

“New Minorities” in the States Parties to the Framework Convention: The Importance of Self-Identification and Recognition

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This paper aims to present some of the issues faced by minorities, especially “new minorities”, namely lack of recognition as such and societal acceptance, mainly in the countries part to the Framework Convention for the Protection of National Minorities, as well as the exclusion from citizenship status and, in general, from how the majority society (or even other, “established” minorities) define their nation. I contend that this exclusion stems from a state of denial that most European societies are in, which determines a lack of recognition of factual diversity. And although some improvements can be applauded, especially in the case of easing the criteria for citizenship, the general societal, legal and political situation in Europe points to a less than satisfying image. As such, another aim of this paper is to reveal the importance of individual self-identification of persons belonging to minorities and of recognition of the identities that result from this (mostly) internal process by their peers and by their “host” states.

Key words: new minorities, self-identification, recognition, Framework Convention, citizenship, national narrative.

1. Introduction

The purpose of this paper is to ascertain some of the issues faced by present-day so-called “new minorities”. The term has recently began to be used more and more to describe a variety of different groups. As such, I will first try to give a theoretical outline to the term itself and other terminology used in minority rights studies in order to correctly pinpoint its meaning and ambit. In doing so, I will use Will Kymlicka’s terminology, since it is probably the most influential, and make some distinctions to his definitions. In defining and ascertaining who these groups are, I will not only refer to their origins or length of residence, but also to the type of rights they seek and their relation to the majority.

After the theoretical introduction, I will present on some of the issues which individuals pertaining to new minorities are facing, some of them being very distinct from the problems facing traditional or “old” minorities. I will particularly focus on two aspects which have an especially disproportionate effect on individuals belonging to new minorities: the lack of social and legal recognition as minorities and the lack of citizenship or the existence of restrictive interpretations of what “citizenship” and “nation” mean.

In what follows, I will mainly direct my attention on European states, particularly those that have signed and ratified the Council of Europe’s Framework Convention for the Protection of National Minorities (henceforth “the Framework Convention”), as it is one of the most comprehensive and modern legal instruments that deals expressly with national minorities, and its main monitoring body, the Advisory

Committee's work, especially its Thematic Commentary No. 4 on the scope of application of the Framework Convention.¹ However, I will also refer to the Canadian example as a particularly well-functioning multicultural system that can be used as a reference point when comparing European states' approaches. For clarity purposes, I will also compare the doctrinal definitions of "minority" and "new minority" with the elements the Advisory Committee uses for "national minority", the only term of the three that is also used by the Framework Convention. Although there is no *per se* definition of "national minority", it can be ascertained through the Committee's work. Moreover, since most of the Committee's work focuses on traditional minorities, I will refer to those parts that would also apply to new minorities.

2. Who and What are the "New Minorities"?

Will Kymlicka makes a basic distinction in his book, *Multicultural Citizenship: A liberal theory of minorities rights*,² between national and ethnic minorities. To him, national minorities are those groups that usually wish to maintain their cultural distinctiveness, form their own societies and maintain them through self-governance,³ while ethnic groups or ethnic minorities are constituted mainly from immigrant groups that leave their countries on a family basis and, consequently, usually do not request autonomy or self-governance rights, but still desire integration.⁴

"New minorities", on the other hand, as one author puts it, are "groups formed by individuals and families who have left their original homeland to emigrate to another country generally for economic and, sometimes, political reasons" and that they "consist of migrants and refugees and their descendants who are living, on a more than merely transitional basis, in another country than that of their origin".⁵

I prefer to use the term "new minorities" in this context, instead of "ethnic minorities" because I wish to emphasize the non-recognition of many of these groups as minorities. The term "ethnic minorities", while not entirely objectionable, does not focus on this problematic, but more on the lack of a link with a kin-state and the type of rights Kymlicka associates with ethnic minorities (such as polyethnic rights). I will not engage in a detailed discussion on what type of rights these new minorities should be granted, but will focus instead on the issue of lack of coherent state policies to integrate them. However, when I refer to "new minorities" in the context of Kymlicka's writings, I am referring in part to his concept of "ethnic minorities", with which the concept of "new minorities" partially overlaps. To exemplify this, it is my view that ethnic minorities can be categorized as old or new (the Roma are, for example, an old ethnic minority in Romania, while Syrians or Turks in Germany would be a new ethnic minority). National minorities are, on the other hand, more or less always overlapping with the concept of "old minorities", as they usually have traditional and long-term links with the state in which they reside, as well as with the territory they occupy. In short, the distinction between new and old minorities is made on the basis of length of existence as a group in a particular state, while the distinction between ethnic and national minorities mainly refers to the existence or lack of existence of a kin-state, as well as other

¹ Advisory Committee on the Framework Convention for the Protection of National Minorities, Thematic Commentary No. 4 on the scope of application of the Framework Convention, Commentary ACFC/56DOC(2016)001, Strasbourg, 27 May 2016.

² Will Kymlicka, *Multicultural Citizenship: A liberal theory of minorities rights*, Oxford University Press, New York, 2003.

³ *Ibid.*, pp. 10-11.

⁴ *Ibid.*

⁵ For more details, see Roberta Medda-Windischer, *New minorities, old instruments? Diversity governance from the perspective of minority rights*, in *Migration Letters*, Volume 13, No. 2, May 2016, pp. 178-192, p. 179.

factors. But, in any case, I will also speak of “immigrant communities” or “immigrant minorities” so as to refer to both what Kymlicka refers to as “ethnic minorities” and the concept of “new minorities”.

Of course, there are other theoretical delimitations that use the term “immigrant minorities” in a much broader sense. In a working paper⁶ for the ECMI (European Centre for Minority Issues), Alan B. Anderson describes immigrant minorities as “ethnic minorities which have originally come from other countries, thus lack a territorial base within an adopted country where they have resettled”.⁷ While this definition might suit the concept of “new minorities” used in this paper as well, Anderson’s concept also includes so-called “imperial relics”, *i.e.* “remnants of imperial settlement policies, representing ethnic kinship with the colonizing power, yet remaining behind after de-colonization or independence”,⁸ such as ethnic Germans and Hungarians in the territories that once belonged to the Austro-Hungarian Empire, ethnic Turks or other Muslims in parts of the former Ottoman Empire and ethnic Russians settled in the former republics of the USSR.⁹ It also includes “metropolitan migrants”, groups formed from migrants that travel from former colonies to the “metropolis”, such as Francophone Africans, Haitians, Moroccans or Algerians in the case of France, West Indians and Indo-Pakistanis in the case of Britain, Surinamese in the case of the Netherlands or Congolese in the case of Belgium.¹⁰ “Middleman minorities” are another category used by Anderson to describe temporary migrants, such as the Turkish *Gastarbeiter* in Germany, or the Chinese and Vietnamese in France.¹¹

Finally, “permanent migrants” are used to refer to various groups, including economic migrants that do not move on a temporary basis and refugees. However, he includes in this category not only Syrian refugees in various European states, but also Russians, Jews and other Eastern Europeans in Paris.¹² In any case, with the exception of the “imperial relics”, most of the groups included in the latter three categories are included in my use of the terms “new minorities” or “immigrant communities/minorities”. Other examples that have not been mentioned are the more recently-arrived Romanians in Spain,¹³

⁶ Alan, B. Anderson, *Ethnic minorities and minority rights in Europe: Theoretical Typologies*, ECMI Working Paper No. 99, September 2017.

⁷ *Ibid.*, p. 8.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*, p. 9.

¹² *Ibid.*

¹³ According to the Instituto Nacional de Estadística (National Institute of Statistics), in 2014 there were 730,340 people with Romanian as their main nationality and 678,098 in 2017. Their numbers have dropped considerably since the economic crisis and are mainly economic migrants, but their presence in Spain as a group seems to point to a permanent presence there. Also, according to a 2011 study on Romanian immigrants in Spain, 29% of Romanians living in Spain plan to remain there, while 15% think on returning only in the long-term (over more than 5 years), 33% think of leaving within 2-5 years, while the rest were planning on returning the following year. In any case, while their numbers are decreasing, there is data to suggest that a large portion will remain in Spain and seek integration and, possibly, also minority status. And even if they choose not to request official recognition, some of the rights enshrined in the Framework Convention could definitely be applied to them as well, especially those rights that have a broad scope of application. For the statistic by the Instituto Nacional de Estadística, see *Population Figures at 1 January 2014. Migration Statistics 2013*, 30 June 2014, p. 4, available online at:

http://www.ine.es/en/prensa/np854_en.pdf (23. September 2017) and *Cifras de Población a 1 de enero de 2017 Estadística de Migraciones 2016*, 29 June 2017, p. 4, available online at:

http://www.ine.es/en/prensa/cp_2017_p_en.pdf (last accessed on 23.09.2017); For the mentioned study, see *National*

Report. Romanian immigrants in Spain, Barcelona, December 2011, p. 69, available online at: <http://www.participation-citoyenne.eu/sites/default/files/report-spain.pdf> (23. September 2017).

Italy,¹⁴ Germany¹⁵ etc, Serbians in Austria¹⁶ or Germany¹⁷. The latter have been forming as communities even before the 1990, while the former have been increasing in numbers only after 1990, although the biggest increase followed Romania's accession to the European Union in 2007.

While it is true that immigrant communities that constitute new minorities mainly and, more important, initially seek accommodation by making the welcoming society more tolerant and, above all, more engaged with them, it is, nonetheless, important to note that the presence of a large enough immigrant community could also lead to the natural creation of separate, parallel societies and, of course, to the requesting of rights usually associated with national minorities. There are, of course, individuals and families that have neatly integrated into the larger "receiving" society and also maintain some degree of cultural distinctiveness so it may be true that these groups only seek accommodative measures. Small groups would tend to assimilate easier, if not right from the first generation, then certainly after the second or third, because of intermarrying and adoption of the mainstream majority culture. Integrating large groups of immigrants, on the other hand, can pose serious difficulties, not only from a logistical and resource point of view, but also because of the lack of social acceptance by the majority culture.

Even though minorities in general could be viewed by the majority as "the Other", an acute feeling of "otherness" is evoked by new minorities as they are not as predisposed as old minorities to social recognition. They are not viewed as part of the cultural fabric of a nation. Thus, while, for example, Hungarians and Germans in Romania may be viewed as being more or less always present in the nation's recent cognitive history, new minorities, such as Syrians, are not. Could the fear of separatism be at the center of states' refusal to officially recognize new minorities?

What Kymlicka notes is that immigrant minorities usually don't pose such a threat to a nation as they usually do not organize as well as old minorities and, consequently, are not as susceptible to cause civil war or insurgencies.¹⁸ This is because, Kymlicka argues, they do not request self-governing rights, but so-called polyethnic rights,¹⁹ which aim at integration in the larger society. Self-governance is, therefore, not an issue usually associated with the claims of immigrant minorities, which have "weaker" claims. It

¹⁴ At the end of 2015, there were 1,151,395 Romanian citizens living in Italy, although the total number of individuals of Romanian ethnicity might be higher, due to some of them being naturalized Italian citizens. Although, as with the case of Spain, a considerable portion would choose to leave Italy, there still remains a sizeable group that would choose to remain. According to a 2012 study, amongst the Romanians recently arrived in Italy, only 8% would choose to remain, while almost 25% of those that have been residing there between 3 and 6 years would choose to reside permanently in Italy. For the statistical numbers, see: <http://demo.istat.it/str2015/index.html> (23. September 2017); For the study, see Isilda Mara, *Surveying Romanian Migrants in Italy Before and After the EU Accession: Migration Plans, Labour Market Features and Social Inclusion*, Vienna Institute for International Economic Studies, Research Reports, 378, July 2012, pp. 23-24.

¹⁵ According to a 2015 census done by the German Federal Statistical Office (*Statistisches Bundesamt*), there are 657.000 persons with Romanian migration background (*Personen mit Migrationshintergrund*). See Statistisches Bundesamt (Destatis), *Bevölkerung und Erwerbstätigkeit, Bevölkerung mit Migrationshintergrund, Ergebnisse des Mikrozensus 2015, Fachserie 1 Reihe 2.2*, p. 62, available online at: https://www.destatis.de/DE/Publikationen/Thematisch/Bevoelkerung/MigrationIntegration/Migrationshintergrund2010220157004.pdf;jsessionid=85A7339F5B34916BE4AB300E6487C349.cae1?_blob=publicationFile (25. September 2017).

¹⁶ According to Statistik Austria, there were 209.000 people with Serbian, Montenegrin and Kosovar backgrounds. See Statistik Austria, *Migration & Integration. Zahlen. daten. indikatoren 2012*, Vienna, 2012 (http://medienservicestelle.at/migration_bewegt/wp-content/uploads/2012/07/IBIB_2012_Integrationsbericht.pdf, p. 26.).

¹⁷ According to the German Federal Statistical Office, there were 281.000 persons with Serbian migration background in 2015. See *supra*, note 15.

¹⁸ Will Kymlicka, *Multicultural Odysseys. Navigating the New International Politics of Diversity*, New York: Oxford University Press, 2007, p. 175, *apud*. Darian Heim, "Old" natives and "new" immigrants: beyond territory and history in Kymlicka's account of group-rights, in *Migration Letters*, Volume 13, No. 2, May 2016, pp. 214-227, p. 216.

¹⁹ Will Kymlicka, *Multicultural Citizenship*, pp. 30-31.

would be particularly difficult for immigrants to engage in separatist movements, since this would presuppose not just the manifestation of their cultural distinctiveness, but also the creation and sustaining of institutions similar to those used by the majority,²⁰ which would need a considerable legal framework and substantial resources. Moreover, there is no evidence, at least in Western societies, of immigrant groups seeking such goals.²¹ Thus, the fear of separatism appears to be unfounded.

But even this chain of thought is marked by the assumption that immigrants have a different mindset from that of old minorities and that they always seek less than old minorities, which is not always the case. While old minorities try to gain some sort of autonomy inside the host state, since they are not considering returning to the kin-state as an immediate and pending option, some immigrant communities, Kymlicka argues, are always on the verge of returning to their state of origin and, as a direct consequence of this, they tend not to form parallel societies.²² However, this is not entirely true for all minority groups that would qualify as “new minorities”.²³ Many do decide to remain in their new state and choose to either assimilate in the majoritarian society, many doing so with probably greater success than old minorities, or retain their distinctiveness by integration or, in less fortunate cases, by isolating themselves from the majority. Even the case about old minorities not desiring to return or move to their kin-states is not entirely accurate, as the example of Hungarians and especially Germans and Jews in Romania shows. Groups of people leave a particular country for various reasons and intentions. Indeed, Kymlicka does not assert that his theory should be taken for granted as making clear cut distinctions between new (ethnic) and old (national) minorities.²⁴ The assumption that new minorities would soon leave is, however, used as a basis for state policies, as in the case of Germany, which will be discussed below.

One of the reasons some minorities remain attached to their states of origin or kin-states²⁵ is the fact that they suffer from systematic disadvantages and discrimination in the host state. Actually, I believe that much of the lack of loyalty minorities have towards their host state stems not from their own individual attachment to their state of origin, which can nevertheless be reconciled with their relationship with the host state, but from the policies of the host state, which sometimes chooses to marginalize them instead of offering integration. The example of the Turkish *Gastarbeiter* in Germany is particularly revealing in this sense, as many of them, although now in the third or fourth generations, are more loyal to their parents' and grandparents' country of origin than to their host country because of the initial exclusion

²⁰ Will Kymlicka, *States, Nations and Cultures, Spinoza Lectures, University of Amsterdam*, Assen: Van Gorcum 1997, p. 52–56, *apud.* Roberta Medda-Windischer, *Changing Paradigms in the Traditional Dichotomy of Old and New Minorities*, in Kristin Henrard (ed.), *Double Standards Pertaining to Minority Protection*, Netherlands, 2010, pp. 195-218, p. 217.

²¹ *Ibid.*

²² Will Kymlicka, *Multicultural Citizenship*, p. 15.

²³ As a matter of fact, the “on the verge of leaving” state of mind can also be present in old minorities. Romanian Jews, for example, numbered over 138.000 in 1948 (if we take into consideration only those speaking Yiddish) or 428.000 (their probable real number), while Germans numbered approximately 344.000, according to the 1948 census. While Jews could definitely be recognized as an old minority in Romania (as they are still a recognized minority), their numbers dropped to approximately 9000 in 1992 and 3271 in 2011, primarily due to mass emigration to Israel. Germans in Romania also emigrated mainly to Germany, as part of an economic deal by which Germany would pay for each ethnic German left to leave, and their numbers dropped to 36.042 in 2011. The numbers of Hungarians also dropped from 1,6 million in 1948 to 1,2 million in 2011. What is interesting to note, however, is that during the Communist period and even up until the late 1990's, many old minorities were fleeing Romania in massive numbers and their reasons to emigrate, especially in the case of Germans and Jews, were strikingly similar to that of many new minorities (oppression, state attempts to forcefully assimilate minorities, lack of protection for human rights and minorities rights, but also for economic and family reunification reasons). Talk of emigration was omnipresent among Germans and Jews. For more on the exodus of minorities from Romania, see Lucian Boia, *Cum s-a românizat România* (Transl.: How Romania Romanianized), Humanitas, Bucharest, 2015, pp. 107-117.

²⁴ Will Kymlicka, *Multicultural Citizenship*, p. 25.

²⁵ Roberta Medda-Windischer, *Changing Paradigms in the Traditional Dichotomy of Old and New Minorities*, p. 197.

from minority status and citizenship, as well as lack of social acceptance. The recent failed coup in Turkey, for example, revealed a high level of political consciousness and implication²⁶ in the political landscape of Turkey by the Turkish diaspora in Germany, as great numbers of Turks demonstrated in support of Erdogan. But while this can be viewed in a positive light, it also entails a certain degree of disinterest in German domestic affairs.

Moreover, new minorities are thought to request in general less protection than old minorities since their decision to leave their countries of origin is voluntary and, consequently, do not have the same expectation as old minorities that they would reproduce their society in the new host state.²⁷ However criticized Kymlicka is because of the association of voluntariness with new minorities,²⁸ he does mention that there are groups that don't fit neatly into his proposed dichotomy and that some groups, such as those that are constituted from refugees, do not leave their country of origin on a voluntary basis.²⁹

Notwithstanding the above delimitations, definitions and categories of minorities made by Kymlicka, the Advisory Committee of the Framework Convention has flexible and, at some times, possibly different interpretations of what a minority constitutes or which are the groups to be considered as minorities. Of course, the Framework Convention does not have a definition, yet it does make consistent use of the term "national minority". It is useful to note that this term does not necessarily overlap with Kymlicka's use of the same term. It is not to be understood in the *stricto sensu* meaning he ascribes to it. On the contrary, the Framework Convention can also be applied to so-called ethnic minorities (as understood by Kymlicka) or to indigenous communities, notwithstanding formal recognition as national minorities or not. As proven by the Advisory Committee,³⁰ some indigenous people do not wish to be formally recognized as national minorities, yet the rights and guarantees found in the Framework Convention are open to them as well and they could avail themselves of their protection without having to identify as a national minority. Even so-called minorities-within-minorities, *i.e.* members of the majority population living in areas where they are numerically inferior to that of the minority or minorities that have a majority position, can benefit from the rights and guarantees enshrined in the Framework Convention, since their position is similar to that of other minorities.

The lack of a definition in the Framework Convention is not only a result of consensus by the states parties, but also a doctrinal choice that highlights the nature of the Convention. More specifically, as former president of the Advisory Committee, Francesco Palermo, pointed out³¹, the issues relating to minority rights protection have shifted from "who" to protect to "how" to protect. This underlying

²⁶ There is also concern for the way Turkish President Erdogan is trying to profit from the rift in German society for electoral purposes. But the rift itself is internal, caused by decades in which German multicultural policies failed. Consequently, the present Turkish generations in Germany are easily attracted to Erdogan's speeches on them being part, not only of Germany, but also of Turkey. Of course, Erdogan's speeches emphasize not the diaspora's belonging to German society, but their being supported by Turkey, thus cashing in on the Turkish diaspora's disenchantment. For more on the German Turks' turn to Turkish politics, see:

https://www.washingtonpost.com/news/worldviews/wp/2016/07/18/home-to-3-million-turkish-immigrants-germany-fears-rising-tensions/?utm_term=.2d0ad0ddd200.

²⁷ Will Kymlicka, *Multicultural Citizenship*, p. 15.

²⁸ Heim, 2007, p. 219.

²⁹ Will Kymlicka, *Multicultural Citizenship*, p. 25.

³⁰ Thematic Commentary No. 4, paras. 46-49.

³¹ The quote has been taken from the conference that launched the Advisory Committee's Fourth Thematic Commentary on the Scope of Application of the Framework Convention, held in Strasbourg on the 11th of October, 2016. The webcast of the conference is available for viewing at:

http://www.coe.int/en/web/minorities/tc4_conference (18. July 2017).

interpretative principle is also mentioned in the Advisory Committee's Thematic Commentary No. 4,³² which dealt with the issue of scope of application of the Framework Convention: "Rather than asking 'who' should be protected, it asks 'what' is required to manage diversity most effectively through the protection of minority rights. It is for this reason that the Convention does not contain a definition of the term 'person belonging to a national minority'". This does not mean that the scope of application *ratione personae* of the Convention is a closed issue that no longer needs clarification or that the issue of "who" to protect is of no interest any more. I contend that an interpretation more consistent with the work of the Advisory Committee and the object and purpose of the Framework Convention would dictate a different meaning to this change of paradigm. Thus, my interpretation is that in the present day, the focus is not on strictly delimitating groups of national minorities with the intention to protect them by enclosing them from the majority, but on how to effectively distribute and guarantee minority rights as measures protecting diversity. Minority rights measures in the 80's and 90's focused mainly on preserving the culture of minorities separately from the majority. Approaches nowadays, on the other hand, lean more towards integration, which presupposes constant interaction with the majority.

3. Why is Recognition Important?

According to article 3 (1) of the Framework Convention, "Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice". Under this widely used formula,³³ the Framework Convention lays down one of its core provisions: the right to self-identity or the right to self-identification. If one reads further into the Explanatory Report's clarification of the first paragraph, three main components of this right become apparent.

The first and, probably, the most self-evident aspect, is the guarantee that every person belonging to a national minority is free to choose to be treated or not as such³⁴ and whether that person wishes to fall under the scope of application of the Framework Convention.³⁵ However, since this provision is, as such, open to abuse, the Explanatory Report further extracts another element: the exclusion of arbitrary declarations from persons wishing to be treated as pertaining to certain national minorities and the link between the individual's subjective choice and objective criteria relevant to the person's identity.³⁶ The

³² Thematic Commentary No. 4, Executive summary, p. 3.

³³ The 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE also lists the principle in a similarly worded fashion: "To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice" (para. 32). The previously mentioned Recommendation 1201 of the Council of Europe's Parliamentary Assembly also indicates, in article 2, that "Membership of a national minority shall be a matter of free personal choice" and that "no disadvantage shall result from the choice or the renunciation of such membership". The same can be said of the OSCE Ljubljana Guidelines on Integration of Diverse Societies, which offers a very similar, though more broadly worded, definition in principle 6 (Primacy of voluntary self-identification): "Identities are subject to the primacy of individual choice through the principle of voluntary self-identification. Minority rights include the right of individual members of minority communities to choose to be treated or not to be treated as such. No disadvantage shall result from such a choice or the refusal to choose. No restrictions should be placed on this freedom of choice. Assimilation against one's will by the State or third parties is prohibited."

³⁴ Framework Convention, Explanatory Report, para. 34.

³⁵ *Ibid.*

³⁶ *Ibid.*, para. 35.

third and last element is the guarantee that no disadvantage shall arise from this free choice and that no indirect obstacle exists in the way of exercising the rights connected to this choice.³⁷

By deconstructing the right to self-identity, we can detect a subjective part, stemming directly from an individual's belief that he or she is part of a national minority, but also an objective counter-weight, of which the primary function is to test the authenticity of the individual's statement.³⁸ Moreover, it is also essential, especially for the purpose of this paper, to retain that individuals can self-identify for some purposes, but not for others.³⁹ In my opinion, this should be the logical outcome when corroborating the article-by-article approach promoted by the Advisory Committee and the fact that the right to self-identify should be exercised freely. Thus, individuals wishing to be recognized as being part of a minority could rightly solicit recognition for the purpose of gaining the possibility to exercise some rights granted by the Framework Convention, but not others.⁴⁰ In any case, as the Advisory Committee declared in its 4th Thematic Commentary, "the right to free self-identification (...) is a cornerstone of minorities rights".⁴¹

The reason why the right to self-identification is so important for the recognition of ethnic and national minorities is that it represents the normative expression of ethnic or national consciousness. And even though these latter forms of consciousness have obvious communitarian undertones, they are, after all, the product of individual self-identification. The individual is the fabric of the "cultural structure" that constitutes the basis of ethnic or national identity and it is the individual that can modify it from within,⁴² since it is his or her free choice to act as such. In the end, the right to self-identify, like the majority of the rights guaranteed by the Framework Convention, is an individual right, although it also has a collective dimension to it, which should, nevertheless, not be neglected.

Opposite the right to self-identification lies the obligation of states to recognize ethnic and national minorities that request this. Recognition, in this sense, would function as a form of justice, not in a distributive sense, but as a guarantee against oppression, marginalization or forced assimilation.⁴³ Of course, legal recognition, alone, is not sufficient to combat injustice, reduce discrimination or integrate ethnic and national minorities into the wider society. It is, however, one of the basic requirements of any policy on minorities, especially new minorities, which have a particular difficulty in getting recognized as such. The alternative, nonrecognition or misrecognition, can, in the words of philosopher Charles Taylor, "inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being".⁴⁴ Recognition by the state has a legitimizing effect on the presence of ethnic

³⁷ Ibid, para. 36.

³⁸ However, according to the Advisory Committee, "these (objective) criteria must not be defined or construed in such a way as to limit arbitrarily the possibility of such recognition, and that the views of persons belonging to the group concerned should be taken into account by the authorities when conducting their own analysis as to the fulfilment of objective criteria" – Advisory Committee of the Framework Convention, Third Opinion on Bulgaria, ACFC/OP/III(2014)001, para. 28.

³⁹ Elizabeth Craig, *Who are the minorities? The role of the right to self-identify within the European minority rights framework*, Journal on Ethnopolitics and Minority Issues in Europe Vol 15, No 2, 2016, 6-30, p. 10.

⁴⁰ The Advisory Committee highlights this in its Thematic Commentary No. 4: "Moreover, it [the Advisory Committee] has considered that free self-identification implies the right to choose on a situational basis when to self-identify as a person belonging to a national minority and when not to do so." (para. 11); "In practice, this means that each person belonging to a national minority may freely decide to claim specific rights contained in the Framework Convention, while under certain circumstances or with respect to certain spheres of rights, he or she may choose not to exercise these rights" (para. 12).

⁴¹ Thematic Commentary No. 4, para. 9.

⁴² Will Kymlicka, *Liberalism, Community and Culture*. Oxford: Clarendon Press, 1989, pp. 166-167 *apud*. Craig 2016, p. 11.

⁴³ Craig, 2016, p. 9.

⁴⁴ Charles Taylor, *The Politics of Recognition*, in *Multiculturalism: Examining the Politics of Recognition*, ed. A. Gutmann, 25-73, Princeton University Press, 1994, p. 25.

or national minorities and, in my opinion, is rather a precondition to, or at least presents itself as a catalyst of, social acceptance than its effect. Even the Advisory Committee, which sees the recognition of minorities in a pragmatic light, taking account of the rights individuals belonging to minorities factually enjoy, once said of the Estonian authorities' policy of excluding non-citizens from the personal scope of the Framework Convention that: "this formal exclusion of non-citizens from the personal scope of application of the Framework Convention, retains a strong symbolic importance among persons belonging to national minorities."⁴⁵ This was its position notwithstanding the fact, acknowledged by the Advisory Committee itself, that in Estonia, citizens and non-citizens belonging to ethnic or national minorities have equal rights, except for political rights.⁴⁶ Thus, even if individuals have access to rights, their identities should nevertheless be recognized. Recognition is not only a means to obtain rights, but also an end in itself.

However, notwithstanding its clear focus on the individual, the right to self-identification does have a collective or communitarian part to it. Humans develop their identities, whether individual or shared, in the context of a larger society.⁴⁷ This can best be seen when recognition by peers is taken into account. For example, the Advisory Committee has criticized the fact that in Bosnia and Herzegovina some political parties included on their electoral lists candidates that changed their declared ethnic affiliation from one election to another in order to gain seats reserved for those national minorities, although these candidates are not recognized by the national minorities they claim to be members of.⁴⁸ The fact that candidates for national minorities require fewer signatures in order to be validated as such for elections, combined with the legal possibility to change one's declared ethnic identity⁴⁹ meant that it was relatively easy to abuse⁵⁰ the right of self-identification granted by article 3 (1) of the Framework Convention and implemented, in this case, by legislation in Bosnia and Herzegovina. Not only does this particular abuse exemplify the necessity of objective criteria in the self-identification process, but also the collective dimension of the right, the Advisory Committee rightly pointing out the lack of recognition of these candidates by the national minorities they claimed to represent.⁵¹ Thus, it can be rightly said that recognition by co-ethnic or co-national peers or our "significant others",⁵² as Charles Taylor puts it, is to be taken into account as another criterion to be met in order for a person to be correctly recognized as a member of a particular ethnic or national minority.

Of course, this reliance on other members of a particular ethnic or national minority should not itself be disproportionate, or else the door opens for abuse coming from the community and directed against the individual. Although a case from the United States Supreme Court, *Hurley v. Irish-American GLIB*

⁴⁵ Advisory Committee, Compilation of Opinions of the Advisory Committee relating to Article 3 of the Framework Convention for the Protection of National Minorities (4th cycle), Fourth Opinion on Estonia, adopted on 19 March 2015, p. 13.

⁴⁶ Ibid.

⁴⁷ Taylor, 1994, p. 33.

⁴⁸ Advisory Committee of the Framework Convention, Third Opinion on Bosnia and Herzegovina, ACFC/OP/III(2013)003, para. 151.

⁴⁹ Ibid.

⁵⁰ *Ibid.*: "While acknowledging the principle of free self-identification laid down in Article 3 of the Framework Convention, the Advisory Committee is concerned at the abuse of this system, which was intended to promote the effective participation of national minorities at local level."

⁵¹ Ibid.

⁵² Taylor, 1994, p. 32. According to him, humans learn to better articulate their identities not alone, through a monological process, but through dialogue, debate and interaction with our peers, our "significant others".

*Association*⁵³ illustrates, in my view, how recognition should be based on the principle of effective equality⁵⁴ between individuals pertaining to ethnic or national minorities.⁵⁵ The case concerned an LGBT organization which requested to join the St. Patrick's Day Parade in Boston and was refused by the organizers. Notwithstanding the fact that the Supreme Court framed the issue as a problem of free speech, rather than equality, what is relevant for the present discussion is that effective equality, as required by the Framework Convention and the Advisory Committee's interpretations thereof, would necessitate, in similar situations, that the individual be protected from exclusion, marginalization or oppression from the minority group itself, not only from the majority group (in this particular case, Irish LGBT individuals from the Irish minority). Of course, in the US legal context, the interpretation of the case in the light of the right to free speech, as guaranteed by the First Amendment, would make sense. However, seen through the lenses of the right to self-identification, it seems apparent that in the process of recognizing ethnic or national minorities, states should pay equal attention to other "in-group" minorities, such as sexual, religious or even language groups.

The ECtHR case of *Ciubotaru v. Moldova*⁵⁶ is also relevant to this discussion. There, the applicant, a Moldovan citizen, was refused his application for an identity card by the Moldovan authorities because he indicated that his ethnicity was Romanian, instead of Moldovan. Since in Moldova, ethnic identities were recorded on the basis of the ethnic identities of one's parents, the applicant's request was rejected because he had not provided sufficient proof that his parents were of Romanian ethnicity. Personal affiliation of the individual in this case was obviously not taken into consideration. Instead, he was recognized on the basis of third-parties' identities. Consequently, the European Court of Human Rights found a violation of article 8 of the ECHR,⁵⁷ since there were "objectively verifiable links with the Romanian ethnic group,⁵⁸ such as language, name, empathy and others".⁵⁹ Although the Court makes it clear that one needs to provide more than one's subjective perception of one's own ethnicity, the inclusion of "empathy" in the "objectively verifiable" links with a particular ethnicity shows that the Court's assessment leans more towards the individual's personal appraisal of his or her own identity than on purely objective elements. Ultimately, one's "empathy" for a specific ethnic or national identity can be objectively proved through one's actions and declarations. What is clear is that the applicant's identity in this case was not tied to his peers', but to his own subjective appraisal, combined with some objective elements, although even these are intrinsically linked with the person of the individual concerned and not with recognition by third parties.

In addition to the above aspects, the right to self-identify is also viewed by the Advisory Committee as being optional, as any right should be. This logically stems from the free exercise of rights in general, where the intrinsic nature of rights consists of the fact that they are at the disposition of the individuals that have them. Therefore, no one should be forced to identify as a specific ethnic or national minority if he or she would not do so out of his or her free will. In its opinions, the Advisory Committee found several cases in which states failed to guarantee a free and optional right to self-identification.

⁵³ *John J. Hurley and South Boston Allied War Veterans Council v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Etc* (1995), 515 U.S. 557.

⁵⁴ As required by article 4(2) of the Framework Convention.

⁵⁵ Craig, 2016, p. 10.

⁵⁶ *Ciubotaru v. Moldova* (application no. 27138/04), ECtHR (2010).

⁵⁷ *Ibid*, para. 59.

⁵⁸ Here, the European Court seems to use the term "ethnic group" to refer to what Kymlicka would consider a national minority.

⁵⁹ *Ibid*, para. 58.

In the case of Cyprus, for example, the Advisory Committee found that the three “religious groups” there (Armenians, Maronites and Latins) were obliged by article 2 of the Cypriot Constitution to affiliate themselves to one of the two majority communities, the Greek Cypriots or Turkish Cypriots.⁶⁰ Moreover, it also criticized their designation as “religious groups”, especially in the case of Armenians and Maronites, related to whom the Committee noted “a general consensus that (...) above and beyond their distinctive religious characteristics, (they) possess a linguistic, cultural and historical identity by which they may be regarded more broadly as ethnic minorities”.⁶¹ The questionnaire used for the 2011 housing and population census also failed to meet the standards required by the Framework Convention, as it gave no possibility for Roma people to identify as such and neither did it allow for responses such as “other” or “none”.⁶² Also, the Roma were not presented with the possibility to choose between the main two communities (Greek and Turkish).⁶³ Most of the Roma people were affiliated with the Turkish community, since they were Muslims and spoke Turkish, while a small part was included in the Greek community, as they were Christians and spoke Greek.⁶⁴

The subjective core of the right to self-identification is, thus, undermined if states, such as Cyprus, construct rigid national identities to which members of ethnic or national minorities are obliged to adhere. Moreover, in the case of individuals of Roma origin, we can see that even though objective aspects related to the individuals’ identities were taken into consideration, the mechanism through which they were associated with one community or another did not take into consideration the subjective appraisal and the desire of the individual.

A similar problem was discovered by the Advisory Committee in Italy during its first monitoring cycle.⁶⁵ As part of a package of measures taken by the Italian state in favor of the German-speaking population of Trento-Alto Adige/Südtirol, a declaration of affiliation to a minority language was instituted as part of a census in the province of Bolzano/Bozen.⁶⁶ However, the Advisory Committee noted that the declaration remains valid for 10 years, cannot be changed during this period and is retained by district courts, so there is no guarantee of confidentiality.⁶⁷ Moreover, even though there is a neutral category (“other”), unlike the situation in Cyprus, where it lacked, individuals must still be affiliated to one of the three linguistic minorities in Bolzano (German-speakers, Ladin-speakers and Italian-speakers) in order to stand as candidate in elections or to apply for public service posts.⁶⁸ Consequently, anyone who is not affiliated to one of the above-mentioned linguistic minorities will be economically and politically disadvantaged.⁶⁹ The situation changed since then and, during its third monitoring cycle,⁷⁰ the Advisory Committee was pleased to note that the declaration was now confidential, with the cases in which it can

⁶⁰ Advisory Committee of the Framework Convention, Second Opinion on Cyprus, ACFC/OP/II(2007)004, para. 25; Third Opinion on Cyprus, ACFC/OP/III(2010)002, para. 28; Fourth Opinion on Cyprus, ACFC/OP/IV(2015)001, para. 12.

⁶¹ *Ibid.*, Second Opinion on Cyprus, para. 28.

⁶² *Ibid.*, Fourth Opinion on Cyprus, para. 12.

⁶³ *Ibid.*, para. 11.

⁶⁴ *Ibid.*

⁶⁵ Advisory Committee of the Framework Convention on National Minorities, First Opinion on Italy, ACFC/INF/OP/I(2002)007.

⁶⁶ *Ibid.*, para. 18.

⁶⁷ *Ibid.*, paras. 19-20.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, para. 21.

⁷⁰ Advisory Committee of the Framework Convention on National Minorities, Third Opinion on Italy, ACFC/OP/III(2010)008.

be disclosed now being limited, but that the change takes effect only after a period of 18 months.⁷¹ Also, the Committee noted that, notwithstanding the improvements, the declaration mechanism still obliges individuals to choose one of the three linguistic minorities.⁷²

What the above criticisms show is that the right to self-identify should take account of the dynamic and complex identities individuals have. Ethnic and national identities change over time, they are neither static, nor homogenous. Moreover, individuals are characterized by a pluralism of identities, whether they be multiple ethnic, national or other (religious, linguistic, sexual etc). As Brigitta Busch, the Austrian member of the Advisory Committee, once said,⁷³ in the past, “identity was seen as stable and defined as a bundle of characteristics ascribed to a particular group (traditional minorities rights). Now, given that today individual biographies are complex and multilayered, due to mobility, such ideas of fixed identity can no longer be upheld”.

This broad and flexible approach can be seen also in the Fourth Thematic Commentary, where the Advisory Committee said that: “Multiple identities and increasing mobility, for instance, have become regular features of European societies. However, such features must not limit access to minority rights”.⁷⁴

Indeed, while in premodern times, issues of identity existed, they were not debated with such detail as in the present.⁷⁵ But this is not due to people not having identities or not needing recognition, but more to the lack of instruments of expression, whether linguistic, philosophical, political, ideological or others. We have now learned to better articulate our identities as a complex of multiple, often overlapping and interchangeable set of characteristics. The present focus on the complex nature of human identity is also expressed in legal instruments such as the Framework Convention, which, according to the drafters of the thematic commentary, is constructed on a broad and flexible understanding of identity which allows for pluralism and dynamism.⁷⁶ What the Framework Convention does presently, in this interpretation, is to offer the possibility for a richer articulation of identity in the legal dimension of minorities issues.

4. Citizenship and National Narrative

Having established how the Framework Convention, as viewed presently by the Advisory Committee, is the product of a relatively new and modern approach to minorities rights which takes account of the diversity of human identity, I believe it would be appropriate to further ascertain how states have changed their own collective identities in view of the rising demand for recognition by minorities and, of course, the advent of globalization, the increase of migration and the creation of groups of new minorities. I will not engage in a discussion over national identity *lato sensu*, but instead focus on how

⁷¹ Ibid, para. 53.

⁷² Ibid.

⁷³ Her remarks here were taken from the conference that launched the Advisory Committee’s Fourth Thematic Commentary on the Scope of Application of the Framework Convention, see *supra* note 19.

⁷⁴ Thematic Commentary No. 4, para. 5.

⁷⁵ Taylor, 1994, p. 35.

⁷⁶ The Ljubljana Guidelines also highlights this aspect its 5th principle (Recognition of diversity and multiple identities): “Diversity is a feature of all contemporary societies and of the groups that comprise them. The legislative and policy framework should allow for the recognition that individual identities may be multiple, multilayered, contextual and dynamic”.

states have defined citizenship in the recent past and if there have been any changes that can be linked to the growing factual multiculturalism that has become the case for many societies. While the notion of citizenship has been traditionally linked with the nation-state and that state's national identity or, better put, the majority's national identity, it can be said of today's societies, with its individuals more conscious of their own identities than ever before, that the strict, exclusive and homogenous interpretation of "nation" and, consequently, of its legal emanation – citizenship – no longer expresses a realistic paradigm. Moreover, the relatively recent debate over "new minorities" also exposes the shortcomings of present state definitions of citizenship, which are still strongly intertwined with the idea of nation-state. I will focus mostly on European states, especially Germany, although I will also mention Canada as well, since its concept of citizenship was deeply changed by multiculturalism's challenge. I believe Germany and Canada function as appropriate elements for comparison mainly because they are both presently very diverse societies with high numbers of individuals with migration backgrounds, but, on the other hand, they dealt with this growing diversity in different ways.

4.1. Germany: the Case of the Ethnic Turks

I will start with Germany, since it has become an interesting example of a country whose policy makers refused to view it as a country of immigration and, consequently, initially upheld a conception of citizenship strongly infused with the *jus sanguinis* principle.⁷⁷ German law on nationality was, of course, based on a German understanding of nation or *Volk*, which harked back to the end of the Wars of Liberation (*Befreiungskriege*) against Napoleon and German national identity consequently formed itself on primarily ethnic and cultural commonalities, as did the German conception of citizenship.

However, post-war migration, especially of Turkish guest workers (*Gastarbeiter*), changed all this. The initial guest workers were met with a policy of "returnist multiculturalism", as Kymlicka describes it,⁷⁸ which meant that German authorities did not aim for the integration of guest workers in German society, but merely accommodated them and sought to reintegrate them in their countries of origin.⁷⁹ Language or education measures were only meant to offer temporary assistance to foreign workers, their families and, especially, their children, who needed to continue their education in their native tongue. For example, during this initial migration period of guest workers, some German states even established separate schools for migrant children so that they could be educated in their own language.⁸⁰ At first glance, one might confuse this measure to be one implementing a right of minorities to be educated in their own language. However, the policy actually aimed at reintegrating migrant children in their home countries once they returned together with their parents, not at accommodating their particular cultural needs in Germany.

The Turkish community in Germany is a particularly relevant example here. Initially, since the signing of the Bilateral Recruitment Agreement with Turkey in 1961 and up until 1973, when the German

⁷⁷ The 1913 German Law on Nationality (*Reichs- und Staatsangehörigkeitsgesetz*, abbreviated as *RuStAG*) created the first all-encompassing German citizenship, which included the citizenships of the federal states and did not replace them. The law would remain in force, albeit heavily modified, until 2000.

⁷⁸ Will Kymlicka, *Multiculturalism without citizenship?*, 2017, available online at: https://www.academia.edu/33677436/Multiculturalism_without_Citizenship_2017 (24. July 2017).

⁷⁹ Yaşar Aydın, *The Germany-Turkey migration corridor: Refitting policies for a transnational age*, February 2016, Migration Policy Institute, Washington, DC, p. 13.

⁸⁰ See Simon Green, *The politics of Exclusion: Institutions and Immigration Policy in Contemporary Germany*, Manchester University Press, Manchester, UK, 2004, *apud*. Aydın, 2016, p. 13, footnote 47.

Economic Miracle (or *Wirtschaftswunder*) ended, the vast majority of Turks came for labor purposes on a temporary basis, on the principle of rotation.⁸¹ The idea was that the overwhelming part of contracts would be short-term, but this was soon abandoned due to pressures coming from employers, who preferred to keep their old employees.⁸² Most guest workers did return to their home country, while the remaining started to bring their families to Germany.⁸³ Consequently, the next phase of migration to Germany was characterized by the predominance of family reunification.⁸⁴ In this context, it became apparent that the initial “returnist” policies could not cope with the vast numbers of guest workers and their family members.⁸⁵

To contend with such a challenge, German migration policy changed accordingly. The above-mentioned German law on Nationality, for example, changed substantially in 2000, when elements of *jus soli* were also introduced, so children born out of non-German parents residing in Germany for at least 8 years (formerly it was 15 years) and holding a permanent right of residence would automatically receive German citizenship at birth.⁸⁶ The downside of this was that, unlike EU citizens, which could keep double citizenship starting with 2007, non-EU citizens born in Germany would have had to choose upon reaching the age of 21 whether they would like to keep their German citizenship or adopt the citizenship of their parents.⁸⁷ Hence, the small number of Turks today that have both citizenships, many preferring to keep the German citizenship when confronted with the choice between Turkish and German citizenship.⁸⁸ Many individuals pertaining to the Turkish diaspora in Germany were, of course, split between opting for German or for Turkish citizenship. Luckily, the situation improved again in 2014, when a new law exempted people growing up in Germany from opting between two. These include persons habitually residing in Germany for at least 8 years, those who attended school in Germany for at least 6 years or those who completed their schooling or vocational training in Germany.⁸⁹

The potentiality of scaring away a substantial part of their workforce determined German authorities to relax their citizenship criteria. But the change can also be attributed to the fear of impeding integration, the threat of alienating a part of its populace which, by then, already constituted its largest minority and a new minority at that as well. Most importantly for the purpose of this paper, however, the change in Germany’s definition of citizenship from a mostly ethnic notion to a more open and diversity-friendly conception not only resonates more with the factuality of Germany’s multicultural society, but also

⁸¹ Aydin, 2016, p. 4.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ According to a 2015 census done by the German Federal Statistical Office (*Statistisches Bundesamt*), there are 2.851 million people with a Turkish migration background (*Migrationshintergrund*). The term “migration background” is used to refer to any person not born in Germany, foreign nationals (even if born in Germany) and those which have at least one parent not born in Germany. See Aydin, 2016, p. 6, footnote 20. Also see the German Federal Statistical Office’s 2015 census (*Bevölkerung und Erwerbstätigkeit, Bevölkerung mit Migrationshintergrund, Ergebnisse des Mikrozensus 2015, Fachserie 1 Reihe 2.2*), p. 177, available online at: https://www.destatis.de/DE/Publikationen/Thematisch/Bevoelkerung/MigrationIntegration/Migrationshintergrund2010220157004.pdf;jsessionid=85A7339F5B34916BE4AB300E6487C349.cae1?__blob=publicationFile (24. July 2017).

⁸⁶ See the German Federal Foreign Office’s site for the information on the Law on Nationality: http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/04_Recht/Staatsangehoerigkeitsrecht_node.html (last accessed on 24. July 2017).

⁸⁷ Ibid.

⁸⁸ Only a small number of Turks are dual citizens: 246,000, or 8.6% of the total number of people with Turkish migration background. See the 2015 census by the German Federal Statistical Office, p. 167.

⁸⁹ Ibid.

brings the German legal framework closer to the desiderata of the Framework Convention and the Advisory Committee. A notion of citizenship that allows for multiple identities (including multiple citizenships) respects the multilayered and complex identities that individuals have, especially individuals who are members of ethnic or national minorities. This change, of course, does not mean that the scope of application of the Framework Convention has been extended to people of Turkish origin in Germany, or to any other minority as a matter of fact. It does, however, mark a significant improvement that could, in the end, lead to recognition and, possibly, as a next logical step, to extending the personal scope of the Framework Convention to cover minorities not previously included.

Even though the Advisory Committee has been consistent in its view that citizenship should not be regarded as a condition for recognition, but of granting specific rights from the Framework Convention, one should not be oblivious to the fact that most countries do require citizenship as a pre-condition to granting official minority status. From one point of view, this is understandable, because most countries probably have a more or less homogenous view of their societies and, for various reasons, including costs in administration, are reluctant to recognize other ethnic or national minorities.

Another reason is that they do not view some minority groups as being part of the “national narrative”, they do not see them as state-constituting actors. In this sense, I am using “national narrative” to refer to the historical and social self-perception and self-identification of one nation, which is usually confused with the majority (or dominant) national group, the one we find regularly as defining the identity of the whole country.⁹⁰ While some ethnic or national minorities might be considered a part of the history and cultural fabric of one nation, some might not, as they are not viewed as being autochthonous. This “judgment” of whether a minority group is part of the nation or not is usually “decided” by the majority national group, but this does not exclude social non-recognition by other, recognized minorities as well. This type of recognition can be seen, for example, in history books officially endorsed by a government, where the participation of ethnic or national minority groups in the country’s history and foundation might be omitted or not seen as amounting to being part of the “national narrative”. And sometimes, this attitude is shared by the dominant national group, although it might not always be the case that omitting the contribution of ethnic or national minorities to the country’s history from officially endorsed history books mirrors an equivalent social non-recognition.

On the other hand, “nation” can also overlap with the concept of citizenship in a more *lato sensu* meaning, encompassing not only the majority, but also traditional minorities. For example, in the case of Romania, even the Constitution lays down, in article 4 (1) the foundation of the state of Romania as being “laid on the unity of the Romanian people and the solidarity of its citizens.” Even if the second paragraph of this article establishes that Romania is the homeland of all its citizens, without discrimination on account of, among others, race, ethnic origin, language and nationality, it is clear that the State, which views itself as a unitary state, identifies more with the majoritarian culture, which is mentioned expressly.⁹¹ Other groups, including old minorities such as Hungarians and Germans, while not part of the majoritarian culture, nevertheless are part of the “national narrative”, *i.e.* their history and culture are intertwined with that of the majoritarian culture. One example of this link is the simple fact that pupils and students are also taught in history classes about these “traditional” minorities, but there

⁹⁰ Such as Romanians, Germans, Hungarians defining their countries as Romania, Germany, Hungary and the nation as Romanian, German, Hungarian.

⁹¹ This constitutional combination between the choice for a unitary state and non-recognition of other languages as official languages could draw parallels with the French Constitution, which also lays the foundation of a unitary state and recognizes French as the sole official language of the Republic. However, while Romania signed and ratified both the Framework Convention and the European Charter of Regional or Minority Languages, France did not, mainly because of France’s highly centralized form of governance which it inherited from the time of the French Revolution.

is also a national consciousness that their history and culture are closely linked with those of the Romanian nation and that they are “at home” in Romania. The Hungarian Constitution also mentions in its Preamble or National Avowal that “We (the Hungarian people) proclaim that the nationalities living with us form part of the Hungarian political community and are constituent parts of the State”. In both cases, however, new minorities are not part of this “national narrative” and are instead viewed as outsiders.

Defining national identity might be selective and it can also have legal manifestations under the form of constitutions outlining a state as unitary or national, as in the above case of Romania. Thus, it might seem as if the constitution creates second class citizens out of individuals belonging to national minorities. But while this is the case with traditional minorities, new minorities are not even considered state-constituting actors or part of the “national narrative”. In this sense, Bhikhu Parekh stresses out the need for political communities to self-identify and self-define themselves not in ethnic or cultural terms, but in politico-institutional terms,⁹² whereby ethnic and national minorities would not feel left out or be seen, as he puts it, as “less authentic 'sons of the soil', less reliable and patriotic than the rest, less entitled to demand respect for their culture and religion, and passed over in politically sensitive appointments.”⁹³ By defining the state as “the national home of the majority community”,⁹⁴ minorities’ presence in the said state is seen as less legitimate, hence the need to re-define the “nation” in broader terms.

In my view, one must not “wait” for a particular ethnic, religious or cultural group to become part of the “national narrative” or the national consciousness of one state’s nation. Thus, minority groups may be part of the population,⁹⁵ but not of the nation. Legal recognition should not be bestowed upon a minority after there has been a social recognition or acceptance into the “national narrative”. On the contrary, I believe that legal recognition should come first, as an official form of recognition by the state. This official recognition, which would grant minorities the rights offered by national, regional and international legal instruments, would have a legitimizing effect on their existence and would also accelerate the integration process, which, as a matter of fact, functions in a two-way manner⁹⁶: the minorities’ desire to integrate into the mainstream society, while also retaining its distinctiveness, is to be mirrored by the host state’s openness. And since social acceptance is a matter of time and various other factors that cannot be exactly ascertained, legal acceptance should precede it, as it involves actions by the state, which should be, by their very nature, predictable, certain and not subject to societal factors, which are more dynamic.

As in the case of the above-mentioned Turks in Germany, new minorities that are excluded from citizenship because of a *ius sanguinis*-infused concept of citizenship are also barred from social

⁹² Bhikhu Parekh, *Rethinking Multiculturalism*, Macmillan Press, 2000, p. 231.

⁹³ Ibid, p. 234.

⁹⁴ Ibid.

⁹⁵ The term “population” would probably be better placed in this context than “nation” (understood *stricto sensu* in ethnic terms), since I refer not only to the majoritarian nation, which usually also defines a state’s name, history and culture, but also to the other national or ethnic minorities that have been, in the meantime, interwoven in a state’s history and, hence, have become part of the so-called “national narrative”. “Population”, in my view, is more statistical and factual than “nation” and would probably be better suited to today’s ever more multicultural societies than a rigid and overly historical interpretation of “nation”. Of course, some states might have a more open understanding of “nation”, than others. Canada, for example, sees itself as a country of immigration and, consequently, requires fewer years of physical presence there (4 years) for granting citizenship than most European countries.

⁹⁶ The Advisory Committee too highlighted this aspect in its Thematic Commentary No. 4, at para. 44: “The Advisory Committee’s established position is that integration is a process of give and-take and affects society as a whole. Efforts cannot therefore be expected only from persons belonging to minority communities, but they must also be made by members of the majority population”.

acceptance.⁹⁷ The end result is the creation of parallel societies, as a symptom of the state's inability to properly integrate minorities, but also of the resistance of the minority itself from being assimilated or assimilating itself. The Turkish *Gastarbeiter* in Germany are such a good example because, initially, members belonging to this minority traveled to Germany as economic migrants, albeit on the invitation of a host country that expected them to return to their country of origin afterwards.⁹⁸ Consequently, initial German policies did not focus on integration, but temporary accommodation.⁹⁹ Given the lack of state support for integration, social acceptance was also hampered, since many of the first generations of *Gastarbeiter* did not know German and could not integrate properly. Moreover, because of an incoherent integration policy of migrants,¹⁰⁰ the threshold for becoming a part of the German "national narrative" is higher for new minorities than for old ones and new minorities are obliged to go to greater lengths to integrate than "established" minorities.

4.2. Hungary, Poland, Norway, Romania, the Czech Republic: Diverging Approaches

Some other states, such as Hungary¹⁰¹ and Poland¹⁰², require minorities to have lived on their territory for a certain period of time – in this case, one hundred years. I believe that this requirement, which obviously seriously impedes recognition of new minorities, would probably be justified by the fact that these states only wish to recognize as minorities those groups which have been traditionally residing the territories now belonging to them and, consequently, have become part of the "national narrative". Societal acceptance is, again, preceding legal recognition. Consequently, those that do not qualify as such are also viewed as alien to the cultural landscape of the host country.

On the other hand, in its recent Thematic Commentary No. 4 on the scope of application of the Framework Convention for the Protection of National Minorities, the Advisory Committee stressed out the fact that length of residency of minority groups in a particular country should not be a determining factor for the application of the Framework Convention as a whole. The same view is held by the UN Human Rights Committee, which interpreted article 27 of the ICCPR (on the right of minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language) in the sense that even migrant workers or visitors should benefit from it, not just permanent residents.¹⁰³

⁹⁷ As Kymlicka rightly points out, the German conception of nationhood would more quickly accept Germans in Russia as citizens than Turks, even if the former have lived all their lives in Russia, while the latter have been living in Germany for three or four generations. See Will Kymlicka, *Multicultural Citizenship*, p. 23.

⁹⁸ See James Angelos, *What Integration Means For Germany's Guest Workers. The Debate Over Multiculturalism Alienates the Immigrants Germany Needs Most*, from *Foreign Affairs*, 28th October, 2011, available online at: <https://www.foreignaffairs.com/articles/europe/2011-10-28/what-integration-means-germanys-guest-workers>.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ The Hungarian Act LXXVII of 1993 on the Rights of National and Ethnic Minorities defined minorities in Article 1 (2) as those ethnic groups "with a history of at least one century of living in the Republic of Hungary", the new Act CLXXIX of 2011 uses the same definition.

¹⁰² The Polish Regional Language, National and Ethnic Minorities Act defines minorities in article 2 as a group of Polish citizens who, among other criteria, has had ancestors residing within the present territory of the Republic of Poland for at least a hundred years.

¹⁰³ See the Thematic Commentary No. 4 on the scope of application of the Framework Convention for the Protection of National Minorities, ACFC/56DOC(2016)001, 27 May 2016, p. 13, para. 31 and the General Comment of the UN Human Rights Committee No. 23(50), CCPR/C/21/Rev.1/Add5/26 April 1994, para. 5.2.

Norway has a similar legislation which recognizes only those minorities that have been traditionally residing in Norway. According to its first state report, “in Norway, the term ‘national minorities’ is understood to mean minorities with a long-term connection with the country.”¹⁰⁴ Therefore, the only minorities recognized are the Jews, Kven, Roma/Gypsies, the Romani people/Travellers, Skogfinn and Sami people.¹⁰⁵ While the term “long-standing” is not given any formal definition, Norwegian authorities have interpreted it to refer to a minimum claim of 100 years of connection with the state,¹⁰⁶ which makes it similar to legislations in Hungary and Poland. Notwithstanding this, the Advisory Committee noted in its third opinion on Norway that “migrants who have recently arrived in Norway, and who wish to identify with ethnic groups with national minority status in Norway, can benefit from the same measures as those intended for the national minorities”.¹⁰⁷ Therefore, normally, even migrant Roma would be covered by the rights enshrined in the Framework Convention, not only the Norwegian Roma. However, as the government of Norway noted in its fourth report, EEA citizens temporarily residing in Norway are not taken into consideration, since they “do not have such a long-established connection to Norway that recognition as a national minority is considered relevant.”¹⁰⁸ Regarding this, the Advisory Committee recalls in its fourth opinion on Norway that it has consistently encouraged an inclusive approach, especially in the case of vulnerable groups.¹⁰⁹

Other countries, such as Romania¹¹⁰ do not have such temporal conditions and, while Romanian legislation does not have any definition of the term “national minority” and, theoretically, according to Romanian legislation, any ethnic group that forms an organization representing them and gathers a specific number of votes will be represented in the Council of National Minorities and, consequently, recognized as a minority.¹¹¹ While social acceptance would remain a problem even in these countries, as it already is the case with the United Kingdom and its new minorities and Romania with some of its old minorities, at least the legal recognition would open a wide range of possibilities for new minorities to integrate.

¹⁰⁴ Report submitted by Norway pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR (2001) 1, p. 17.

¹⁰⁵ *Ibid.*, p. 3.

¹⁰⁶ Patrick Thornberry, Maria Amor Martin Estebanez, *Minority Rights in Europe: A Review of the Work and Standards of the Council of Europe*, Council of Europe publishing, Germany, 2004, p. 122, n. 71.

¹⁰⁷ Advisory Committee of the Framework Convention, Third Opinion on Norway, ACFC/OP/III(2011)007, para. 29.

¹⁰⁸ Fourth report submitted by Norway pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR/IV(2015)006, p. 14.

¹⁰⁹ Advisory Committee of the Framework Convention, Fourth Opinion on Norway, ACFC/OP/IV(2016)008, para. 11.

¹¹⁰ Romania has a draft Law on the Status of Minorities which has been proposed in 2005, but has not been, as of yet, adopted. The first draft defined national minorities as “any community of Romanian citizens, which lives on the territory of Romania from the moment *when the modern Romanian state was founded* (emphasis added), which is numerically inferior to the majority population, having its own national identity expressed through culture, language or religion, which it desires to keep, express and develop”. The Venice Commission has criticized this definition in its Opinion no. 345/2005, CDL-AD 2005 026, stating that: “the requirement that the community must have lived on the territory of Romania from the moment the modern Romanian state was established in order to qualify as a national minority. (...) This seems to indicate that the relevant time is 1919, although the creation of a modern state may be seen as a process rather than a definite event”. Consequently, the draft proposal has been changed accordingly and now the definition is rather similar to those of Hungary and Poland, by requiring minority groups to have lived in Romania for at least 100 years.

¹¹¹ See Law 208/2015 on elections. Under the conditions laid down by the said law, if an organization representing a minority gains somewhere between 200 and 3000 votes, it will be represented in the Parliament by one seat in the Council of National Minorities and, as a consequence, will be granted official recognition as a protected minority. The requirement for citizenship is, however, still present.

The Czech example is also interesting, given the 2013 recognition of Belarusians and Vietnamese as (new) minorities.¹¹² The Czech system resembles more or less the Romanian one, in both cases there is lack of legal certainty regarding the recognition process of minorities, but, on the other hand, they are both theoretically flexible in the case of recognizing new minorities, because in both cases acceptance in their respective state council for minorities would mean that the state has recognized a new minority.¹¹³ In the Czech example, the Vietnamese and Belarusians have been requesting recognition for a long time and in 2013, the Czech Government passed a resolution that amended the charter of their Council for National Minorities to include representative from the two aforementioned groups.¹¹⁴

While this is quite unique in Europe and especially in Central and Eastern Europe, where definitions of minorities, where they exist, usually include both citizenship and historicity of their presence on the territories of those countries and, as such, would probably exclude new minorities from the start, it is important to note that the Czech Republic had previously included representatives of a Serbian minority NGO, in 2004, although the Serbian minority there consists mostly of immigrants from the 1990's.¹¹⁵ A precedent existed, therefore. And while inclusion of representatives in the Czech Council of National Minorities via a resolution of the executive has been described as "legally unsound"¹¹⁶ and lacking in legal certainty,¹¹⁷ the conclusion was that it amounted to an official recognition of those minorities by the state¹¹⁸ and, logically, of the scope of application of the Framework Convention.

The case of the Vietnamese migrant-communities-turned-minorities presents several similarities with the situation of the aforementioned Turkish diaspora in Germany. While initially migrating as temporary workers starting with the 1950s as part of a program co-sponsored by the Vietnamese government, which hoped to gain skilled workers which would return to their country, they eventually settled down and, especially after the fall of Communism in Europe, started bringing their families to the Czech Republic as well.¹¹⁹ And, as with Germany, initial "returnist" policies gave way to more integrative ones which, unlike in Germany, culminated with recognition as a minority.

The Romanian legislation in this field is also pretty vague, as mentioned above. Thus, for electoral purposes, Law 208/2015 on elections understands the term "national minority" as referring to those ethnicities¹²⁰ represented in the Romanian Council of National Minorities.¹²¹ Other national minorities' organizations can also participate if they are of "public utility" and if they can produce a list of persons representing 15% of the total number of citizens that have declared themselves as belonging to that national minority.¹²² According to the current above-mentioned elections' law, the threshold applied to these organizations is 5% of the average number of votes given to a Deputy.¹²³ The same 5% threshold

¹¹² See Marián Sloboda, *Historicity and citizenship as conditions for national minority rights in Central Europe: old principles in a new migration context*, *Journal of Ethnic and Migration Studies*, 2016, 42:11, 1808-1824.

¹¹³ *Ibid.*, p. 1819.

¹¹⁴ *Ibid.*, p. 1814.

¹¹⁵ *Ibid.*, p. 1815.

¹¹⁶ *Ibid.*, p. 1819.

¹¹⁷ *Ibid.*, p. 1815.

¹¹⁸ *Ibid.*, p. 1816.

¹¹⁹ *Ibid.*, p. 1814.

¹²⁰ Here, I am merely reproducing the term used by Law 208/2015, which does not make the distinction between national and ethnic minorities, but instead refers to "ethnicities" as synonymous with "national minority".

¹²¹ Law 208/2015, art. 56 (3).

¹²² *Ibid.*, art. 56 (4).

¹²³ *Ibid.*, art. 56 (1).

is required of regular parties,¹²⁴ although it relates to the total number of votes. This last threshold is also to be applied to national minorities' organizations which participate in electoral alliances.¹²⁵

In these circumstances, the only national minority organization that has consistently managed to reach the threshold for regular parties is the Democratic Alliance of Hungarians in Romania, mainly due to its largely loyal electorate and high number of individuals belonging to this minority.¹²⁶

Thus, in theory, the legislation is very permissive with its understanding of the term "national minority", with no single, general definition existing at any legislative level, except for the one mentioned above, which links the recognition of a national minority with its representation within the Council of National Minorities.¹²⁷ As a direct consequence of this policy, since any organization representing national minorities can achieve official recognition, provided they attain the required number of votes, the number of organizations grew from the initial 12 in 1990,¹²⁸ when the first free elections were held, to the present 18 (including both those represented by one deputy in the Council and the Hungarians represented in the Parliament). Given that the number of votes required of national minorities to be represented in the Council and, thus, also recognized is small,¹²⁹ the chances that a new minority would be recognized in Romania are indeed high. At least in theory.

In the Czech example, while there was a definition of what national minorities are, it included, besides the citizenship criterion, a historicity criterion as well, it was formulated in vague terms.¹³⁰ It allowed, therefore, for negotiation¹³¹ on the historicity of a minority's presence in the Czech Republic. In the case of Romania, however, there is no official definition of what constitutes a national minority yet. While the Advisory Committee urged¹³² the Romanian government to ensure that an open and flexible approach to the scope of application of the Framework Convention was reflected in the above-mentioned draft Law on the Status of National Minorities, the existing draft law contains a definition that requires

¹²⁴ Ibid, art. 94 (2).

¹²⁵ Ibid, art. 56 (8).

¹²⁶ According to the latest census which took minorities into consideration, from 2011 (there is a 2016 census, but it does not include data on national minorities), there were 1.227.623 Hungarians living in Romania, representing 6.5% of the total population. The census data is available in English at: <http://www.insse.ro/cms/files/statistici/comunicate/alte/2012/Comunicat%20DATE%20PROVIZORII%20RPL%202011e.pdf> (14. February 2017).

¹²⁷ Monica Călușer, *Reprezentarea minorităților naționale pe locurile rezervate în parlament* (The representation of national minorities on the reserved seats in parliament), in Levente Salat (ed.), *Politici de integrare a minorităților naționale în România* (National minorities integration policies in Romania), Centrul de Resurse pentru Diversitate Etnoculturală, Cluj-Napoca, 2008, p. 170.

¹²⁸ By the rules established by article 4 of Decree-law no. 92/1990 for the organization of elections, 13 minorities (besides the Hungarians, which entered directly into Parliament, with 41 Senators and Deputies) were initially represented in the Romanian Parliament's Council for National Minorities by 11 organizations: Germans, Roma, Lipovan Russians, Armenians, Bulgarians, Czechs, Slovaks, Serbians, Greeks, Polish, Tatars, Turks and Ukrainians. The Czechs and Slovaks formed just one organization – The Democratic Union of Slovaks and Czechs in Romania. Shortly after, the Turks and Tatars factions split and former distinct organizations, bringing the total number of seats in the Council to 12 and the number of organizations in Parliament, as a whole, to 13 (including the Hungarians). For more details, see Călușer, 2008, pp. 169-170.

¹²⁹ The required number of votes was 1336 in 1992, 1494 in 1996, 1273 in 2000, 2841 in 2004 (when the threshold was lifted to 10% instead of 5%, but this was reverted to 5%), etc.

¹³⁰ "A national minority is a community of citizens of the Czech Republic living in the present-day Czech Republic who differ from other citizens, as a rule, in their common ethnic origin, language, culture and traditions, constitute a numerical minority of the population, and demonstrate their will to be considered a national minority for the purpose of their joint efforts to preserve and develop their own identity, language, and culture, as well as for the purpose of expressing and protecting the interests of their historically constituted community". See the Czech Minorities Act No. 273/2001, Sec. 2.1. (Translated by Sloboda, 2016, note 4, p. 1820).

¹³¹ Sloboda, 2016, p. 1811.

¹³² Advisory Committee of the Framework Convention, Third Opinion on Romania, para. 32, ACFC/OP/III(2012)001.

both citizenship and that the minority must have been living in Romania for 100 years.¹³³ However, in light of the Czech case with the Belarusians and Vietnamese, I believe that the adoption of the law in this form would severely limit the possibility to negotiate a group's minority status in the future. While the present state of Romanian legislation on minorities leaves a lot to be desired, it does offer more room for flexibility when speaking strictly about official recognition.

4.3. The United Kingdom and Canada: Liberal Policies

Other countries, such as the United Kingdom and Canada, have a much more liberal approach. The United Kingdom, for example, has been praised by the Advisory Committee of the Framework Convention for its broad interpretation of the term "ethnic minorities".¹³⁴ The Fourth Opinion of the Advisory Committee on the United Kingdom even starts by acknowledging that it is "traditionally a multi-ethnic society where efforts to guarantee and extend the protection of the rights of persons belonging to national and ethnic minorities have been carried out for decades."¹³⁵ Besides this, the United Kingdom has undergone a series of devolutions (the granting of powers to regional legislative and executive bodies from the Parliament of the United Kingdom), namely the ones granting powers to the Scottish, Welsh and Northern Irish legislatures and executive bodies, have increased the political participation of these minorities. Moreover, since the 2014 recognition of the Cornish people as a minority,¹³⁶ there have been talks and also an agreement reached in 2015 for a devolution in the case of Cornwall as well.¹³⁷

Canada, as well, has been defining themselves as multicultural for some time now. Its multicultural policy shifted from the 1960's view that multiculturalism is an extension of citizenship¹³⁸ and, thus, applying to persons that are already citizens (such as long-standing communities of Ukrainians, Poles or Italians), to the present extension of multicultural integrative measures to immigrants as well.¹³⁹ The 1988 Canadian Multiculturalism Act, for example, officially defines Canada's multiculturalism as being fundamental to the Canadian identity:

"It is hereby declared to be the policy of the Government of Canada to:

(a) recognize and promote the understanding that multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage

¹³³ See *supra* note 105.

¹³⁴ Advisory Committee, First Opinion on the United Kingdom, 30 November 2001, ACFC/INF/OP/I(2002)006, para. 14: "The Advisory Committee strongly welcomes the inclusive approach of the United Kingdom in its interpretation of the term "national minority". The Advisory Committee notes that the term "national minority" is not a legally defined term within the United Kingdom, but that the State Report is based on the broad "conventional" definition of "racial group" as set out in the Race Relations Act (1976). Under this Act "racial group" is defined as "a group of persons defined by colour, race, nationality (including citizenship) or ethnic or national origin". This includes the ethnic minority communities. The Courts have furthermore interpreted the term and found it to include the Scots, Irish and Welsh by virtue of their national origin. On a case-by-case basis the Courts have also included Roma/Gypsies as well as Irish Travelers (also defined as a racial group for the purposes of the Race Relations (Northern Ireland) Order (1997), Sikhs and Jews."

¹³⁵ Advisory Committee, Fourth Opinion on the United Kingdom, 25 May 2016, ACFC/OP/IV(2016)005, para. 1.

¹³⁶ *Ibid*, para. 6.

¹³⁷ *Ibid*, para. 14.

¹³⁸ Will Kymlicka, *Multiculturalism without citizenship?*, p. 1.

¹³⁹ *Ibid*, p. 2.

(b) recognize and promote the understanding that multiculturalism is a fundamental characteristic of the Canadian heritage and identity and that it provides an invaluable resource in the shaping of Canada's future"¹⁴⁰

The fact that Canadian society view itself as intrinsically multicultural means that their definition of the Canadian nation leaves the possibility open for new minorities to become part of it without having to renounce their distinctiveness. They are, in other words, "state actors", constituent parts of the national narrative and of the nation itself.¹⁴¹ The contrast with the German example is obvious: whereas Germany has been reluctant to see itself as a country of immigration and has only recently started to tone down on its citizenship requirements in the face of growing disenchantment within communities of persons with immigrant background, Canada has taken its multicultural role seriously and, although initially reliant on *Anglo-conformity* or *Anglocentrism*,¹⁴² the practice of requiring immigrants to conform to the English-speaking majority's culture, it has shifted towards recognizing multiculturalism as the basis of Canadian identity itself and not only as an institutional mitigation aimed solely at foreigners. Of course, it has to be borne in mind that Canada started to be confronted with the paradigm of it being a country of immigration at a time when Germany was still a country of emigration. Nevertheless, German authorities' slow response in facilitating access to citizenship to its increasing population of individuals with migrant background should always be put into the context of Germany's particular socio-historical and cultural situation, which is markedly different from Canada's.

Then again, Germany's *Leitkulturdebatte* or "leading culture" debate, which started in the early 2000's, presents similarities with the notion of Anglo-conformity. Catalyzed by the intention of the social democrats and greens, which came to power in Germany in 1998, to reform the country's immigration and citizenship policies, the debate was sparked between the progressive left and conservatives (represented by the CDU and its Bavarian sister-party, the CSU) as to whether Germany should tilt towards more multicultural policies and, consequently, also towards a more diversity-friendly self-perception of the German nation, or, as the conservative camp argued, in a more or less Huntingtonesque tone, immigrant cultures should be kept separated and those that wished to "join" the nation and also become citizens should conform to a German *Leitkultur*. In this case, what was meant by *Leitkultur* was the more general Western liberal-democratic culture with roots in the Enlightenment and, following internal debates in the CDU, "German" *Leitkultur* was transformed into the broader European *Leitkultur*. European Western ideals were viewed as the yardstick against which immigrants' integration was to be measured.¹⁴³ As one might assume, the concept of *Leitkultur* is deeply suspicious of immigrant communities and presupposes the superiority of the European culture to which German culture is ascribed in order to demand assimilation.

The leading culture paradigm is a reaction to transnationalism, free movement and, to a certain extent, globalism in general, and, as such, is not necessarily a specifically internal German issue, but merely the internalization of a wider debate, which is present all across Europe and beyond. Although Germany, for example, succeeded in reforming its citizenship law in order to ease its granting to persons with

¹⁴⁰ Canadian Multiculturalism Act, 1988, section 3 (1).

¹⁴¹ Will Kymlicka, *Multiculturalism without citizenship?*, p. 2.

¹⁴² "Anglocentrism required migrants to abandon the traditions and cultures of their homelands and instead adopt the values and behaviors of English-speaking Canadians". For further details on Canada's initial assimilationist policies, see Jatinder Mann, "Anglo-Conformity": *Assimilation Policy in Canada, 1890s–1950s*, *International Journal of Canadian Studies*, Volume 50, 2014, pp. 253-276.

¹⁴³ Hartwig Pautz, *The politics of identity in Germany: the Leitkultur debate*, *Race & Class*, Institute of Race Relations 0306-3968 Vol. 46(4), 2005, pp. 39–52, p. 44.

migration background, it has done so after lengthy political debates. The sensitivity of the issue can be seen also in Italy, where, recently, a bill which proposed a more *ius soli*-oriented approach to citizenship and facilitated naturalization for immigrants was delayed owing to intense political opposition.¹⁴⁴ Switzerland, on the other hand, overwhelmingly voted in favor of a law that eases the naturalization process for third-generation foreigners no older than 25 years,¹⁴⁵ while in 2014, the Czech Republic reformed its citizenship legislation,¹⁴⁶ one of the major changes being the introduction of dual or multiple citizenship, in contrast with the old legislation, according to which Czech citizenship would be withdrawn from persons acquiring foreign citizenship.¹⁴⁷ Estonia also eased its citizenship requirements in 2015 and allowed double citizenship, granted citizenship retroactively to stateless children under 15 years old born in Estonia and, most importantly, abolished the principle of *jus sanguinis*.¹⁴⁸

Of course, easier access to citizenship status, while definitely enticing integration and signifying a form of acceptance and recognition, does not constitute *per se* a recognition of minority status. It does, however, permit unrecognized minorities to organize politically and demand further recognition and protection, while also overcoming the citizenship criterion used by many states as a pre-condition to minority status.

5. Conclusion

There are, of course, many other issues that I did not address. However, what is clear is that the dichotomy between old and new minorities is not always a clear-cut distinction. Moreover, some perceptions of new minorities are inherently simplistic and do not take count of the variety of circumstances which characterize their existence and lead to the triumph of formalism over factual realities. And sometimes the factual realities reveal a closer resemblance between new and old minorities, whether we are considering their claims, their relationship with the majority or their belonging to the so-called “national narrative” of a specific country.

New minorities’ and other minorities’ struggle for recognition and acceptance is a particularly modern phenomenon in my view, as a part of the growing interest in identity politics and the general struggle for recognition of all facets of human identity. In this context, the process of recognizing minorities, especially new minorities, as part of today’s societies ultimately challenges homogenous views of

¹⁴⁴ See James Politi, *Italy delays vote on citizenship for immigrants’ children*, Financial Times, July 17, 2017, available online at: <https://www.ft.com/content/bb0203a4-6ace-11e7-bfeb-33fe0c5b7eaa> (08. August 2017) and Manuela Perrone, *Italian parties clash over citizenship rights for immigrant children*, Italy24, 26 June 2017, available online at: <http://www.italy24.it/sole24ore.com/art/politics/2017-06-22/italian-parties-clash-over-citizenship-rights-for-immigrant-children-171609.php?uuid=AEgiWckB> (08. August 2017).

¹⁴⁵ Philip Oltermann, *Switzerland votes to ease citizenship process*, The Guardian, 12 February 2017, available online at: <https://www.theguardian.com/world/2017/feb/12/switzerland-votes-immigrants-citizenship-rights-islamophobia> (08. August 2017).

¹⁴⁶ Act No. 186/2013 concerning the nationality of the Czech Republic and amending certain acts or “Czech Nationality Act”.

¹⁴⁷ The Advisory Committee of the Framework Convention took notice of this change in its Fourth Opinion on the Czech Republic: “The Advisory Committee welcomes this change as it is likely to encourage foreign citizens to apply for Czech citizenship, thus formally including them in the scope of application of domestic legislation on national minorities and the Framework Convention.” See Advisory Committee, *Compilation of Opinions of the Advisory Committee relating to Article 3 of the Framework Convention for the Protection of National Minorities (4th cycle)*, Fourth Opinion on the Czech Republic, adopted on 16 November 2015, p. 10.

¹⁴⁸ The Advisory Committee also praised these reforms in its Fourth Opinion on Estonia. See *ibid*, Fourth Opinion on Estonia, adopted on 19 March 2015, pp. 13-14.

nations and determines valuable debates on how to redefine nationality and, of course, citizenship as well. As pointed out above, in the case of citizenship, many European countries have recently eased their requirements and criteria for granting it.

However, while these changes are indeed welcomed, they do not necessarily signify a shift or a redefinition of those countries' societies' understanding of "nation", nor does it highlight any particular or sudden shift of support for recognizing migrant communities as minorities. On the contrary, as the post-2015 political scene in Europe has shown us already, a new strand of populist parties and movements have begun to rely heavily on anti-migration discourse and have gained considerable support from their constituencies. If this rise in popularity of populist figures has shown anything, it is that following the European migrant crisis, a great part of the European electorate, especially in Central and Eastern Europe, but also in Western Europe, is against the presence of migrants, in particular those from the Middle East, in their countries. Thus, they are also probably at least indifferent to improving their integration process, not to mention their recognition as minorities.

The fact that we are witnessing a process of "securitization" of discourses on minority rights and of migration or asylum issues, by which the public's attention is diverted to seeing minorities and migrants as security issues, only underlines the increased difficulties new minorities have in integrating into their receiving societies. Societal recognition and acceptance represent a time-consuming process, as part of the process of integration, one of carefully studied accommodation and compromise. Legal recognition as citizens and as minorities should function as a doorway to societal recognition.

Nevertheless, even in this most hostile environment, governments are bound to realize that pluralism is unavoidable and identity is dynamic and that official recognition of new minorities would not only increase loyalty towards the state from a group that factually reside there in one form or another, but also bridge the typical gap that always exists between law and the reality for which it seeks to offer a normative framework.