (Table 2). Where concluding observations were not yet available/adopted for the last monitoring cycle, lists of issues prior to reporting (LoIPR) were included instead. Altogether, 291 documents were analysed.

All documents analysed in this paper are available from online public databases: the UN Treaty Body Database and/or the United Nations Digital Library. Except when quoting directly from or referring specifically to a particular document, concluding observations will not be individually referenced in the body of the paper, for reasons of space constraints and easier readability. However, in the Reference section, individual document identifiers will be provided, categorized according

to the respective country and treaty body, so that documents can be easily accessed in the above-mentioned databases.

Table 2: Number of concluding observations adopted by UN treaty bodies in the examined States

	CERD	CCPR	CESCR	CEDAW	CAT	CRC	CMW	CRPD	CED	Total
Austria	12	6	9	6	6	4	0	2	1	46
Bosnia&Herzegovina	7	3	3	3	3	3	3	2	1	28
Croatia	6	4	2	3	5	4	0	1	0	25
Hungary	13	7	8	7	4	4	0	2	0	45
Italy	11	6	7	6	6	4	0	1	1	42
Montenegro	3	2	1	3	3	2	0	1	1	16
North Macedonia	3	4	2	3	4	3	0	1	0	20
Serbia	2	5	4	3	4	2	0	1	1	22
Slovenia	4	3	2	5	4	3	0	2	0	23
Yugoslavia	12	3	6	1	1	1	0	0	0	24
Total	73	43	44	40	40	30	3	13	5	291

Source: United Nations Digital Library; UN Treaty Bodies Database. (Prepared by author).

3. Preliminary Remarks: The Relevance of UN Treaty Bodies

Before turning to the analysis, a few preliminary observations must be made. First, when it comes to minorities, not all human rights treaties carry the same weight. In numerical terms, there are only a few documents adopted by the CMW (3), the CED (5) and the CRPD (13) in the examined region. By contrast, most documents were adopted by CERD (73), whereas the number of reports under CCPR, CESCR, CEDAW and CAT is in the range of 40 (see Table 2).

The importance of treaty body materials for the purpose of this analysis is also influenced by the minority-relevance of the treaties they monitor. In fact, only the ICCPR and the CRC contain explicit references to the rights of minorities. Specifically, Article 27 of the ICCPR sets out the following:

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

As can be seen, the provision does not offer a definition of minority, but merely hints at a few objective elements that could form part of the concept and/or be taken into consideration when operationalizing the term. To qualify for protection under Article 27, an individual must belong to an ethnic, religious or linguistic minority, yet these terms – ethnicity, religion, and language – were also left undefined during the drafting process.

One element of the minority concept was explicitly set out in a 1993 decision of the Human Rights Committee: numerical inferiority. The authors of the communication challenged legislation in Canada's Quebec province that prohibited the use of any language other than French in commercial signs. The Committee concluded that English speakers within Quebec did not qualify as a (linguistic) minority for the purposes of Article 27 of the ICCPR, since

> the minorities referred to in article 27 are minorities within a State, and not minorities within any province. A group may constitute a majority in a province but still be a minority in a State and thus be entitled to the benefits of article 27.[9]

This criterion, however, does not appear in the concluding observations of the CCPR or of other treaty bodies.

In 1994, the Human Rights Committee adopted a general comment which also discussed conceptual issues, albeit only indirectly and briefly. Stating that "the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language", it claimed that Article 27 does not require members of a minority group to be citizens of the State party. For the Committee, "it is not relevant to determine the degree of permanence that the term 'exist' connotes", since under Article 2(1) States are required to ensure that the rights protected under the ICCPR are available to all individuals subject to their jurisdiction, except for rights expressly applicable to citizens. Thus, Article 27 also entitles non-nationals, including migrant workers and even visitors.[10]

Article 30 of the CRC repeats Article 27 of the ICCPR almost *verbatim*, except that it also refers to indigeneity:

> In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Again, no definitions are provided in the text, and one must turn to the monitoring materials for more in-depth classification.

In addition to these two provisions explicitly related to minorities, most human rights treaties contain some reference to the prohibition of discrimination on grounds such as race, colour, descent, language, religion, national, ethnic or social origin, etc. These factors – either individually or, more often, in combination – are standard conceptual elements of a minority group. This provides further justification as to why international human rights treaties are relevant in this context, even when they do not contain explicit references to minorities.

In the case of ICERD, the prohibition of racial discrimination – defined as

> any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life (ICERD, Article 1)

– is the very purpose and subject-matter of international protection. Unsurprisingly, none of the five suspect grounds are defined in the treaty text, not even race, which seems to function as the umbrella term for the purposes of the Convention. In the CERD's view, it is not necessary to assume the existence of races or accept racial theory to combat racial discrimination; on the contrary, both the Convention and the Committee condemn theories of racial superiority as well as racist practices (Thornberry 2005, 250–251). The various grounds of discrimination in Article 1 "do not immediately translate themselves into recognizable varieties of community, vulnerable to discrimination" (Thornberry 2005, 257) and, clearly, there are overlaps between them. In fact, according to Thornberry (2019, 326), the *travaux préparatoires* of the Convention suggest that "not every descriptor was understood to mark out a sharply defined conceptual space".

To help clarify the scope and content of the Convention, the CERD adopted several general recommendations, two of which are especially relevant here. General recommendation VIII (1990) concerns affiliation with a particular racial or ethnic group and succinctly states that "such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned".[11] General recommendation XXIV (1999) concerns the reporting of information on persons belonging to different races and national or ethnic groups, and

on indigenous peoples, calling for the uniform application of criteria to determine the existence of ethnic groups within a State's territory, thus avoiding differential treatment of population groups.[12]

Despite the uneven amount and relevance of the available materials, unless otherwise indicated, the observations in the next sections apply equally to all treaty bodies, in relation to all countries under discussion. This may suggest that the findings of the article are universally applicable, and while this may well be the case, all statements should be understood as describing the situation within the examined geographical area.

4. Results of the Analysis

4.1 Terminology

Perhaps the most important overall observation about the practice of UN treaty bodies is that there seems to be a consensus in their approach and use of terms related to minorities. This is reflected, *inter alia*, in a general shift over the past decade from minorities to vulnerable/disadvantaged/marginalized groups as an umbrella term. As Eichler and Topidi (2022, 6) rightly point out, by

> shifting the focus of legal protection and policy responses to categorisations beyond [objective criteria], and instead including vulnerability as a determining criterion, the demands of such groups may be captured in a more holistic way, although at the cost of creating an 'open-ended', almost infinite process of judicialising the very protection of collective subjects.

Furthermore, treaty bodies are often inconsistent in their application of terminology. The following concepts are used interchangeably throughout the reports: ethnic and/or national minorities, ethnic/national communities, nationalities (mostly in earlier reports), ethnic minority groups, national minority groups, ethnic groups, national groups, minorities, minority groups/communities, and nations (least frequently). The terms race, class, colour, descent, or caste occasionally appear (mostly in CERD reports), but with the exception of Italy, where the legacies of the colonial past still linger,[13] this is not typical in the countries of the Alpine-Adriatic-Pannonian region.

Although the Committees acknowledge that the above-mentioned categories overlap, they rarely pursue conceptual clarification. Requests addressed to States to define or categorize certain population

groups (and to eliminate differentiations between them) are scarce, and the treaty bodies themselves never give any explanations of the terms. For instance, in its 1993 report on Croatia, the CERD inquired about the legal difference between the terms minorities, peoples, nations and communities.[14] Since no satisfactory explanation was given, in the following concluding observations it identified as a principal subject of concern "the lack of clarity as to the various legal definitions to describe ethnic and national minorities".[15] Similarly, in 1990 the CERD sought clarification as to the criteria for distinguishing between nationalities and ethnic groups in Hungary – alas, no answer was provided by the representative of the State party.[16] With regard to former Yugoslavia, both the CERD and the CCPR asked about the distinction made between nations and nationalities, to which the following explanation was given: there were six nations in Yugoslavia (Montenegrins, Croats, Slovenes, Serbs, Moslems and Macedonians), whereas all other groups were considered nationalities or national minorities (in one instance, it was added that they originated in other countries). National groups was an inclusive term for both categories.[17] The various definitions of different ethnic groups are not only confusing for members of the treaty bodies, but they also have potentially discriminatory effects.[18]

Conceptual issues also arose in relation to the Muslims (Moslems) and Turks in Yugoslavia. The CERD wanted to know why Muslims were classified as a national group rather than a religious one, and why the Turks were classified separately. The State representative explained, somewhat confusingly, that the term Moslem referred to a nation/nationality/ethnic group/national group (all four terms were used in the two relevant reports) of Slavic origin and not to a religious group. They lived mostly in Bosnia and Herzegovina and part of Serbia, whereas persons practising Islam in Yugoslavia might be Serbs or Albanians. Moslems generally belonged to the Moslem religion but were distinct from Turks. Those who had declared themselves as Turks, though they might be practising Moslems, were not considered part of the Moslem nation but members of a separate nationality.[19]

In the treaty bodies' practice, the terms ethnic and national are not clearly distinguished and are often mentioned together, connected or separated by conjunctions like and, or, or, confusingly, and/or. Still, ethnic seems to be the broader term. For instance, disaggregated data on population composition are almost always required by ethnic origin, and race, colour, descent, national or ethnic origin, mother tongues and languages commonly spoken are considered indicators of ethnic diversity.[20]

4.2 Specific Groups

In many reports, certain groups are referred to by name, often without clarifying whether they qualify as minorities and, if so, what type of minorities. For example, reports on North Macedonia refer to the Albanian, Roma and Turkish minorities, whereas in its 1990 report on Yugoslavia the CERD also inquired about the number of persons of Bulgarian ethnic origin in Macedonia.[21] Frequently, communities are classified under different categories in different reports. For instance, in the first two CERD reports on Austria, adopted in 1974 and 1976 respectively, only the Croatian and Slovene minorities/languages in Carinthia, Burgenland and Styria were mentioned. The Austrian representative explained that no distinct national or ethnic groups or racial minorities existed in the country, and that the only legally recognized minorities were linguistic minorities. One member of CERD pointed out in vain that the 1955 State Treaty for the Re-establishment of an Independent and Democratic Austria referred to these groups as national minorities.[22] Yet, only a few years later, Croats and Slovenes were classified as ethnic groups in both CERD and CCPR reports, along with Czechs and Hungarians, who had not been mentioned in the previous reports at all.[23]

In Yugoslavia, too, Hungarians were first included in CERD and CCPR reports as late as the early 1990s[24] (and then not mentioned again in reports on Serbia). In an early report on Yugoslavia, the CERD also asked why Austrians and Germans were not classified under a single heading. The State representative explained that they had declared themselves to be members of separate nationalities.[25]

In the reports from the examined region (and indeed across Eastern and Western Europe more broadly) there is a single community that features as a unique category: the Roma (in earlier reports often referred to as Gypsies, nomads or nomad populations). Roma people are sometimes classified as an ethnic group, other times as a national minority, and occasionally not classified at all but treated as an in-between or outsider category. A frequent concern of the treaty bodies is that the Roma community is not accorded minority status in Italy (and formerly, Croatia); thus, they repeatedly call on State parties to recognize the Roma as a (national) minority.[26]

In Italy, where the law protects linguistic minorities only, the representative of the State party explained to the CCPR in 1989 that "gypsies" were not considered a minority because they were "made up of different groups speaking different languages".[27] Later it was stated that the Roma were not protected as a minority because they did not have a connection with a specific territory. The CCPR recalled that "the ab-

sence of connection with a specific territory does not bar a community for qualifying as a minority under article 27" of the ICCPR.[28]

Furthermore, the Roma are often singled out for issues such as child marriage and other harmful practices, health, employment and housing, and are identified as particularly vulnerable to sexual and economic exploitation, trafficking, and domestic violence. An interesting terminological issue is that in Montenegro, Serbia and Kosovo the Roma, Ashkali and Egyptian communities are mentioned together, but the Roma are also referred to separately (apparently with Roma serving as the umbrella term for other nomadic populations).[29] Likewise, from the late 2000s onwards Sinti, and a few years later Camminanti (and on one occasion, Travellers)[30] appear alongside Roma in the reports on Italy.[31]

4.3 Legal Recognition

Recognition is the State's legal answer to the question of the existence of a group on its territory. This is especially relevant in the context of the ICCPR, since Article 27 applies only in States in which minority groups actually exist. Whereas States parties tend to adopt a restrictive definition in this regard (cf. Nagy & Vizi 2024), treaty bodies embrace an increasingly inclusive approach and are critical of States that restrict the definition of minorities to certain legally recognized groups, thereby excluding others from full legal protection.[32] As mentioned in the previous section, a prime example of such practice is the non-recognition of the Roma in Italy.

In this vein, in its latest LoIPR, the CESCR called on Austria to

> indicate the measures taken to broaden the criteria for the recognition of a national minority under the Ethnic Group Act so as to ensure that all ethnic minority groups in the State party can receive State support to sustain their culture and identity and fully enjoy their economic, social and cultural rights.[33]

Similarly, the CCPR emphasizes that States

> should ensure that all members of ethnic, religious and linguistic minorities, whether or not their communities are recognized as national minorities, enjoy effective protection against discrimination and are able to enjoy their own culture, to practise and profess their own religion, and use their own language, in accordance with article 27 of the Covenant.[34]

Italy recognizes only linguistic minorities within its territory (Albanian, Catalan, Croatian, Franco-Provençal, French, Friulian, German, Greek,

Ladin, Occitan, Sardinian and Slovenian) and provides special status to the German-, French- and Slovenian-speaking minorities living in Alto Adige/Südtirol, Valle d'Aosta/Vallée d'Aoste and Friuli Venezia Giulia, respectively.[35] The legal distinction between "acknowledged" and "other minorities" is clearly based on language: the former groups are "numerically quite large, whose members [do] not speak Italian", whereas the latter are "smaller and much integrated, [who] speak Italian and for whom there [is] no linguistic problem".[36] Here, too, the Committees' concern is that such a restrictive definition may lead to situations in which members of other minorities (such as the Roma) do not enjoy equal protection of their rights.[37]

The situation is similar in Slovenia, where only the Hungarians and Italians are recognized as national minorities (in the words of the constitution: autochthonous national communities), thus singled out for special protection. The CCPR reminded that immigrant communities constituting minorities within the meaning of Article 27 are also entitled to the benefit of that article.[38]

Legal distinctions based on race, ethnicity or religion that result in the discrimination of certain population groups in the exercise of their human rights are a serious concern of UN treaty bodies. In Bosnia and Herzegovina, for example, the so-called "constituent peoples" (Bosniaks, Croats and Serbs) enjoy privileged status, whereas "Others" – that is persons belonging to national minorities or ethnic groups other than Bosniaks, Croats or Serbs – are prevented from exercising certain political rights, such as standing for election to the House of Peoples and the tripartite Presidency.[39] In Serbia, when it comes to the official registration of religious communities and the acquisition of legal personality, a distinction is made between traditional and non-traditional religions. This, in the view of the CCPR, violates the principle of equal protection and has a negative impact on the enjoyment of rights under Article 27.[40]

4.4 Objective Characteristics

4.4.1 Distinctive Features

As for the objective characteristics of the minority concept, the following terms are often mentioned as features that distinguish a minority group from the rest of the population: culture/cultural identity/cultural heritage, own language/mother tongue/national language, history, religion/belief, traditions/customs/way of life. The frequency of their occurrence suggests that these characteristics can be seen as concep-

tual elements of a minority. However, based on a contextual reading, one may also argue that they are simply indicative of ethnic difference, since they are almost always mentioned as part of certain rights (e.g. freedom of religion, the right to learn/use the minority language) or as components of other, albeit related, concepts (such as cultural or ethnic diversity).

Logically, when a State recognizes only its linguistic minorities (Austria, Italy), language must be seen as a conceptual element. (The same would apply to religion in the case of religious minorities, but nowhere in the examined region does a State recognize religious minorities only.) However, for the treaty bodies it is far from obvious that linguistic difference necessarily leads to the creation of a minority – at least in exclusive terms. For instance, the CERD specifically asked Hungary why the criterion of mother tongue had been chosen to determine the category to which the various ethnic groups belonged.[41]

Based on the overall practice of UN treaty bodies in the Alpine-Adriatic-Pannonian area, ethnicity seems to be the *sine qua non* of the minority concept. Even in the case of religious minorities (typically Muslims or Jews), CERD only deals with them if they also qualify as ethnic minorities. True enough, this follows from the definition of racial discrimination, where religion is not mentioned explicitly (Article 1 of ICERD, see above). As Thornberry (2005, 258) explains, CERD tends to read national, ethnic, linguistic and religious minorities or cultural groups of various kinds within the frame of Article 1; however, in the case of religion, the Committee searches for an ethnic or other connection, or for intersectionality, between race and religion.[42]

4.4.2 Close Ties to the Territorial State

According to the unanimous position of UN treaty bodies, citizenship is not relevant for establishing minority status. This is so even if aliens, foreigners, migrants, refugees, asylum-seekers, (internally/externally) displaced persons, returnees and stateless persons are usually mentioned under separate headings and/or as frequent victims of violations of certain rights (for instance, in the context of the ICCPR: freedom of movement, the right to liberty and security of person, prohibition of torture, etc.).

Although traditional or autochthonous minorities (with an element of ethnicity and a long-term connection to the territory where they reside) and new minorities (based on migration status) are differentiated by the treaty bodies, this is mostly a terminological matter and does not imply a difference in the rights that these groups (or rather: indi-

viduals belonging to them) should enjoy.[43] The irrelevance of citizenship as a potential element of the minority concept was confirmed by the Human Rights Committee's General comment No. 23 in 1994 (see above).

This does not mean, however, that citizenship is entirely irrelevant. Statelessness is a situation that human rights instruments and monitoring organs seek to avoid by all means, and in practice, the lack of citizenship of the territorial State often leads to violations of civil, political, economic, social and cultural rights. The UN treaty bodies are particularly troubled by the precarious condition of the erased persons in Slovenia. The erased are former permanent residents of Slovenia originating from other former Yugoslav republics, including Bosnians, ethnic Albanians from Kosovo, Macedonians and Serbs, whose names were removed from the population registers in 1992 and who, as a result, lost their permanent residence and associated rights in the country (Zorn 2005). The Committees have repeatedly urged Slovenia to remedy this situation and to definitively resolve the legal status of all concerned individuals.[44]

Similarly to citizenship, the area of residence or long-term presence in a particular area – another characteristic of autochthony and a frequent conceptual element in States' minority definitions – is also rejected by UN treaty bodies. Instead, States parties are recommended to adopt a flexible approach and avoid unjustified differential treatment of minority groups based on area of residence or length of established settlement within their territories.[45]

Such is the case, for instance, in Austria, where individuals belonging to autochthonous national minorities residing in the so-called historical settlement areas – *inter alia*, the Slovenes in Carinthia and the Roma and Croats in Burgenland – and individuals not residing in those areas, such as Slovenes outside Carinthia and Roma and Croats outside Burgenland, are treated differently.[46] In Italy, the CERD observed that the Slovene minority in Trieste had a special status in that its members could use their own language in courts, whereas in areas outside Trieste the Slovene minority could not do so.[47] Slovenia provides special protection for the autochthonous Hungarian and Italian national communities,[48] and also differentiates between autochthonous/indigenous vs. non-autochthonous/non-indigenous/new Roma, the latter being denied certain rights. To avoid further discrimination against this already marginalized population, treaty bodies repeatedly call on Slovenia to end the distinction between the two types of Roma status and to provide the whole Roma community with a status free of discrimination.[49]

In Hungary, only those ethnic groups that have lived in the territory of the State for at least one century can be recognized as a minority (with post-2012 terminology: nationality) – a statutory condition that, in the opinion of both the CERD and the CCPR, should be repealed. According to the CCPR, such a restrictive requirement could result in the exclusion of nomadic and other groups that do not satisfy the condition due to their lifestyle from the full protection of the law.[50]

4.4.3 Non-dominant Position

A very important element of the minority concept is what Capotorti called a non-dominant position in his famous 1978 report.[51] Although this term has never been used in the UN treaty bodies' concluding observations, CERD reports occasionally refer to the dominant majority/group (such as the Bosniaks and Croats within the Federation of Bosnia and Herzegovina, and the Serbs within the Republika Srpska), from which, *a contrario*, the non-dominant position of minorities follows.[52] In any case, discrimination is mentioned in every report in the context of minorities, along with vulnerability, segregation, social exclusion, marginalization, disadvantaged status and underprivileged backgrounds. These terms all convey the same meaning – namely, that minority groups occupy an inferior position within society, which makes their equal protection, inclusion and/or integration vital. In fact, the UN treaty bodies' approach reflects the unfortunate reality that "minority issues in the everyday world are still concerned with processes of 'othering', of structural discrimination and systemic inequalities" (Eichler & Topidi 2022, 4).

Intersectional/multiple forms of discrimination are frequently identified in the reports. Depending on the individual treaty body's mandate, minority/ethnic background may intersect with age (children, the elderly), sex (women, girls), migration status[53] and disability. Interestingly, no intersection has been noted between minority/ethnic background and sexual orientation. This means that if and when LGBTQ+ persons are mentioned in the reports, they are either classified under the broad category of vulnerable/marginalized/disadvantaged groups and treated like other such groups (including traditional, ethnic/national minorities),[54] or discussed under a separate heading.

4.5 Subjective Characteristics

Subjective elements of the minority concept – similar to what Capotorti referred to as a sense of solidarity between members of the group, di-

rected towards preserving their distinct identity – are very rarely mentioned in the reports. A noteworthy exception is the CERD's first report on Austria, where "ethnic consciousness" and "kindred" were mentioned as "sociological criteria".[55]

By contrast, self-identification as an overarching principle for claiming minority membership is a recurring theme in most treaty bodies' reports, but always in the context of the individual, not the community. Interpreted in this way, self-identification is not an element of the minority concept *per se*, but rather a mode of operationalization, i.e. a means of determining who belongs to a minority group.

Operationalization strategies for minority membership in general include self-identification; identification by other members or elected/appointed representatives of the group; classification made by outsiders (third-party identification), relying on the perception of the majority; or the use of objective criteria, such as name, language or residence (Pap 2021, 215). The universally accepted view in international law is that the identification of individuals as members of ethnic/minority/racial groups should be voluntary and based on self-identification by the individuals concerned (cf. Eichler & Topidi 2022, 4–5). In line with this, the CCPR expressed its concern

> at the administrative shortcomings of the minority election register and the self-government system [in Hungary], which, *inter alia*, renders it obligatory for minorities to register their ethnic identity, and therefore deters those who do not wish their ethnic identity to be known, or who have multiple ethnic identities, from registering in particular elections.[56]

In several other reports, too, the principle of self-identification is regularly emphasized as a cornerstone and indispensable element in the operationalization of minorities.[57]

5. Summary and Final Conclusions

Based on the 291 concluding observations analysed in this paper, the overall conclusion is that there is a consensus in the UN treaty bodies' approach and use of terms related to minorities. First and foremost, over the past decade a general shift can be observed from minorities to vulnerable/disadvantaged/marginalized groups as an umbrella term. However, there is no consistency in the application of specific terminology; rather, a variety of concepts are used interchangeably throughout the reports, including ethnic and/or national minorities, nationalities,

ethnic minority groups, national minority groups, ethnic groups, national groups, and others. Naturally, the easiest way to avoid definitional problems is to mention particular groups by name, which is often the case when treaty bodies inquire about the situation of specific communities.

In the examined reports, the Roma (in earlier times often referred to as Gypsies or nomads, and more recently mentioned alongside Sinti, Camminanti, Ashkali and/or Egyptians) stand out as a unique category. They are sometimes classified as an ethnic group, at other times as a national minority, and occasionally not classified at all but treated as an in-between category. A major concern of the treaty bodies is that the Roma community is not accorded (national) minority status in certain States parties (currently only in Italy within the examined region). This is seen as one of the reasons why they face even more discrimination and human rights violations than other minorities.

Various types of minorities – ethnic, national, linguistic, religious and racial – appear alongside one another in the reports, and although the Committees acknowledge that these categories overlap, they rarely pursue conceptual clarification. In fact, the Committees seem to manage quite well without clear definitions, as for them the *de facto* protection of human/minority rights appears paramount. Their ultimate goal is to extend the highest possible level of protection to the widest strata of society, that is, to all groups that are vulnerable in any way.

This is also evident from the fact that, whereas States parties tend to adopt restrictive definitions of minorities, UN treaty bodies embrace an increasingly inclusive approach and are critical of States that confine the definition of minorities to certain legally recognized groups, thereby excluding others from full legal protection. In the view of the treaty bodies, neither citizenship nor long-term residence in a State's territory should be considered a precondition for minority status. This means that new (migrant) communities could also qualify for protection under minority-protection provisions, including Article 27 of the ICCPR.

As for other objective characteristics of the minority concept, the following features are often mentioned as distinguishing a minority group from the rest of the population: culture, cultural identity and cultural heritage; own language, mother tongue and national language; history; religion and belief; and traditions, customs and way of life. The frequency of such references suggests that these characteristics can be regarded as conceptual elements of a minority; however, one could equally argue that they are simply indicative of ethnic difference. Based

on the overall practice of UN treaty bodies in the Alpine-Adriatic-Pannonian area, it can be stated that, if anything, ethnicity seems to be the *sine qua non* of the minority concept (whatever the term ethnicity may mean).

A very important element of the minority concept is what Capotorti called a non-dominant position in his famous 1978 report. Although this term has never been used in the UN treaty bodies' concluding observations, discrimination is mentioned in every report, along with vulnerability, segregation, social exclusion, marginalization, disadvantaged status and underprivileged backgrounds. These terms all convey the same idea – namely, that minority groups occupy an inferior position within society.

In terms of operationalization of the minority concept, the universally accepted view of the UN treaty bodies is in line with that of other international human rights organs, namely that the identification of individuals as members of minority groups should be voluntary and anonymous, based on self-identification by the individuals concerned.

To conclude, the practice of the UN treaty bodies demonstrates the tension between an emerging professional consensus and the existing practice of States. The concluding observations reflect a general concern that specific minority rights, understood as part of universal human rights, should not exclude any potentially affected individual or group from their personal scope of application. As my colleague and I (Nagy & Vizi 2025, 52) have argued elsewhere, the development of international law, the prevailing faith in the universality of human rights and recent expert interpretations of minority rights point to an understanding that the very justification of minority rights lies in counterbalancing unequal power relations between different social groups.

However, States did not originally assume minority-protection obligations for such considerations. From a historical perspective, the international recognition of minority rights served to reconcile specific groups and to manage specific security threats and conflicts. This approach has not significantly changed since the Second World War, although minority rights are now framed within the discourse of the international protection of universal human rights (Nagy & Vizi 2025, 52–53). Against this backdrop, there is little chance that the UN treaty bodies' recommendations will resonate with the political will of States – at least in the Alpine-Adriatic-Pannonian area, where the nation-state narrative and the traditional concept of minorities still prevail.

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CCPR: A/38/40, paras. 178-219; A/47/40, paras. 80-124; CCPR/C/79/Add.103; CCPR/C/AUT/CO/4; CCPR/C/AUT/CO/5; CCPR/C/AUT/QPR/6 (LoIPR).

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CAT: A/44/46, paras. 202-230; A/55/44, paras. 46-50; CAT/C/AUT/CO/3; CAT/C/AUT/CO/4-5; CAT/C/AUT/CO/6; CAT/C/AUT/CO/7.

CRC: CRC/C/15/Add.98; CRC/C/15/Add.251; CRC/C/AUT/CO/3-4; CRC/C/AUT/CO/5-6.

CRPD: CRPD/C/AUT/CO/1; CRPD/C/AUT/CO/2-3.

CED: CED/C/AUT/CO/1.

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CERD: A/48/18, paras. 453-473; A/50/18, paras. 205-225; CERD/C/BIH/CO/6; CERD/C/BIH/CO/7-8; CERD/C/BIH/CO/9-11; CERD/C/BIH/CO/12-13; CERD/C/BIH/CO/14-15.

CCPR: CCPR/C/BIH/CO/1; CCPR/C/BIH/CO/2; CCPR/C/BIH/CO/3.

CESCR: E/C.12/BIH/CO/1; E/C.12/BIH/CO/2; E/C.12/BIH/CO/3.

CEDAW: CEDAW/C/BIH/CO/3; CEDAW/C/BIH/CO/4-5; CEDAW/C/BIH/CO/6.

CAT: CAT/C/BIH/CO/1; CAT/C/BIH/CO/2-5; CAT/C/BIH/CO/6.

CRC: CRC/C/15/Add.260; CRC/C/BIH/CO/2-4; CRC/C/BIH/CO/5-6.

CMW: CMW/C/BIH/CO/1; CMW/C/BIH/CO/2; CMW/C/BIH/CO/3.

CRPD: CRPD/C/BIH/CO/1; CRPD/C/BIH/Q/2-3 (LoIPR).

CED: CED/C/BIH/CO/1.

UN treaty bodies' concluding observations on **Croatia**:

CERD: A/48/18, paras. 474-508; A/50/18, paras. 143-178; CERD/C/304/Add.55; CERD/C/60/CO/4; CERD/C/HRV/CO/8; CERD/C/HRV/CO/9-14.

CCPR: CCPR/CO/71/HRV; CCPR/C/HRV/CO/2; CCPR/C/HRV/CO/3; CCPR/C/HRV/CO/4.

CESCR: E/C.12/1/Add.73; E/C.12/HRV/CO/2.

CEDAW: A/53/38/REV.1, paras. 80-119; A/60/38, paras. 168-209; CEDAW/C/HRV/CO/4-5.

CAT: A/51/44, paras. 151-162; A/54/44, paras. 61-71; CAT/C/CR/32/3; CAT/C/HRV/CO/4-5; CAT/C/HRV/QPR/6 (LoIPR).

CRC: CRC/C/15/Add.52; CRC/C/15/Add.243; CRC/C/HRV/CO/3-4; CRC/C/HRV/CO/5-6.

CRPD: CRPD/C/HRV/CO/1.

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CCPR: A/32/44, paras. 130-132; A/35/40, paras. 307-333; A/41/40, paras. 371-410; CCPR/C/79/Add.22; CCPR/CO/74/HUN; CCPR/C/HUN/CO/5; CCPR/C/HUN/CO/6.

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CAT: A/48/44, paras. 342-364; A/54/44, paras. 78-87; CAT/C/HUN/CO/4; CAT/C/HUN/Q/5-6 (LoIPR).

CRC: CRC/C/15/Add.87; CRC/C/HUN/CO/2; CRC/C/HUN/CO/3-5; CRC/C/HUN/CO/6.

CRPD: CRPD/C/HUN/CO/1; CRPD/C/HUN/CO/2-3.

UN treaty bodies' concluding observations on **Italy**:

CERD: A/32/18, paras. 284-294; A/35/18, paras. 58-73; A/39/18, paras. 297-312; A/45/18, paras. 286-298; A/50/18, paras. 77-109; CERD/C/304/Add.68; A/56/18, paras. 298-320; CERD/C/ITA/CO/15; CERD/C/ITA/CO/16-18; CERD/C/ITA/CO/19-20; CERD/C/ITA/CO/21-22.

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CAT: A/47/44, paras. 310-338; A/50/44, paras. 146-158; A/54/44, paras. 163-169; CAT/C/ITA/CO/4; CAT/C/ITA/CO/5-6; CAT/C/ITA/QPR/7 (LoIPR).

CRC: CRC/C/15/Add.41; CRC/C/15/Add.198; CRC/C/ITA/CO/3-4; CRC/C/ITA/CO/5-6.

CRPD: CRPD/C/ITA/CO/1.

CED: CED/C/ITA/CO/1.

UN treaty bodies' concluding observations on **Montenegro**:

CERD: CERD/C/MNE/CO/1; CERD/C/MNE/CO/2-3; CERD/C/MNE/CO/4-6.

CCPR: CCPR/C/MNE/CO/1; CCPR/C/MNE/QPR/2 (LoIPR).

CESCR: E/C.12/MNE/CO/1.

CEDAW: CEDAW/C/MNE/CO/1; CEDAW/C/MNE/CO/2; CEDAW/C/MNE/CO/3.

CAT: CAT/C/MNE/CO/1; CAT/C/MNE/CO/2; CAT/C/MNE/CO/3.

CRC: CRC/C/MNE/CO/1; CRC/C/MNE/CO/2-3.

CRPD: CRPD/C/MNE/CO/1.

CED: CED/C/MNE/CO/1.

UN treaty bodies' concluding observations on **North-Macedonia**:

CERD: A/52/18, paras. 512-529; CERD/C/MKD/CO/7; CERD/C/MKD/CO/8-10.

CCPR: CCPR/C/79/Add.96; CCPR/C/MKD/CO/2; CCPR/C/MKD/CO/3; CCPR/C/MKD/QPR/4 (LoIPR).

CESCR: E/C.12/MKD/CO/1; E/C.12/MKD/CO/2-4.

CEDAW: CEDAW/C/MKD/CO/3; CEDAW/C/MKD/CO/4-5; CEDAW/C/MKD/CO/6.

CAT: A/54/44, paras. 106-117; CAT/C/MKD/CO/2; CAT/C/MKD/CO/3; CAT/C/MKD/CO/4.

CRC: CRC/C/15/Add.118; CRC/C/MKD/CO/2; CRC/C/MKD/CO/3-6.

CRPD: CRPD/C/MKD/CO/1.

UN treaty bodies' concluding observations on **Serbia**:

CERD: CERD/C/SRB/CO/1; CERD/C/SRB/CO/2-5.

CCPR: CCPR/CO/81/SEMO; CCPR/C/SRB/CO/2; CCPR/C/SRB/CO/3; CCPR/C/SRB/CO/4.

CESCR: E/C.12/1/Add.108; E/C.12/SRB/CO/2; E/C.12/SRB/CO/3.

CEDAW: CEDAW/C/SCG/CO/1; CEDAW/C/SCG/CO/2-3; CEDAW/C/SCG/CO/4.

CAT: CAT/C/SRB/CO/1; CAT/C/SRB/CO/2; CAT/C/SRB/CO/3; CAT/C/SRB/QPR/4 (LoIPR).

CRC: CRC/C/SRB/CO/1; CRC/C/SRB/CO/2-3.

CRPD: CRPD/C/SRB/CO/1.

CED: CED/C/SRB/CO/1.

UN treaty bodies' concluding observations on **Slovenia**:

CERD: CERD/C/304/Add.105; CERD/C/62/CO/9; CERD/C/SVN/CO/6-7; CERD/C/SVN/CO/8-11.

CCPR: CCPR/C/79/Add.40; CCPR/CO/84/SVN; CCPR/C/SVN/CO/3.

CESCR: E/C.12/SVN/CO/1; E/C.12/SVN/CO/2.

CEDAW: A/52/38/Rev.1, paras. 81-122; A/58/38, Part II, paras. 184-228; CEDAW/C/SVN/CO/4; CEDAW/C/SVN/CO/5-6; CEDAW/C/SVN/CO/7.

CAT: A/55/44, paras. 189-212; CAT/C/CR/30/4; CAT/C/SVN/CO/3; CAT/C/SVN/CO/4.

CRC: CRC/C/15/Add.65; CRC/C/15/Add.230; CRC/C/SVN/CO/3-4.

CRPD: CRPD/C/SVN/CO/1; CRPD/C/SVN/QPR/2-4 (LoIPR).

UN treaty bodies' concluding observations on **Yugoslavia**:

CERD: A/8027, para. 39; A/9018, paras. 219-223; A/10018, paras. 105-109; A/31/18, paras. 117-121; A/34/18, paras. 210-221; A/36/18, paras. 212-219; A/38/18, paras. 148-161; A/40/18, paras. 538-556; A/45/18, paras. 192-205; A/48/18, paras. 509-547; A/50/18, paras. 226-246; A/53/18, paras. 190-214.

CCPR: A/33/40, paras. 366-398; A/39/40, paras. 193-238; A/47/40, paras. 431-469.

CESCR: E/1982/WG.1/SR.4, paras. 18-50; E/1982/WG.1/SR.5, paras. 1-8; E/C.12/1988/4, paras. 240-269; E/1984/WG.1/SR.16, paras. 26-46; E/1984/WG.1/SR.18, paras. 64-79; E/C.12/2000/21, paras. 496-511.

CEDAW: A/46/38, paras. 334-359.

CAT: A/54/44, paras. 35-52.

CRC: CRC/C/15/Add.49.

Notes

[1] For the historical relevance of these discussions in the region, see Žagar (1996).

[2] Furthermore, Ukraine also recognizes the Crimean Tatars, Karaites, and Krymchaks as indigenous peoples (see Mission of the President of Ukraine in the Autonomous Republic of Crimea, 2024).

[3] Report of the Special Rapporteur on minority issues, A/74/160, 15 July 2019, para. 21.

[4] For instance, in its most recent report on Bosnia and Herzegovina, the CERD expressed concern about "the reported misuse of national minority status during election processes and in the selection of members of institutions or bodies, where a position for a person belonging to a national minority is guaranteed" (CERD/C/BIH/CO/14-15 (2024) para. 19.)

[5] A noteworthy exception is indigenous peoples. ILO Convention No. 169 on Indigenous and Tribal Peoples (1989) gives a fairly detailed definition in its Article 1, whereas the UN Declaration on the Rights of Indigenous Peoples (2007) establishes a right for indigenous peoples to determine their own identity or membership in accordance with their customs and traditions, and to select the membership of their institutions (Article 33). On the specific conceptual issues surrounding indigenous peoples, see e.g. Scheinin (2004), or more recently, Imai and Gunn (2018).

[6] These are the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965); the International Covenant on Civil and Political Rights (ICCPR, 1966); the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984); the Convention on the Rights of the Child (CRC, 1989); the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW, 1990); International Convention for the Protection of All Persons from Enforced Disappearance (CPED, 2006), and the Convention on the Rights of Persons with Disabilities (CRPD, 2006).

[7] There are only two reports adopted regarding Kosovo, by the CCPR and CESCR, respectively. In both cases, the treaty bodies evaluated the human rights situation in Kosovo based on the reports submitted by the United Nations Interim Administration Mission. CCPR/C/UNK/CO/1 (2006); E/C.12/UNK/CO/1 (2008).

[8] Due to space constraints, the relevant State regulations on the concept and recognition of minorities cannot be presented in this paper.

[9] CCPR: *Ballantyne, Davidson and McIntyre v. Canada*, Communications Nos. 359/1989 and 385/1989, Views of 31 March 1993, para. 11.2.

[10] CCPR: General Comment No. 23, UN Doc. CCPR/C/21/Rev.1/Add.5, 26 April 1994, paras. 5.1–5.2.

[11] CERD: General recommendation VIII concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention. In *Report of the Committee on the Elimination of Racial Discrimination,* A/45/18, 1991, p. 79.

[12] CERD: General recommendation XXIV concerning article 1 of the Convention. In *Report of the Committee on the Elimination of Racial Discrimination*, A/54/18, Annex V, 1999, p. 105.

[13] CERD/C/ITA/CO/19-20 (2016) para. 26; CERD/C/ITA/CO/21-22 (2023) paras. 36-37.

[14] A/48/18 (1993) para. 481.

[15] CERD/C/304/Add.55 (1999) para. 6; CERD/C/60/CO/4 (2002) para. 8.

[16] A/45/18 (1990) para. 219.

[17] CERD A/36/18 (1981) paras. 213; A/38/18 (1983) paras. 150, 156; A/39/40 (1984) para. 236;

[18] CERD/C/62/CO/9 (2003) para. 7.

[19] A/38/18 (1983) paras. 150, 156; A/40/18 (1985) paras. 542, 552.

[20] CERD/C/ITA/CO/15 (2008) para. 11. Cf. paragraph 11 of revised reporting guidelines for CERD: Guidelines for the CERD-Specific Document to be Submitted by States Parties under Article 9, Paragraph 1, of the Convention. CERD/C/2007/1, 13 June 2008.

[21] A/45/18 (1990) para. 194.

[22] A/9618 (1974) paras. 135, 137; A/31/18 (1976) para. 51.

[23] A/35/18 (1980) para. 87; A/47/40 (1992) para. 119. Cf. A/38/40 (1983) para. 218.

[24] A/47/40 (1992) paras. 450, 455; A/48/18 (1993) paras. 515, 526.

[25] A/38/18 (1983) paras. 150, 156.

[26] CCPR/CO/71/HRV (2001) para. 22; CERD/C/304/Add.68 (1999) para. 12; CERD A/56/18 (2001) para. 309; CERD/C/ITA/CO/15 (2008) para. 12; CERD/C/ITA/CO/16-18 (2012) para. 3; CCPR/C/ITA/CO/6 (2017) para. 15.

[27] A/44/40 (1989) para. 595.

[28] CCPR/C/ITA/CO/5 (2006) para. 22.

[29] CERD/C/MNE/CO/1 (2009) paras. 6, 16-18; CERD/C/MNE/CO/2-3 (2014) paras. 3, 5, 11-15; CERD/C/MNE/CO/4-6 (2018) paras. 5, 10-21, 23; CERD/C/SRB/CO/1 (2011) paras. 8-9, 14-16, 19; CERD/C/SRB/CO/2-5 (2018) paras. 5, 20-23; CCPR/C/MNE/CO/1 (2014) para. 19; CCPR/C/MNE/QPR/2 (2020, LoIPR) paras. 7-8; CCPR/C/UNK/CO/1 (2006) paras. 13-14, 21-22; E/C.12/MNE/CO/1 (2014) paras. 10, 19, 22-23, 25; E/C.12/UNK/CO/1 (2008) paras. 13, 15, 26, 29, 31; E/C.12/SRB/CO/2 (2014) paras. 4, 11-13, 17, 28, 30-31, 35; CEDAW/C/MNE/CO/1 (2011) paras. 21, 23, 26-31, 34-35, 38-39; CEDAW/C/MNE/CO/2 (2017) paras. 20, 22-25, 30-32, 34-35, 42-43; CEDAW/C/MNE/CO/3 (2024) paras. 25-27, 31-32, 43-44; CAT/C/MNE/CO/1 (2008) para. 16; CAT/C/MNE/CO/2 (2014) paras. 12, 22; CAT/C/MNE/CO/3 (2022) para. 4; CRC/C/MNE/CO/1 (2010) paras. 14, 32-33, 40, 49-50, 55, 57-60, 63, 65, 69; CRC/C/MNE/CO/2-3 (2018) paras. 11, 21-22, 27-28, 35-36, 47, 50, 55, 60; CRPD/C/MNE/CO/1 (2017) paras. 4, 10.

[30] E/C.12/ITA/CO/5 (2015) paras. 5 and 45. Reference is made to the National Strategy for the Inclusion of Roma, Sinti and Travellers.

[31] CERD/C/ITA/CO/15 (2008) paras. 12, 14, 22; CERD/C/ITA/CO/16-18 (2012) paras. 3, 8, 11, 15, 17-21, 24; CERD/C/ITA/CO/19-20 (2016) paras. 14, 21-22,

33; CERD/C/ITA/CO/21-22 (2023) paras. 3, 12, 14-15, 22-27, 34, 36, 45; CCPR/C/ITA/CO/6 (2017) paras. 3, 12-15; CEDAW/C/ITA/CO/7 (2017), CEDAW/C/ITA/CO/8 (2024) paras. 11-12, 17, 25, 35-38; CAT/C/ITA/QPR/7 (2020, LoIPR) para. 26; CRC/C/ITA/CO/3-4 (2011) para. 24; CRC/C/ITA/CO/5-6 (2019) paras. 15, 18, 31-32.

[32] Cf. CCPR/C/79/Add.103 (1998) para. 14; CRC/C/15/Add.98 (1999) para. 30; E/C.12/AUT/CO/4 (2013) para. 24.

[33] E/C.12/AUT/QPR/5 (2019, LoIPR) para. 33.

[34] CCPR/CO/81/SEMO (2004) para. 23.

[35] Cf. A/44/40 (1989) paras. 605-606; A/50/18 (1995) para. 96.

[36] A/39/18 (1984) para. 307.

[37] CCPR/C/79/Add.37 (1994) para. XI.

[38] CCPR/C/79/Add.40 (1994) para. 12.

[39] CERD/C/BIH/CO/6 (2006) paras. 11-12; CCPR/C/BIH/CO/1 (2006) para. 8; CCPR/C/BIH/CO/2 (2012) para. 6; CERD/C/BIH/CO/9-11 (2015) paras. 5, 7; CCPR/C/BIH/CO/3 (2017) paras. 11-12; CERD/C/BIH/CO/14-15 (2024) paras. 9-10.

[40] CCPR/C/SRB/CO/2 (2011) para. 20; CCPR/C/SRB/CO/3 (2017) paras. 36-37.

[41] A/37/18 (1982) para. 239.

[42] The intersectionality between religion and ethnic origin is explicitly mentioned by CERD in its 2015 report on Bosnia and Herzegovina (CERD/C/BIH/CO/9-11, para. 11), whereas intersectionality between religion and race is pointed out in its 2012 report on Italy (CERD/C/ITA/CO/16-18, para. 19). Reference is made to ethno-religious groups in the 2018 reports on Montenegro (CERD/C/MNE/CO/4-6, para. 10) and Serbia (CERD/C/SRB/CO/2-5, para. 13), respectively. However, further research is needed to ascertain whether the notion of religious minority implies some ethnic or cultural connection in the practice of other treaty bodies, too.

[43] For instance, in its 2002 report the CERD had "difficulty in understanding the distinction made by [Austria] between autochthonous and other minorities and the legal and practical consequences following from this". CERD/C/60/CO/1, para. 11.

[44] E/C.12/SVN/CO/1 (2006) paras. 16, 32; CERD/C/SVN/CO/6-7 (2010) para. 14; CAT/C/SVN/CO/3 (2011) para. 18; CRC/C/SVN/CO/3-4 (2013) paras. 35-36; CCPR/C/SVN/CO/3 (2016) paras. 21-22.

[45] CERD: General recommendation XIV on article 1, paragraph 1 of the Convention. In: Report of the Committee on the Elimination of Racial Discrimination, A/48/18, 1993, p. 114. Cf. CCPR/C/ITA/CO/5 (2006) para. 22.: "[T]he absence of connection with a specific territory does not bar a community for qualifying as a minority under article 27" of the ICCPR.

[46] CERD/C/AUT/CO/17 (2008) para. 10; E/C.12/AUT/CO/4 (2013) para. 24.

[47] A/39/18 (1984) para. 300.

[48] E.g. CCPR/C/79/Add.40 (1994) para. 12.

[49] CERD/C/62/CO/9 (2003) para. 10; CRC/C/15/Add.230 (2004) paras. 22-23; E/C.12/SVN/CO/1 (2005) para. 11; CCPR/CO/84/SVN (2005) paras. 16-17; CRC/C/SVN/CO/3-4 (2013) paras. 24-25; CERD/C/SVN/CO/8-11 (2015) paras. 6-7; CCPR/C/SVN/CO/3 (2016) paras. 23-24.

[50] A/51/18 (1996) paras. 106-131; CCPR/C/HUN/CO/5 (2010) para. 22.

[51] Among the many attempts to offer a definition of minorities, the most often quoted one was provided by Francesco Capotorti in 1978. As Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his study on the rights of minorities, he used the following working definition that became widely acknowledged in academia: "a minority is a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their cultures, traditions, religion or language" (Capotorti 1978, para. 568).

[52] See, e.g. CERD/C/BIH/CO/6 (2006) para. 11; CERD/C/BIH/CO/9-11 (2015) para. 11; A/48/18 (1993) para. 501 (Croatia); A/40/18 (1985) para. 56 (Hungary).

[53] Within the Alpine-Adriatic-Pannonian area, only Bosnia and Herzegovina ratified the ICMW, and the relevant treaty body has so far adopted three concluding observations. The last two explicitly refer to the situation of the Roma within the migrant communities. CMW/C/BIH/CO/2 (2012) para. 35; CMW/C/BIH/CO/3 (2019) paras. 45-46, 61.

[54] For instance, in the latest LoIPR on Montenegro, the CCPR inquired about "measures taken to combat discrimination and prejudice against lesbian, gay, bisexual, transgender and intersex persons" under the following heading: "Non-discrimination, rights of minorities and prohibition of advocacy of national, racial or religious hatred (arts. 2, 20, 26 and 27)". CCPR/C/MNE/QPR/2 (2020) para. 8.

[55] A/9618 (1974) para. 135.

[56] CCPR/C/HUN/CO/5 (2010) para. 21.

[57] CERD/C/ITA/CO/16-18 (2012) para. 11. See also A/35/18 (1980) para. 92; A/47/40 (1992) para. 119; CERD/C/HRV/CO/8 (2009) para. 10; E/C.12/MNE/CO/1 (2014) para. 6; CERD/C/MKD/CO/8-10 (2015) para. 7; CERD/C/SVN/CO/8-11 (2015), para. 5; CRC/C/HUN/CO/6 (2020) para. 11; CERD/C/HRV/CO/9-14 (2023) para. 6; CERD/C/ITA/CO/21-22 (2023) para. 5; CERD/C/BIH/CO/14-15 (2024) para. 6.

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Konceptualizacija manjšin v praksi pogodbenih teles OZN – študija primera iz alpsko-jadransko-panonske regije

Izvleček

V mednarodnem pravu se v povezavi s pravicami določenih skupin pogosto uporablja izraz manjšine ter sorodni pojmi, vendar pa pravo samo teh skupin ne opredeljuje natančno. Koristne usmeritve na tem področju zato ponuja praksa organov, ki spremljajo izvajanje ustreznih mednarodnih instrumentov. Članek temelji na doktrinarni in primerjalnopravni analizi sodne prakse teles OZN za človekove pravice. Zaključne ugotovitve so umeščene v kontekst alpsko-jadransko-panonske regije, ki vključuje Slovenijo, njene sosede in druge države nekdanje Jugoslavije. Namen članka je pokazati, da med pogodbenimi telesi obstaja vse večje soglasje glede pojmovanja manjšin, ter izluščiti bistvene sestavine koncepta manjšin, ki se dosledno pojavljajo v njihovi praksi. Članek tako prispeva k nadaljnji konceptualizaciji manjšin v okviru mednarodnega prava človekovih pravic.

Ključne besede

konceptualizacija manjšin, pogodbena telesa OZN, alpsko-jadransko-panonska regija, pravna ureditev položaja etničnih skupnosti