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**DIALOGUE WITH THE UNWILLING:
ADDRESSING MINORITY RIGHTS
IN SO-CALLED DENIAL STATES**

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DIALOGUE WITH THE UNWILLING: ADDRESSING MINORITY RIGHTS IN SO-CALLED DENIAL STATES

Three European countries have chosen to stand outside the European minority rights regime adopted by European inter-governmental organizations. For diverse reasons they do not accept a responsibility to participate in the normative framework that protects Europe's ethnic, national, linguistic, or religious minorities. For France there exist no minorities in its territory. For Greece, there exists only one religious minority, the Muslims of Thrace, and they are protected by a bilateral treaty. And Belarus has refused to democratize its society and governance in order to become member of the European organizations. While these so-called 'denial states' have avoided the European normative framework, they are, however, subject to the United Nations (UN) system of human rights monitoring. And this system also includes mechanisms on minority protection. Thus, one could ask how the three countries deal with these mechanisms. This Working Paper will try to shed light on this question through an examination of the relevant UN mechanisms.

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I. INTRODUCTION

For a continent that enjoys one of the best minority rights and protection regimes in the world the dissension of a few European countries remains a conundrum. In spite of, or perhaps as a result of, the European Continent's history of persecuting minorities for centuries, it has been possible at the end of the twentieth Century to develop a minority protection regime of good protection levels through inter-governmental co-operation and

state compliance. This is a regime that includes human and minority rights instruments adopted by the Council of Europe, agencies of the United Nations (UN) and non-discrimination instruments by the European Union (EU). Moreover, non-standard setting organizations like the Organization for Security and Co-operation in Europe (OSCE) have created 'soft' instruments aimed at guiding governments on protecting minorities



in conflict zones. Furthermore, all European countries are parties to at least one of the legal international instruments either through signature, accession or succession. Thus, there is foundation for a strong consensus in Europe on minority protection, at least with regard to non-discrimination.

Yet, a few countries like Belarus, France and Greece have chosen to stand outside the European minority rights regime. With reference to either the principle of equality or national unity, or as in the case of Belarus' lack of membership, these three countries have not acceded to the binding instruments adopted at the regional level in Europe. While France and Greece are democracies and members of the for minority rights relevant European international organizations, such as the Council of Europe, Belarus only participates in the work of the OSCE. France and Greece are thus legally obligated to protect human rights enshrined in the European Convention on Human Rights and Fundamental Freedoms (ECHR) adopted in 1950 through their membership of the Council of Europe. Forty-seven countries have signed and ratified the ECHR. However, none of the three countries has acceded fully to the most important legally binding European minority protection instrument, the European Framework Convention for the Protection of National Minorities (FCNM) adopted in 1995 and signed and ratified by thirty-nine countries.¹ While Belarus' dissension can be explained through the lack of membership and co-operation of the current regime,² the dissension of two of Europe's presumed leaders in democratic governing remains an enigma. This unwillingness to participate in

the European minority rights regime has reinforced a view of the three countries that they are in denial about minority rights.

However, all three countries are members of the UN and partially subject to the minority rights regime adopted by the UN. They are party to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (hereafter the UN Declaration), which was adopted unanimously in 1992 by the UN General Assembly (UNGA).³ Although UNGA decisions are non-binding, the fact they have global reach means that they must be respected also in Europe. Moreover, all three countries have acceded to the UN's International Covenant on Civil and Political Rights (ICCPR) adopted in 1966, whose Article 27 provisions that ethnic, religious or linguistic minorities shall not be denied the right in community with other members of their group to enjoy their own culture, to profess and practice their own religion, and to use their own language.⁴ Although France has made a reservation to the ICCPR declaring that Article 27 is not applicable so far as the Republic is concerned,⁵ the UN Declaration is still applicable in the French territory. The first question is, therefore, whether this UN legal regime is capable of making the three countries implement minority rights.

In addition to the legal monitoring of human and minority rights, the UN also monitors minority rights at the political level through the UN's Human Rights Council (hereafter the Council). With regard to the three countries studied in this paper, they have all been subjected to the questioning of the members of the Council. The second and third



questions are, therefore, how have the three countries responded to the Council's questioning and have they entered into a political dialogue on minority rights?

The aim of this Working Paper is to begin to answer these questions by shedding light on the behavior of the so-called denial states in the implementation of minority rights in Europe through an analysis of the monitoring systems to which they are subject in their capacity as members of the UN. The focus will thus be entirely on the UN since the three countries have not signed up to the European normative framework of minority protection. It will be explored whether the seemingly unwilling governments of Belarus, France and Greece engage in any dialogue with regard to minority rights and protection. This will be undertaken through an examination of the UN legal and political monitoring mechanisms that include provisions relevant for minority protection.

II. RELEVANT MECHANISMS OF THE UNITED NATIONS

Unlike the European minority rights regime, which started addressing minority protection immediately after World War II in the European Convention on Human Rights (ECHR), the UN opted for a human rights approach based on universal individual rights. The Universal Declaration on Human Rights (UDHR) adopted in 1948 did not, therefore, address minority protection, except for a general clause on non-discrimination. It took some years before the UN member states could agree to address minority rights directly. In this section, I review the legal instruments

and political mechanisms available to monitor member states' behavior.

A. *The International Covenants and the Human Rights Committee*

The change happened in 1966 when the UNGA adopted two international covenants, the aforementioned ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both instruments are legally binding on the member states that have signed and ratified them. They are thus part of the legal monitoring of minority rights, under the so-called treaty bodies. The ICCPR provisions minority rights in Article 27:

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

The ICESCR does not provision minority rights per se but the protection of minority identity requires that general human rights are also protected. Both instruments came into effect in 1976, and each has its own monitoring committee.

The Human Rights Committee (HRC) is a body of independent experts that monitors implementation of the ICCPR by the member states that have signed and ratified it. Very few countries have not become party to the ICCPR as yet; these include China, Cuba,



Saudi Arabia and Iran. Member states are obliged to submit regular reports on how the rights are being implemented. The HRC examines each report and addresses its concerns and recommendations. It may also consider inter-state complaints as well as individual complaints with regard to alleged violations.⁶ The HRC also publishes its interpretation of the content of human rights provisions, known as general comments on thematic issues or its methods of work. The Committee on Economic, Social and Cultural Rights (CESCR) works in a similar manner. In this paper, only the HRC is examined in regard to Belarus, France and Greece.

B. The UN Declaration and the Special Rapporteur

The UN Declaration does not require signatures or ratifications. Thus, it is not legally binding on the member states. Although it is not a treaty body, legal experts consider it a human rights instrument. Nevertheless, it is a rather weak instrument in inter-state relations, and it is not an international law document. Instead, experts group it as a ‘soft law’ instrument in line with a number of documents adopted by international organizations. Depending on the nature of the documents topic, these can acquire a degree of moral standing in inter-state relations and thus become instruments of some power. In the area of minority rights, this characterization could be given to the recommendations issued by the OSCE’s High Commissioner on National Minorities (HCNM). The UN Declaration has not attained such label. However, the UN

Declaration was drafted with a view to further elaborate the provisions of Article 27 of the ICCPR and give states guidelines.⁷ Nevertheless, experts also recognize that not only is the UN Declaration normatively weak, it also leaves it to the goodwill of governments to determine its implementation. Moreover, experts argue that it needs further standard setting to see effective implementation of minority rights.⁸ In Europe, the subsequent adoption of instruments such as the FCNM helped set the stage for more effective implementation. Thus, it would seem that a combination of the ICCPR and the UN Declaration procedures is needed to assess whether the three countries abide legally by the global standards set.

While the Human Rights Committee (HRC) has powers to engage in ongoing dialogue with governments through the monitoring cycles, the UN Declaration has no procedure. From 2005-14, the UN did appoint an Independent Expert to assist the Secretary-General in monitoring the UN Declaration. From 2014 this mandate has been changed to a special rapporteur mandate with the following powers:

- (a) To promote the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, including through consultations with Governments, taking into account existing international standards and national legislation concerning minorities;
- (b) To examine ways and means of overcoming existing obstacles to the full and effective realization of the



- rights of persons belonging to minorities;
- (c) To identify best practices and possibilities for technical cooperation with the Office of the High Commissioner, at the request of Governments;
 - (d) To apply a gender perspective in his/her work;
 - (e) To cooperate and coordinate closely, while avoiding duplication, with existing relevant United Nations bodies, mandates and mechanisms and with regional organizations;
 - (f) To take into account the views of and cooperate closely with nongovernmental organizations on matters pertaining to his/her mandate;
 - (g) To guide the work of the Forum on Minority Issues, prepare its annual meetings, to report on its thematic recommendations and to make recommendations for future thematic subjects, as decided by the Human Rights Council in its resolution 19/23;
 - (h) To submit an annual report on his/her activities to the Human Rights Council and to the General Assembly, including recommendations for effective strategies for the better implementation of the rights of persons belonging to national or ethnic, religious and linguistic minorities.
- a) The protection of a minority's survival, through combating violence against them and preventing genocide;
 - b) The protection and promotion of the cultural identity of minority groups and the right of national, ethnic, religious or linguistic groups to enjoy their collective identity and to reject forced assimilation;
 - c) The guarantee of the rights to non-discrimination and equality, including ending structural or systemic discrimination and the promotion of affirmative action when required; and
 - d) The guarantee of their right to effective participation of members of minorities in public life, especially with regard to decisions that affect them.⁹

The Special Rapporteur's draws on a normative framework of international standards in four broad areas of global concern relating to minorities:

The Special Rapporteur's work is similar to the Independent Expert's. She receives information from diverse sources, including governments, expert bodies, UN agencies, regional and other inter-governmental organizations, NGOs and other civil society organizations. Based on such information, she will issue communications to member states concerning implementation of the UN Declaration. She also submits annual reports on the activities undertaken by the mandate to the Human Rights Council (hereafter the Council) including thematic studies on key minority rights issues. Finally, she undertakes, at the invitation of governments, country visits to further constructive consultation, observe relevant programmes and policies, register concerns, and identify areas for cooperation.



She will study national legislation, policy, regulatory framework and institutions and practices, in seeking to promote the effective implementation of the UN Declaration.

C. The Commission on Human Rights and its Sub-Commission

The Commission on Human Rights (CHR) was a political mechanism established immediately after the UN was founded. It worked from 1946 to 2006 as the main forum for 53 member states to discuss human rights issues. It was instrumental in the drafting of the UDHR, and developed its mandate from an early approach of promoting human rights to a later approach of reporting violations. Its mandate was to examine, monitor and publicly report on human rights situations in specific countries or territories (known as country mechanisms or mandates) as well as on major phenomena of human rights violations worldwide (known as thematic mechanisms or mandates). The membership of the CHR was rotated based on yearly elections, and membership was for three years. The CHR had the power to create special procedures by appointing working groups and special rapporteurs. In 2006, the Human Rights Council replaced the CHR.

ECOSOC also established the Sub-Commission on the Promotion and the Protection of Human Rights in 1999. It consisted of 26 experts tasked with implementing the UDHR. The Sub-Commission worked through a number of working groups, including one on minorities,

which operated from 1995 to 2006. The Working Group held 12 sessions and aimed at being a forum for dialogue. It facilitated greater awareness of the differing perspectives on minority issues and sought better understanding and mutual respect among minorities and between minorities and Governments. It also acted as a mechanism for hearing suggestions and making recommendations for the peaceful and constructive solution to problems involving minorities, through the promotion and protection of their rights. The Working Group worked not only on conceptualization of the rights of persons belonging to minorities but also good practices and other measures for the promotion and protection of minorities. It issued papers on topics such as multicultural and intercultural education; recognition of the existence of minorities; participation in public life, including through autonomy and integrative measures; inclusive development; and conflict prevention. In 2007, the Forum on Minority Issues replaced the Working Group.

D. The Human Rights Council

The Council, which took over the political approach to monitoring, is made of 47 member states, which are elected by the majority of members of the UNGA through direct and secret ballot. The Council's membership is based on equitable geographical distribution. Members of the Council serve for a period of three years and are not eligible for immediate re-election after serving two consecutive terms. The Council's main function is to conduct country reviews of the human rights records



of member states through the Universal Periodic Review (UPR). This is a state-driven process, which provides the opportunity for member states to declare what actions they have taken to improve the human rights situations in their countries and to fulfill their human rights obligations. The UPR is supposed to remind states of their responsibility to fully respect and implement all human rights and fundamental freedoms. Thus, the UPR plays a major role in the dialogue with the unwilling states.

In the rest of the paper, I review the legal and political dialogues that have taken place with Belarus, France and Greece in the relevant UN mechanisms.

III. BELARUS

Belarus was one of the founding members of the UN and has been a member since 1945 first as the Soviet Republic of Byelorussia and since September 1991 as Belarus.¹⁰ Today, the main cultural groups in Belarus are Belarusians (83.7%), Russians (8.3%), Poles (3.1%), Ukrainians (1.7%), and other (3.2%).¹¹ According to the government, there are seventeen minorities in the territory of Belarus.¹² As noted above, Belarus is not a member of the Council of Europe; however, the Parliamentary Assembly (PACE) of the Council of Europe is seeking to establish a dialogue with the authorities in Belarus on certain conditions, most notably a moratorium on the death penalty. Moreover, in October 2013, Belarus acceded to the Council of Europe's Convention on Action against Trafficking in Human Beings, which will enter into force for Belarus on 1 March 2014.

According to the U.S. State Department's 2011 Human Rights Report for Belarus, governmental and societal discrimination against the ethnic Polish population and Roma persisted. There were also expressions of societal hostility toward proponents of Belarusian national culture, which the government often identified with actors of the democratic opposition. During the year authorities continued to harass the independent and unregistered Union of Poles of Belarus (UPB). However, in contrast with previous years, authorities did not openly persecute UPB members. Official and societal discrimination continued against the country's 10,000 to 20,000 Roma. The Romani community continued to experience high unemployment and low levels of education. Authorities estimated the unemployment rate among Roma to be as high as 80 per cent according to the latest available information. Roma often were denied access to higher education in state-run universities. In 2009, however, the Office of the Plenipotentiary Representative for Religious and Nationality Affairs stated that the country's Romani community had no problems that required the government's attention.¹³

With regard to language use, the State Department wrote that while the Russian and Belarusian languages have equal legal status, in practice Russian was the primary language used by the government. According to independent polling, the overwhelming majority of the population spoke Russian as its mother tongue. Because the government viewed proponents of the Belarusian language as political opponents of the regime, authorities continued to harass and intimidate



academic and cultural groups that sought to promote use of the Belarusian language. Proposals to widen use of the language were rejected routinely.¹⁴

A. Legal Monitoring

Belarus has signed most of the UN instruments, including the ICCPR on 19 March 1968 and ratified it on 12 November 1973. Initially Belarus made a reservation to Article 48(1)¹⁵ but withdrew the reservation on 30 September 1992.¹⁶ With regard to the ICCPR monitoring, Belarus has submitted state reports to the HRC since 1978 with last report submitted in April 1995.¹⁷ The fifth cycle report due in 2001 has yet to be submitted. While the HRC's Concluding Observations in 1995 did not include any recommendations on minority protection,¹⁸ the Committee addressed minority issues in its analysis of the state report.¹⁹ Among others, the HRC pointed out that references to Jewish people as a different nationality were unfortunate,²⁰ and that this was a recurrent problem addressed by the Committee in previous Observations.²¹ Since 1997, the HRC has issued numerous communications on jurisprudence in relation to human rights in Belarus. The country has also been under review by other UN treaty bodies, such as the Committee against Torture and the Committee on the Elimination of Racial Discrimination. It has not, however, been under review by the Independent Expert on Minorities.

B. Political monitoring

With regard to the UN's political monitoring, the Commission on Human Rights (CHR)

issued ten recommendations or reports on human rights conditions in Belarus between 1997 and 2006. These related mostly to arbitrary detention and the independence of the judiciary.²² Between 2006 and 2012, the Council has reviewed Belarus under the UPR in 2010. In this Review, the situation of the Roma was raised as an independent agenda point. The outcome of the Review, which is a peer review conducted by other members (member states) of the Council not an expert review, included two recommendations on minority protection proposed by Austria and Finland. According to the recommendations, the Belarusian government was encouraged to

Take appropriate measures against discrimination against persons belonging to ethnic minorities, in particular measures against harassment by police, and allow equal access to education for all persons belonging to minorities (Austria); strengthen its effort to combat and prevent discrimination faced by the Roma and ensure their full participation in the creation of mechanisms and adoption of measures to this end (Finland);²³

In response to the recommendations of Austria and Finland, the Belarusian government responded that Belarusian legislation relating to ethnic minorities is in line with the principles of international law and is intended to create conditions for the free development of ethnic minorities and to protect their rights and lawful interests. It argued that any action aimed at discrimination



on the grounds of ethnicity, obstruction of the enjoyment by ethnic minorities of their rights or incitement to inter-ethnic hatred is punishable by law. Finally, the government argued that Belarusian internal affairs authorities have adopted comprehensive measures to prevent acts of discrimination against ethnic minorities and that no information on such acts is available. Specifically, with regard to the Roma, the government argued that in practice there are no problems associated with discrimination against persons belonging to any ethnic group, including the Roma. It maintains that the State provides the necessary assistance, including financial, to representatives of the Roma for the organization of cultural and educational events, production of publications and artistic performances. The leaders of the Belarusian Roma Diaspora voluntary association participate in the work of the advisory inter-ethnic council reporting to the Office of the Commissioner for religious and ethnic affairs.²⁴

Since 2004, the UN has appointed a Special Rapporteur on the situation of human rights in Belarus with a view to examining the situation of human rights in Belarus and following any progress made towards the elaboration of a programme on human rights education for all sectors of society, in particular law enforcement, the judiciary, prison officials and civil society.²⁵ Belarus is the only European country assigned a Special Rapporteur on human rights. Although the Special Rapporteur has not been able to visit Belarus due to lack of co-operation on the part of the Belarus government, reports have been compiled on the basis of contacts in

neighboring countries. In the Rapporteur's 2006 Report, the issue of persecution of the Polish minority is discussed as well as the Roma community.²⁶ To date Belarus has still not extended an open invitation to special procedures experts, and the government does not reply to requests to visit the country.²⁷

Since experts are not welcome in Belarus, the Independent Expert has not been able to visit either although the country clearly lies within the mandate of the Expert and the UN Declaration. While the Expert may have had reasons not to step in the footsteps of the Special Rapporteur in order not to waste UN funds, there have not been any statements or communications from the Independent Expert on Belarus. This is curious given the fact that according to the UN websites, there have been 165 Charter-based documents²⁸ and 167 treaty-based documents²⁹ related to human rights in Belarus issued by the UN since 1994.

To sum up, UN standards on minority rights are applicable in Belarus through the country's membership of the UN and its accession to the ICCPR and the UN Declaration as well as other UN instruments. Although Belarus is not party to any European regional minority instruments, it has not denied the existence of minorities on its territory. Moreover, the Council of Europe is making inroads through the PACE initiative, and European peers, such as Austria and Finland have been at the forefront of holding Belarus to its obligations. However, since 1997, dialogue with the Belarusian government has been non-existing both with regard to human rights and minority rights. It has not submitted any further reports to the



HRC under the ICCPR monitoring and it has refused to invite experts to visit.

IV. FRANCE

France has been a founding member of the UN since October 1945.³⁰ France is home to numerous ethnic groups, including Celtic and Latin with Teutonic, Slavic, North African, Indochinese, and Basque minorities as well as the ethnic groups living in the overseas departments, such as black, white, mulatto, East Indian, Chinese, and Amerindian.³¹ France is a member of both the Council of Europe and the OSCE and has ratified the ECHR but not Protocol 12.³² It has not ratified any of the minority rights instruments. Nevertheless, France is responsible to the Council of Europe, to the UN and to the OSCE.

A. *Legal monitoring*

France acceded to the ICCPR on 4 November 1980 making numerous declarations and reservations to the instrument, some of which have subsequently been withdrawn.³³ It made a declaration to Article 27 that with reference to Article 2 of the Constitution of the French Republic, Article 27 is not applicable so far as the Republic is concerned.³⁴ Article 2 of the French Constitution reads,

France is an indivisible, secular, democratic and social Republic. It ensures the equality before the law of all citizens, without distinction of origin, race or religion. It respects all beliefs. The national emblem is the tricolour flag, blue, white and red. The national anthem is the 'Marseillaise'.

The motto of the Republic is 'Liberty, Equality, Fraternity'. Its principle is government of the people, by the people, for the people.³⁵

France submitted its fifth cycle report to the HRC in July 2012. In spite of France's declaration of exemption from Article 27, the fourth cycle review process did address minority issues. Thus, France was asked to answer questions related to the situation and legal status of traditional minorities in France, including bilingual education and instruction, statelessness, discrimination against minorities in employment, access to public office, racism in the media, racially motivated police violence, and residential segregation.³⁶

In reply to these questions, the French government stated in general terms that France does not recognize the existence of domestic minorities which have legal status as such, and considers that the application of human rights to all the nationals of a state, in a spirit of equality and non-discrimination, normally gives them, whatever their situation, the full and comprehensive protection which they may expect. The practical effect of this concept is that the affirmation of an identity is the result of a personal choice, not of applicable criteria defining one group or another a priori.³⁷ Moreover, it argued that the fact that the legal status of minorities is not recognized does not prevent the application of many policies designed to assert France's cultural diversity and support individual choices in this field. In the field of education, for example, while mastery of the French language, considered as the prime tool to ensure equal opportunities, constitutes a



priority challenge, various measures are adopted to take linguistic diversity into account.³⁸ Thus, while the government made comments to all the questions posed, it focused specifically on language issues.

Specifically, with regard to bilingual education, it argued that the teaching of original languages and cultures is organized in schools, where classes are taught either during the school day or outside it (when it is necessary to bring together pupils from several schools).³⁹ Local communities are involved in the practical organization of this teaching (provision of premises and equipment). This teaching is always subject to the consent of the families and the presence of a sufficient number of pupils. It is provided by foreign teachers (from the country of origin), made available by their governments. This arrangement is covered by bilateral agreements signed by eight countries - Portugal, Spain, Italy, Morocco, Algeria, Tunisia, Turkey and Serbia. With regard to the teaching of regional languages, the government explained that these are taught as specific subjects, with own timetable, curricula, examinations, trained staff and educational and scientific research programmes from nursery to university level. The teaching of certain languages (Corsican, Basque, Breton, Catalan, Creole, Occitan-Langue d'Oc, Tahitian) is provided by teachers who hold the *certificat d'aptitude au professorat de l'enseignement du second degré* (CAPES); it is validated when pupils are awarded the secondary certificate for 16-year-olds. Finally, the government noted that more specific measures have been taken for the overseas regional languages. Under the

Act of 2 August 1984 concerning the powers of the regions of Guadeloupe, Guyane, Martinique and Reunion, each regional council determines the additional educational and cultural activities relating to knowledge of the regional languages and cultures, which can be organized in the schools that fall within the competence of the region. Similarly, for New Caledonia, a law of 19 March 1999 grants recognition to the Kanak languages as languages of instruction and culture, while incorporating commitments regarding teaching, scientific and university research, and teacher training. In total, 404,351 pupils received instruction in regional languages in 2005/2006.

In September 2007, the Independent Expert on Minorities visited France as part of the implementation of the mandate in Europe.⁴⁰ The Expert addressed some of the same issues as the fourth cycle HRC review and focused specifically on discrimination against 'visible' minorities and the indirect assimilation processes to which they are subjected. While the Expert commended recent anti-discrimination initiatives, including the 2004 Anti-discrimination Law and the establishment of the Independent High Authority for Equality and Against Discrimination (HALDE), an independent body with powers to mediate or refer discrimination cases for prosecution, conduct studies and promote non-discrimination programmes and activities, the Expert emphasized that targeted and more robust approaches are required to have a deeper and far-reaching impact on persistent discrimination experienced by minorities. She further argued that given the level and nature



of inequalities in France, fulfilling the negative obligation of non-discrimination is not enough to secure equality in practice. The state is under a positive obligation to create favorable conditions for the exercise of the rights of minorities. Finally, the Expert commented that France's history of rejecting the concept of minority rights and recognition of minority groups or collective rights as incompatible with the French Constitution and the principles of the Republic, which prioritize individual rights, equality, unity and universalism has been an obstacle to the adoption of policy initiatives that by their nature must acknowledge the reality of discrimination against specific population groups within French society. It has prevented any serious consideration of affirmative action programmes or the collection of statistical data concerning the socio-economic status of population groups that can be disaggregated by ethnicity or religion. She recommended, therefore, that such government measures, rather than being considered in violation of the Constitution, should be seen as essential to achieving a true vision of "Liberté, Egalité, Fraternité;" the acknowledgement of ethnicity, religion and heritage should not be considered to threaten the principles of unity and equality that are the foundation of French society.

B. Political monitoring

With regard to the political procedure under the CHR and subsequently the Council's UPR, it does not appear that the CHR issued resolutions on France in the years after the adoption of the UN Declaration. After 2006, France was reviewed under the Council's UPR in 2008 and 2012. During the UPR 2012,

questions were raised among others regarding discrimination against immigrants in employment and their access to public administration as well as with regard to Roma resettlement (UK), ratification of the ECRML (Slovenia), and the employment conditions for autochthonous minorities in the overseas territories (Mexico).⁴¹ During the interactive dialogue session, France was also asked by numerous delegations to ensure that it met its obligations under international law given the various acts of discrimination against Roma, especially the treatment of Roma by police.

On the issue of the Roma, the French government replied that

in application of the principles of the indivisibility of the Republic, equality before the law and the unity of the French people, France did not recognize the existence of groups or communities with specific rights. France thus did not recognize the Roma as a group and did not collect statistics related to ethnic origin. However, neither did it underestimate the problems it was facing, and it set its action against the background of what was happening at European level, as the whole of the continent was concerned. A national strategy for the inclusion of Roma had been adopted in February 2012, with priority on access to education, employment, health and housing.⁴²

With regard to the Roma camps, the government replied that illegal camps were dismantled in response to an immediate danger or health risk, in particular. However,



it was the task of the local Government services, in partnership with local authorities and associations, to ensure that they responded properly to the situation of the individuals and families concerned. As soon as a camp was set up, prefects should conduct a diagnostic survey of needs in respect of health care, employment and schooling for children. Before beginning to dismantle any illegal installations, they must, first and foremost, provide emergency accommodation. An inter-ministerial delegate for accommodation and access to housing was responsible for coordination at all levels, from local to national, to allow a proper response to all types of situation.⁴³

According to the Report of the Working Group, the following member states made recommendations about Roma: Germany, Hungary, Namibia, Austria, Japan, Republic of Korea, Russia, USA, Poland, Burundi, Ecuador, Brazil, India and Australia.⁴⁴ Bahrain urged France to withdraw its reservation to Article 27 of the ICCPR,⁴⁵ and the Ukraine recommended that France reinforce its legislative framework and institutional mechanisms to exclude all discriminatory practices that prevent equal access to employment for persons belonging to ethnic, national or religious minorities as well as to seek to promote understanding, tolerance and friendship between nations and racial and ethnic groups. Norway recommended that France take measures to produce data adequate for combating discrimination and violence against minorities more efficiently, and Canada urged France to take all necessary measures to prevent discrimination in hiring in the active

population, since access to employment on the part of minorities is limited. Poland recommended to reinforce the legislative framework and institutional mechanisms aimed at excluding all discriminatory practices that prevent equal access to employment for persons belonging to ethnic, national or religious minorities, while Ireland recommended that the legislative framework and relevant institutional mechanisms be strengthened in order to exclude all discriminatory practices that prevent equal access to employment for persons belonging to ethnic, national or religious minorities. Finally, Austria urged France to ratify the ECRML. France accepted many of the recommendations but also rejected a number with reference to the French Constitution. It did not, however, respond to Bahrain's recommendation regarding Article 27. In its preliminary comments to all recommendations, the government stated that it did not respond to the recommendations on subjects that do not fall under the scope of the universal periodic review.

To sum up, even though France is not party to European minority rights instruments, it is not exempted from scrutiny with regard to minority protection. UN standards on minority rights are applicable in France through the country's membership of the UN and its participation in the UN Declaration as well as other UN human rights instruments. Thus, in spite of France's declaration of exemption from Article 27 ICCPR and the fact of minorities in its territory, the monitoring procedures under the HRC, the Independent Expert and the Human Rights Council have put France under pressure to answer numerous



questions regarding minority protection. Moreover, European states have been particularly keen to hold France to its legal and political obligations, and France has made endeavors to reply to the inquiries of its European peers. France has steered clearly, however, of questions relating to its declaration to exempt the applicability of Article 27 ICCPR on French territory.

V. GREECE

Greece has been a member of the UN since October 1945. The country's population is 93% Greek and 7% foreign nationals.⁴⁶ Greece officially recognizes one minority, the Muslim minority in Thrace.⁴⁷ The country is a member of both the Council of Europe and the OSCE and has ratified the ECHR and signed but not ratified Protocol 12.⁴⁸ It has not ratified any of the minority rights instruments but it has signed the FCNM on 22 September 1997. Thus, Greece is responsible both to the Council of Europe with regard to the ECHR, to the UN and to the OSCE.

A. *Legal monitoring*

Greece acceded to the ICCPR on 5 May 1997 without making any declarations or reservations.⁴⁹ Its first cycle report was processed after submission in April 2004, six years late. With regard to the second cycle, Greece has yet to submit its report, which was due in April 2009.⁵⁰ With regard to the first cycle and Article 27, the Greek government was asked to explain what measures were taken to identify and protect the rights of other ethnic groups, participation of minorities in the public service and at all levels of

Government, a denial about a statement by the Greek National Human Rights Commission that instances of discrimination and violence against Roma by police in local societies,⁵¹ as well as extrajudicial demolition of Roma dwellings and forced eviction of settlements prior to the 2004 Olympic Games, including what measures had been taken to compensate those affected.⁵² During the discussions in the HRC, the government was further queried about its narrow interpretation of the rights under Article 27. According to the member of the HRC, the use of nationalities, such as Turkish, Macedonian or Roma, in the names of private associations posed no threat and did not constitute an attempt to wrest power from the Greek authorities. Moreover, such appellations could be used to justify discrimination at the local level, and it would be interesting to study the statistics on persons of Turkish, Macedonian or Roma origin who had risen to leadership positions in order to determine the effect of the government's stance on appellations that mentioned nationalities.⁵³ On the latter issue, the government replied that there could be no comparison between the Muslims in Thrace and the Kurds in Turkey: since the 1923 Treaty of Lausanne, the Muslim minority in Greece had been officially recognized and measures had been adopted to ensure respect for their rights. The same was not true of the Kurds in Turkey. Greece was also a party to the ECHR. Muslims had never been denied the right to form cultural or religious associations or to use their own languages. Thus, according to the government, the Muslim minority in Greece was doing well, and wrongs were being corrected.⁵⁴



With regard to the Roma dwellings, the Greek government argued that in the absence of property titles or settlement permits, eviction was legal where there was a demand for public interest infrastructures. In the case in question, Roma families had been camping illegally on land near the Olympic stadium on which facilities were to be built. Before their eviction, agreement had been reached to relocate them to conventional housing in the same municipality and they had been compensated by the government. With regard to police treatment, the police treated Roma citizens in the same way as any other citizen and crime among the Roma was handled with the utmost sensitivity and in strict observance of the Constitution and the law.⁵⁵ Eventually, the HRC made two recommendations on the basis of the review sessions. First, it recommended that the Greek government should intensify its efforts to improve the situation of the Roma people in a manner that is respectful of their cultural identity, in particular, through the adoption of positive measures regarding housing, employment, education and social services, and second, that it should submit detailed information on the results achieved by public and private institutions responsible for the advancement and welfare of the Roma people.⁵⁶

In September 2008, the Independent Expert on Minorities visited Greece as part of the implementation of the mandate in Europe.⁵⁷ The Expert addressed the same issues as the experts of the HRC had, including the issue of minority ethnicity in relation to national unity and especially the fact that recognizing associations of Turkish and Macedonian national minorities does not

constitute threats to national unity. In this connection, she noted that obligations under international human rights law, including minority rights, have precedence over bilateral treaties and agreements. The Expert also urged Greece to comply fully with the judgments of the European Court of Human Rights. With regard to the government's efforts to develop positive policies for Roma integration through the coordination at the inter-ministerial level by the Minister for the Interior and the Integrated Action Programme on Roma, the Expert noted that there had been serious problems of implementation at the local level, particularly regarding living conditions and the segregation of Roma in certain public schools. She urged that the government should continue its efforts to ensure that national policies are not subverted or defied by local authorities that are responsive to local prejudices; it should, therefore, comply with European Court judgements with respect to the segregation of Roma children. Finally, the Expert urged the government to withdraw from the dispute over whether there is a Macedonian or a Turkish minority in Greece and focus on protecting the rights to self-identification, freedom of expression and freedom of association of those communities.

B. Political monitoring

With regard to the political review through the CHR and later the Council, Greece was reviewed most recently by the Council under the URP in 2011. During the review procedure, the Greek government was asked to answer questions regarding its policy on



Roma (Sweden, Switzerland, UK, the Netherlands, Finland), implementation of ECHR rulings on minority rights (Slovenia) as well as the treatment of Muslims in Western Thrace (Turkey).⁵⁸ In reply, the government explained with regard to the Roma that from 2002 to 2008, an Integrated Action Plan had as its priority segments housing rehabilitation and the provision of supplementary services in education, health, employment, culture and sports.⁵⁹ A new strategic framework was to be planned for Roma. Regarding the education of Roma children, further focused action has been taken to increase enrolment and school attendance and to remedy any instances of exclusion of Roma students.⁶⁰ On the right to vote of the Roma population, the government highlighted that Greek Roma are Greek citizens and thus enjoy by virtue of the Constitution all civil and political rights granted to Greek citizens, including electoral and voting rights.⁶¹ They participate in and form political parties. They vote and get elected, in particular in local government structures. For those not registered with the municipal registries, due to lack of certain documents, particular circulars of the Ministry of Interior were issued. Under the current strategic reform, remaining issues on civic status are further elaborated on the basis of recommendations made by independent authorities in Greece, the Ombudsman and the National Commission on Human Rights.

Furthermore, according to the government particular projects have been implemented under the Integrated Action Plan to address existing inequalities while accessing housing, employment and other social services.⁶² An important amount of

State mortgages had been allocated to Roma families for purchasing or constructing a house. This was extensively amended in 2006 in order to adopt social assessment criteria, considering the particular needs of the Roma population like for minors, persons with disabilities etc., to introduce participatory procedures at the local level as well as safeguards to the use of the loans. Following recent legal reform of the local authorities' responsibilities, local cooperation is ensured through the establishment of a department for social affairs at the regional level to facilitate housing rehabilitation issues for Roma at the local level. An important number of employment projects will be further elaborated under the new strategic framework for Roma employment.

With regard to the Muslim minority in Thrace, the government explained that it consists of three distinct groups whose members are of Turkish, Pomak and Roma origin. Each of these groups has its own spoken language, cultural traditions and heritage, which are fully respected by the Greek State. Persons belonging to the Muslim minority in Thrace are free to declare their origin, speak their language, exercise their religion and manifest their particular customs and traditions. According to the government, there is no denial of the ethnic identity of these groups.⁶³ Moreover, a 1991 law sets out a transparent procedure for the selection of the religious leaders of the Muslim minority, who are subsequently nominated by the State to the three Mufti Offices. The government was currently considering ways to meet more effectively the needs of the Muslim minority in this field through an open consultation



process respecting at the same time the international standards on freedom of religion. The right to education for persons belonging to the Muslim minority would be improved and the Government stood ready to improve the functioning of the existing minority schools and to accommodate the preference for the public educational system increasingly shown by the Muslim minority.

With regard to Sharia law, the government explained that it may be applied in Thrace for the members of the Muslim minority on certain matters of family and inheritance law to the extent that its rules are not in conflict with fundamental values of the Greek society and the Greek legal and constitutional order.⁶⁴ As a consequence, the three Muftis in Thrace are bestowed with judicial authority on these matters. Thus, members of the Muslim minority have the option to take their legal cases on these matters to the local Civil Courts. Greece has been and continues to be committed to strengthening the substantive review by domestic courts of the relevant Muftis' decisions as to their conformity with the Constitution and international human rights standards, and it is ready to consider and study possible readjustments.

As regards the Muslim Foundations, the government noted that a law was passed in 2008 that responded to a long-standing request of the Muslim minority to have the members of its three main management committees elected.⁶⁵ The need to renew by election the members of these three Muslim Waqf management committees remains pertinent. In conjunction with the selection of the muftis in Thrace, the Government was

engaged to find through amendments or possible adjustments the proper way to deal with this issue.

On the question regarding the general “minority protection” of persons who belong to groups that have not been recognized as minorities, the government noted that Greece emphasizes that it fully respects the human rights of individuals who declare that they belong to a certain group regardless of the fact that this group has not been officially recognized or officially granted a status of minority in Greece.⁶⁶

According to the Report of the Working Group, a high number of countries made specific recommendations to Greece with regard to minorities and Article 27.⁶⁷ Greece was recommended to uphold respect for and protection of the rights of all individuals to self-identification, freedom of expression and freedom of association, including for the members of ethnic, religious and linguistic groups that are not officially recognized as minorities (Slovenia); to continue its work for the realization of human rights of the Roma population in the country and to focus on implementation of adopted strategies at a local level as well as on countering discrimination by private actors (Sweden); to take measures to provide Roma with increased opportunities for education and employment (United States); to accelerate the process for the building of a mosque in Votanikos, Athens, without further delay (Turkey); to collect disaggregated data on the dissemination of hate speech against minorities (Egypt); to consider opening of one of the historical mosques in Thessaloniki, where significant number of Muslim



population live (Turkey); to be more flexible on the preconditions set for minaret construction (Turkey); to execute the judgments of the European Court of Human Rights regarding the applications of the Turkish Union of Xanthi, the Cultural Association of Turkish Women of Rodopi and the Evros Minority Youth Association (Turkey);

In its response to the recommendations,⁶⁸ the government has not agreed to take measures on equal rights for minority citizens such as the Roma, particularly the right to vote (Australia); to take necessary steps to ensure the election of the muftis by the Turkish Muslim Minority and repeal the relevant articles of the Law No. 3536 regarding the appointment of imams, which the minority has severely opposed (Turkey); to revise the relevant legislation concerning the Waqfs in consultation with the minority with a view to enabling the minority to directly control and to use its own Waqf properties, and to put an end to misuse and expropriation of Waqf properties (Turkey, 85,5); to initiate procedures for the opening of Turkish-language kindergartens for minority children in Komotini and Xanthi (Turkey, 85,6);

To sum up, like France, Greece is actually subject to scrutiny with regard to minority protection, and the government has engaged in dialogue regarding the issues. UN standards on minority rights are applicable in Greece through the country's membership of the UN and its participation in the UN Declaration as well as other UN human rights instruments. The monitoring procedures under the HRC, the Independent Expert and the Human Rights

Council have put Greece under pressure to answer numerous questions regarding minority protection. Moreover, European states have been particularly keen to hold Greece to its legal and political obligations, not least its obligations under the case law of the ECHR.

VI. CONCLUSIONS

The questions posed at the beginning of this chapter as to whether the UN system can step in with regard to monitoring those countries in Europe that have opted not to be part of the European minority rights regime is partially answered positively. The Independent Expert has visited both France and Greece, and both countries have co-operated with the Expert in this regard. Vital minority issues were addressed, including issues that fall under the European regime. Unfortunately, the Expert was not able to visit Belarus because the government has not co-operated with the UN on human rights since 1997. However, other experts, such as the Special Rapporteur on human rights in Belarus have reported on the situation in Belarus from neighboring countries. This does not, however, replace the specific attention to minority issues that the Expert and now the Special Rapporteur would apply.

Specific attention to minority protection has been taken by the HRC with reference to Article 27 of the ICCPR. With regard to all three countries, the HRC has been able to enter into dialogue with the governments on minority issues. Although Belarus stopped the dialogue in 1997, France and Greece have kept an active dialogue with



the HRC. Even though France has excluded its responsibility with regard to Article 27, the dialogue has addressed minority issues and references to existing and new non-discrimination measures as well as to reporting and petition measures for minorities and immigrants,

At the political level, all three countries have been subject to both CHR scrutiny and later the Council's UPR. The latter has specifically engaged the countries in issues of minority protection and required them to react to recommendations. Moreover, many European countries have been at the forefront of the scrutiny through their recommendations in the Council, thus partially filling the void created by the

inability of the European minority rights regime to conduct inter-state peer review in these three countries. However, not all European countries participate in keeping up the pressure. More importantly, the UPR does not replace the scrutiny to which the European regime would subject the countries because the 'naming and shaming' system of the Council has limited effect compared to the legally binding process of the FCNM and the ECHR. Nevertheless, this Working Paper has shown that the UN system of minority monitoring does engage where the European minority rights regime is unable to reach. And the unwilling are not as unwilling as one might suspect.



Endnotes

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- 8 Henrard, *op. cit.* note 7, at 193.
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