NAYIA KAMENOU

KING'S COLLEGE LONDON, UK

4th Hellenic Observatory PhD Symposium, LSE, June 2009

Abstract

Nationhood‟s inclusion and exclusion cues do not only pertain to ethnicity and culture. „The nation‟ also alienates non-heteronormative gender and sexuality subjectivities, thus affirming its existence and purity. Through the examination of the case of Cyprus this paper argues that even in the „Europeanization and human rights era‟, hegemonic institutional agents continue to prescribe nationhood based on their constructions of „normal‟ and „abnormal‟, „nationally proper‟ and „nationally improper‟ gender and sexuality performances. Through empirical research this paper demonstrates that such public discourses permeate private discourses and LGBTQ individuals‟ self-perceptions. However, through an analysis of the effectiveness of European mechanisms and of queer and deconstructive theories it argues that the strategic employment of non-internalised, bounded political, and legal LGBTQ identities--in combination with the increasing number of same-sex, Cypriot „bi-communal‟ unions--could function as an effective catalyst towards identity-barrier eradication, which is also applicable outside the Cypriot context.

Minority participation in public life: the case of Greece

Nikolas Kyriakou*

This article examines Greece's stance towards minorities in the light of the recent UN Report of the Independent Expert on Minority Issues regarding her mission to Greece. The epicenter of the paper is the jurisprudence of the European Court of Human Rights in minority cases against Greece in which minority participation in public life and Article 11 of the European Convention on Human Rights are involved. The article concludes by supporting the idea of the necessity for a change of the current position maintained by Greece as regards the Macedonian and Turkish minorities living in Greece.

Introduction

On 18th of February 2009 Gay McDougall, the UN Independent Expert on minority issues, submitted to the Human Rights Council her Report regarding her mission to Greece.[1] In the Report's 'Conclusions and Recommendations' section, she found that Greece's interpretation of the term 'minorities' was too restrictive to meet current standards and that the government should retreat from the dispute over whether there is a Macedonian minority or a Turkish minority and place its full focus on protecting the rights to self-identification, freedom of expression and freedom of association of those communities. She also called upon Greece to comply with relevant judgments of the European Court of Human Rights (hereinafter,

* PhD researcher, European University Institute, Florence. The author wishes to thank Prof. Bruno De Witte and Lauren Lindsay for their comments on an earlier draft of this paper. It goes without saying that responsibility for errors is that of the author alone.

[1] UN Human Rights Council, *Report of the Independent Expert on Minority Issues, Gay McDougall: addendum: mission to Greece (8-16 September 2008)*, 18 February 2009. A/HRC/10/11/Add.3. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.11.Add.3.pdf

'ECtHR' or 'Court') and afford the requisite standard of protection to minorities pursuant to international law.[2]

The aim of the current paper is to examine the political participation of these two minorities in Greece. For the purposes of this paper 'political participation' is understood in a broad manner, encompassing participation in the common domains of public life through the medium of associations and political parties. A central point of reference is the jurisprudence of the ECtHR which emanates directly from this geographical and conceptual framework. The paper does not intend to discuss all aspects of the minority issue within the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), but will try to sketch out the contemporary issues surrounding it, with a particular focus on Greece. Setting matters in historical perspective assists the examination of Greece's stance.

Starting from the interwar period I will take a 'snapshot' of the League of Nations' minority protection arrangements and describe its main features and Greece's position within it. This will be followed by a brief presentation and commentary on three judgments of the ECtHR which cover a 10 year time-span, from 1998 to 2008. The discussion will centre on Articles 11 (freedom of assembly and association) and 14 (prohibition of discrimination). It is these two Articles which contain the two main features of interest: the freedom of association as a "political" right and the prohibition of discrimination on the grounds of association with a national minority.

[2] *Ibid*., paras. 81 and 90.

The last part of this paper will lend support to the idea that there are interpretative tools available to the ECtHR to tackle minority issues. Against this backdrop, I will argue that Greece's current perception for and stance towards minorities is no longer sustainable for a series of legal and political reasons and that a radical change in its policies is needed.

The heritage of the League of Nations

Greece's attitude towards minorities has closely followed that of the international (legal and political) community: a highly changeable amount of attention being spent on this thorny issue. Notwithstanding the high homogeneity of its population, the Greek State has since its independence in 1830 dealt, in different historical periods, with minorities living within its borders. Minorities were, and continue to be, perceived by the State as a problem by definition. This is quite understandable in light of the various political turbulences, border resetting and irredentism in the Balkan Peninsula for most part of the 20th century.

An institutionalized system of minorities' protection was meticulously set up within the League of Nations. The system imposed in a unilateral fashion obligations on the defeated, with the exemption of Germany. This system bore some interesting characteristics: it consisted of several types of instruments; there were provisions which contained the most far-reaching measures concerning obligations of the States in relation to educational and cultural affairs; provisions that were addressed to all inhabitants of the State; other provisions that were aimed at some individuals in particular, such as, 'nationals' who belonged to racial, religious, or linguistic minorities; provisions

relating to the Jewish community as a whole; and, provisions conferring rights upon specific minority organizations.[3]

Greece had the peculiarity of being on the winners' side, but due to its subsequent conflict with Turkey, in the aftermath of World War I, it found itself on the same side with states upon which obligations towards minorities were imposed. Added to the Treaty of Sèvres of 1920, it was also part of the Treaty of Lausanne of 1923. The two treaties regulated, *inter alia*, the protection of the Muslim and non-Muslim minorities remaining in their respective territories.[4]

The League's overall system of minorities' protection did not prove to be viable for several reasons. One of the most prominent ones was the revisionist stance of states which had assumed obligations vis-à-vis minorities who felt that the system was overly onerous for them. By 1934 the concerted dispute of the system by these states had brought the system to its limits, after it had been politically manipulated by them.[5] Greece's concerns and fears, exacerbated by the overwhelming number of complaints lodged against it by minority groups, led Greece to assess the system as detrimental to its national interests and joined Germany, Poland, Romania, Czechoslovakia and Yugoslavia in disputing it. It is my hypothesis, to which I will turn to later in this paper, that along with the political developments in the subsequent years,

[3] Meijknecht, Anna. 2001. "Towards international personality : the position of minorities and indigenous peoples in international law." Antwerp: Intersentia,., 123-128.

[4] Divane, Lena. 1995. Hellada kai meionotetes : to systema diethnous prostasias tes koinonias ton ethnon. Athena: Nephele., 63.

[5] Tsitselikes, Konstantinos and Demetres Christopoulos. 1997. To meionotiko phainomeno sten Hellada : mia symvole ton koinonikon epistemon. Athena: Ekdoseis Kritike., 194, LENA DIVANE, Hellada kai meionotetes : to systema diethnous prostasias tes koinonias ton ethnon (Nephele 1995), 48.

Greece's negative experience with the League's system is still casting a heavy shadow on its perceptions regarding minority issues. In other words, Greece's current stance on minority issues is prefigured by the political choices made during the interwar period.

What then remains of the League of Nations? Only two international instruments which fit rather awkwardly in today's world: the Treaty of Lausanne and Finland's statement for the Åaland Islands.[6] The former has become a *mantra* for the official position of Greece in relation to its obligations towards the Muslim minority of western Thrace. It constitutes the foundation of an extremely formalistic argument for the non-recognition of other minorities. For Greece, the existence of minorities is contingent upon their recognition through treaty law, which effectively means that the only minority recognized in Greece is the Muslim one. This point is closely related to the consistent denial of Greek courts to accept the use of the word "Turkish" and its derivatives for the determination of the character of certain members of the Muslim minority and also for banning the use of the word "Macedonian" since this bears an ethnic connotation related to the claims made by the Former Yugoslavian Republic of Macedonia.

This, in turn, brings me to the discussion of three relevant judgments of the European Court of Human Rights. Their connecting factor is that they expose to judicial scrutiny the Greek stance towards these two minorities. This exposure has been achieved through complaints lodged under Article 11

[6] Study of the legal validity of the undertakings concerning minorities, UN DOC E/CN.4/367. Available at: http://documents-dds-ny.un.org/doc/UNDOC/GEN/GL9/006/98/pdf/GL900698.pdf?OpenElement (accessed 17 March 2009)

of the European Convention on Human Rights (ECHR), which provides for the right to peaceful assembly and association with others (subject to its notorious triple test of its second paragraph).

ECtHR Case law

In *Sidiropoulos v Greece* [7] the applicants lodged an application under Articles 6, 9, 10, 11 and 14 against Greece based on its refusal to allow the registration of a non-profit association named "Home of Macedonian Civilisation", whose object was the cultural development of the inhabitants of the region. Greek courts had justified the refusal on the basis that the purpose of the use of the term "Macedonian" was to dispute the Greek identity of Macedonia and its inhabitants and from which they inferred an intention on the part of the organisation's founders to undermine Greece's territorial integrity.[8] The ECtHR examined the alleged violation of Article 11 and found a violation. It rejected Greece's submissions, and concluded that:

> "Territorial integrity, national security and public order were not threatened by the activities of an association whose aim was to promote a region's culture, even supposing that it also aimed partly to promote the culture of a minority; the existence of minorities and different cultures in a country was a historical fact that a "democratic society" had to tolerate and even protect and support according to the principles of international law."[9]

[7] Case of Sidiropoulos and Others v. Greece, (57/1997/841/1047), judgment of 10 July 2008.
[8] *Ibid*., par. 11
[9] *Ibid*., par. 41

An aspect of the judgment which often escapes attention is the Court's passing reference to the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Section IV) of 29 June 1990 and the Charter of Paris for a New Europe of 21 November 1990 which allow the formation of associations aiming to protect cultural and spiritual heritage. The Court usually refrains from taking into consideration other international instruments when called to decide upon an alleged violation. In light of this, it is somewhat odd that it chose to refer to 'soft law' instruments, adopted outside the framework of the Council of Europe to enhance its judgment.

Ouranio Toxo v Greece[10] was another judgment handed down by the Court which also related to the Macedonian minority. The case was brought before the Court by a political party which took part in elections with the declared aim to defend the Macedonian minority residing in Greece.[11] Its headquarters were ransacked by the town's inhabitants following the affixture of a sign which bore the name of the party in Greek and Macedonian languages. The central complaint under Article 11 was that the acts directed against the party, the participation of the clergy and municipal authorities in the said acts and the inactivity of the police to stop the ransacking constituted interference with the freedom of association. Additional allegations under Articles 6, 8, 10 and 14 were also included. The Court, in finding a violation of Article 11, reiterated the abovementioned passage in *Sidiropoulos* and added:

[10] Case of Ouranio Toxo and others v. Greece (Appl. no. 74989/01), judgment of 20 October 2005.

[11] The party took part in the elections for the European parliament of 1999 and 2004. It received 0, 08% and 0, 10% of the ballots. Available at: http://www.ypes.gr/ekloges/content/gr/europ_fr.htm (accessed 18 March 2009)

> "The emergence of tensions is one of the unavoidable consequences of pluralism, that is to say the free discussion of all political ideas. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing political groups tolerate each other […] The Court considers that the role of State authorities is to defend and promote the values inherent in a democratic system, such as pluralism, tolerance and social cohesion. In the present case, it would have been more in keeping with those values for the local authorities to advocate a conciliatory stance, rather than to stir up confrontational attitudes."[12]

The acknowledgment of the Court that amongst the aims of the party is the defence of the Macedonian minority living in Greece is cryptic.[13] This statement lends itself to divergent interpretations since it can be construed as an implicit recognition of collective rights. The categorical acceptance as to the existence of a Macedonian minority in conjunction with its representation by the political party seems to offer a strong argument towards this direction.

The third and more recent judgment is the case of *Tourkiki Enosi Xanthis and others v Greece*.[14] The applicants lodged an application under Articles 6, 9, 10, 11 and 14 of the ECHR following the dissolution by court decision of the association, the Turkish Union of Xanthi. The national court had held that because the use of the adjective "Turkish" was contrary to public order, the association was to be dissolved. The sole minority recognised by

[12] Paras. 40 and 42 of the judgment.
[13] Par. 41.
[14] Affaire Tourkiki Enosi Xanthis et autres c Grèce (*Requête n^{o}* 26698/05), judgment of 27 March 2008

the Greek State in the region is the Muslim one. The Court considered Art. 11 as *lex specialis* to Art. 9 and 10 and found:

> « La Cour estime qu'il ne lui appartient pas d'évaluer le poids accordé par l'Etat défendeur aux questions relatives à la minorité musulmane en Thrace occidentale. Elle ne considère pas pour autant que seuls le titre et l'emploi du terme « turc » dans les statuts de la première requérante suffisaient, dans le cas d'espèce, pour conclure à la dangerosité de l'association pour l'ordre public. […]En effet, la Cour estime que, à supposer même que le véritable et unique but de l'association était de promouvoir l'idée qu'il existe en Grèce une minorité ethnique, ceci ne saurait passer pour constituer à lui seul une menace pour une société démocratique ; cela est d'autant plus vrai que rien dans les statuts de l'association n'indiquait que ses membres prônaient le recours à la violence ou à des moyens antidémocratiques ou anticonstitutionnels.»[15]

Article 11 - Guarantee of political participation

Article 11 of the ECHR is central to the analysis and discussion of these three judgments. It constitutes the cornerstone of every democratic society and thus its importance can hardly be overstated.[16] Greece's persistent stance of refusing to register associations or failure to afford the necessary protection to political parties strikes at the heart of democratic values. At the same time it constitutes a violation of the right to self-

[15] *Ibid.*, paras. 51 and 53 of the judgment.
[16] Hillgruber, Christian and Matthias Jestaedt. 1994. The European Convention on Human Rights and the protection of national minorities. [Germany?]: Verlag Wissenschaft und Politik., 47.

identification for the members of such minorities. It deprives them of access to public life in a manner and under an identity that they themselves could have chosen. More importantly it dictates the conditions of self-perception to the individual members and their collective unions. For the Turkish minority, only its religious aspect is accepted to figure in the public domain, whereas the right to collective identification as 'Turkish' is banned. At a more extreme level, the existence of a Macedonian minority is denied altogether.

The two minorities find themselves in a disadvantageous position. State interference with their associations and parties is equivalent to negating the minorities' actual identity and existence.[17] Minorities are thus deprived of their access, as collective entities, to the public common domain. Greece aligns itself with the position that it is for the states to determine in the first place whether a minority exists.[18] However, this position cannot be accepted since it leads to the absurdity of denying the individual right to self-determination and publicly manifest this identity in collectiveness with others.

Article 11 can serve as a vehicle to advance the idea of collective rights of groups. For Article 11 to provide the full range of its capacity as a guarantor of political liberties, a shift in its interpretation from the ECtHR is needed. It is unduly legalistic to rely on the external form of the association as a legal entity and not acknowledge that its existence is not an end itself but it is the means for the promotion of various aims which are vital for a minority. The primary aim of the ECHR is the protection of the individual, but certain articles cannot

[17] Thio, Li-ann. 2005. Managing Babel : the international legal protection of minorities in the twentieth century. Leiden ; Boston: Martinus Nijhoff Publishers., 7.

[18] Weller, M. 2005. The rights of minorities in Europe : a commentary on the European Framework Convention for the Protection of National Minorities. Oxford ; New York: Oxford University Press., 633

be understood solely as a summation of individual rights. The context of group activities and wills is needed for the rights to be practical, effective and meaningful.[19] Article 11 bears a double genre/identity which is amenable for invocation by both individuals and groups. The crux of this idea is the existence of a continuum of rights. An individual right to create an association with others loses its individuality the moment the will and purpose of the individuals is expressed. It is thus transformed into a right borne by a further bearer: the association itself, and in the context of this paper a minority group. This is a view which is not endorsed by the ECtHR's jurisprudence and scholars, as the following section on Article 14 illustrates.

Rusty and unused: Article 14

Although in the aforementioned cases the applicants advanced explicit arguments as to the minority contours of their rights, the Strasbourg Court refrained in all three cases to examine the alleged violation of Article 14 which prohibits discrimination on the basis of association with a national minority in the enjoyment of *Convention* rights. Critics of this approach advance the idea that the main feature of the Court's related jurisprudence remains insensitive to minority rights,[20] whereas others have argued that "it would be an

[19] Hadden, Tom. 2000. "The pendulum theory of individual, communal and minority rights." Critical Review of International Social and Political Philosophy 3(1):77-90.78.
[20] Scheinin, Martin. 2003. "Minority rights: additional rights or added protection." In Human rights and criminal justice for the downtrodden : essays in honour of Asbjørn Eide ed. Morten Bergsmo. Leiden: M. Nijhoff., 498.

exaggeration to state that the supervisory mechanism of the convention is completely insensitive to the minority issue."[21]

Article 14 included the only reference in the ECHR architecture to minority rights until 2005, when Protocol 12 to the ECHR came into force.[22] The Court's circumspect approach may well be attributed to its lack of willingness to engage in a matter which may potentially have political repercussions. From a legal point of view, one has to be mindful that the ECHR was not promulgated with a view to tackling minority issues. At the time of its drafting the international community had elbowed aside any public discourse on minorities. Indeed, the lack of international consensus even on its basic understandings of minorities, as well as the superseding of nationalistic antagonisms by the East-West divide, rendered the question not topical. Instead, the focus had shifted to the protection of individual rights. Against this backdrop, Article 14's application until today appears as a missed opportunity: since it had been the only instance where 'minority' appeared in the text of the Convention, it ought to have been understood and applied in such a manner as to promote actively the protection of minority rights.

A free-standing non-discrimination clause was introduced by Protocol 12 stipulating: "The enjoyment of any right set forth by *law* shall be secured without discrimination on any ground such as […] association with a national minority […]". However, it is still too early to draw any conclusions as to the

[21] Henrard, Kristin. 2000. Devising an adequate system of minority protection : individual human rights, minority rights, and the right to self-determination. The Hague ; Boston: M. Nijhoff., 85.

[22] ETS 177 – Convention for the Protection of Human Rights (Protocol No. 12), 4.XI.2000, entered into force on 1 April 2005. Available at : http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=177&CM=8&DF=3/19/2009&CL=ENG (accessed on 19 March 2009)

Protocol's impact on the complexion of the ECHR, all the more so for minority protection, due to its recent entry into force and the limited number of countries that have ratified it. What way ahead then?

Back to the future: a method of interpretation from the past

It is submitted that a two-prong approach to minorities' issues is more plausible. On the one hand it must be recognized that the ECHR has its limits:

> "[T]he current set of individual human rights enshrined in the ECHR and the concomitant interpretation of these rights is generally not far reaching to address (appropriately) the needs and wishes of minorities regarding the protection and promotion of their separate identity."[23]

This is not to suggest that these limits have been reached – on the contrary, the Court has been able to read the ECHR rights in the light of current developments. It regards it as a 'living instrument' and also adopts a dynamic interpretation of the rights therein.[24] It is submitted that the Court can still accommodate the claims of minorities using these two interpretative tools.

On the other hand, the ECtHR cannot but observe developments in international law and especially within the context of the Council of Europe. The adoption and entry into force of the Framework Convention for the

[23] Henrard, Kristin. 2000. Devising an adequate system of minority protection : individual human rights, minority rights, and the right to self-determination. The Hague ; Boston: M. Nijhoff., 63.

[24] As regards the 'living instrument' assessment see: Tyrer v. United Kingdom (Appl. 5856/72) and Loizidou v. Turkey (Appl. no 15318/89) (preliminary objections). As regards the 'dynamic interpretation' the reader is directed to case-law proving the changing attitudes towards homosexuality, children born out of wedlock and transsexuals.

Protection of National Minorities (FCNM) has been a major development.[25] It is of particular relevance to the topic of this paper to refer to Article 15 of the FCNM which requires States to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them. A cross-fertilisation of the ECtHR's judgments and a reading of the articles enshrined in the ECHR in the light of the FCNM provisions and spirit can expand the hermeneutic horizons of the ECHR. It must be also noted that this has already been the subject of some attention (and controversy) for the Court:

> "We must pay attention to the changing conditions in Contracting States and give recognition to any emerging consensus in Europe as to the standards to be achieved. […]There is an emerging consensus amongst the member States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle (see paragraphs 55-67 of the judgment, in particular the Framework Convention for the Protection of National Minorities), not only for the purpose of safeguarding the interests of the minorities themselves but also in order to preserve a cultural diversity of value to the whole community."[26]

[25] CETS No.: 157 - Framework Convention for the Protection of National Minorities, Adopted on 1/2/1995, entered into force 1/2/2998. Available at: http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=157&CM=8&DF=3/19/2009&CL=ENG, (accessed 18 March 2009)

[26] Case of Chapman v. UK, (Appl. no. 27238/95), judgment of 18 January 2001, Joint dissenting opinion of judges Pastor Ridruejo, Bonello, Tulkens, Strážnická, Lorenzen, Fischbach and Casadevall, par. 3.

This emerging consensus can further be traced within other documents such as the UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities[27] and the Lund Recommendations on the effective participation on national minorities in public life.[28] This proliferation of binding and non-binding instruments leads to the consideration of whether there is a general customary norm in relation to the protection of minorities in international law. Rozakis has asserted that:

> "Whilst the international community has helped to set new norms and has thus 'internalised' the concern over minorities, its customary rules of protection remain ambivalent. It requires the international community to reconcile this discrepancy."[29]

Although this is not the theme of this paper, it is contended that the adoption of the FCNM as well as the abovementioned proliferation of standard-setting suggest that there may be a gradual move towards the formation of customary law in the field. Notwithstanding this, political pressure on 'persistent objectors' to the FCNM, as Greece, will continue to mount in order to provide credible reasons for their denial to join the mainstream of the international community. And this pressure may prove to be a catalyst for a change of this kind in the future.

---

[27] G.A. RES. 47/135, 47 U.N. GAOR Supp. (No.49) AT 210, U.N. DOC. A/47/49 (1992), 18 December 1992.

[28] Lund Recommendations on the effective participation on national minorities in public life http://www.osce.org/documents/hcnm/1999/09/2698_en.pdf, (accessed 18 March 2009)

[29] Rozakis, Christos. 1996. "The international protection of minorities in Greece." In Europe in change. Greece in a changing Europe : between European integration and Balkan disintegration?
, eds. Kevin Featherstone and Kostas Ifantis: Manchester University Press.

As a final comment, it is emphasized that the international legal landscape is changing. Following the fall of communist regimes in Eastern Europe, States in the region were once again confronted with the problems that were lying dormant (or suppressed) for nearly 50 years. Minorities have become once again a priority on the agenda and legal regulation is called for. New instruments, of divergent legal nature and binding force, have been put in place. The Council of Europe, already at the forefront of human rights developments with the ECHR, devised a new mechanism, the FCNM, to deal efficiently with minorities. States (and their omnipresent sovereignty) still remain the determinant factors in this process of standard setting. However, the underlying catalyst of this process is change.

Change we (do not) need

Greece is already lagging behind the current developments in minorities' protection, doing so by burying its head in the sand. It continues to view their claims as politically motivated, attributed to the irredentist and revisionist policies of its neighboring countries. It is submitted that Greece must reconsider its practice and strive for a comprehensive protection of minority rights, which will bring it in line with the current state of affairs, at least at the ECHR level. In this regard, domestic courts have an important role. There are several arguments that advocate for such a change.

First, Greece is a State Party to the ICCPR which includes Article 27, referring to ethnic minorities. Hence, it is already bound and obliged to respect one of the core international human rights' instruments.

Second, the interpretation given to the ECHR by the Court in relation to minorities may not be as progressive as mainstream human rights jurists might have expected, but the fact remains that its attitude is changing. The three cases discussed previously are termed in a resonant manner that cannot be simply ignored.

Third, there is a fundamental disregard of one of the first authoritative references to minorities by the Permanent Court of International Justice. In *Minority Schools in Albania* it unequivocally stated that the existence of a minority does not turn on state recognition, as this entails a question of fact.[30] Ironically, what was at stake in this Advisory Opinion was the dispute over the existence and education rights of the Greek minority residing in Albania. This point brings to the surface a basic, diachronic contradiction of Greece's stance towards minorities. As long as domestically Greece interprets in the narrowest sense the rights accorded to them (or even, violates them), it cannot credibly argue in favor of the rights of Greek minorities residing in other countries.

Fourth, in relation to the FCNM, it is recalled that Greece has signed but not ratified it.[31] As a signatory, Greece is bound by Article 18 of the Vienna Convention on the Law of Treaties to refrain from acts which would defeat the object and purpose of the FCNM.[32] In persisting to refuse the registration of

[30]Advisory Opinion, (1935) PCIJ Ser. A/B. Available at: http://www.worldcourts.com/pcij/eng/decisions/1935.04.06_albania/

[31]http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=157&CM=8&DF=3/20/2009&CL=ENG.

[32]Vienna Convention on the Law of Treaties, http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed 20 March 2009).

associations of minorities,[33] Greece is clearly acting in stark contravention to Article 15 which, as mentioned above, relates to political participation of minorities.

Conclusion

Human rights literature has largely analysed minority issues from the prism of yet another problematic area of law. This author takes a different stance as he regards these issues as challenging opportunities for further expansion of international and human rights law. The examples of the examination of the customary nature of certain norms, the innovative provisions found in several instruments and the evolving jurisprudence of bodies, notably the ECHR, illustrate this.

Interested groups have opted in certain instances for strategic litigation before the ECHR in order to assert their rights.[34] At the same time political participation for minority groups can be upheld through a judicial process, as exemplified by the three judgments discussed above.[35] On the reverse side of the coin is the minority-conscious approach to the Convention which has not yet been fully explored. The Court should not continue to examine applications with 'minority colour-blindness'. Instead, it must place them in the overall context from which they emanate and refrain from excessive

[33] Apart from this refusal, another problem has arisen which seriously undermines the effectiveness of the ECHR: "Despite the finding of a breach of Article 11 ECHR in *Sidiropoulos*, the association 'Home of Macedonian Civilisation' did not manage to have its statute registered by domestic courts because it did not succeed in finding a lawyer willing to take care of legal formalities", http://www.juristras.eliamep.gr/wp-content/uploads/2008/09/greece.pdf

[34] See for example: D.H. and others v. the Czech Republic, *(Application no. 57325/00),* judgment of 13 November 2007.

[35] Gilbert, Geoff. 2002. "The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights." Human Rights Quarterly 24:736-780.778.

deference to States. In this way, it can provide for meaningful solutions and positively contribute to setting arrangements which promote integration and cultural diversity *lato sensu*.

However, the ECHR is not the only option for minority protection in Europe. Notwithstanding the programmatic nature of the FCNM, it is has set a new benchmark and "no real alternative has emerged to challenge [its] role as the most far-reaching European standard for the protection of national minorities."[36]

In addition to the aforementioned, a body of 'soft law' instruments has emerged in the last two decades which suggests the existence of a common consensus in the international community with regard to minorities. Progress is slow, but one must be mindful of the fact that the overall legal situation has advanced more in the last 20 years than it has done in the past two centuries.

This fundamental change cannot be disregarded by international actors, and most significantly States. Greece has long kept an intransigent attitude, failing to acknowledge the changing realities. A long standing fear of "Otherness" and of nationalistic contestations with neighboring countries has created a tradition of institutionalized 'single-mindedness' when reflecting upon such issues. This paper has traced back to the League of Nations' era the roots of Greece's unaltered position on minority protection. The long standing statist perceptions of bureaucratic establishments are not responsive to changes that seem to dispute sovereignty as the sole source of legitimacy.

[36] Elena Jurado and Antti Korkeakivi. 2006/7. "Completing the First Decade of Monitoring: Latest developments under the Framework Convention for the Protection of National Minorities." European Yearbook of Minority Issues 6:373-386.

It is evident that even the most elaborate and comprehensive minority protection system may not accomplish to stop aggressive forms of minority rights vindication. It is equally evident, however, that negating minority rights will almost certainly provoke it.

Bibliography

Divane, Lena. 1995. Hellada kai meionotetes : to systema diethnous prostasias tes koinonias ton ethnon. Athena: Nephele.

Elena Jurado and Antti Korkeakivi. 2006/7. "Completing the First Decade of Monitoring: Latest developments under the Framework Convention for the Protection of National Minorities." European Yearbook of Minority Issues 6:373-386.

Gilbert, Geoff. 2002. "The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights." Human Rights Quarterly 24:736-780.

Hadden, Tom. 2000. "The pendulum theory of individual, communal and minority rights." Critical Review of International Social and Political Philosophy 3(1):77-90.

Henrard, Kristin. 2000. Devising an adequate system of minority protection : individual human rights, minority rights, and the right to self-determination. The Hague ; Boston: M. Nijhoff.

Hillgruber, Christian and Matthias Jestaedt. 1994. The European Convention on Human Rights and the protection of national minorities. [Germany?]: Verlag Wissenschaft und Politik.

Meijknecht, Anna. 2001. "Towards international personality : the position of minorities and indigenous peoples in international law." Antwerp: Intersentia,.

Rozakis, Christos. 1996. "The international protection of minorities in Greece." In Europe in change. Greece in a changing Europe : between European integration and Balkan disintegration?
, eds. Kevin Featherstone and Kostas Ifantis: Manchester University Press.

Scheinin, Martin. 2003. "Minority rights: additional rights or added protection." In Human rights and criminal justice for the downtrodden : essays in honour of Asbjørn Eide
ed. Morten Bergsmo. Leiden: M. Nijhoff.

Thio, Li-ann. 2005. Managing Babel : the international legal protection of minorities in the twentieth century. Leiden ; Boston: Martinus Nijhoff Publishers.

Tsitselikes, Konstantinos and Demetres Christopoulos. 1997. To meionotiko phainomeno sten Hellada : mia symvole ton koinonikon epistemon. Athena: Ekdoseis Kritike.

Weller, M. 2005. The rights of minorities in Europe : a commentary on the European Framework Convention for the Protection of National Minorities. Oxford ; New York: Oxford University Press.

ECtHR Judgments

Chapman v. UK, (Appl. no. 27238/95), judgment of 18 January 2001.
D.H. and others v. the Czech Republic, *(Application no. 57325/00),* judgment of 13 November 2007
Loizidou v. Turkey (Appl. no 15318/89) (preliminary objections), judgment of 23 March 1995.
Ouranio Toxo and others v. Greece (Appl. no. 74989/01), judgment of 20 October 2005.
Sidiropoulos and Others v. Greece, (57/1997/841/1047), judgment of 10 July 2008.
Tourkiki Enosi Xanthis et autres c Grèce (*Requête n^{o}* 26698/05), judgment of 27 March 2008.
Tyrer v. United Kingdom (Appl. 5856/72), judgment of 25 April 1978.

UN DOCUMENTS and TREATIES

UN Human Rights Council, *Report of the Independent Expert on Minority Issues, Gay McDougall: addendum: mission to Greece (8-16 September 2008)*, 18 February 2009. A/HRC/10/11/Add.3.
Study of the legal validity of the undertakings concerning minorities, UN Doc E/CN.4/367.
UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities, G.A. RES. 47/135, 47 U.N. GAOR Supp. (No.49) AT 210, U.N. DOC. A/47/49 (1992), 18 December 1992.
Minority Schools in Albania, Advisory Opinion, (1935) PCIJ Ser. A/B
Vienna Convention on the Law of Treaties, *Treaty Series*, vol. 1155, p. 331

CoE

CETS No.: 005 - Convention for the Protection of Human Rights and Fundamental Freedoms.
ETS 177 – Convention for the Protection of Human Rights (Protocol No. 12).
CETS No.: 157 - Framework Convention for the Protection of National Minorities.

OSCE

Lund Recommendations on the effective participation on national minorities in public life.

Internet Accessed Sources

The Strasbourg Court, Democracy and the Human Rights of Individuals and Communities: Patterns of Litigation, State Implementation and Domestic Reform (JURISTRAS), http://www.juristras.eliamep.gr/wp-content/uploads/2008/09/greece.pdf