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Commentary: The Law on Protection of National Minorities in the Republic of Albania

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In October 2017, the Albanian Parliament adopted the Law (96/2017) on Protection of National Minorities¹ (hereafter: the Law) and filled a gap that has been existing in the Albanian legal system for years. The adoption of the law on national minorities has been on the agenda since the Stabilisation and Association Agreement (SAA) between Albania and the European Union (EU) was signed in 2006 and the issue appeared even in the first Albanian National Plan for the implementation of the SAA. Apparently, the law was scheduled to be adopted in 2006 or 2007, but this did not occur then.² Later on, in 2013, the Albanian Ombudsman issued a recommendation addressed to the Prime Minister ‘on the need to complete the legal framework for the recognition and protection of minorities’ (Ombudsman of the Republic of Albania, 2018: 75). The need to “complete the legal framework” was also pointed out by the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC)

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from the very beginning of the monitoring in Albania. In the First Opinion on Albania, the ACFC expressed that ‘further efforts will be required to complete the legal and institutional framework and to ensure its full realisation in practice’ (ACFC, 2003: 27, point 117). In the Second Opinion, the ACFC was more specific about the relevance of adoption of a ‘framework law on national minorities’, and expressed its opinion that ‘such a law could help clarify a number of aspects of the State’s position *vis-à-vis* its minorities’ (ACFC, 2008: 7, point 16). The message became even more concrete in the Third Opinion in which the ACFC put as one of the issues for immediate action to ‘consider adopting comprehensive legislation on national minorities to fill in the identified legal gaps and to clarify State policy towards minorities’ (ACFC, 2011: 34). The issue of the uncompleted legal framework for the protection of national minorities has also been observed by the European Commission in its regular progress reports on Albania.³ Generally, in these reports, the European Commission has mostly referred to the findings of the ACFC on the issue.⁴ But, interestingly enough, the issue of the uncompleted legislative framework on national minorities can be found in the documents of the European Commission even prior to the ACFC First Opinion on Albania. For example, in its Country Strategy Paper for Albania under the CARDS Programme adopted in November 2001, the European Commission has urged Albania to ‘take the necessary measures to complete its legislative framework on minorities’ (European Commission, 2001: 10). Eventually, the need to adopt a framework law on national minorities resulted also from the EU identifying ‘the protection of human rights and anti-discrimination policies including in the area of minorities and their equal treatment’ as one of the key priorities for Albania to move forward in the EU enlargement process (Council of the EU, 2014).

Bearing in mind the general impression that the interethnic relations are marked with the ‘climate of respect and tolerance’ (ACFC, 2011: 5, point 8) and that the Albanian ‘authorities have pursued their efforts to protect national minorities’ (Ibid.: point 9), it remains puzzling that so many years and persistent international pressure were needed for Albania to adopt a framework law on national minorities. The fact that Albania has still not signed the European Charter on Regional and Minority Languages is also indicative of reluctance to develop a comprehensive and outreaching system of minority protection. With the adoption of the new Law in 2017, Albania has made a significant step forwards, but somehow it remained on a sort of a “half way”, uncertain how to balance the need to provide the protection for national minorities and to secure cohesion of the Albanian society in general, as the following brief analysis tries to show.

The Law is conceptualized as a framework law and it was adopted with the aim to “codify” the set of rights for persons belonging to national minorities and provide a legal basis for a comprehensive minority protection. As such, the Law should fill the gap between the Constitution (Article 20)⁵ and the norms relevant for national minorities that are dispersed in various laws. The adoption of the framework law can generally be a well-suited approach to bridge the often vague and programmatic constitutional norms and issue-specific and more detailed regulations stipulated in sectoral laws (see further Djordjević, Malloy, with Černega, 2017: 9). For serving this purpose, a proper balance has to be found when drafting the framework law between too general and too specific regulation. On the one hand, the framework law needs to have genuine legal substance and to clearly set minority rights that can be used as a basis for concrete legal claims. This calls for the law in its core to be self-executive and not in its essence dependent on sectoral or secondary legislation. On the other hand, the law on national minorities cannot regulate in full detail all the aspects of minority protection (even more, this would be counter-productive and is not a guarantee of a well-suited legal framework) (Ibid.: 10) and needs to be complemented with secondary and sectoral legislation. Here it is of great importance that the law on national minorities sets clear rules and does not provide too wide margin of appreciation for secondary or sectoral legislation to interfere with the guaranteed minority rights: the core of the rights and principles set out in the law on national minorities should remain intact. In this respect, the Law shows somewhat mixed picture. Positive is that the provisions of the Law are generally clear and mostly formulated as rights. Negative, however, is that the Law often refers to the decision of the Council of Ministers or relevant sectoral legislation.⁶ Two examples could be indicative. In Article 13.2 the Law stipulates that in the local self-governing units where minorities live traditionally or in substantial numbers, and there are adequate requests, there should be the possibility for persons belonging to national minorities to learn or to take lessons in the minority language. The Law, however, refers to ‘the conformity with the relevant legislation in the field of education’ and empowers the Council of Ministers to lay down with its decision the criteria for the determination of the local self-government unit, the substantial number and the adequate requests (Article 13.3). Indeed, when it comes to the right to education, the Law clearly stipulates only the right to learn own language, and in all other aspects regulated in Article 13 (which covers minority education), the Law refers to a decision of the Council of Ministers and/or the legislation on education. This opens the question over the core of the minority right to education and to what extent this might be affected by the secondary and sectoral regulations.

It should not be assumed that the decisions of the government (the Council of Ministers) and the laws on education would narrow the minority right to education, as they might be supportive and provide for education of or in minority languages. But, the very core of the right to education should have been guaranteed in the Law and not left on the good-will of the government or affected by the sectoral legislation on education. Another example provides Article 15 that regulates the use of minority language. The provisions of Article 15 call for the right to use minority language, but at the same time they link the exercise of the right to relevant legislation or administrative decisions. For instance, the right to use own language for name and last name has to be ‘in conformity with the relevant legislation’ (Article 15.1 lit. a), or the indication of topographic names in minority language is ‘pursuant to the legal provisions on local self-governance’ (Article 15.3) and for the use of language in criminal procedures the Law refers to the provisions of the Code of Criminal Procedure (Article 15.5). Furthermore, when it comes to the right to get information about the progress of the electoral process also in minority language, the Law empowers the Central Electoral Commission to regulate the issue with its acts (Article 15.4). And, finally, the Law empowers the Council of Ministers to regulate with a decision how minority language can be used in local self-government units (Article 15.6 in conjunction with Article 15.2 and Article 15.3). This example again shows that the exercise of the right to use own language basically depends on the secondary and sectoral legislation. This in effect might not necessarily be limiting, but it would have been more appropriate if the right to use minority language had been more strongly enrooted in the law on national minorities.

Relevant for the above argumentation is that the Law has stipulated the deadline in which the Council of Ministers (and in one case, the Central Election Commission) shall adopt the decisions for the implementation of relevant provisos of the law: they should have done so within six months from the entry into force of the Law (Article 23). As of the end of 2018 (thus more than a year after the Law entered into force), the Council of Ministers adopted three decisions: one on the Committee on National Minorities and two in the area of education.⁷ This is far behind the goal the Law has set, both with regards to the time-frame and the number of decisions. Thus, in many segments, the Law remains ineffective because the Council of Ministers has not adopted necessary decisions. Interesting is also that the Council of Ministers has launched a campaign of public consultations with national minorities on the issues that have to be regulated with the decisions.⁸ Holding consultations with national minorities is certainly positive and they should indeed be involved in the process of decision-making on the issues that are relevant for them. However, this, together with the fact that so far the Council of

Ministers has managed to adopt only three decisions, indicates that the decisions reach out of the simple elaboration of the relevant segments of the law and defining (more practical or technical) conditions for the implementation of minority rights, and that they shape the very substance of the system for the minority protection in Albania. This bears the risk of legal uncertainty and potentially jeopardizes coherence and sustainability in the implementation of the Law.

One of the most interesting aspects of the Law refers to the territorial and personal scope of application of the minority protection. The territorial scope of application is interesting and relevant for Albania, because of its legacy of “minority zones” that existed before and under the communist regime and that limited the enjoyment of minority rights to certain areas in which minorities lived more concentrated. In its First Opinion on Albania, the ACFC has expressed concerns that ‘the application of “minority zones” ... continues to play certain currency in particular in relation to the teaching in and of minority languages’ (ACFC, 2003: 9, point 24). Consequently, the ACFC has urged the authorities to take steps ‘to ensure that no undue limitations are placed on the rights of persons belonging to national minorities who live outside these formerly identified “minority zones”’ (Ibid.). In its Second Opinion on Albania, the ACFC has devoted more attention to the territorial restrictions in access to minority rights that resulted from the de facto existence of “minority zones”. It has been identified that ‘persons belonging to national minorities who are no longer living in a minority zone cannot claim the same rights as those living in such zones’ (ACFC, 2008: 6, point 13 and 13, point 51), and the authorities have been urged to ‘ensure that persons belonging to national minorities can assert their rights, in line with Article 3, with no undue territorial restrictions’ (Ibid.: point 53) and to consider ‘drafting a framework law on national minorities, clarifying *inter alia* the territorial application of the protection afforded to national minorities in Albania’ (Ibid.: point 54). Against this background, it is not surprising that the Law in Article 5.2 explicitly states that the minority rights and freedoms envisaged in the Law can be exercised ‘in the whole territory of the Republic of Albania’. In the same manner, Article 12.1 of the Law stipulates the right for persons belonging to national minorities to maintain and develop linguistic, cultural and religious identity and cultural heritage ‘in the entire territory of the Republic of Albania’. Yet, the two important minority rights: the right to education and the right to use own language remain territorially “restricted”. When it comes to the possibility to learn minority language or to receive the instruction in this language, the Law limits this to the local self-government units in which minorities have been living traditionally or in substantial numbers, if there are

adequate requests. As mentioned above, it is up to the Council of Ministers to define the criteria for determining these parameters. The norm on the education of/in minority language in the Law corresponds with the norm of Article 14 of the Framework Convention for the Protection for National Minorities (FCNM). However, it remains to be seen whether the Law (together with the respective decisions of the Council of Ministers necessary for its implementation) will produce positive effects and open the possibility for persons belonging to national minorities who live outside the former “minority zones” to have full access to education in minority language. When it comes to the use of minority language, in three aspects is this limited to the areas (local self-government units) with more than 20% of the population belonging to a national minority: the possibility to use the minority language in communication with the bodies of local self-government units, the display of the topographic indicators in the minority language and the right to be informed about the progress of the electoral process (Article 15, paragraphs 2, 3 and 4). The details shall be regulated with the decision of the Council of Ministers and with regards to the information about the electoral process with the acts of the Central Election Commission (Article 15.6 and 15.4). Again, the territorial limitation of the (official) use of minority languages does not contradict with the standards of the FCNM because the latter in relevant Articles 10.2 and 11.3 refers to areas traditionally or in substantial numbers inhabited by persons belonging to national minorities. However, the ACFC has called to interpret this territorial aspect more flexible and to focus more on the actual needs and demands of persons belonging to national minorities, rather than on the rigid demographic thresholds (ACFC, 2012: 18-19, 21). Thus, although the demographic threshold set out in the Albanian Law is not unusual in comparative practice, it should not create a severe obstacle for minority languages to be used in relations with local authorities, in topographic signs or as part of information of electoral process. Two additional aspects are to be borne in mind here. The linkage of the use of minority language to the demographic threshold calls for accurate and reliable data on the structure of population. Usually, the census data is used as a benchmark to determinate if the threshold is met or not. The last census in Albania was conducted in 2011 and it was marked with significant flaws (for details see ACFC, 2008: 10-13). As the UN Committee on the Elimination of Racial Discrimination has put in the recent Concluding Observations on the Combined Ninth to Twelfth Periodic Reports to Albania, ‘the 2011 census did not provide a realistic picture of the ethnic or ethno-religious composition of the State party’ (UN CERD, 2019: 2, point 7) and ‘reliable demographic data, disaggregated by ethnicity, religious practices and languages spoken, are still not available in the State party’ (Ibid.).

Interestingly enough, in its Third Opinion on Albania, the ACFC has called ‘on the authorities not to condition the exercise of any rights provided for in the Framework Convention on the results of the census of 2011’ (ACFC, 2011: 13, point 51). The next census in Albania is planned for 2020. The recommendations of the ACFC from the Third Opinion on Albania remain still accurate. It has been called to ‘process the census data in strict conformity with the principle of self-identification; ensure that appropriate procedures are in place for future censuses, as well as other forms of data collection, in order to provide reliable data on the situation of persons belonging to national minorities, disaggregated by age, gender and geographical distribution, in all relevant fields, in line with the principles of free self-identification and internationally recognised data collection and protection standards’ (Ibid.: 34). Another aspect refers to the territorial reform in Albania that took place in 2015, as a result of which the number of local government units decreased from 373 to 61. Whereas the Albanian authorities in its Fourth Report on the FCNM claimed that ‘the new administrative division maintained the current demographic configuration of the local units where the majority of the population belongs to the minorities’ (Republic of Albania, 2016: 81, point 237), they did not reveal the effects of the reform in the areas where national minorities also constitute local minority. In the Annual Report for 2017, the Albanian Ombudsman has tackled the issue and noted that ‘the new territorial administrative division has created problems with regard to the real presence of different population other than the majority one, located in certain areas of the country’ (Ombudsman of the Republic of Albania, 2018: 77). As a result of the drawing of new territorial borders, in some cases, population belonging to the same national minority has been divided into two territorial units (Ibid.). Against this background, the Ombudsman concludes that current factual situation will create problems in implementation of the minority rights that are conditioned with the requirement of the substantial number, sufficient requests or the 20% demographic threshold (Ibid.).

The personal scope of application of minority protection is also interesting and relevant, because the issue was considered generally problematic and it was expected that the new Law brings clarifications and creates the needed prerequisites for the improvement. There were several points that have been critical prior the new Law. First, the distinction between the categories “national minority” (a status that enjoyed the Greek, Macedonian, Montenegrin and Serb minority) and “ethno-linguistic minority” (a status that enjoyed the Roma and the Aromanian/Vlach minorities) was criticized as potentially discriminatory, as persons belonging to the latter group ‘are not able to access certain rights such as minority language education, in

the same conditions as those persons recognised as national minorities’ (ACFC, 2008: 11, point 39). Against this background, the ACFC has called the authorities to ‘reconsider their distinction between national and “ethno-linguistic” minorities with a view to ensure that there is no differentiated treatment in the enjoyment of certain rights for the Roma and the Vlachs/Aromanians as compared to “national minorities”’ (Ibid.: 11, point 40). Second, problematic was the scope of groups who enjoyed protection as minorities (in either of the above-mentioned categories). Namely, Egyptians have claimed distinct identity from Roma and called for protection as a distinct group, and the Bosniaks have also requested from the Albanian authorities to consider them as a national minority (Ibid.: 11-12). In line with this, the ACFC called ‘the authorities to examine, in consultation with those concerned, the possibility of including persons claiming Bosniac and Egyptian identities, in the application of the Framework Convention, in particular as regards their linguistic and cultural interests’ (ACFC, 2011: 10, point 35). Finally, problematic was the application (more precisely, restriction) of the principle of self-identification, mainly through the practice of mandatory recording of people’s ethnicity on their birth certificates (this practice was abolished in 2011) and the pressure (through introducing a fine) to persons in the census of 2011 to answer the question on ethnic origin in accordance with the data registered in the civil registry.⁹ In reaction to this, the ACFC called ‘the authorities to observe strictly the right to self-identification, while taking into consideration both the subjective choice and the objective criteria relevant to a person’s identity, and to abstain from any pressure impacting on the free choice of the persons concerned’ (ACFC, 2011: 12, point 48). More specifically, the ACFC urged ‘the authorities not to apply any fines on persons exercising their right to free self-identification’ (Ibid.) and encouraged them ‘to process the census data in strict conformity with the principle of self-identification’ (Ibid.: point 49).

The Law addresses all these issues and regulates both the question of the status of a national minority and the right to self-identification. When it comes to the status of a national minority, the Law defines this in three steps: through a legal definition, the list of groups which enjoy the status of a national minority, and stipulating the outline of the procedure for formal recognition of a group as a national minority. The first thing to observe is that the Law refers only to national minorities and thus eliminates the distinction between national and ethno-linguistic minorities. In Article 3.1, the Law contains the definition of a national minority. The criteria set out in the definition are: the Albanian citizenship, the residence on the territory of Albania, sustainable links with the Albanian state, objective manifestations of distinct identity

(cultural, ethnic, linguistic, religious or traditional characteristics) and subjective will to foster own identity. The definition corresponds with the ‘classical’ Capotorti definition of a minority (developed in the 1970s) but does not fully meet the accurate standards developed under the Council of Europe. The Venice Commission has a clear general position that ‘citizenship should ... not be regarded as an element of the definition of the term “minority”’ (Venice Commission, 2011: 8). It has been argued that the practice to include citizenship among the criteria in the definition resembles the traditional position in international law, which has changed over time. As the Venice Commission acknowledges, ‘a new, more dynamic tendency to extend minority protection to non-citizens has developed over the recent past’ (Ibid.: 6). Yet, citizenship does not become fully irrelevant for the minority protection, but a more nuanced approach is needed. Generally, minority protection should be inclusive and cover non-citizens as well, but they might be excluded from some minority rights that remain reserved for citizens only (like political right or access to civil service).¹⁰ The criterion of ‘earlier and sustainable links with the Albanian state’ (as it is stated in Article 3.1 of the Law) also might be problematic and exclusive. The criterion of the traditional settlement can be found in the FCNM as well, but only in relation to the use of language before administrative authorities, the display of signs and end the education in/of minority language. Again, a more nuanced approach is needed, and general exclusion of groups from minority protection on ground of the lack of longstanding relationship with the state is not welcome.¹¹

In addition to the definition of a national minority, the Law also lists the national minorities in the Republic of Albania: Greek, Macedonian, Aromanian, Roma, Egyptian, Montenegrin, Bosnian, Serb and Bulgarian (Article 3.2). Positive in this respect is the acknowledgment of the Egyptian and Bosnian minorities, same as the introduction of the Bulgarian minority, but generally, putting the list of protected minorities in the law on national minorities is not welcome. For the Venice Commission, such a list could ‘cause the exclusion of the non-listed minorities from the various entitlements under the law and thus violate the concept of equal protection of national minorities’ (Venice Commission, 2011: 10). Closed lists are for the Venice Commission fully unacceptable, and the open-ended lists (formulated using the terms “and others” or “such as”) are tolerable only if being purely indicative (Ibid.: 9, 10). It is not quite easy to determine whether the list in the Law is closed or open. First, the list in Article 3.2 is formulated as a closed list. But, Article 4 of the Law opens up the possibility for other groups to be “formally recognized” as national minorities and prescribes the outline of the procedure for such a recognition. Article 4 might indicate that the list in Article 3.2 is an

open list, but the procedure for recognition envisaged in it is rigid and has for the consequence that non-listed groups might get under the protection only if being formally recognized and eventually added to the list.¹² In effect, the list is closed but amendable (new groups can be added, but only after the procedure for “formal recognition”). This concept of formal recognition is not in line with the international standard that the state “recognition” is irrelevant, because ‘the existence of a minority was a question of “fact” and not of “law”’ (Ibid.: 13). As the Venice Commission has put it, ‘the existence of a minority is and should be a question of fact and not of law or of government recognition, as governments should not be allowed to exclude minorities or define them away by non-acknowledgement’ (Ibid.). The ACFC has also a clear position that ‘access to minority rights should ... not depend on formal recognition’ (ACFC, 2016: 12, point 28).

The issue of self-identification, the Law addresses in Article 6. The principle set out in Article 6.1 of the Law is that every person has the right to declare their belonging to a national minority, based on the right of self-identification. It is confusing that the Law makes reference to the legislation on the general census, because the right to self-identification should be absolute and not affected with the sectoral laws. As a matter of fact, the provisions of sectoral laws must respect and underpin the right to self-identification. Relevant here is also the provision of Article 5.1 which grants the right to every person belonging to a national minority freely to choose to be treated or not to be treated as such. When it comes to the proper implementation of the right to self-identification, it is essential to interpret the right to declare own affiliation of Article 6.1 wider, as to include both identification and declaration/expression. Persons are free to decide about their affiliation with a national minority, they can change the affiliation, have multiple identities and on situational basis decide whether to identify as belonging to a minority or not.¹³ In general, the rigid approach to the identity should be avoided. The freedom of expression of affiliation with national minority is the external manifestation of the right to self-identification, and it covers both the freedom to express affiliation and the freedom from being forced to do so. In the respect of the latter, Article 6.2 of the Law is relevant, because it protects from a compulsory disclosure of data of belonging to a national minority. The Law acknowledges that disclosure of such data is necessary for enjoyment of some minority rights, but this should not be *per se* considered as a forced disclosure of data (as the wording of Article 6.2 might indicate). As a matter of fact, it is up to every person belonging to a national minority to decide what minority rights they will make use of and consequently provide the data on their own affiliation. In any case, the basic principle is that the data cannot be processed

without consent of the person in question. Interestingly, the question of collection of data is regulated in Article 7 of the Law. Article 7.1 entitles the public institutions at the central and local level to collect data on “identification” of persons belonging to national minorities. The Law also sets out the purpose of such data collection: it is to guarantee the rights of national minorities (Article 7.1). The collection of data shall be based on the right to self-identification and the documentation of the Civil Registry (Article 7.1). The reference to the Civil Registry is to some extent surprising, as the compulsory registration in the Civil Registry was strongly criticised by the ACFC and the category of “nationality” (understood in the terms of ethnic affiliation) in the Civil Register was abolished in 2011. Generally, it is not contrary to the European standards to register affiliation with national minority in civil registers, but this has to be in line with the right to self-identification and the rules on the data protection. It is still to be seen how this data collection envisaged in Article 7.1 will be implemented in practice. It is relevant to point out here that the Law in Article 7.1 refers to Article 6.2 (freedom from compulsory disclosure of affiliation or unwanted publication of data on affiliation) and on the legislation on the protection of personal data. Indeed, the data on affiliation with a national minority (also the data on race, language and religion, which might be relevant for the affiliation with a national minority) count to “special categories of data” and enjoy stronger protection.¹⁴ Bearing this in mind, it is surprising that Article 7.2 entitles the Council of Ministers to define with its decision the criteria, the documentation and the procedures for the data collection stipulated in Article 7.1. The basic principles for data collection should be defined in the law and the government in its decision should only elaborate the provisions of the law necessary for their implementation in practice. But the government cannot be left a wide margin of appreciation in regulating the data collection and thus interfere with the issues that are regulated or should be regulated with the law. Against this background, the entitlement for the Council of Ministers stipulated in Article 7.2 can be justified only if the government remains “*intra vires*” and does not violate the general principle that the substance of the regulation on data collection should be provided in the law.

The catalogue of rights set out in the Law contains the rights generally typical for minority protection, such as: the freedom of peaceful assembly and association, including the right to establish and be active in political parties and civil organizations (Article 9 lit. a and lit. b), the freedom of conscience and religion with the right to manifest religion or faith and to set up religious organizations and associations (Article 10), the right to equal and effective participation in the public, economic, social, and cultural life of the country (Article 11), the

right to maintain and develop own identity (Article 12), the right to education of and under some conditions in the minority language (Article 13), the right to information in the minority language (Article 14), the right to use minority language (in specified situation and under prescribed conditions, Article 15) and the right to establish and maintain free and peaceful cross-border contacts with persons of the common ethnic, cultural, linguistic or religious background or cultural heritage (Article 17.1). The Law prohibits any form of discrimination against any person on account of their belonging to a national minority (Article 8), a prohibition that should be interpreted wider so that it also covers protected grounds such as race, religion, ethnicity and language. The Law entitles public institutions at the central and local levels to impose affirmative action measures; as the Law puts it, to approve and implement the necessary measures to guarantee full and effective equality in the economic, social, political and cultural life between persons belonging to a national minority and those belonging to the majority (Article 8.2 lit. a). In line with general standards of affirmative action measures, such measures are declared not to constitute an act of discrimination (Article 8.3 of the Law). In line with Article 16 of the FCNM, the Law prohibits measures that alter the composition the population in local self-governing units inhabited by national minorities with the aim to restrict minority rights (Article 16). It would go out of this commentary to analyse every of the rights listed above and here only a few general comments will be provided. The positive feature and the quality of the Law is that the rights are clearly stipulated, and it cannot be claimed that the formulations in the Law are vague. However, this is not a straightforward characteristic of the Law, as it seems that this is more the case on those issues which call for less accommodation for minorities (such as freedom of association or freedom of religion) than in the issues that call for more accommodation for minorities (like education of use of language). In the case of the latter, the Law contains the ifs and buts that indicate certain reservations and “pulling the breaks”. Furthermore, the Law often refers to the decisions of the Council of Ministers that need to be adopted and which will actually shape the quality of minority protection as they will guide the practical implementation of rights set out in the Law. Indeed, the Law overemphasizes the role of the Council of Ministers and puts the minority protection under its control. It is still to be seen whether this will negatively affect the quality of implementation of minority rights.

Interesting and worth mentioning is the incorporation of the Committee on National Minorities in the Law (Articles 18-20), an institution which existed in the Albanian order since 2004, but was legally grounded in the secondary legislation (the decision of the Council of Ministers). Members of the Committee on National Minorities are representatives of national

minorities listed in Article 3.2 of the Law, under the principle that each national minority has one member (Article 21.1 and 21.2). This would indicate that the Committee is a minority representative body, but the Law opens important channels for the Prime Minister and the Council of Ministers to shape and influence this body. The Committee has been conceptualized as ‘a central institution under the auspices of the prime Ministers’ (Article 18.1), thus the concept of ‘a governmental body answering directly to the Prime Minister’ (ACFC, 2011: 29, point 169) has remained unchanged with the Law. The Prime Minister approves the structure of the Committee with an order (Article 18.3): The Prime Minister appoints the members of the Committee and its chairman and deputy chairman (Article 20.2 and 20.3). The Law stipulates that the associations representing national minorities should put forward candidates for the members of the Committee (Article 20.2) and calls for selection of the chairman, deputy chairman and members of the Committee to be done through an independent, transparent and inclusive process (Article 20.4). The Law entitles the Council of Minister to regulate in its decision the process of selection (Article 20.4). The Council of Ministers is also supposed to regulate in the decision the organisation, operation and level of wages of the members of the Committee and the administrative personnel attached to it (Article 18.2). All these regulations make the Committee highly dependent in the first line from the Prime Minister, but also from the Council of Ministers. In Article 19, the Law defines the powers of the Committee, which mainly refer to giving opinions, providing recommendations, issuing reports, undertaking awareness-rising activities, and monitoring the situation in the area of minority protection. An important competence of the Committee is to finance initiatives and projects relevant for minority protection (Article 19 lit. g). The financing goes through the Fund for National Minorities which is legally based in Article 21 of the Law. The financial means for the Fund shall be allocated in the state budget, and the Committee on National Minorities has the mandate to administrate the Fund (Article 21.2). Yet, this does not mean that the Committee has full control over the Fund, because, again, the Council of Ministers is entitled to define the criteria for supporting the initiatives and projects, the selection criteria for financing and criteria for the management of the Fund (Article 21.3).

The final comment goes to the element of integration in the Law. When listing the measures central and local public institutions can impose in fighting discrimination (Article 8.2), the Law refers also to measures aiming at strengthening intercultural dialogue and fostering mutual respect, understanding and cooperation among citizens of Albania (lit. c and lit. ç). This is generally positive, but the lawmakers did not invest more effort to stronger

promote interaction between national minorities and the majority and thus the concept of integration as a two-way street, affecting both national minorities and majority. When referring to measures for fostering mutual respect, understanding and cooperation among citizens, the Law makes it clear that this is ‘without any distinction as to their distinct cultural, ethnic, linguistic, religious or traditional identify’ (Article 8.2 lit. ç). This can be understood in the sense that persons should not be excluded from mutual respect, understanding and cooperation because of their distinct identity features, what is in line with general spirit of Article 8 on prohibition of discrimination. But the norm could actually go a step further and call for mutual respect, understanding and cooperation of people *precisely* taking into account their different identity backgrounds. In this way, the norm should have acknowledged social diversity as an asset and underpinned an integration policy that rests on interaction between the majority and minorities. This would have communicated well with the wording of Article 2.1 of the Law that acknowledges national minorities as ‘an essential component of an integrated society’. Unfortunately, the wording of the Law does not provide for this. Interesting in this respect is also the wording in Article 12.4. Article 12 regulates the right for persons belonging to national minorities to maintain and develop linguistic, cultural and religious identity and cultural heritage, and in this context, it prohibits policies or practices aiming at forceful assimilation (Article 12.4). Interesting here is the reference the Law makes to ‘the measures taken in pursuance of the general integration policy of national minorities’. The way the norm is formulated could lead to interpretation that the integration policy might have assimilatory effects, but it is not to be considered as assimilation against the free will of persons belonging to national minorities. This is highly problematic formulation and it indicates serious misunderstanding of a modern concept of integration of a diverse society.¹⁵ Actually, the general tone of the Law implies a sort of a constraint that indicates a fear that “a step further” and a progressive approach in minority protection would jeopardize stability and cohesion. In this line goes also the regulation in Article 2.2 of the Law that calls for persons belonging to national minorities to respect the rule of law, the territorial integrity and the sovereignty of the Republic of Albania. This formulation is not *per se* wrong, but it is obsolete and does not communicate well. Rule of law, territorial integrity and sovereignty are constitutional categories and as such enjoy enhanced legal protection, thus it is unnecessary to refer to them in a law on national minorities. Furthermore, the message behind it reflects the fear of the conflict-potential of minority issues and basically mistrust towards national minorities.

In sum, it is positive that after more than 10 years of being on the agenda, the law on national minorities was finally adopted in 2017. It is also positive that the Law stipulates a catalogue of minority rights and avoids vague formulations. Yet, the Law too often refers to the decisions of Council of Ministers or regulation in the secondary legislation and thus impedes the self-execution of its norms and direct implementation of the prescribed rights. And, finally, the Law lacks a clear integrative perspective, it is rather conservative in this respect and does not correspondent to the tendencies and challenges of diversity management of the twenty-first century.

Notes

¹ LIGJ Nr. 96/2017 PËR MBROJTJEN E PAKICAVE KOMBËTARE NË REPUBLIKËN E SHQIPËRISË, Official Journal of the Republic Albania No. 196/2017. Available in Albanian at <http://qbz.gov.al/Botime/Akteindividuale/Janar%202017/Fletore%20196/Ligi%20nr.%20962017.%20date%2013.10.2017.pdf>. Retrieved: February 28, 2019.

² ‘Albania to Adopt Law Boosting Minorities’ Rights’. <https://balkaninsight.com/2017/09/28/albania-to-adopt-the-first-law-on-minorities-09-27-2017/>. Retrieved: February 26, 2019.

³ All reports can be found at https://ec.europa.eu/neighbourhood-enlargement/news_corner/key_documents_en?f%5B0%5D=field_file_country%3A79. Retrieved: February 26, 2019.

⁴ See for example Albania 2012 Progress Report, SWD(2012) 334 final, 21. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2012/package/al_rapport_2012_en.pdf; Albania 2013 Progress Report, SWD(2013) 414 final, 45. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/package/al_rapport_2013_en.pdf; Albania 2014 Progress Report, 13 and 49. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-albania-progress-report_en.pdf (all retrieved February 26, 2019).

⁵ Article 20 of the Albanian Constitution is the key constitutional norm for the protection of national minorities in Albania. It guarantees full equality before the law for persons belonging to national minorities (interestingly with referring to the exercise of human rights and freedoms) and the rights freely to express affiliation, to protect and develop their identity, to education in the mother tongue and to freely to associate. The version of the Constitution in the English language is available at <https://www.osce.org/albania/41888?download=true>. Retrieved: February 26, 2019.

⁶ When it comes to the relationship between the Law and the sectoral laws, it is worth mentioning that these are of the same legal force and consequently in the case of a norm collision, the usual principles of legal interpretation are to be implemented that might result in the norm of a sectoral law to prevail over the norm of the Law.

⁷ The Council of Minister Decision no. 561 of September 29, 2018 ‘For the Provision of Student Textbooks, Initial Training, Further Professional Development of Teachers, and the Establishment and Operation of Classes in the Language of National Minorities’; The Council of Minister Decision no. 562 of September 29, 2018 ‘For Appropriate Measures to Promote the Recognition of Culture, History, Language and Religion of National Minorities in Teaching and Scientific Activities of Higher Education Institutions’ (both decisions were published in the Official Journal of the Republic of Albania 143/2018. http://www.qbz.gov.al/botime/fletore_zyrtare/2018/PDF-2018/143-2018.pdf. February 26, 2019); The Council of Minister Decision No. 726 of December 12, 2018 on ‘The Organisation and Functioning of the Committee on National Minorities’ (published in the Official Journal of the Republic of Albania 176/2018; http://www.qbz.gov.al/botime/fletore_zyrtare/2018/PDF-2018/176-2018.pdf. Retrieved: February 26, 2019).

⁸ See, for example, ‘Shkodër, Bushati takim me pakicat serbo-malazeze: Projekte specifike për pakicat kombëtare’ <http://www.gazetatema.net/2018/04/15/shkoder-bushati-takim-me-pakicat-serbo-malazeze-projekte-specifike-per-pakicat-kombetare/> and ‘Public hearing with representatives of the Greek national minority: “National Minorities – linking bridge” Grapsh, Gjirokasër’. <https://punetijashtme.gov.al/en/degjesa-me-perfaqesuesit-e->

[pakices-kombetare-greke-pakicat-kombetare-ure-lidhese-grapsh-gjirokaster/](#). Retrieved: February 26, 2019). See also ‘Committee on the Elimination of Racial Discrimination considers the Report on Albania’. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23976&LangID=E>. Retrieved: February 26, 2019.

⁹ For details, see ACFC, 2011: 10-12. Interestingly enough, the regulation on registering people’s ethnicity in the birth certificate was subject to the control by the Albanian Constitutional Court and actually, the court’s decision about the unconstitutionality of the regulation resulted in the practice to be abolished in 2011. See: Vendim Gjykata Kushtetuese 52/11 (December 1, 2011); the decision is available in Albanian at http://www.gjk.gov.al/include_php/previewdoc.php?id_kerkesa_vendimi=1080&nr_vendim=1.

¹⁰ For more detail see: Djordjević, Malloy with Černega, 2017: 19-20.

¹¹ For details see: ACFC, 2016: 13-14.

¹² According to Article 4.2 of the Law, a group of citizens who claim to belong to a national minority can file an application for formal recognition with the minister of internal affairs. Under the ministry of interior, a special *ad hoc* committee shall be established, which is entitled to review the application (Article 4.3). The structure and the work (including the procedures) of this committee shall be determined by a decision of the Council of Ministers (Article 4.3). The ad hoc committee adopts a formal decision in which it decides about the application. This decision can be appealed before the administrative court (Article 4.4).

¹³ See ACFC, 2016: 7-8. See also Djordjević, Malloy with Černega, 2017: 23.

¹⁴ See Article 6 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Council of Europe Treaty No. 108. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108>; Article 9 of the EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ EU L 119 of May 4, 2016. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN>.

¹⁵ A useful tool for understanding the concept provide the OSCE HCNM Ljubljana Guidelines on Integration of Diverse Societies (2012). <https://www.osce.org/hcnm/ljubljana-guidelines?download=true>.

References

ACFC. ‘First Opinion on Albania’. ACFC/INF/OP/I(2003)004. 2003. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008bd39>.

_____. ‘Second Opinion on Albania’. ACFC/OP/II(2008)003. 2008. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c151>.

_____. ‘Third Opinion on Albania’. ACFC/OP/III(2011)009. 2011. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008c633>.

_____. ‘Thematic Commentary No. 3. The Language Rights of Persons Belonging to National Minorities under the Framework Convention’. ACFC/44DOC(2012)001 rev. 2012. <https://rm.coe.int/16800c108d>.

_____. ‘Thematic Commentary No. 4. The Scope of Application of the Framework Convention for the Protection of National Minorities’. ACFC/56DOC(2016)001. 2016. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a4811>.

Council of the EU. ‘Conclusions on Albania’. June 24, 2014. <https://www.consilium.europa.eu/media/21900/143354.pdf>.

Djordjević, Lj., H. Malloy, with S. Černega. 'Drafting Domestic Legislation Provisioning National Minority Rights: The Dos and Don'ts According to the Council of Europe'. ECMI Working Paper #104. Flensburg: ECMI, 2017.

https://www.ecmi.de/uploads/tx_ifpubdb/Working_Paper_104.pdf.

European Commission. 'Albania Country Strategy Paper 2002-2006'. EC CARDS Programme. November 30, 2001. https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/financial_assistance/cards/publications/albania_strategy_paper_en.pdf.

Ombudsman of the Republic of Albania. 'Annual Report on the Activity of the Ombudsman's Institution 2017'. 2018.

<https://avokatipopullit.gov.al/ombudsman/media/manager/website/reports/REPORT%202017.pdf>.

Republic of Albania, Ministry of Foreign Affairs. 'Forth Report on the FCNM'. ACFC/SR/IV(2016)005. 2016.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806befc5>.

UN Committee on the Elimination of Racial Discrimination (CERD). 'Concluding observations on the combined ninth to twelfth periodic reports of Albania'. CERD/C/ALB/CO/9-12. 2019.

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/ALB/CO/9-12&Lang=En.

Venice Commission. 'Compilation of Venice Commission Opinions and Reports concerning the Protection of National Minorities'. CDL (2011)018. 2011.

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2018\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2018)002-e).