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TOWARDS A EUROPEAN SYSTEM GUARANTEEING LINGUISTIC MINORITY RIGHTS PROTECTION: INCLUDING THE HUNGARIAN CASES

Abstract

Due to the peace treaties of the twentieth century Hungarian minorities live in seven different Central and East European states, including Slovakia (520.000), Ukraine (200.000), Romania (1.930.000 million), Serbia (400.000), Croatia (30.000), Slovenia (20.000) and Austria (5.000). In agreement with Central and Eastern European tradition the most important feature of ethnic identity is mother tongue. Hence, these states are de facto multilingual states but not all of them consider themselves de jure as such but rather as monolingual, national states. In the latter cases, the Hungarian minorities are confronted with a 'policy of exclusion', that is discriminating language laws restricting the use of the Hungarian language in the official and public space. This leads to polarized, divided societies along the lines of ethno-linguistic cleavages.

This paper compares exclusive and inclusive language policies in multilingual Central and Eastern European states with Hungarian minorities. We will investigate the legal system in these countries concerning the status and use of the languages of national minorities. It will be concluded that the position of the Hungarian language in the countries concerned can be classified in two groups: (1) Serbia, Slovenia, Croatia and Austria and (2) Slovakia, Romania and Ukraine. In the first group the minority language has a legal status equal to the language of the majority and is included into the official domains. This is especially true for Serbia's Vojvodina region where an official policy supporting multilingual, multicultural society is pursued. In the second group minority languages subordinated to the official state language are restricted in the official domains and additional requirements and conditions determine their use. Hence, the second case does not match EU's democratic standards, whereas the first case respects these standards.

This grouping is an interesting fact because all the countries involved are subject to the process of Europeanization. All seven countries mentioned above are members of the Council of Europe (COE) and have ratified the Framework Convention for the Protection of National Minorities (FCPNM, henceforth Framework Convention) and the European Charter for Regional or Minority

Languages (ECRML, henceforth Language Charta) and foremost four countries, including Austria, Slovenia, Romania and Slovakia are members of the Union. Two of these countries, Romania and Slovakia are however not in the group where democratic values and standards are satisfied. From this it follows that membership of the Union is not a guarantee for the protection of the linguistic rights of national minorities. Hence, we observe a discrepancy between the theory of the Union celebrating linguistic diversity and democratic values and the practice in member-states. It turns out that there are no effective controlling and sanctioning mechanisms in the Union available when linguistic rights of national minorities are violated and multilingual practice is banned from the public and official space. The state of affairs in second group is not only violating human rights but undermines the cohesion of the Union and affects the deepening of conflicts between the states with Hungarian minorities and the kin-state Hungary (see Brubaker et. al. 2006, Csergo 2007). This implies that we have to reconsider the controlling and sanctioning mechanisms in the legal framework of the Union. An important step forward would be the adoption of the Council of Europe's Framework Convention and the Language Charta as a bench-marking system by the Union and to integrate them into the Union legal system. This would allow sanctions against states violating them.

1. INTRODUCTION

The European continent is characterized by linguistic diversity (see Extra and Gorter 2008). The European Union's language policy takes the European multilingual structure into account granting all the state languages of the member-states an official status in the Brussels centre of the European Union. Although at an ideological level the Union declares multilingualism not to be connected to the principle of territory but rather to the principle of personality the present structure of the Union causes that the multilingual centre of the Brussels institutions is in competition with the language policy of its member-states that are quite often promoting monolingualism (see Mamadouh 1999, 2002). The member-states support an official language stipulated in their legal system. At present the Union has 27 member-states and 23 official languages spoken by more than 480 million speakers. The linguistic map of Europe is rather complex however. In most of the European states not only the official languages are spoken but all states are multilingual in fact. Regional and minority languages and all sorts of plurilingual speakers living within in the borders of European states lead to a heterogeneous picture. In the present power constellation a number of these languages are not or only partially recognized and hence seeking for recognition.

In this paper, I will concentrate on implications of the language policies towards Hungarian linguistic minorities for national and linguistic minority rights protection within the Union. These Hungarian minority languages are being spoken outside the territory of Hungary in Central and Eastern Europe, more specially in the Carpathian Basin (see Nádor and Szarka 2005; Fenyvesi 2005 and Gal 2008). In section 2 of this paper, we will discuss the geo-ethno-linguistic distribution of the Hungarians in the Carpathian Basin. In agreement with Central and Eastern European traditions and customs we will postulate that the most important feature of ethnic identity is mother tongue. From this it follows, that the states mentioned above are de facto multi-ethnic, multilingual states but not all of them consider themselves as such de jure but rather as a national unitary states yielding a hierarchy of languages.

We will focus on the legal system to determine what the language policies are with respect to the Hungarian minorities in the above countries. It will be concluded that the position of the Hungarian language in the countries concerned can be classified in two groups, namely (1) Serbia, Slovenia, Croatia and Austria and (2) Slovakia, Romania and Ukraine displaying a 'policy of inclusion' and 'a policy of exclusion' respectively. In the first group, the minority language is equal from a legal point of view - at least in the regions inhabited by the national minorities - to the language of the majority and included into the official domains. In the second group, the minority language is subordinated to the official state language and is restricted in the official and public domains yielding language conflicts and struggles for recognition on behalf of the national minorities (see section 3). Only the first group does respect democratic standards of the EU, whereas in the second group the language policy is restricting and conditioning the use of the Hungarian language in the official and public spaces. This leads to discriminative practices and to polarized, divided societies along the lines of ethno-linguistic cleavages. This state of affairs negatively affects the relations between the states concerned and neighbouring kin-state Hungary jeopardizing cohesion in the European Union and threatening safety and security in Central Europe and the Balkans.

In section 4, I will argue that this grouping is an interesting fact because all the countries involved are subject to the process of Europeanization (see Schimmelfennig and Sedelmeier 2005). All seven countries mentioned above are members of the Council of Europe and have ratified the Framework Convention and the Language Charta and foremost four countries, including Austria, Slovenia, Romania and Slovakia are members of the Union. Two of these countries, Romania and

Slovakia are however not in the group where democratic values and norms are satisfied. From this it follows that membership of the Union is not a guarantee for the protection of the linguistic rights of national minorities. Hence, we observe a discrepancy between the theory of the European centre celebrating linguistic diversity and democratic values and the practice in member-states. This means that the present EU policy respecting multilingualism and linguistic diversity does not provide the tools in order to implement this policy in the present member-states. Furthermore it follows that the preparatory work done by supranational organizations like the COE in terms of a non-territorially structured subsidiarity (see Breidbach 2003) and the drafting of conventions, like the Framework Convention and the Language Charta are not able to influence directly the state of affairs in the Union. Note that if European states, even Union's member-states do not respect the conventions signed by them in the framework of the COE no legal sanctions will apply because the COE does not provide for a legal penalty mechanism, unlike the Union that has the possibility to provide for legal court procedures if Union law is not respected. The legal foundation of Europeanization is important though because it provides some 'tools' and 'discourses' for national minorities to counterbalance an exclusive minority and language policy of their governments. In order to reach this state of affairs it is proposed that a stronger cooperation between the COE and the Union has to be established. If the Union and not only individual member-states would recognize conventions of the COE then the issue of 'sanctioning by violation' would be solved automatically. Before we can elaborate on this in more detail we first have to consider the position of the Hungarian language in the Carpathian Basin.

2. THE TRANSNATIONAL HUNGARIAN LANGUAGE COMMUNITY

Due to the peace treaties of the First World War - i.e. the Treaty of Trianon (1920) (see Goldstein 2002, 31-33) - and the Second World War and the new state formation after the collapse of the Soviet Union, Czechoslovakia and former Yugoslavia ethnic Hungarians have come to live in eight different countries in Central Europe, including Hungary, Romania, Serbia, Croatia, Slovenia, Austria, Slovakia and Ukraine. Ethnic Hungarians who live in all these states are in fact autochthonous inhabitants, especially in those areas that belonged to the former parts of the Hungarian kingdom as a constituting entity of the historic Habsburg Double Monarchy (see Bogdan 1989, Bideleux and Jeffries 1998). In the Hungarian discourse, this territory is often called the Carpathian Basin

being an area that is defined by geographical, common socio-cultural and linguistic features (see Teleki 1923; Szabó 2006; Marácz 2009, 117-118). Before we discuss the distribution and concentration of ethnic Hungarians in the Carpathian Basin we first have to define the relation between ethnicity and language in Central and Eastern European.

Elsewhere I have argued relying on the work of Anthony Smith (1991) that ethnicity in Central and Eastern Europe is closely related to the knowledge of a mother tongue, i.e. an L1 (see Marácz 2009, 118). This correlation can be characterized in terms of a generalization that is only true if and only if it is read from left-to-right: If you are of X ethnicity then language X is your L1, vice versa is not true. Hence there is a strong correlation between ethnicity and L1 category. Most of the times these categories are interchangeable in Central and Eastern Europe.

Smith's generalization has a number of consequences for ethnicity in Central and Eastern Europe. Note that ethnic conflicts in Central- and Eastern Europe, including the ones in the Carpathian Basin often take the shape of language conflicts. Because of Smith's generalization ethnic engineering, i.e. the altering of the geo-ethnic distributions in a multi-ethnic state by the state authorities in Central and Eastern Europe at purpose has often direct consequences for the languages spoken. Any restriction by the state of the language rights of ethnic groups other than the majority group will cause conflicting situations leading to deeply divided societies along ethno-linguistic cleavages.

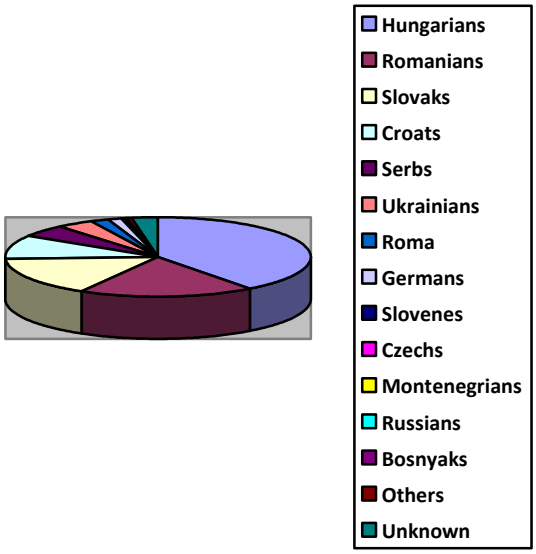
Now we have identified the main feature of ethnicity the following diagram displays the geo-ethno-linguistic distribution in the Carpathian Basin. In diagram 1 the most important ethnic groups, i.e. language groups living in the Carpathian Basin are listed (see Kocsis, Bottlik and Tátrai 2006, 28):

Diagram 1a Geo-ethno-linguistic distribution in the Carpathian Basin

Ethnic group	Number	Percentage
Hungarians	11.706.000	39,7
Romanians	5.464.000	18,5
Slovaks	4.716.000	16,0
Croats	2.828.000	9,6
Serbs	1.497.000	5,1
Russins/Ukrainians	1.125.000	3,8
Roma	579.000	2,0
Germans	372.000	1,3
Slovenes	82.000	0,3

Czechs	60.000	0,2
Montenegrins	38.000	0,1
Russians	33.000	0,1
Bosnyaks	27.000	0,1
Others	105.000	0,4
Unknown	828.000	2,8

Diagram 1b Geo-ethno-linguistic distribution in the Carpathian Basin



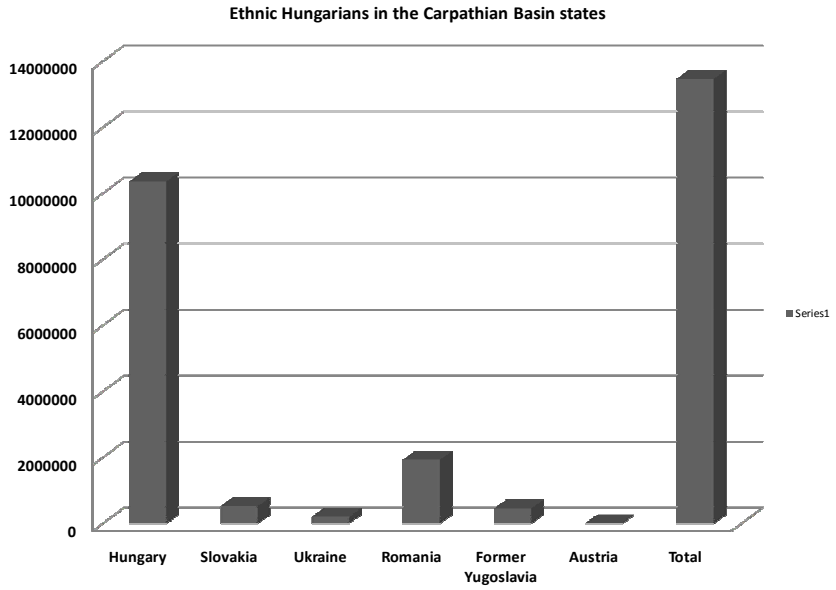
This diagram demonstrates that the biggest ethno-linguistic group in the Carpathian Basin is the Hungarians, i.e. the Hungarians have a relative majority of almost forty percent. The following diagram displays the distribution of the ethnic Hungarians living in the Carpathian Basin in the eight different states (see Kocsis and Kocsis-Hodosi 1995 and Kocsis 2005):8

Diagram 2a. Ethnic Hungarians in the Carpathian Basin states

[8] The discrepancy concerning the total number of Hungarians presented in the diagrams (1) and (2) is due to the fact that for (1) data of the 2001 censuses have been used, whereas for (2) the data of the 1991 censuses.

	Carpathian Basin
Hungary	10.360.000
Slovakia	520.000
Ukraine	200.000
Romania	1.930.000
Former Yugoslavia (Serbia, Croatia, Slovenia)	455.000
Austria	5.000
Total	13.470.000

Diagram 2b. Ethnic Hungarians in the Carpathian Basin states



As can be seen from this diagram, most of the ethnic Hungarians live in the Republic of Hungary where they constitute more than 90 percent of the population. In all other seven countries ethnic Hungarians form a numeric minority. As a consequence of the fact that ethnic Hungarians live in eight states, an ethnic conflict between ethnic and non-ethnic Hungarians has the potential of affecting stability and peace in eight states.

A more microscopic view allows us to specify also the relevant multi-ethnic and multilingual distributions in the regions of the states neighbouring Hungary where the ethnic Hungarians live. The following diagram displays the geo-ethno-linguistic distribution in these regions

based on the census data of 2001 (see Kocsis, Bottlik and Tátrai 2006, 29):

Diagram 3. Geo-ethno-linguistic distribution in Carpathian Basin states

Territory	Percentage of state nationality	Percentage of national minorities
Hungary	91,2	1,3
Slovakia	85,5	11,5
Sub-Carpathia (Ukraine)	80,5	18,3
Transylvania (Romania)	74,6	23,8
Vojvodina (Serbia)	65,0	26,7
Pannonian (Croatia)	90,1	7,7
Mura-region (Slovenia)	85,0	9,5
Burgenland (Austria)	87,4	12,5
Carpathian Basin	83,7	11,5

Ethnic Hungarians live mostly in compact territories bordering to the Hungarian kin-state. These regions include the southern part of Slovakia (see Szabómihály 2003); the Sub-Carpathian region of Ukraine (see Beregszászi and Csernicskó 2003); the northwestern part of Romania, i.e. Transylvania region (see Benö and Szilágyi 2006); the northern part of Serbia, i.e. the Autonomous Province of Vojvodina (see Göncz 2003); the Pannonian part of Croatia (see Lábadi 2003); the Mura-region in Slovenia (see Kolláth 2003) and the Burgenland area in Austria (see Szoták 2003). This geo-ethno-linguistic distribution in the Carpathian Basin contributes to the conflicts between Hungary and the ethnic Hungarian minorities involved on the one hand and the states with the Hungarian minorities involved on the other hand. Any improvement of the situation of the ethnic Hungarian minorities and the Hungarian language in Hungary's neighboring states can be interpreted - and is quite often interpreted as such - as the strengthening of the Hungarian geopolitical position in Central and Eastern Europe, although ethnic Hungarians do not form a political nation but are rather a transnational cultural and language community connecting a family of related cultures in the Carpathian Basin in the sense of Smith (1991, 172). We will assume that we have to do with a transnational Hungarian

cultural community where culture is defined as a system of shared meanings, attitudes and values, and the symbolic forms (performances, artifacts) in which they are expressed or embodied.9 It is clear that the Hungarian language is central to this concept. The Hungarian language is not only homogeneous from a structural point of view but it also has a coherent meaning and content, otherwise speakers of Hungarian would face communicational difficulties in the Carpathian Basin. This is however not the case. Hence, Hungarian nationality is not linked to the exclusive existence of a Hungarian state in the Carpathian Basin but to a transnational community sharing the same language and culture.

In order to inventarise the potential of the individual Hungarian minority cases for conflict we first have to make a shifting. Three local factors play an important role in pacifying Hungarian minority issues in the Carpathian Basin (see Marácz 2008). First of all the numerical factor is a relevant in controlling the conflict potential. It is unlikely that small ethnic groups, even if they are not being treated by the states concerned in accordance with European standards will be a source of easily inflammable conflict. The small ethnic Hungarian linguistic groups in Austria (5.000), Slovenia (20.000), Croatia (30.000) and Ukraine (200.000) do not constitute a secessionist threat to the states involved. They are simply too small in number. This fact also plays a role in the offering of more substantial minority rights to the ethnic Hungarian groups in countries like Serbia (Vojvodina), Slovenia, Croatia and Austria than to ethnic Hungarian groups in countries like Slovakia and Romania that include a more substantial number of ethnic Hungarians.

In Slovakia, almost the entire ethnic Hungarian group lives in the southern parts of the country in a stroke of thirty kilometers next to the border with Hungary that is 681 kilometers long. Although the ethnic Hungarians form a substantial group in Slovakia, i.e. more than ten percent of the inhabitants of Slovakia counting more than 520.000 people their geographic distribution is rather complicated. In a number of municipalities and districts in South Slovakia, ethnic Hungarians form an absolute majority; in others the ethnic Hungarians are a relative majority and in a few districts ethnic Slovaks are the majority population.

In Romania, most of the ethnic Hungarians live in the northwestern part of the country, i.e. the Transylvanian area which is a traditional multi-ethnic region. In fact, the Hungarian minority in Transylvania lives

[9] The difference between the concepts of political nation and cultural and language community that is introduced at this place resembles the difference between the concepts of nation and etnie in Smith (1991, 40).

in the northern part of the area stretching from the Hungarian-Romanian border to the Szeklerland at the feet of the Eastern Carpathians mountains deep into the centre of present-day Romania.10 In this 'stroke', the ethnic Hungarians are not present in equal intensity: three sub-areas can be distinguished. First, ethnic Hungarians live in the so-called Partium area, i.e. the former eastern parts of Eastern Hungary, next to the border with Hungary. In Partium, a substantial percentage of ethnic Hungarians constitute an absolute or relative majority in a number of municipalities and districts. Secondly, in the middle part of the stroke, in the area with the capital of Transylvania, Cluj-Napoca (Hungarian Kolozsvár, German Klausenburg) the Hungarians form a relative minority but in some municipalities and districts they have a relative or absolute majority (see Brubaker et al. 2006). Finally, in the so-called Szeklerland where about 800.000 ethnic Hungarians, i.e. almost half of the Transylvanian Hungarians, live these Hungarians are in an absolute majority.

A second pacifying factor is the presence of a reciprocal minority in Hungary, like the ethnic Slovenes and Croats. In these cases, the states involved will have a mutual interest of offering concessions to their Hungarian minorities (see Tóth 2005). Finally, the relation of Hungary with its neighbors is also a relevant factor. With Austria (1955), Ukraine (1991), Slovenia (1992) and Croatia (1992, 1995) Hungary has concluded state treaties on good neighborliness and cooperation. In these treaties, the Hungarian minorities received the rights to preserve their identity (see Marácz 1995, 267; Lábadi 2003, 182; Kolláth 2003, 190-201 and Szoták 2003, 218-219). Although the ethnic Hungarian groups in these states have a better formal legal position than the ones in Slovakia or Romania there is much complaining from the sides of the Hungarian that there is a gap between the de jure possibilities and the de facto realization of minority rights, except for the Slovenian case (see for discussion Beregszászi and Csernicskó 2003, 121-122; Lábadi 2003, 189; Kollát 2003, 202-203 and Szoták 2003, 218-219). Although, these cases do not have a potential to cause large-scale ethnic conflicts nationalist tensions in the areas inhabited by the Hungarians in Ukraine, Croatia, Slovenia and Austria might fuel conflicts in other areas with Hungarian minorities and vice versa.

A fourth, external factor in the pacification process is the Europeanization factor as is clearly the case in Vojvodina (Serbia). In the

[10] The Székely are an ethnic Hungarian group in Transylvania displaying a peculiar set of ethnographic, cultural and linguistic features. In the Hungarian kingdom, they were employed as border guards defending the isolated Eastern Carpathian mountain range.

northern part of Serbia's Vojvodina region an absolute majority of Hungarians live in the Backa (Hungarian Bácska) area with the town Subotica (Hungarian Szabadka) as its centre. The 350.000-400.000 Hungarians constitute almost fifteen percent of the inhabitants of the Vojvodina region. Recently the ethnic Hungarians received in the multi-ethnic, multilingual statute of the Autonomous Province of Vojvodina the status of a national community having equal rights to the Serbian majority community and other national minority communities. Serbia agreed to assign multi-ethnic, multilingual Vojvodina the status of an Autonomous Province due to the fact that the pro-European government of Serbia wants to qualify as soon as possible as a candidate member-state for EU-accession.

In sum, two cases of Hungarian minorities remain that have the potential for conflict and tension, namely the case of the Hungarian minorities in Slovakia and Transylvania (Romania). Much will also depend on the language policy, i.e. whether these states pursue a 'policy of inclusion' or a 'policy of exclusion' concerning their Hungarian language minorities.

3. LANGUAGE POLICIES

In the Carpathian space there are at least thirteen languages spoken as we have seen from the diagram 1 above. In the system of national states of the twentieth century these languages have been in conflict traditionally (see Van der Plank 1971, 2004). The language policies of the states in the Carpathian Basin are in fact nationalist language policies in which each single state has declared an official state language, i.e. the language of the majority speakers (see Csergo 2007). In this scheme there are however two rough division possible, a 'policy of inclusion' and a 'policy of exclusion'.

A policy of inclusion applied to a multilingual situation means that there is no strict hierarchy of languages but in the legal framework minority languages have an equal position to the majority language. This may be restricted to the region where the minority language is spoken. In a policy of exclusion concerning a multilingual situation a hierarchy of languages exists in which the majority language has a priority position over the other languages. Minorities and other languages have a subordinated position in this setting. The use of the minority language in the official domain, like the administration, judiciary or education is restricted or additionally conditioned compared to the state language. This might lead to discrimination of minority speakers and the language

itself (see Kontra and Hattyár 2002) or even to the marginalization of the minority language. In these cases, the core of the language conflict is the fact that the majority population does not want to change the status quo and the minority population is seeking full recognition of its language. Hence there is an asymmetric relation at the disadvantage of the minority languages, even if the minority population is in the majority in the area where it lives.

In conclusion, in the Carpathian Basin we find de facto multi-ethnic, multilingual states that pursue a de jure nationalist language policy, expect for Serbia's Vojvodina. This state of affairs can be summarized in the following diagram:

Diagram 4. Language policies in the Carpathian Basin

	Nationalist language policy	Multicultural Language Policy
Policy of Inclusion	Austria (Burgenland), Slovenia (Mura-region), Croatia (Slavonia)	Serbia (Vojvodina),
Policy of Exclusion	Slovakia, Romania (Transy-lvania), Ukraine (Sub-Carphatia)	

Let us discuss the consequences of this diagram. In Austria, Slovenia and Croatia where a Hungarian language minority is living in specific regions, i.e. Burgenland, Mura-region and the Pannonian part of Croatia respectively the Hungarian language enjoys full equality next to the official state language, i.e. German in Austria, Slovenian in Slovenia and Croatian in Croatia (see Nádor and Szarka 2003). In these countries although the minority language is spoken in a country pursuing a nationalist language policy supporting the official language without restrictions, minority languages have an official status in the areas where the Hungarian minorities live (see Szarka 2003). The position of the minority languages in the Carpathian Basin, including the Hungarian language is the best in Vojvodina that has become an Autonomous Province within Serbia. The statute of the AP of Vojvodina has been agreed upon by the Serbian Parliament on November 30, 2009; afterwards it has been ratified in the Parliament of Vojvodina on December 14, 2009 and has entered into force on January 1, 2010. This statute defines the AP of Vojvodina as a multi-ethnic, multilingual and multicultural community. The Hungarian minority has received the status of a national community as well being equal with the Serbian majority national community (see article 25 of the Statute of the AP of

Vojvodina). According to article 26 of the Statute (see Official Journal of the AP no. 17/09) the AP of Vojvodina recognizes six official languages, including Serbian, Hungarian, Slovak, Romanian, Croatian and Ruthenian. In this case, we can speak of a language policy of inclusion in a multicultural language policy setting.

The situation is radically different in Slovakia, Romania and Ukraine where the Hungarian language is not equal in legal terms to the official state languages, i.e. Slovak, Romanian and Ukraine respectively, not even in the territories where the ethnic Hungarians live and form a majority (see Péntek and Benö 2003, 2005). This means that in these countries the Hungarian language and culture face restrictions in the administrative, educational, judicial and public domains. The ethnic Hungarian communities are striving for getting their language rights to be guaranteed in the constitution of these states. Hence, it is on the level of the constitution where the conflicts are rooted.

In the constitution of these three countries the 'nation' matches actually the ethnic majority. The Romanian constitution speaks about an 'indivisible and unitary nation state' (see article 1.1). The Slovak constitution states in its preamble 'we, the Slovak nation…' and the preamble of the Ukrainian constitution speaks of the 'neutral Ukraine people and the Ukrainian ethnic nation'. In the legal system of Slovakia and Romania national minorities are not recognized as collective entities. The Slovak constitution (compare article 3.4) and the Romania constitution (compare article 6.1) do define national communities or minorities only on the individual or personal level as 'persons belonging to a national minority'. Hence the minority rights and minority language rights are considered in fact personal, individual rights. This is a rather bizarre state of affairs for language and communication implies a collective activity. Only the Ukrainian constitution does recognize collective rights.

The next question is how do these countries determine 'national minorities'. First of all, this is the outcome of an internal procedure. In Slovakia a 'national minority' is defined by the membership of the government advisory board and in Romania a national minority has to have a political representation. In Ukraine, the definition of a national minority is the most liberal. A national minority is recognized if it has a societal representation on the basis of the nationality concerned. Secondly, 'national minorities' receive their recognition from international treaties, like the COE's Framework Convention and the Language Charta ratified by the states involved. Thirdly, the registration

in the framework of censuses refers to existence of a specific national minority.

Only the Slovak and Ukrainian constitution allow for persons belonging to a national minority to choose one's own identity (see article 12.3 and 11 respectively). The Romanian constitution does not specify this explicitly but this should follow from international legislation, like the COE agreements mentioned above. Persons belonging to national minorities in these countries are allowed to foster their own identity but that should not harm the rights and identity of the majority population. No positive discrimination of the minority population is legally allowed (see Romanian's constitution article 6, the Slovak constitution article 34 and Ukraine constitution article 11). In sum, national minorities in these countries are clearly subordinated to the majority nation in the legal system. They are denied the status of a collective entity, especially in the Slovak and Romanian constitution that recognize minority rights only at the personal, individual level. Let us now discuss the status of the minority languages in these countries.

In all the three constitutions of Slovakia, Romania and Ukraine the official language is the language of the majority. The constitutions express the right to develop the language identity of persons belonging to a national minority however. The Romanian constitution declares Romanian to be the official language but allows persons belonging to a national minority to express their linguistic identity (see article 13.6). According to law 215/2001 the minority language can only be used for contacts and communication with the municipal authorities and may be used for bilingual place name signs if in the administrative unities minimally twenty percent of the inhabitants speak the minority language. This threshold leads to inconsistencies however. Hungarian speaking inhabitants of Transylvania's capital Cluj-Napoca are not allowed to use Hungarian for contact and communication with the municipal administration because according to the last census only 19.9 percent of the persons interviewed registered as ethnic Hungarians (see Brubaker et al. 2006). The threshold of twenty percent was not reached. Although the outcome of the census has a smell of manipulation it leads to unwanted inconsistencies in the system. Note that in the city around 70.000 Hungarian speaking persons live that is much more than in smaller Transylvanian towns with a Hungarian majority where Hungarian can be used in communication with the administration (see Péntek 2006). Furthermore Hungarian speaking inhabitants from Cluj-Napoca are allowed to use the Hungarian language when contacting the

Brussels EU-institutions because Hungarian is one of the official languages of the Union.

Article 6 of the Slovak constitution stipulates that Slovak is the official language of the state. There has been adopted a special language law, i.e. the act of the National Council of the Slovak republic no. 270/1995 on the state language of the Slovak republic that specifies when he Slovak language must be used and when the minority languages, apart from Czech, may be used. Recently a modified version has entered into force on September 1, 2009 that pushes back the use of Hungarian to the private sphere and imposes a penalty when the law is violated.

Instead of protecting the languages of the national minorities in Slovakia, including Hungarian, the act calls for the protection of the Slovak state language and specifies when the official state language must be used banning the free use of Hungarian from the official segments of life. All servants belonging to the state are obliged to speak the state language on duty, i.e. Slovak only. Consequently, ethnic Hungarian employers of the Fire and Rescue Services are allowed to speak with each other only Slovak (art. 1.6.1) when they are on duty. In fact, the normal social behavior of ethnic Hungarians even when employed by the Slovak state will be frustrated. The Slovak language law also specifies that anytime the language of the minority is used it must be accompanied and preceded by the state language. Consequently, the complete educational and administrative documentation of Hungarian schools has to be bilingual (see art. 1.4.3). The most macabre provision is maybe article 1.5.7 dictating the use of the state language on scriptures of monuments, memorials and memorial tables. If any other, non-state language is used, let say a Hungarian scripture on a tombstone, it has to be preceded by the same scripture in the state language, i.e. Slovak and the scripture of the non-state language should consist of letters of the same or smaller size than the ones of the state language. So even the dead men in Slovakia are not allowed to rest in peace for the language on their tombstone is controlled by the state. To do otherwise than the Slovak language law specifies is not without risks. In case of offences, the Ministry of Culture can impose a fine ranging from 100 to 5000 euro.

The Slovak administrative law no. 184/1999 specifying the administrative use of minority languages stipulates a threshold of twenty percent of the minority speakers. However, even one speaker of Slovak who does not speak the minority language can block the use of the minority language at a meeting of the municipal council. State officials are not obliged to know the national minority language even if twenty

percent of the inhabitants of an administrative unit speak a minority language.

Article 10 of the Ukrainian constitution declares Ukrainian as the official language of the state. The same article stipulates that Russian and other languages are guaranteed a free development. Minority languages can only be used in contact and communication with administrative authorities when the minority concerned forms a majority. The municipal councils have the right to choose their own languages. Minority languages in these states, i.e. Slovakia, Romania and Ukraine are in the educational domain subordinated to the majority language, similarly to the administrative domain.

Article 32 of the Romania constitution specifies that the language of education is Romanian, although persons that belong to a national minority have the right to learn their mother tongue and to receive education in their own mother tongue (see article 32.3). This is however only possible when there is 'enough interest' (see educational law 84/1995). Furthermore in minority language schools the teaching of the Romanian language and literature, and history and geography in the Romanian language is obligatory. In the institutes of higher education 'within the borders of the law' and 'on the basis of a special request' minority language classes may be set up.

According to law 245/2008, the language of education in Slovakia is the Slovak state language. Article 34 of the Slovak constitution declares the right to persons belonging to a national minority to receive education in their mother tongue. Organizations of national minorities have the right to establish their own educational institutes. In minority language schools the teaching of the state language, Slovak language and literature is obligatory, however.

The Ukrainian constitution specifies that the educational language is the Ukrainian state language but guarantees the education in the language of the national minorities as well (see article 53). Hence, in territorities where the minorities live in compact groups together minority language schools may be established. In these schools the education of the Ukrainian state language is obligatory, however.

In all the three countries Slovakia, Romania and Ukraine the education law stipulates that only the Ministry of Education has the authority to sanction the use of schoolbooks. In Slovakia, the geographical names in the schoolbooks have to be in Slovak as well, even if the textbook is in Hungarian or another minority language. The use of minority languages in the Slovak, Romanian and Ukrainian judiciary is neither free of restrictions.

In Romania, persons belonging to a minority have the right to use their language in court. In Slovakia only the bureau of the ombudsman can be contacted in the language of the national minorities without language restrictions (see 564/2001). In Ukrainian court a minority language can only be used when the court is seated in a territory where the national minority concerned is above fifty percent.

In Romania bilingual signs in a municipality are only allowed, if persons belonging to a national minority constitute more than twenty percent of the inhabitants of the municipality concerned (see administrative law 2001/215). According to Slovak law 184/1999 bilingual place names and inscriptions are only allowed in a municipality, if the threshold of twenty percent of persons belonging to a national minority in that municipality is reached. In Ukraine the language law of 2005 allows place names signs in the language of the minorities in those regions where the national minorities live together in compact groups. In Ukraine road signs are only in the official language, like the subtitles in movies.

In all the three states Slovakia, Romania and Ukraine the official language of the mass media is the state language. Only the Slovak constitution guarantees that persons belonging to a national minority have the right of getting access to information in their own mother tongue (see article 34.1 of the constitution). Apart from a number of asymmetries in the legislation of these countries, the Slovakian, Romanian and Ukrainian legislation specify only in some cases symmetries between the state language and the language of the national minorities.

Romanian law 119/1996 allows Christian and family-names to be spelled out in the language of one's own mother tongue with Latin script. In Slovakia, according to law 300/1993 it is allowed for women of non-Slovak nationality to drop the Slovak suffix 'ová' used in the family-names of ethnic Slovak women. The Ukrainian language law of 1989 allows persons belonging to a national minority to use their name according to the traditions of their own nationality. According to law 46/2002, it possible in Romania to do the examination for a driver's license in the language of the national minorities.

In sum, in the states where a 'policy of exclusion' is pursued the state language enjoys priorities over minority and other languages in most of the administrative, educational, judicial and public domains. The use of minority languages is restricted, conditioned in terms of thresholds and the number of speakers yielding inconsistencies and sometimes even sanctions like in Slovakia, when discriminative and impractical laws are

violated. This state of affairs is best characterized as an asymmetry between the state languages and the minority and other languages. If this asymmetric state of affairs in the legal system being a projection of the ideology lurking in the back one wonders what the consequences are for the practical use of non-state languages in states pursuing a 'policy of exclusion'?

The states pursuing a 'policy of exclusion', especially Slovakia and Romania do not recognize 'collective rights'. Hence autonomy on the basis of an ethnic territory will not be a realistic option in the near future in these states. The only way collective rights can be implemented is in fact by language rights. But in terms of national legislation the graduation and the varieties in this field are enormous as we have discussed in this section. The framework of the COE includes the most explicit formulation of such rights. Hence, the best guarantee for the implementation of minority rights, especially language rights is the enforcement of international treaties, like the Framework Convention and in particular the Language Charta due to the Europeanization of Central and Eastern Europe. These Europeanization effects offer the possibility of counterbalancing the nationalist policy of language exclusion. The problem with the treaties of the COE is however that at present they are not legally binding and on states violating these treaties no sanctions can be imposed.

4. EUROPEANIZATION AND THE LISSABON TREATY

The Europeanization of Central and Eastern Europe, i.e. the implementation of liberal norms and values in these societies has contributed to a strengthening of the position of national and ethno-linguistic minorities, more precisely in the case of the following three fields (see Schwellnuss 2005).

First, national and ethno-linguistic minorities have the legitimate right to define themselves as a group. The Union does not only respect individual human rights but also group rights, although it must be admitted that the canonical set of minimum conditions and provisions defining such rights is less clear than in the case of individual human rights. In any case, due to the ratification of the Language Charta a sense of collectivity has been recognized by the Central and East European states for language communication involves a collective activity. Observe that the treaties supporting group rights will challenge the classical nation-state and make possible a policy that accommodates reality, namely that states or parts of their territory are multi-ethnic,

multilingual in character (see Zoltani and Koszorus 1996). This will prevent the exclusion of citizens on the basis of ethnic features, like language, religion and so on.

Second, due to the establishment of a free civil society, national and ethno-linguistic minorities have been able to establish representative political organizations and other non-governmental organizations that can express the legitimate claims of the ethno-linguistic communities involved.

Third, due to the regeneration of a Central and Eastern European public space in the sense of Habermas (1991) and due to the principle of freedom of movement not hindered by borders in the Union national and ethno-linguistic Hungarian communities are able to foster contacts with other ethnic Hungarian communities and individuals all over the Carpathian Basin. These processes have contributed to the revival of a Hungarian cultural community using the same language for communication. Free access to information and Internet strengthens the ties within this cultural and language community (see Marácz 2009, 127-130 for further discussion). Above we have argued that the ethnic Hungarian community in the Carpathian Basin is in fact a transnational cultural and language community and not a political national one (see Fowler 2002, Deets 2010). Such a community fits in with the multi-level, multi-layered organization structure of the Union itself (see Hooghe and Marks 2001, Zielonka 2007). In such a structure, COE treaties, like the Framework Convention and the Language Charta can support the minority rights of Hungarian ethno-linguistic communities and other transnational communities (see Jutila 2009).

At present the COE specifies two legal treaties that are relevant for the protection of minority languages and national and ethnic minorities, namely the Language Charta signed on November 5, 1992 in Strasbourg and the Framework Convention concluded on February 1, 1995 in Strasbourg (see Trifunovska 2001). It is generally accepted that an overall application of these agreements contribute significantly to the stability, democratization and peace in Europe (see Vizi 2003).

The Framework Convention supports the positive discrimination of national minorities on the basis of human rights and general freedom rights, it recognizes the fact that minority rights are group rights and that cross-border cooperation is not only restricted to states but also local and regional authorities can take part in this. These provisions are highly relevant for the Hungarian communities in the Carpathian Basin states. As we have discussed above state borders separate ethnic Hungarian communities from their co-nationals in Hungary. The following diagram

demonstrates that all the states concerned, even those with the biggest groups of ethnic Hungarians in the Carpathian Basin, namely Romania, Slovakia and Serbia have ratified the Framework Convention as well:

Diagram 5 . Framework Convention (FCPNM, CETS no. 157)

States	Signature	Ratification	Entry into Force
Romania	01/02/1995	11/05/1995	01/02/1998
Serbia	11/05/2001	11/05/2001	01/09/2001
Slovakia	01/02/1995	14/09/1995	01/02/1998
Austria	01/02/1995	31/03/1998	01/07/1998
Croatia	06/11/1996	11/10/1997	01/02/1998
Slovenia	01/02/1995	25/03/1998	01/07/1998
Ukraine	15/09/1995	26/01/1998	01/05/1998
Hungary	01/02/1995	25/09/1995	01/02/1998

The Language Charta has been motivated by the fact that languages are part of a common cultural heritage and that the protection of languages is necessary to neutralize assimilatory state policy and uniformization by modern civilization. Note that all the Central and Eastern European states with Hungarian linguistic minorities have ratified this charter as well:

Diagram 6. Language Charta (ECRML, CETS no. 148)

States	Signature	Ratification	Entry into Force
Romania	17/07/1995	29/01/2008	01/05/2008
Serbia	22/03/2005	15/02/2006	01/06/2006
Slovakia	20/02/2001	05/09/2001	01/01/2002
Austria	05/11/1992	28/06/2001	01/10/2001
Croatia	05/11/1997	05/11/1997	01/03/1998
Slovenia	03/07/1997	04/10/2000	01/01/2001
Ukraine	02/05/1996	19/09/2005	01/01/2006
Hungary	05/11/1992	26/04/1995	01/03/1998

In principle, the Hungarian language communities all over the Carpathian Basin enjoy some legal protection due these two conventions. As a consequence, this will encourage these communities to defend their minority and linguistic rights.

A weakness of the treaties of the COE however is that they are not binding and that the COE has no sanctioning mechanism at its disposal, if contracting parties violate these treaties. In Central and Eastern Europe this can easily happen if more liberal, pro-European governments are

replaced by governments pursuing a nationalist course or if governments jockey a nationalist course to mobilize popular support among the majority electorate. A perfect example of this are Slovakia and Romania. Even the commitments concluded by Slovakia and Romania due to the accession to the European Union in 2004 and 2007 and the ratification of the Language Charta in 2002 and 2008 respectively could not prevent local nationalist politics to cause a fall back.

Contrary to the obligations to protect and promote the languages of national minorities in the framework of the Language Charta by the pro-European government of Mikulas Dzurinda (1998-2006), the nationalist government under leadership of Prime Minister Robert Fico (2006-2010) recently completed the act of the National Council of the Slovak Republic No. 270/1995 on the state language of the Slovak Republic pushing the Hungarian language back to the private walks of life as we discussed above.11

In May, 2009 the ethnic Hungarian directors of the State School Inspectorate of the Székely provinces Harghita, Covasna and Mures in Transylvania were replaced by Romanians who did not speak the Hungarian language. The dismissal of the ethnic Hungarians raised public demonstrations of Hungarians and the Hungarian political representatives accused the Romanian government of 'ethnically cleansing' the state offices.

The EU has not yet integrated the COE's treaties on minority rights protection in its legal system but almost all of the EU member-states, or states opting for Union's (candidate)-membership, like Croatia and Serbia have signed and ratified these conventions.12 Hence, it is reasonable to expect that this type of benchmarking in the framework of the COE will be adopted in the future by the Union as well. Some commentators argue that the Union has set a step forward by adopting minority rights as an accession criterion at the EC summit in Copenhagen

[11] The implementation of act No. 270/1995 by the Slovak government can be viewed as a pre-emptive move to counterbalance growing Hungarian geopolitical influence in the Carpathian Basin. Note that the territory of the ethnic Hungarians in Slovakia is continuous with Hungary. It is to be expected, certainly after the introduction of the borderless Schengen-zone between Slovakia and Hungary on January 1, 2009 that the position and the role of the Hungarian language as a transnational, vehicular language in the Carpathian Basin is getting more important (see Marácz 2009, 127-130 for discussion). So instead of satisfying the provisions of the Language Charta Slovak nationalist measures, like the language law are trying to prevent this spontaneous process of Hungarian language revitalization in the ethnic Hungarian territories, contrary to the spirit and letter of Europeanization of the region.

[12] The importance of the Language Charta in the field of minority language protection has been recognised by the European Parliament though, which in its Resolution on Regional and Lesser-used Languages (2003) referred to the Charter as the 'key Europe-wide legal frame of reference applying in this sphere'.

(1993) but that it has failed however to elaborate a canonical set of norms that have the force of a single European standard (see Demeter and Tonk 2008). It is argued that without such a standard, the so-called minority rights of the Copenhagen criteria are open to different, ambiguous interpretations. At present their realization fully depends on rather ad-hoc political procedures and mechanisms that have to be applied in each case separately. By adopting the standards of the COE in this domain, the Union could pursue a more coherent policy with respect to the protection of minority and language rights. Apart from broadening the political platform and implementing a set of minimum standards on minority rights there is another reason why the Union should adopt the Framework Convention and the Language Charta. The COE contrary to the Union cannot imply sanctions on its member-states violating the provisions of these treaties. Possible sanctions could prevent them from falling back into an exclusionist, nationalist policy. The Union acknowledges however all sorts of procedures to sanction its members, if they do not fulfill legal obligations. In the present state, the Slovak government simply can neglect the COE's reprimanding imperatives because of implementing a language law detrimental to the minority and language rights of its Hungarian community setting aside international obligations in this domain. The conventions of the COE could be of a direct influence if these conventions were valid within the EU itself.

The cooperation between the EU and the Council of Europe in the field on human rights protection started in 2007. There is some fine-tuning between the EU's Vienna-based Fundamental Rights Agency and the Council of Europe. Both courts, the Union's Court of Justice seated in Luxembourg and the European Court of Human Rights in Strasbourg apply a moderate exchange mechanism. They take each others' jurisprudence into account and the judges of both courts are in contact with each other (see Lawson 2008, 662). On the more specific terrain of this paper, i.e. the treaties of minority rights protection the Union supported the implementation of COE's treaties in the case of recognition of the independence of Kosovo.

A proposal under responsibility of the Secretary-General of the UN addressing the UN's Security Council was elaborated in order to pacify the conflict between the Albanian majority and the other minorities of Kosovo, especially the Serbian minority (see United Nations Security Council 2007). The Serbian minority is a relatively small minority, i.e. it numbers under five percent of the total population of Kosovo but it has an absolute majority in some areas around the town of Mitrovica in the northern parts of Kosovo. In fact, the UN, i.e. the international

community, supported by the Union was only willing to recognize Kosovo's independence if and only if the rights of the ethnic communities other than the Albanians were fully recognized. For this purpose, an annex was included in the proposal for the settlement of Kosovo that specified the rights of the different communities and their members.

The Annex, i.e. Annex II The Right of Communities and their Members stipulated that traditional communities, i.e. national or ethnic, linguistic, or religious, have specific rights (art. 1.1) and that they are fully equal in all areas of economic, social, political and cultural life (art. 2.4). From our point of view, it is relevant that the new state Kosovo was urged to pursue an active policy of promoting the rights of communities by preserving, protecting and developing their identities (art. 2.1) and by adopting the standards of international agreements, such as the COE's Framework Convention and Language Charta (art. 2.2). This implies that national and ethnic communities in Kosovo have a full control over their own educational system and their language enjoys full equality (art 3.1b-f,h). Not only local names, street names and other topographical indications may be used in the languages of the communities but they also have the right to use their languages in the communication with local or central state authorities (art. 3.1f,i). Communities have full access to and special representation in public broadcast also in their language (article 3.1j).

The ethnic Hungarian communities in the Carpathian Basin enjoy legally less rights than the Serbian community in Kosovo. The only exception is the Hungarian community in Vojvodina. The provisions specified in the Statute of the AP of Vojvodina come close to those of Annex II of the proposal for the settlement of Kosovo. We have discussed above that especially Hungarian linguistic communities in Slovakia, Romania and Ukraine are confronted with a 'policy of exclusion' yielding hierarchies and asymmetries. International agreements, like the Framework Convention and Language Charta are and can be violated by national legislation and practice as the completion of the Slovak language law no. 270/1995 unambiguously demonstrates. The use of the Hungarian language in official and public domains is seen as a special right to be regulated by law. In this light, the Kosovo and Vojvodina minority rights protection are actually a break through in the Central and Eastern European nationalist context. Note that in the case of Kosovo the international community and the EU explicitly referred to the conventions of the COE to be applied for concerning the protection of the rights of the national communities, especially the Serbian.

It is important to intensify this cooperation between the EU and the COE in the domain of human rights and the protection of minority and language rights. The COE agreements could be used as setting European standards in this field, while the EU has the possibility of imposing sanctions on member states, if they do not respect Union law. Now the Lissabon Treaty provides for a possibility to make a strong link between the Union and the COE. Article 46A of the Lissabon Treaty specifies that the Union is a legal person that can join international organizations and treaties. By doing so, the Union can ratify a series of legal treaties in the domain of human and minority rights protection, including the Charta of Basic Rights of the UN and the COE's European Convention of Human Rights, the Framework Convention and Language Charta. In that case, those treaties would be legally binding for the Union's member-states as well and they would be obliged to put into practice what they have ratified, otherwise states, organizations but also individuals could take legal action at the European courts that could impose sanctions on states violating these treaties.

5. CONCLUSIONS

In this paper, I have compared the language policies of Central and East European states with Hungarian minorities. These states neighbouring the kin-state Hungary, including Slovakia, Ukraine, Romania, Serbia, Croatia, Slovenia and Austria are de facto multi-ethnic, multilingual states. In fact only the AP of Vojvodina belonging to Serbia pursues a multicultural language policy favouring multilingualism on her territory with equal rights for all the languages spoken including Hungarian. However, all other states pursue a nationalist language policy in which the official language of the state, i.e. the language of the majority has a more prominent position than minority and other languages. These states fall apart into two groups. In the first group a policy of inclusion prevails, that is in Slovenia, Croatia and Austria the Hungarian language has an official status on the territory where it is spoken next to the state language; in the second group consisting of Slovakia, Romania and Ukraine we find asymmetries between the state language and the Hungarian minority language. In the latter cases, we find a conflicting situation where the speakers of the minority language are seeking for the recognition of their language as an official language next to the official state language. These conflicts are enhanced by the fact that ethnic Hungarians form an interconnected, transnational cultural and language

community being located in the Carpathian Basin, a historic Hungarian area in Central and Eastern Europe.

These ethnic conflicts which are in the first place language conflicts could be pacified, if there is an international, or at least a binding European standard that could be applied to these cases. The COE provides for an European benchmarking system of minority and language rights protection in terms of the Framework Convention and the Language Charta. All of the states involved have signed these treaties as a result of the Europeanization of the Central and Eastern European region but at present they are not binding and if violated by the states involved there is no sanctioning mechanism available. This implies that these procedures and mechanisms should be developed. A solution of this problem could be the joining of the Union itself to the COE. This move is allowed by article 46A of the Lissabon Treaty considering the EU as a legal entity that can join international organizations and treaties. In that case, states, organizations and individuals would have the possibility of going to court if COE treaties are violated. The European courts could have the option of imposing sanctions on states that violate these treaties. As a result, the Union as an entity will be more pronounced; the European law-state will be strengthened; stability and security in the Central and Eastern European area will improve for the protection of human rights and minority rights will be taken more seriously leading to a language policy in the area that accommodates phenomena of multilingualism.

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