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## **Recognition, Non-recognition, and Misrecognition of Minority Communities.**

### **What Lessons Can Be Drawn from a Comparison between European and Central Asian Approaches?**

Sergiusz Bober and Aziz Berdiqulov

ECMI RESEARCH PAPER #124

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# Recognition, Non-recognition, and Misrecognition of Minority Communities. What Lessons Can Be Drawn from a Comparison between European and Central Asian Approaches?

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*This Research Paper focuses on practices concerning recognition and non-recognition of minority communities in six European and Central Asian countries (Denmark, Germany, Kazakhstan, Kyrgyzstan, Poland, and Tajikistan). Additionally, it also assesses the risk of misrecognition with regard to some of the minority communities resulting from these practices. The text is structured as a dual comparative analysis, first scrutinizing approaches to recognition within two macro-regions, and afterwards confronting them in order to identify similarities and discrepancies. This results in the identification of two “cultures” of recognition: a “strong” one in Europe and a “weak” one in Central Asia, with their characteristics originating mainly from differences concerning social, political, and legal contexts. At the same time, some features are shared by both macro-regions: hierarchization of minority communities, general limited access to minority rights, and sometimes a severe risk of misrecognition. Moreover, the paper argues in favour of formal mechanisms of recognition, a wider scope of application of minority rights (especially in Europe), as well as the strengthening of minority rights frameworks in Central Asia.*

**Keywords: recognition; non-recognition; misrecognition; Denmark; Kazakhstan; Kyrgyzstan; Germany; Poland; Tajikistan**

**Sergiusz Bober and Aziz Berdiqulov**

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*Even though I may not have a definition of what constitutes a minority, I would dare to say that I know a minority when I see one. First of all, a minority is a group with linguistic, ethnic or cultural characteristics which distinguish it from the majority. Secondly, a minority is a group which usually not only seeks to maintain its identity but also tries to give stronger expression to that identity.*

— Max van der Stoel



*[E]ven in the best circumstances the position of a minority is uneasy (...).  
— Albert Hourani*

## 1. Introduction

The present paper<sup>1</sup> will focus on the issue of formal recognition mechanisms of minority communities<sup>2</sup> in both Europe and Central Asia, with particular attention paid to the cases of Denmark (interesting due to its bilateral approach to minority issues, coupled with a colonial legacy), Germany (minorities accommodated within a formally new state, created both due to border changes and reunification), Poland (an example of a post-communist framework for minority rights protection), Kazakhstan (the most economically advanced country of Central Asia, with a relatively complex framework of inter-ethnic governance), Kyrgyzstan (the country's relatively democratic political system and still fairly recent record of inter-ethnic clashes constitute a unique – within the region – context for internal debates concerning the coexistence of various groups), and Tajikistan (Tajikistan's society is a post-conflict one, challenged by the lasting legacy of a civil war and divisions impeding nation-building processes in an ethnically diverse population). As a result, a dual comparative analysis will be conducted, first by discussing approaches to recognition of minority communities within a given macro-region and subsequently by confronting previously identified macro-regional patterns. Therefore, the present considerations are focused upon answering the following main research questions:

- What is recognition/non-recognition/misrecognition of minority communities?
- How do European countries approach these issues in practice?
- How do Central Asian countries approach these issues in practice?
- What lessons (if any) can be drawn from the comparison of practices concerning the recognition of minority communities identified in both macro-regions?

Importantly, in the present paper the key analytical category, i.e. recognition (and categories linked to it: non-recognition and misrecognition) of minority communities, is perceived through the prism of the European legal doctrine and practice concerning that question, resulting from the introduction of comprehensive instruments of minority rights protection in mid-1990s. Consequently, first European, and later Central Asian approaches to recognition of minority communities will be discussed.<sup>3</sup> Due to the above-mentioned factor, the analysed macro-regions function in significantly different legal contexts. In Europe, minority rights are densely regulated at the level of international law, with accompanying monitoring cycles, and a multilateral approach to the implementation of standards. This is largely absent in Central Asia, however, it needs to be borne in mind that due to the Central Asian



countries' membership in the Organization for Security and Co-operation in Europe (OSCE), at least to a certain degree they remain in contact with standards of minority rights protection also applicable in Europe through, for example, thematic recommendations and guidelines of the OSCE High Commissioner on National Minorities. In the opinion of the present authors, this connection makes the present comparison more justified and less radical than it might appear at first sight.

## **2. Brief theoretical considerations: the nexus between recognition, non-recognition, and misrecognition of minority communities**

The issue of official recognition of minority communities constitutes perhaps one of the most intriguing topics in wider discussions concerning minority rights. The reason justifying such a statement is linked to the key aspect of minority rights protection, that is the scope of application of minority rights. In other words, the issue of recognition entails two fundamental questions: (1) Who is considered – usually by a given state's authorities - a minority community, i.e. who is recognized as a national or ethnic minority? (2) Which communities and their individual members (as a consequence of the aforementioned categorization) enjoy collective and individual minority rights?

It is important to remember that in the European system of minority rights protection, constructed primarily around normative standards codified in the Council of Europe's Framework Convention for the Protection of National Minorities (1995, hereinafter FCNM), both individual and communal aspects of these rights are conceptually linked through the stipulations of article 3:

1. 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.
2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Therefore, an individual choice concerning one's identity (which, on the other hand, is not completely sealed off from objective criteria; see Explanatory report to the FCNM) and thus belonging to a national minority should at least in theory create a situation in which such a person (or a community of persons) enjoys rights and freedoms enshrined in the FCNM.

Crucially, the FCNM does not contain a definition of the term national minority, due to recurring disagreements during the Convention's preparatory phase, eliminating a possibility of reaching a consensus on that issue (Craig, pp. 14-15). As a consequence, it was left to state parties to decide which



minorities should be protected under the Convention within their jurisdictions (*ibid.*). According to some observers of the implementation of the FCNM in individual states, such a wide margin of appreciation in fact constituted an invitation to potentially arbitrary decisions concerning the scope of application of the Convention and resulted in discriminatory treatment of some minorities (in other words, situations in which certain acts of self-identification legally weigh more than other declarations of that kind). As Gudmundur Alfredsson pointed out (2000, p. 296),

The necessary elements of the definition of the term ‘minority’ are known and largely accepted: objective characteristics, self-identification and long association (one or two generations) with the country or territory concerned. The existence of a minority is also a question of fact related to the definition elements, not a question of law as expressed in decrees or acts of governmental recognition. States should therefore not be able, by way of unilateral declarations or reservations which seem to go against the very object and purpose of the exercise, to withhold protection by denying the existence of a minority through the use of different labels or through additional criteria (such as citizenship when a group otherwise qualifies for protection, including the time element of the definition).

Other authors, in turn, strongly supported a certain ambiguity built into the FCNM, as reflecting the very nature of that legal instrument. For instance, according to Frank Steketee (2001, p. 4),

[T]he use of the notion of a framework makes clear that this instrument does not contain a blueprint, or unique solutions, for settling minority issues. This is based on the recognition that the situation in member States is very diverse, demographically, historically, economically and socially and that it is not possible or even desirable to find ‘one size fits all’ answers to these very complex questions. The identification of common principles and objectives in programmatic provisions, worded in the form of state-obligations (and not as individual justiciable rights) is a logical approach in this context.

The FCNM’s flexibility concerning the scope of its application is considered positive also in one of the most recent comprehensive assessments of that instrument, as in the opinion of Stéphanie Marsal and Francesco Palermo (2018, p. 92) the lack of definition of the notion of national minority created a possibility of adapting the treaty to specific circumstances of historical, socio-economic and demographic natures prevailing in state parties. Nevertheless, these authors are also aware of a potential risk of arbitrariness and unjustified distinctions (*ibid.*, p. 99).

Importantly, the Advisory Committee on the Framework Convention for the Protection of National Minorities (an expert body evaluating the implementation of the Convention in state parties; hereinafter ACFC) is clearly aware of problematic issues created by the above-mentioned margin of appreciation and states’ practices aiming to define the category of national minority (and similar) often leading to



narrow perceptions of it. In response, it consistently argues that formal recognition of minority communities is a requirement frequently leading to exclusionary practices, whilst encouraging a flexible approach which should result in a broad scope of application of the Convention (Council of Europe 2016, pp. 12-13, paras. 27-28). It might be argued that the ACFC's intention is to avoid situations which Charles Taylor classified as cases of nonrecognition or misrecognition and the dire consequences they at times entail (1994, p. 25):

The thesis is that our identity is partly shaped by recognition or its absence, often by the misrecognition of others, and so a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being.

Consequently, by projecting the dilemmas accompanying recognition of minority communities on the six cases scrutinized further in the text, the authors also aim – besides addressing the central issue of states' practices concerning recognition/non-recognition as well as reasons behind the former and the latter – to answer the following question: to what extent is the risk of misrecognition avoided within a given national system of minority rights protection?

### **3. Recognition of minority communities in Europe: three examples**

#### **3.1 Denmark**

##### **3.1.1 Recognition of minority communities**

When it comes to Denmark's position on the issue of recognition of minority communities, and thus of the scope of application of the FCNM, since Denmark's completion of the ratification procedure it remains clear that, according to the accompanying Declaration, "the Convention shall apply to the German minority in South Jutland of the Kingdom of Denmark" (Denmark. Declaration contained...). The first State Report submitted by Denmark in 1999 additionally explained that the status of the German minority in Denmark is a direct consequence of the so-called Copenhagen-Bonn Declarations signed in 1955, as both documents constituted a legal framework for the protection of rights of both the Danish minority in Germany and the German minority in Denmark. In the context of article 3 of the FCNM it is important to stress that, as the Declarations stipulate, it is free to profess one's loyalty to the Danish or German people and the Danish or German culture, thus granting individuals the right to a free self-identification. Such professions of loyalty cannot be verified or contested by any official authority (Report submitted by Denmark, p. 40). It needs to be added that besides legal implications of the Declarations resulting in a set of rights enjoyed by members of national minorities on both sides of



the Danish-German border, they also have to be considered as tools leading to the normalization of the Danish-German bilateral relations, which opened the path towards ensuing reconciliation and close cooperation within wider European and Transatlantic structures.

In the most recent of Denmark's State Reports concerning the implementation of the FCNM (Fifth monitoring cycle; date of reception: 2 April 2019) the view concerning the unique status of the German national minority is reiterated, this time by pointing to the perception of the notion of national minority by the Danish government (importantly, there is no definition of national minority in Danish law): "[i]t is a minority population group which above all has historical, long-term and lasting links to the country in question". According to the authorities, such criteria are fulfilled only by the German minority in South Jutland (Fifth report submitted by Denmark, p. 4). Interestingly, the same paragraph contrasts such perception of national minority with groups not belonging to that category, namely "refugee and immigrant groups".

Already in the first monitoring cycle, the ACFC critically assessed that narrow approach. For instance, even with regard to the recognized German minority it argued that a territorial limitation of protection mentioned in the Declaration is not in line with the spirit of the FCNM, as "[a]lthough the Framework Convention attaches importance in a number of its provisions to the criterion of traditional inhabitation of certain areas for protection, the majority of its provisions are designed to apply throughout the territory of the state concerned (...)" (Opinion on Denmark, p. 6., para 17). A territorial aspect was also mentioned in the context of legal situation of Greenlanders and Faroese residing in Denmark. As the Danish government explained, due to special autonomous arrangements concerning Faroe Islands and Greenland within the Kingdom of Denmark (consisting of Denmark proper and the two aforementioned autonomous constituent countries located in the northern part of the Atlantic Ocean), members of both groups were not considered national minorities in mainland Denmark. According to the ACFC, such special arrangements do not create an either/or dilemma when considered in combination with the FCNM, as different instruments of protection are not mutually exclusive (*ibid.*, pp. 5-6, paras. 16-17). In addition to that, the ACFC remarked that both communities, similarly to the German minority, are characterized by deep historical ties with Denmark proper, thus further strengthening the case for the clarification of their status (*ibid.*). The argument of "historic presence" was also used with reference to Roma community in Denmark, also excluded from protection under the FCNM (*ibid.*, p. 6, para. 22).

The ensuing four monitoring cycles affected the above-sketched picture in the following way: The German minority remains the only recognized national minority in Denmark. The territorial scope of its protection continues to be limited to South Jutland. The ACFC accepted the position expressed by the representatives of the German minority that widening the geographic scope might not be necessary, while at the same time noticing that, for example, increased mobility could create challenges justifying a future reconsideration of that position (Second opinion on Denmark, p. 10, paras. 39-40).



While the status of the Faroese and Greenlanders residing in Denmark remains unchanged (according to the Danish authorities also because of the lack of interest in recognition explicitly expressed by the Faroese and Greenlandic governments [Third report submitted by Denmark, p. 17]), the ACFC in its Fourth Opinion on Denmark praised the readiness of Denmark's authorities to provide language teaching to these communities, on condition that a certain number of students are interested in such a possibility. That position is additionally commended as being in line with the flexible approach to the implementation of the FCNM generally recommended by the ACFC to states parties, emphasizing – among others – that a formal recognition of a given community as a national minority is not necessary in order to cover it by its regulations (Fourth opinion on Denmark, p. 7, para. 18). Interestingly, in its Fifth Report the Danish government provides a concise overview of its activities concerning both Faroese and Greenlanders, even though it simultaneously states that “it is not part of Denmark's obligations under the framework convention (minuscules as in the original - SB)” (p. 11). The ACFC, on the other hand, in its Fifth Opinion on Denmark emphasizes that while a consensus still has not been reached within the community of Greenlanders residing in Denmark with regard to its status as a recognized minority, certain sectors of the community expressed clear interest in “the possible de facto application of some of the provisions of the Framework Convention to the Greenlandic communities and persons living in Denmark.” In this context, a flexible approach to the provisions of FCNM was recommended again by the ACFC (Fifth opinion on Denmark, p. 7, paras. 33 and 35).<sup>4</sup>

Similarly to the three cases analysed above, the formal status of the Roma community in Denmark has not changed since the first monitoring cycle. This state of affairs is justified by the Danish authorities primarily by “the lack of continuous historical presence in Denmark of persons with a Roma background” (Fourth report submitted by Denmark, p. 10), as historical materials provided by the association of the Danish Roma “Romano” were not sufficiently convincing to prove otherwise (Third Report submitted by Denmark, p. 17-18). In the fifth monitoring cycle, the ACFC noted that Roma organizations were no longer actively seeking formal recognition, while in general the social climate surrounding both Roma coming to Denmark from other countries, as well as those residing there for a longer time, has significantly deteriorated. Among reasons explaining that negative trend, the ACFC mentions laws targeting camping in public places (with dramatic overrepresentation of foreigners in the overall number of arrested persons), and a negative image of the community in the media. This situation leads to members of the Roma community hiding their ethnic origins and a decreasing level of civil engagement (Fifth opinion on Denmark, p. 12-13, paras. 77-83).

### 3.1.2 Summary (1)

The approach of the Danish authorities to the scope of application of the FCNM remains unchanged since the first monitoring cycle, meaning the list of recognized minorities in Denmark is still limited to just one group, that is the German minority in South Jutland. This state of affairs, together with the



uncontested right to free self-identification and complex institutional arrangements concerning the Kingdom of Denmark, leads to a situation where three different types of minority communities can be identified: (1) a recognized national minority enjoying basically a full scope of minority rights, (2) non-recognized communities with acknowledged identity linked to historical circumstances and autonomy arrangements, enjoying certain rights similar to minority rights (e.g. Greenlanders in Denmark proper); (3) non-recognized communities with acknowledged identity but without access to minority rights. With regard to the ultimate category, it primarily affects Roma. In spite of the community's efforts, it is considered by the authorities to not have sufficient historical ties to Denmark to be considered a national minority (interestingly, Roma are recognized as a national minority in Denmark's most immediate neighbouring countries; Germany, Norway and Sweden). This situation, coupled with both negative social perceptions and media discourse concerning Roma, leaves this community in a particularly vulnerable position. Such tendencies cannot be balanced by visibility and appreciation resulting from a formal recognition; therefore, a risk of misrecognition has to be assessed as critical. What is more, situations of denial concerning the identity of individual Roma have been already observed. Such unwillingness to openly use the right to free self-identification, in fact puts a question mark on the future of Roma community in Denmark.

## 3.2 Germany

### 3.1.1 Recognition of minority communities

The Federal Government of Germany considers as recognized minority communities which fulfil the following five criteria:

- their members are German citizens;
- they possess clear identity markers such as language, culture and history, which distinguish them from the majority group (i.e. ethnic Germans);
- they intend to maintain the aforementioned identity;
- they reside in Germany over a prolonged period of time (in practical terms, this longevity is measured in centuries rather than in decades);
- when it comes to the spatial aspect of their presence in Germany, they live in their traditional settlement areas.

As a result, four communities are recognized as national minorities in Germany: the Danish minority, the Frisian ethnic group, the German Sinti and Roma and the Sorbian people. With regard to the penultimate among these groups, the exception was made, as it is dispersed all over Germany (Federal Ministry of the Interior, p. 10). The list of national minorities recognized by Germany, as well as the necessity of a definition clarifying understanding of that category under the FCNM was signalled in the declaration accompanying the instrument of ratification:



The Framework Convention contains no definition of the notion of national minorities. It is therefore up to the individual Contracting Parties to determine the groups to which it shall apply after ratification. National Minorities in the Federal Republic of Germany are the Danes of German citizenship and the members of the Sorbian people with German citizenship. The Framework Convention will also be applied to members of the ethnic groups traditionally resident in Germany, the Frisians of German citizenship and the Sinti and Roma of German citizenship. (Germany. Declaration contained...).

It needs to be added that in the German legal context the right to free self-identification can be derived from article 2 of the Federal constitution. In addition, it is mentioned *expressis verbis* in federal states' legislation, e.g. in Saxony and Schleswig-Holstein (Report submitted by Germany, pp. 18-19).

The narrow approach to the scope of application of the FCNM presented by the German authorities has been criticized by the ACFC since the very first monitoring cycle concerning the implementation of the Convention. In its first opinion, the ACFC foremostly highlighted the issue of citizenship criterion in the aforementioned definition of a national minority and its problematic nature in the context of substantial numbers of non-citizens residing in Germany, who might belong to communities potentially interested in obtaining the status of recognized national minorities (the most numerous groups: citizens of Turkey, Federal Republic of Yugoslavia, Poland and Croatia). At the same time, the lack of recognition of groups historically present in Germany and composed of German nationals, Poles for instance, was also mentioned. In the face of such circumstances, the ACFC encouraged German authorities to consider a flexible approach to the FCNM's scope of application with regard to the above-mentioned communities, by suggesting an article-by-article approach after previous awareness raising actions and consultations with groups concerned (Opinion on Germany, pp. 6-7, paras. 17-18).

In the Second Opinion of the ACFC on Germany similar issues to those discussed in the preceding monitoring cycle were addressed, and a flexible approach to the scope of application of the FCNM recommended anew. This time, the article-by-article approach was mentioned with reference to, among others, people of Turkish origin, "who (...) could benefit from certain rights covered by the Framework Convention." (Second Opinion on Germany, p. 8, para. 26). Importantly, the ACFC replied to the concerns raised by the German government with regard to the suggested article-by-article approach as potentially leading to unequal treatment of different groups. In the view of the ACFC, the different circumstances faced by the four recognized minorities in Germany resulted in differentiated treatment of them by the authorities (i.e. adjusted to their specific needs), which in itself did not constitute a violation of the principle of equality articulated in the FCNM (*ibid.*, p. 8, para. 27). As a result, an article-by-article approach to new groups which might be protected under the FCNM would not violate that principle either.



In respect of the three following monitoring cycles (the last of them is not completed as of yet), the issue of the status of Poles in Germany is a recurrent one, with the ACFC arguing that the presence of this community in Germany is a result of migration dating back to the 19th century, therefore a historical longevity cannot be contested (Third Opinion on Germany, p. 10; Fourth Opinion on Germany, p. 7). At the same time, the ACFC notes that a potential recognition of Polish national minority in Germany might be discussed bilaterally, during periodical Roundtables assessing the implementation of the 1991 Treaty on Good Neighbourly Relations and Friendly Co-operation between Poland and Germany, while acknowledging the financial support for initiatives concerning Polish language and culture provided by the German authorities (Third Opinion on Germany, p. 11; Fourth Opinion on Germany, *ibid.*). In the Fifth Report submitted by Germany, however, further formal and historical hindrances to the recognition of Poles are mentioned: the absence of historical settlement areas resulting from the border changes after World War II, as well as the lack of continuity between the social reality of the Federal Republic of Germany and its immediate predecessors where Poles belonged to recognized minority communities (Fifth Report submitted by Germany, p. 132-133). In addition, and with reference to other communities reflecting a “growing cultural diversity of German society”, the above-mentioned article-by-article approach is encouraged once more, without a need to formally recognize further communities as national minorities (Fourth Opinion on Germany, p. 8, para. 18).

### 3.2.2 Summary (2)

In the case of Germany, the link between the unchallenged right to free self-identification and recognition as a national minority is definitely not an automatic one, as – for example – the unchanging status of the Polish community proves. It remains so, in spite of the repeated calls for a flexible approach to the scope of application of the FCNM voiced by the ACFC. At the same time, Polish identity and its expressions are to a certain degree supported by German authorities at different governmental levels. On the one hand, it might be praised as a display of flexibility, on the other though, such support is of smaller scale and less visible than the one enjoyed by recognized minority communities, therefore a hierarchical approach to minorities can be observed. Nevertheless, due to such relatively positive practices, the risk of misrecognition can be considered as significantly reduced, perhaps even entirely eliminated. It might be even justified to discuss indirect (or weak) recognition in this case. At the same time, the unresolved issue of formal recognition of the Polish community in Germany is a factor straining bilateral relations, as – in the view of Poland’s authorities – the recognized status of the German minority in Poland is not reciprocated. Importantly, a number of other minority communities cannot enjoy neither full recognition, nor support similar to that received by Polish community and resulting from – among others – bilateral consultations. In that sense, their right to free self-identification results in very limited legal and institutional advantages. This certainly constitutes a risk of misrecognition, as such communities are left without a symbolic acceptance stemming from intense interactions with authorities at different governmental levels and significant financial support

concerning their activities, while their media image might be less positive than that of formally recognized groups.

### 3.3 Poland

#### 3.3.1 Recognition of minority communities

Poland's Act on National and Ethnic Minorities and on the Regional Language (article 2. 1.) contains both definitions of national- and ethnic minority, as well as a clearly stated right to free self-identification (article 4). With regard to the first type of defined groups, it is a community of persons holding Polish citizenship, characterized by the following features (objective criteria):

- it is numerically smaller than the remaining population of the country;
- it is significantly different from the remaining citizens in terms of language, culture and tradition;
- it is willing to preserve its aforementioned language, culture and tradition;
- it is aware of the historical existence of its national community and is focused upon its protection and manifestation;
- its ancestors have been present within the contemporary boundaries of Poland for at least one hundred years;
- it identifies with a nation organized in its own state.

Paragraph 2 of the same article enumerates nine communities recognized as national minorities in Poland: Armenian, Belarusian, Czech, German, Jewish, Lithuanian, Russian, Slovak and Ukrainian. When it comes to the second of the aforementioned categories, i.e. ethnic minority, it is the sixth objective criterion which distinguishes it from a national minority, as the identification with a nation organized in its own state is not required. Consequently, four communities lacking a kin state are recognized as ethnic minorities in Poland: Karaim, Lemko, Roma and Tatar. Importantly, the same scope of protection is awarded to both types of minority communities. It is interesting to note that the discussed objective criteria conditioning the recognition of a given community as a national or ethnic minority are both more numerous and complex than those expressed in the declaration presented by Poland during the FCNM ratification process in which, after the initial statement pointing to the lack of the definition of the notion of national minority in the Convention, that term was defined as encompassing communities residing within the territory of Poland and whose members hold Poland's citizenship (Poland. Declaration contained...). This rigid approach to the issue of recognition of minority communities is further strengthened by the absence, in the above-mentioned Law, of a procedure indicating how a given community aspiring to be recognized as either a national or ethnic minority should proceed in order to achieve that goal. As a result, the only available path towards the expansion of the two closed catalogues of recognized minority communities leads through the



parliamentary amendment of that Law, which in most of the cases might be beyond the organizational and/or political capacities of communities pursuing recognition.

The above-sketched lack of flexibility of Poland's legislator towards recognition of national/ethnic minorities was met with criticism by the ACFC. For instance, in its third opinion on Poland, first the ACFC refers to previous monitoring cycles and its recommendation encouraging Polish authorities to adopt a "flexible and open approach to the scope of application of the Framework Convention", and – as a consequence - to consider the possibility of extending legal protection to communities not listed in the Act on National and Ethnic Minorities and on the Regional Language (Third Opinion on Poland, p. 9, para. 22). In the following paragraph the ACFC notes that the criticized approach has not changed. Crucially, further in the text a practical implication of the rigid approach of Polish authorities to the scope of application of the FCNM is mentioned: in the 2011 national census, almost 850,000 persons declared Silesian identity (primarily in Opole and Silesian Voivodeships located in the southern part of the country bordering Czech Republic; until the aftermath of the World War II substantial parts of these regions belonged to Germany), while for almost 380,000 of these respondents it was the only identity declared (*ibid.*, para. 24).

In numerical terms, the results of the Census make Silesians by far the largest among Poland's minority communities. At the same time however, it is not recognized as such and thus it is not protected by any laws. Consequently, it can be argued that in the Polish legal context the right to free self-identification for certain minority communities constitutes a blind alley, as even in the case of a significant number of individuals self-identifying as belonging to such a community, it does not entail any changes concerning their/its legal status. This particular issue was also highlighted by the ACFC in its Fourth opinion on Poland (p. 9, para 26). Therefore, the connection between minority community as a social fact and its legal dimension at least in certain cases is severed. Importantly, and in line with the already mentioned Thematic Commentary No. 4, in the same opinion concerning Poland the ACFC again reiterated the view that an open and inclusive approach should guide the authorities' attitude towards minority rights protection (*ibid.*). Yet already in the Comments of the Government of Poland on the Third Opinion of the ACFC (p. 16, point 26), it was explicitly stressed that:

The list of national and ethnic minorities living in Poland is determined in the Act of 6 January 2005 on National and Ethnic Minorities and Regional Language. As it follows from the above, the issues relating to other groups of Polish citizens or people who do not have Polish citizenship cannot be included in Poland within the scope of use of the *Framework Convention for the Protection of National Minorities* [italics in the original].

It is clear then that a flexible route suggested by the ACFC is rejected by Poland's government and consequently Silesians are considered as neither a national nor an ethnic minority. At the same time,



the government repeatedly emphasized in the Comments (pp. 16-17) its willingness to conduct “a dialogue with people interested in cultivating, within the existing legal order, own regional Silesian identity (...)”. A similar position is expressed with regard to Silesian “dialect” (in the Comments it is described as a “dialect of Polish language”). The same level of scepticism is clearly visible in the fourth monitoring cycle. In response to the findings of the ACFC, Poland’s government maintains that “(...) the language, culture and tradition of Silesians are not separate from the Polish language, culture and tradition but rather form ‘an integral part thereof’ and that Silesian is a variant of the Polish language” (Comments of the government of Poland on the Fourth Opinion of the ACFC, p. 10).

It has to be acknowledged that central, regional and local authorities at times support certain initiatives concerning the history of Silesia or the Silesian heritage, which at least in some cases are of considerable scale (e.g. the financing of the Silesian Institute in Opole or the Silesian Museum in Katowice; see Third Opinion on Poland, p. 15, para. 60). Consequently, it can be claimed that issues pertaining to a broadly conceptualized Silesian identity are not in its entirety overlooked by the Polish state. On the other hand, it is obvious that the status of Silesians, access to funding, possibilities of political participation, media presence etc. are incomparable to those enjoyed by the officially recognized national and ethnic minorities. What further complicates this issue is the politicisation of the Silesian question, a phenomenon noticed by the ACFC as well (Fourth opinion on Poland, pp. 9-10, para. 27).

### 3.3.2 Summary (3)

Due to the above-mentioned actions of Poland’s central, regional and local authorities vis-à-vis the issue of Silesian identity, to a certain degree it might be justified to describe the status of individual Silesians and of the Silesian community as a case of, at most, indirect and/or weak recognition. At the same time, because of the existence in Polish law of formal criteria which need to be met in order to achieve recognition, such nomenclature might be legally confusing and not entirely corresponding with reality. As a result, it is perhaps more secure to qualify the position of Polish authorities towards persons self-identifying as Silesians as a mere acknowledgment of their right to free self-identification and (regional) identity, which constitutes a differential treatment of various minority communities. In addition, Poland’s case illustrates – again - a certain weakness of mechanisms monitoring the implementation of the FCNM, as the ACFC’s calls for a flexible approach to the Convention’s scope of application remain unanswered. As for misrecognition, the practices briefly analysed above suggest that the issue is not entirely off the table; even if the thesis concerning the above-mentioned indirect recognition is accepted, it is still taking place in a discursive context characterized by the authorities’ firm position emphasizing that both culturally and linguistically Silesians simply make part of a wider Polish nation. Logically then, persons self-identifying as Silesians are mistaken in their choice, as a separate Silesian identity – according to the authorities - does not exist. It is needless to say that such a situation may lead to problematic consequences both on individual, as well as group levels.



## 4. Recognition of minority communities in Central Asia: three examples

### 4.1 Introductory remarks

Issues and challenges related to identity, majority-minority interplay, and nation-building can be seen as the continuation of the processes commenced at the dawn of the USSR. As Slezkine puts it, nation-building in the Soviet Union was a “successful attempt at a state-sponsored conflation of language, ‘culture’, territory and quota-fed bureaucracy” (Slezkine, 1999, p. 414). Although the process of “*korenizatsiya*” promoted participation of local groups in decision-making (mostly dominated by Russians up to that point), ethnic minorities living in the Soviet Republics were often overlooked. While “titular” nations benefited the most, minority communities living in the same republics did not have many resources for political representation and institutionalization. This continued after the collapse of the USSR, where nation-building projects (especially in Central Asia) were almost exclusively built around majorities. At the same time, ethnic minority organizations, Assemblies of Peoples (which will be discussed further) and councils were – respectively – allowed to function or set up by governments.

In 1994-1995, Kazakhstan, Kyrgyzstan, and Tajikistan (along with other post-Soviet states) signed the Convention on the Guarantee of Rights of Persons Belonging to National Minorities of the Commonwealth of Independent States (the Convention), which is based on the UN and OSCE minority protection standards. The Convention defines national minorities as “persons permanently living on the territory of a state party, having the citizenship of a state party and differing from the majority of the population by ethnic origins, language, culture, religion or traditions” (the Convention, Article 1). Further, the Convention underlines that “belonging to a national minority is a matter of individual choice and should not lead to any unfavourable consequences for an individual” (the Convention, article 2). Thus, the Convention follows international standards concerning the right to free self-identification, manifested in the FCNM and the OSCE documents, among others. As it was mentioned in the analysis of the European cases, the principle of free self-identification is conceptually linked to the issue of formal recognition of minority communities. At the same time, the references to the latter are absent from the text of the Convention. Importantly, unlike in the European model stemming from the FCNM, the Convention does not define any monitoring mechanisms to trace the implementation of its principles within national legislations of state parties.

The Convention and its definition of minorities will be used as a background for minority rights protection analysis for the purpose of this part of the paper (Constitution of Kazakhstan, article 4, p. 3; Constitution of Kyrgyzstan, article 6, p. 3; Constitution of Tajikistan, article 10). In all three countries, the definition of national/ethnic minority is absent from national legislation.

In the Central Asian context, it is important to emphasize that the authorities’ attitude towards minority communities and potential enjoyment of minority rights by them can become an effective tool



mitigating tensions in multi-ethnic societies, such as those of Kazakhstan, Kyrgyzstan and Tajikistan. Conflicts and tensions based on ethnicity took place in all three countries, which indicates a need for recognition or at least a certain level of acknowledgement of minorities to prevent future tensions. As it was signalled above, the three countries in focus undergo a continuous process of nation-building, which dates back to the twilight of the Soviet Union. As a result, national identities became a central element of official rhetoric, strengthening and promoting the role of the so-called “titular nations” in consolidating societies and being a source of state-approved culture, traditions and history. Crucially, this needs to be balanced against the diversity of these societies.

In the following sections of the paper, we will attempt to analyse whether there are any formal procedures for the recognition of minority communities in Kazakhstan, Kyrgyzstan, and Tajikistan or, in the potential absence of these, whether any governmental lists of recognized minorities exist, similar to the ones discussed above with regard to the European examples. If not, then the question would be, what alternative solutions are offered to the minority communities? Within certain country contexts, the cases of particular communities will be scrutinized more closely, e.g. Pamiris in Tajikistan, also with reference to the issue of misrecognition.

## **4.2 Kazakhstan**

### **4.2.1 Population and minority communities**

Kazakhstan is one of the biggest states in the world and it borders Russia, Kyrgyzstan, Uzbekistan, Turkmenistan and China (Encyclopaedia Britannica, 2019). With around 18 million people in 2017, Kazakhstan, however, is not the biggest country in terms of population yet it is very diverse (World Bank, 2019).

Substantial communities of Germans, Finns, Koreans, Latvians, Lithuanians, Poles, and Tatars were deported to Kazakhstan up until the 1950s (Sciences Po, 2007). Particularly significant is the case of the Germans who were deported to Kazakhstan in the 1940s from the Volga German Autonomous Republic as the Soviet authorities feared they might collaborate with the Nazis. Other groups present in the country include Russians, Ukrainians, Uzbeks, and Uyghurs (National Population Census of the Kazakh Republic, 2011, p. 20). Crucially, after the collapse of the USSR, most of the Germans left and the community significantly dropped in numbers (World Directory of Minorities and Indigenous Peoples, 2019).

The Russian community, which in the 1990s was still nearly of the same size as the Kazakh, continues to be the biggest non-Kazakh group and amounts to 23.7 per cent of Kazakhstan’s population (National Census, p. 20). The majority of Russians came to Kazakhstan in the period of the 1930s to 1950s, along with Belarussians and Ukrainians during an industrialization programme and the Virgin Lands project. The Russian community grew rapidly in number, on several occasions becoming a majority in the



republic and fostering the widespread use of Russian language throughout the country (World Directory of Minorities and Indigenous Peoples, 2019).

Kazakhstan is also a home to an Uyghur community, which can be roughly divided into two categories. The first category is comprised of Uyghurs who are indigenous to the Kazakh territories, which were part of the Uyghur Empire. Uyghurs, who fled from persecutions and came from the Chinese province of Xinjiang, make up the second group. In Kazakhstan, Uyghurs actively campaign for freedoms of their peers in Xinjiang and the province's greater autonomy. As of recent, the Kazakh authorities have started challenging activities led by Uyghurs out of fear of antagonizing relations with China, which resulted in cases of forced returns of Uyghurs to China (World Directory of Minorities and Indigenous Peoples, 2019).

It is important to mention that, after the collapse of the Soviet Union the Government of Kazakhstan launched a repatriation programme "Oralman" ("Returnee"), aimed at bringing in ethnic Kazakhs living abroad, which resulted in around a million of Kazakhs settling in Kazakhstan since the 1990s (Radio Free Europe, 2015).

#### 4.2.2 Recognition of minority communities

In line with the Kazakh Constitution, individuals have the right to choose their national, religious, or a party affiliation and whether to declare these or not (article 19). In the rules regulating the issuing of passports and other identifying documents approved by the Government of Kazakhstan, it is provided that mentioning one's national identity in documents is based on the individual's decision (article 3, passport law). Therefore, it allows to conclude that there is no government pressure for forced identification.

In the last national census of 2009, 125 national communities are mentioned (p. 4). This relatively big number of ethnic communities can similarly allow an assumption that the government does not prevent persons from using the right to freely self-identify, at least formally.

Kazakhstan is among a few countries in Central Asia, which established a specialized body dealing with minority-related issues. The Assembly of People of Kazakhstan (previously the Assembly of Peoples of Kazakhstan) has functioned since 1995. In 2007, the Assembly became a constitutional body with a right to elect 9 MPs to the Parliament out of its members (Konrad Adenauer Stiftung, 2018, pp. 17-18). Currently, the Assembly includes more than 30 cultural organizations, which represent various national communities. The biggest communities according to the census are represented in the Assembly, thus totalling 14 associations: Armenians, Azerbaijanis, Chechens and Ingush, Germans, Greeks, Jews, Koreans, Kurds, Russians, Slavs and Cossacks, Tatars and Bashkirs, Turks, Uzbeks, Ukrainians, and Uyghurs (Assembly of People of Kazakhstan, 2020). The Assembly has a relatively complex structure,



whereby in addition to the associations of minorities, it also includes a scientific council, a club of journalists, as well as an interethnic and interconfessional centre under the President of Kazakhstan. The now former President Nursultan Nazarbaev has the right to be the lifelong Chairman of the Assembly. This, alongside the constitutional status of the Assembly and its right to elect MPs to the national Parliament, indicates a high status of the body in the hierarchy of state structures.

The procedure of becoming a member of the Assembly entails nominations by various bodies of the country. Eligible candidates can be nominated for membership “given their authority in society” and the President of Kazakhstan either approves or rejects member candidates as well as introduces new members into the Assembly (The Law on the Assembly of People of Kazakhstan, article 15, p. 1-3). It is not defined what is meant by “authority”, allowing arbitrary decisions concerning members of the Assembly.

Building a Kazakh civic identity is recognised as one of the aims of the Assembly, however, in the context of the “consolidating role of the Kazakh people” (The Law on the Assembly of People of Kazakhstan, article 3). Supporting Kazakh diasporas living abroad also ranks among the main activities of the Assembly (The Law on the Assembly of People of Kazakhstan, article 6, p. 10). These two provisions might hint towards Kazakh Government’s stance on the Kazakh community as a somewhat superior in the country. However, the ethnic clashes of February 2020 question the effectiveness of country’s promoted policies of ethnic tolerance, civic identity, and multiculturalism. The unrests unfolded after an incident involving several Dungans (also known as Hui, a Mandarin-speaking Muslim community) and Kazakh policemen, which then led to a rampage, in which 11 people died, around 100 were injured, multiple houses of Dungans were burnt down, and several thousand Dungans fled to nearby Kyrgyzstan (Aljazeera, 2020). Dungans and Kazakhs are living in neighbouring but isolated villages and reportedly never had everyday interactions with each other (Radio Azattyk, 2020). Such conflict is a rare occurrence for Kazakhstan, where no major tensions or unrests between different communities have taken place. Nevertheless, it clearly indicates that there is a need for awareness raising, better integration policies, and specifically targeted initiatives for different parts of the country. Building a civic identity can seem fitting in Almaty or Nur-Sultan, however the situation in remote and rural areas, where different communities often live next to each other and barely interact, requires a different approach. Initiatives to affirm inter-ethnic communication and interaction can be effective tools to mitigate tension and prevent potential conflicts. Such initiatives are only possible if there is a mechanism for recognition or at least for some acknowledgment of a minority community, its distinct identity, and rights.

At the same time, we can infer that by setting up a specialized body for minority communities’ representation, the Kazakh Government recognizes their distinct identity and tries to accommodate them, even though only a few of the country’s minorities are included (e.g., Dungans are not part of the



Assembly of People, although according to the most recent national census of 2009 they are the 12<sup>th</sup> largest minority community). Minority communities, who are the Assembly's members, can in theory advocate for their rights and draw attention to their needs by putting issues of their concern on the highest political agenda – basically, enjoy possibilities to a certain degree similar to those formal recognition in the European context entails. However, some experts call into question the effectiveness of the Assembly's work and its capacities to formulate adequate policies on minority rights protection (Morozov, 2013).

In the Doctrine of National Unity (2010), a big emphasis is put on equal treatment and equal opportunities for all national communities living in the country, regardless of their ethnic and national origins (Chapter 1). Language is stressed as a part of communities' self-awareness and thus the preservation and development of language is listed among the most important responsibilities of the country (Chapter 3). At the same time, the Doctrine underlines the importance of learning and using Kazakh and calls it “a key factor of spiritual and national unity” (Chapter 3). The Law on Languages supports this idea by recognizing knowledge of Kazakh as “every citizen's duty” (article 4), while simultaneously to a certain degree relativizing that requirement by acknowledging that each citizen of Kazakhstan has a right to use their mother tongue and to choose a language of communication, upbringing, education and creativity. Moreover, in the areas of compact settlement of minorities, their languages can be used when conducting events (article 6). It has to be also kept in mind that the same law acknowledges Russian language as equally used with Kazakh in public organizations and bodies of local self-government (article 5). A similar balancing act is noticeable in the Law on Education of the Republic of Kazakhstan in which article 9.1. stipulates that all educational bodies must maintain knowledge of Kazakh as state language, as well as Russian and one foreign language, while the right to obtain education in mother tongue is also ensured (article 9.3). When it comes to the implementation of such regulations, it is of course crucial to sustain a balance between all languages taught, as requirements concerning the knowledge of Kazakh language might potentially isolate minority communities using predominantly other languages and limit career opportunities of their members, in particular within the public sector.

### 4.2.3 Summary (4)

Kazakhstan has neither a list of recognized minorities nor, as a logical consequence, any procedures allowing communities to pursue such a formal status. At the same time, a constitutional right to free self-identification results in numerous communities mentioned in national censuses. Importantly, we could not find reports illustrating cases when minorities were refused the right to mention their identity for the census or any other purpose. Additionally, the Assembly of People of Kazakhstan is set up exclusively to represent minorities on the state level and offers membership to some of the minority communities, thus recognizing their distinct identity. Linguistic and educational needs of minority



communities are acknowledged as well. All this, *toutes proportions gardées*, reminds one of a flexible approach to the scope of application of the FCNM recommended by the ACFC. At the same time, it needs to be borne in mind that in Kazakhstan this flexible approach takes place within a context characterized by authoritarianism and the absence of rule of law. What is more, Kazakhstan tries to shift from ethnicity-centred nation-building to building civic identity, while still emphasizing a leading role of the Kazakh community, which can be seen as a remnant of nation-building processes of the Soviet period designed around ethnic origins. All this might make it legitimate to argue that some of the minority groups are offered a recognition which can be qualified as indirect, however with certain links to legislation. The collective dimension of such groups' identity is not contested, while at the same time the overall legal and political context provokes an additional qualifier of "weak", thus illustrating the fragility of currently existing arrangements. It can be also argued that, given the context discussed above, in the case of Kazakhstan the overall risk of misrecognition is reduced, especially when compared with other Central Asian republics, however not entirely eliminated. As the clashes between Dungans and Kazakhs of February 2020 have shown, ethnic tensions and conflicts can take place in Kazakhstan, which is proud of its civic-centred nation-building. In the areas of minorities' settlements, awareness raising and mitigation initiatives are needed – especially if different communities do not interact with each other frequently. The added value of formal recognition in cases of potential or ongoing conflict would not only be in providing a clear mechanism for granting minority rights (among them, the expansion of the Assembly is of primary importance, in order to secure representation – even if imperfect - of different communities), but also in informing the general public about the existence of minority communities. Thanks to this, the state would acknowledge that it is aware of their distinct identity and culture, which in turn could potentially mitigate the risk of future conflicts and other negative aspects resulting from misrecognition.

## 4.3 Kyrgyzstan

### 4.3.1 Population and minority communities

Kyrgyzstan is territorially one of the smallest states in Central Asia. It borders Kazakhstan, China, Tajikistan and Uzbekistan. There are several enclaves within the Kyrgyz territory, populated by Tajiks and Uzbeks, and often unresets within these settlements lead to tensions between neighbouring countries. Kyrgyz are the biggest community (71 per cent), followed by Uzbeks (14 per cent) living mostly in Ferghana Valley in the south of the country. Overall, 91 national communities are mentioned under the census of 2009 with larger communities being Russians, Dungans, Uyghurs, Tajiks, Turks, Tatars, Kazakhs, Ukrainians, and Koreans (National Statistical Committee of the Republic of Kyrgyzstan, 2009).

Kyrgyzstan's recent history was marked by several turbulent events, including revolutions and instances of ethnic clashes. One of the major confrontations between Kyrgyz and Uzbek communities took place



in 1990 in the southern city of Osh, caused by conflicts over land distribution and resulting in around 300 victims (World Directory of Minorities and Indigenous Peoples, 2018). Tension between these two communities has remained high since then and reached its peak in 2010, when a fight between young Kyrgyz and Uzbek men led to major armed clashes spreading over the cities of Osh and Jalal-Abad. According to official numbers, around 430 people were killed, and 1,800 houses destroyed (Kyrgyzstan's Report for the Committee on the Elimination of Racial Discrimination, 2012, p. 4). A continuous process of investigations and prosecution followed, however the legacy of the 2010 events is frequently considered as still not having been properly addressed.

In 2007, clashes took place between Kyrgyz and Dungan communities in Chu province. Starting as a fight between young people, the clash turned into skirmishes and resulted in physical injuries of participants. In 2009, Kyrgyz and Russians outraged by a paedophilic assault of a Russian girl by a Kurdish man, initiated an assault on the Kurdish population of the Petrovka village. In 2010, supporters of the overthrown President Bakiev caused disturbances in the Mayevka village, mostly populated by the Meskhetian Turks, which led to land seizures as well as the death of 4 persons (Kyrgyzstan's Report for the Committee on the Elimination of Racial Discrimination, 2012, p. 4).

Consequently, the Kyrgyz Government undertook measures to mitigate tensions and ensure the peaceful coexistence of ethnic communities in the country. The State Agency for Self-Governance and Inter-ethnic Relations was established in 2013 with the aims to maintain national unity, preserve cultural heritage and ethnic diversity in the country and, among others, expand participation of minorities in public life (The State Agency for Self-Governance and Inter-ethnic Relations, 2019).

The same year saw the launch of the Concept to Strengthen National Unity and Inter-Ethnic Relations in the Kyrgyz Republic (the Concept). The Kyrgyz "ethnos" is seen as a "unifying pillar of country's multinational population, which gave the country its historical name and makes a majority of population" (The Concept, p. 6). The document stresses the importance of the Kyrgyz language and its unifying role in the context of development of linguistic diversity. It calls for implementing a three-languages policy, in the frameworks of which each citizen of Kyrgyzstan would be able to speak Kyrgyz, Russian, and English or any other official UN language freely (The Concept, p. 15). Building a civic identity is among aims of the Concept, which is planned to be reached through a renewed education system focusing on values of diversity, inter-cultural communication and use of at least three languages (the Concept, p. 17).

#### 4.3.2 Recognition of minority communities

In 1994, the Assembly of People of Kyrgyzstan was established to strengthen inter-ethnic unity and assist in preserving culture, language and traditions of minorities (The Assembly of People of Kazakhstan, 2014, pp. 3-4). Unlike the Assembly of People in Kazakhstan, the body in Kyrgyzstan has



a limited scope of competences and acts mainly as a consultative and coordinating body aiming to strengthen the unity of the people of Kyrgyzstan, albeit it operates in apparently more democratic context (The Decree of the President of the Kyrgyz Republic on the Status of the Assembly of People of Kyrgyzstan, p. 2). Its chairs have changed frequently since the Assembly's establishment and it does not have a right to elect MPs to the Parliament. Currently, there are 29 minority associations who are members of the Assembly, along with a number of NGOs.<sup>5</sup> These 29 members represent the biggest (according to the census) communities as well as smaller groups (The Assembly, 2019). The structure of the Assembly, its activities (which mainly include cultural events) and its direct connection (if not subjugation) to the government, allows to conclude that it is rather passive, while its contribution to ensuring peaceful co-existence of ethnic communities remains limited at best. At the same time, membership in the Assembly constitutes an acknowledgement of the existence of a given minority community. As is the case with the Assembly of People of Kazakhstan, its Kyrgyz namesake appears to provide membership to communities based on their distinct ethnic identity, which can be interpreted as a form of indirect recognition. However, the procedure of becoming a member of the Assembly remains unclear as the documents available in open access do not specify this.

When it comes to legislation, there is no definition of “national minority” (Sydygalieva, 2012, p.1). Nevertheless, Kyrgyz citizens can choose whether to mention their national identity in passports and there were no reports or known cases of individuals denied the right to identify with a certain nationality or ethnic community. The Constitution guarantees the right to free ethnic identification and freedom from forced identification (article, 38). Since 2007, the nationality line was removed from identity cards and replaced by citizenship. This innovation was perceived negatively by some activists, who demanded to restore a nationality line as a sign of respect for a “titular nation of Kyrgyzs, who form the statehood of the country” (Vesti, 2018).

Furthermore, the Law of the Kyrgyz Republic on the State Language of the Kyrgyz Republic includes regulations concerning minority languages, as article 1 guarantees all “ethnoses” who form the people of Kyrgyzstan a right to preserve their mother tongue and the creation of conditions to learn and develop it. Article 4, on the other hand, stipulates that the existence of the state language on the territory of the Kyrgyz Republic does not prevent the use of other languages, while expressing the commitment to the principle of free development of languages of other nationalities, living on its territory.

#### 4.3.3 Summary (5)

Although the Kyrgyz Government initiated a shift towards civic identity and advocates for the use of multiple languages, it still puts a visible emphasis on the Kyrgyz community and language. What is more, a nationalist rhetoric employed by some populist activists does not help to calm the tense inter-ethnic atmosphere of the country. From the formal point of view, the situation in Kyrgyzstan is similar



to the one identified in Kazakhstan, with the constitutionally guaranteed right to free self-identification, indirect recognition of minority groups through the existence of a special body dealing with interethnic issues, and references to linguistic and educational needs of such groups in other legislation. As a result, Kyrgyzstan is another example of weak indirect recognition due to inadequate institutional support for minority communities and limited significance of the body representing them. In the Kyrgyz case, that “weakness” of recognition is even more pronounced because of still relatively recent instances of inter-ethnic violence. Certainly, a formal recognition of minorities might be essential for the Kyrgyz society, primarily as a tool to prevent potential conflicts and rehabilitate relations between conflicting communities, given this kind of recognition would spell out what kind of rights and guarantees minority communities would have. The language issue is quite acute in the country, and the Uzbek community’s demands to normalize and comprehensively institutionalize the usage of Uzbek in the Osh region is seen by some experts as one of the causes of the 2010 conflict (World Directory of Minorities and Indigenous Peoples, 2018). Even though there are no known cases of minorities reporting about being unable to self-identify, formal recognition at least can be instrumental in terms of, for example, ensuring language rights, legally emphasizing a multi-ethnic character of Kyrgyzstan, and eliminating further misrecognition of the Uzbek community. In addition, as Gherghina and Jiglaui hypothesise, the fact that there were past conflicts between majority and minority groups makes future mobilization along ethnic cleavages more probable. (Gherghina and Jiglaui 2011, p. 55). Kyrgyzstan’s recent history saw multiple inter-ethnic clashes and continuous tension, which have a potential to reoccur if not properly addressed (e.g. clashes between Kyrgyz and Uzbek communities in 1990 and 2010). Again, a certain level of formal and symbolic recognition is critically needed in Kyrgyzstan to initiate effective provision of minority-related rights and to streamline relations between majority and minority communities. Recognition could be a supplementary tool to bring the issue of inter-ethnic tensions higher in the agenda for decision-makers, as governmental bodies would have to acknowledge the existence of various communities and multiple challenges faced by them. Moreover, a move towards a formal recognition of minority communities in the Kyrgyz context must include cross-border and kin-state dimensions (perhaps with Danish-German model as a source of initial inspiration) in order to comprehensively resolve the question of Uzbek minority.

## **4.4 Tajikistan**

### **4.4.1 Population and minority communities**

Territorially, Tajikistan is the smallest country in the region. It borders with Afghanistan, China, Kyrgyzstan, and Uzbekistan. The country’s landscape mainly consists of mountains and a small number of lowlands (Encyclopaedia Britannica, 2019). Tajikistan’s population includes Tajiks, who constitute a majority in the country (84.3 per cent), followed by Uzbeks (12.2 per cent), Kyrgyz, Russians, and Tatars (National Population and Household Census, 2012, p. 7).



Tajikistan's recent history is marked with the tragic events of the Civil War (1992-1997). Starting as a series of unrests aimed at regime change, it turned into a continuous armed conflict between various ideological, regional, political and ethnic groups. A mass exodus of Russians and Russian-speakers from the country, as well as large number of internally displaced persons and victims were caused by it (Encyclopaedia Britannica, 2019). It decisively contributed to the state of inter-ethnic relations currently existing in the country. The communities of Pamiris, Yaghnobis, and Roma will be discussed in detail below, followed by general considerations concerning the situation of minorities in the country. Importantly, all mentioned communities face challenges related to misrecognition of their minority status – thus, Pamiris and Yaghnobis are continuously rejected the right to self-identify, while Roma are forced to identify as such, especially in IDs and other official papers.

#### 4.4.2 Recognition of minority communities

##### *(a) Pamiris*

The last National Census included around 90 national and ethnic groups (National Population and Household Census, 2012, pp. 7-11). However, there are several issues with it. First, as pointed by Ferrando, the Uzbek community dropped significantly in number, which became possible by singling out Uzbek sub-groups into separate categories and registering them as “others” (Ferrando, 2008, pp. 497, 509). Second, the Pamiris – one of the biggest ethnic groups in the country (ca. 200,000 people according to various estimates), cannot be found in the census, as they were included under the category of “Tajiks”.

Pamiris are a community which mainly lives in the Gorno-Badakhshan Autonomous Oblast (GBAO). It consists of several sub-groups, which speak various Pamiri languages and mostly professes Nizari Ismailism, a branch of Shi'a Islam. Most importantly, the community self-identifies as Pamiris and not Tajiks. There exists a certain perception among Tajiks too, which considers Pamiris as being “different” from the rest of the population and sees this “difference” in a lesser religiosity and higher education levels among others. Although the Tajik identity cards no longer contain a nationality line, one still must mention a national identity when applying for a card. Several interviews indicate that Pamiris cannot identify as such and are written down as “Tajiks” (CERD Alternative Report, 2017, p. 6).

As a group, Pamiris are generally politically active, and 2012 and 2014 saw the community's mobilization against the presence of government's troops in Khorog, the administrative centre of Badakhshan. Particularly, several mass demonstrations took place in Khorog following clashes between government troops and local population, which resulted in the death of over 20 persons, according to official sources (Monitoring Report on Human Rights Observance During the Special Military Operation on 24 July 2012 in Khorog, 2013, p. 38). The community was very active before and during the Civil War with a political movement “La'li Badakhshon” representing its interests, which often



contradicted those of today's official government. Additionally, the Tajik Government looks at the GBAO with great caution due to the region's proximity to Afghanistan and the poorly controlled Afghanistan-Tajikistan border. All these incidents deepened mistrust in relations between Khorog and Dushanbe, which were already tense since the end of the Civil War in 1997.

The issue of formal recognition or the right of the community for self-identification is never discussed officially, especially between the Aga Khan (a spiritual leader of the Ismailis, of which Pamiris are part of) and his affiliated institutions, but only among the community itself. However, the Tajik Government does not oppose the functioning of the Aga Khan and Ismaili organizations in Tajikistan, which provide support to the Pamiri and other communities. Due to this support, the Ismaili Centre in Dushanbe and the University of Central Asia in Khorog were built. Most probably, financial and infrastructure support of the Aga Khan institutions is seen as an asset by the Tajik authorities, who often struggle with subsidizing its regions.

#### *(b) Yaghnobis*

Yaghnobis are an ethnic minority group who nowadays mainly occupy mountainous areas around the Yaghnob and Zarafshon rivers. In the 1970s, around 3,000 Yaghnobis were resettled to lowland valleys because of potential avalanches, however, some experts argue that the whole population was moved in order to increase the production of cotton (Eurasianet, 2012). In the 1980s, Yaghnobis were allowed to return and since then they have been struggling with living conditions. Their settlements are very difficult to reach, and the infrastructure is very poor.

Yaghnobi originates from the ancient Sogdian language spoken before the arrival of Arabs to the region (Encyclopaedia Britannica, 2019). The language has its own script and was taught in schools during the Soviet Union. However, today obtaining education in Yaghnobi seems to be a great challenge and little is done to improve the situation.

In the last census, Yaghnobis were also put under the category of "Tajiks." Unlike Pamiris, however, the Yaghnobi community does not actively demand recognition or self-identification rights. This might be explained by the group's small size, as well as the tendency to disperse correlated with Yaghnobis' migrations for bigger urban centres. In addition, the community lives in conditions which can get especially harsh in winter times and thus is probably more preoccupied with organizing everyday life rather than seeking for institutional recognition of its distinct identity.

#### *(c) Roma*

Central Asian Roma is often used as aggregated term for a variety of communities residing in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. As Marushiakova and Popov argue, the term "Roma" is not common for the post-Soviet space, especially for Central Asia. Rather,



the Russian term “Gypsies” (as a continuation of the Soviet tradition) is used both in official sources and by local populations and has not been considered of pejorative nature. In Tajikistan, one can distinguish between different communities of Roma, including Lyuli, Jughi, Mughat (as most of the communities call themselves), Tavoktarosh/Sogutarosh/Kosatarosh, Chistoni, Parya, and Balyuj. These groups differ by the level of interaction with each other – while some of them might be maintaining connections, others do not communicate and mainly prefer to be integrated with the Tajik majority (Marushiakova and Popov, 2016, pp. 2, 5, 9-17).

The size of Roma community in Tajikistan varies between 2,300 people according to the census and 13,000, according to Tajikistan’s report to the Committee on the Elimination of Racial Discrimination (Population and Household Census of the Republic of Tajikistan, 2012, p. 7; Concluding observations on the combined ninth to eleventh periodic reports of Tajikistan, 2018, p. 6).

In its most recent report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the Tajik authorities claimed that after considering the recommendation to devise a strategy for the protection of Roma community, it was decided that such strategy is not needed, as the community does not face any discrimination or stigmatization (Consideration of Reports Submitted by States parties under article 9 of the Convention. Tajikistan, 2016, page 6). However, experts talk about systematic discrimination and difficulties that the Roma community faces in the country, including segregation at school, poor housing conditions, obstacles in obtaining documents, limited access to healthcare and decision-making. Negative stereotypes and stigmatization are additional challenges that the community faces on a daily basis (CERD Alternative Report, 2017, pp. 3-5).

Unlike Pamiris and Yaghnobis, Roma are forced to identify as such in the documents necessary for the issuing of passports; they are also mentioned under a separate category of “Gypsies” in the last census (Population and Household Census of the Republic of Tajikistan, 2012, p. 8.). This might have been done in order to keep count of the Roma population and locate their settlements, which can contribute to further marginalization of the community.

In the context of the preceding considerations, it is important to add that Tajikistan’s legislation does not contain a provision on the right to freely self-identify. The only regulation which might be perceived as conceptually close to the notion of free self-identification is expressed in Article 17 of the Constitution of the Republic of Tajikistan stipulating that “the state guarantees rights and freedoms of everyone regardless of nationality, race, sex, language, religious confession, political beliefs, education, social and property status.”.



It would be incorrect to say that groups whose identity is not challenged, enjoy a protected minority status in Tajikistan. Minorities face inadequate language accommodation, lack of effective education in mother tongue (in spite of the existence of regulations concerning the use of languages other than Tajik; see for example article 4.1. of the Law of the Republic of Tajikistan on the State Language of the Republic of Tajikistan and article 7.2 of the Law of the Republic of Tajikistan on Education), hampered access (if any) to decision-making and state positions. At the same time, active refusal to recognise distinct identities can create negative dynamics among certain groups. Particularly Pamiris are struggling for the right to self-identify and are willing to be at least mentioned in the census as a distinct group, while the authorities persistently view them as Tajiks. On the everyday level, Pamiris also raise concerns for suffering from stereotypes and distorted perceptions from other communities in the country, which tend to single the Pamiri group out.

We see several reasons why the Tajik government is reluctant to introduce formal recognition of minorities. First, there is an unwillingness of the authorities to introduce any changes which might jeopardize the attempts to consolidate the Tajik community as a sole bearer of the state power and a titular nation. Unlike Kazakhstan and Kyrgyzstan, which started shifting towards building a civic identity, nation-building processes in Tajikistan focus almost entirely on the Tajik community and its religious and cultural practices. For example, the Law on Freedom of Conscience and Religious Associations recognizes a special role of the Hanafi branch of Islam (professed by majority of Tajiks) in developing a national culture and spiritual life of the people of Tajikistan, which by default excludes Ismailis, Christians and other denominations (Preamble, p. 1).

Second, lack of resources can be a cause too. Recognition usually means more or less adequate organization of education in minority languages, accommodation of special needs etc. Tajikistan does not have financial capacities to do that.

Our final assumption concerns the unwillingness to share the power. President Emomali Rahmon, his family members and other members of his close circle occupy high-ranking positions and a refusal to recognize certain communities might be caused by the unwillingness of incumbent leaders to share or delegate the power. Especially the Pamiri community might be seen as competitors to take over the power due to charismatic local leaders, who enjoy popular support from community peers and have demonstrated political literacy during and after the Civil War.

#### 4.4.3 Summary (6)

Unlike the cases of Kazakhstan and Kyrgyzstan, in Tajikistan the legal reality faced by at least certain minority communities is different, primarily due to the fact that the right to free self-identification is in some cases denied, leading to such situations as the conflation of Pamiris, Yaghnobis and Tajiks by the authorities, or enforced as in the case of Roma community. All three communities have varying degrees



of self-organization – Pamiris being socially coherent, living mostly in the autonomous region and communicating via multiple institutions, Yaghnobis being very small in size and geographically and politically remote from decision-making bodies, while the Roma community is diverse, facing persecution and unlawful treatment. It might be argued then that the Tajik authorities operate beyond the boundaries of the recognition/non-recognition dichotomy, and their approach to these groups can be located somewhere between reluctant acceptance and open hostility. In addition, the Pamiri community was involved in several conflicts (including the Civil War and clashes in Khorog), and if mistreatment and misrecognition continues, there is potential for new tensions. Once again, the introduction of formal recognition and guarantees concerning the right to free self-identification are crucial especially in Tajikistan, where mobilization and violence along ethnic lines has taken place and memories of this are still fresh. Formal recognition would already be useful to mitigate growing tensions and to facilitate acceptance of the fact that communities possess distinct identities (at least formally at the beginning). One can understand that the lack of resources is a serious challenge to fully implement provision of minority rights followed after formal education, however, in the case of Pamiris we believe it would already be a significant step if the Tajik Government acknowledged its minority status, which would positively affect the community’s self-esteem and minimize prospects for future conflicts.

## 5. Concluding analysis

The conducted analysis of practices concerning recognition of minority communities in Europe and Central Asia leads to the identification of two general approaches to recognition, which might be called “cultures of recognition” (see Table 1).

The “European” model (with inverted commas, as it is built upon the analysis of a limited number of cases) can be described as formalistic (strict approach to recognition criteria by the authorities in a given country) and static/conservative/inflexible (e.g. a number of recognized minorities tends not to change), while at the same time it offers a recognition, which might be additionally qualified as “strong”, due to the characteristics of the legal context (rule of law, legal certainty etc.; current developments concerning Poland to a degree relativize that assessment) and economic, as well as institutional support offered to the recognized minorities. Importantly, in each of the analysed cases, the link between the right to free self-identification – essentially uncontested in all considered countries – and formal recognition of a given minority community, composed of persons self-identifying as its members, is severed. What is more, even a certain critical mass of self-identifications does not inspire a more flexible stance of state authorities either (e.g. the case of Silesians in Poland; by referring to Max van der Stoep’s quotation opening the present text, one may argue that frequently “visibility” is far from enough). As a result, it leads to a hierarchization of minority communities and identities, with the clearest division separating recognized minorities from “others”, i.e. representatives of other identities. In certain cases, e.g. Danish,



due to specific historical circumstances it leads to even more complex hierarchies. On the other hand, the acknowledgement of the existence of certain identities (e.g. the case of Poles in Germany) can sometimes lead to transfers of state funds supporting the activities of a given community, thus further contributing to grey zones, inconsistencies, paradoxes and inequalities concerning minority rights protection. All in all, the practices scrutinized in the present analysis lead to a picture more complex than a simple dichotomy of recognition/non-recognition, whilst the hierarchization of minority communities – not infrequently coupled with negative social perceptions and media narratives – contributes to the persisting risk of misrecognition in certain cases (e.g. the Roma community in Denmark). It should be also added that monitoring mechanisms concerning the implementation of the Council of Europe’s standards in minority rights protection are of limited efficiency when it comes to the expansion of the scope of application of the FCNM, as lists of recognized minority communities remain unchanged, and recurrent calls for a flexible approach to the Convention remain largely unanswered.

The “Central Asian” case paints even more complex picture, while at the same time it is more difficult to assess, due to the absence of systematic monitoring mechanisms. In all three countries, legal definitions of “ethnic” or “national” minority, as well as the category of “minority recognition” do not exist. Indirect recognition, on the other hand, linked to minority organizations, mentions in censuses, practical implementation of the right to free self-identification, allows us at least to confirm whether the governments of Kazakhstan, Kyrgyzstan, and Tajikistan acknowledge the existence of a given minority on their territory. While Kazakh and Kyrgyz approaches share numerous similarities (at least in a formal sense), Tajikistan is a case apart. This is a result of issues concerning the right to free self-identification in that country, as among all six cases considered, this is the only one where the formal dimension of this right is blatantly violated, for example with regard to Pamiris (lack of possibility to self-identify as such) and Roma (enforced identification as such). Therefore, the issue of recognition/non-recognition in a way is of no importance in the case of Tajikistan, as that country struggles with the protection of even more basic among minority rights, while simultaneously it can be definitely considered a host-state misrecognizing some of its minorities. In addition, its authoritarian political system further limits the margin of acknowledgement/rights etc. enjoyed by the country’s minority communities. When it comes to both Kazakhstan and Kyrgyzstan, the right to free self-identification is relatively well protected and contributes to indirect forms of recognition, as in both countries official lists of recognized minorities, similar to those in Europe, do not exist. As a result, the tension between the right to free self-identification and recognition is to a significant degree eliminated, which results in a larger number of minority communities invited to participate in special state structures established for them (the efficiency and transparency of their functioning is another matter). At the same time, however, and due to the nature of both Kazakh (authoritarian) and Kyrgyz (democratic but unstable and illiberal) political systems, potential benefits of that flexibility are significantly



circumscribed. Therefore, it might be legitimate to qualify cases of such indirect recognition as relatively “weak”. Importantly, in the Kyrgyz case persistent interethnic tensions involving the Uzbek minority as a target, coupled with the unaddressed legacy of the events of 1990 and 2010 further complicate the existing situation, and provoke justified questions concerning misrecognition. In Kazakhstan, on the other hand, in spite of the official civic approach to the issue of identity and ideological importance of minority rights, the situation on the ground frequently paints a significantly different picture, as proved by the recent incidents involving Dungans. What is common for the three Central Asian states is the fact that ethnic conflicts and tensions took place on their territories quite recently. Consequently, it only seems natural to advocate for the introduction of formal recognition as a tool mitigating existing tensions, affirming identity of minority communities and thus reducing the risk of misrecognition, as well as contributing positively to the long-term social and political stability due to changing social attitudes.

The final question remains: can the two identified “cultures of recognition” learn something from each other? Certainly, a more flexible approach to the recognition of minority communities resembling both the Kazakh and Kyrgyz positions might at least to a certain degree loosen stiff European practices concerning the scope of application of minority rights. Rule of law, legal certainty, relatively stable access to funding, symbolic aspects, and cross-border/multilateral approaches to minority rights protection, on the other hand, might enable Central Asian minority communities to live in more secure legal and socio-political contexts. Crucially, such mutual inspirations could lead to a significant reduction of the misrecognition risk currently present in both macro-regions, by offering protection to marginalized communities. Whether these two “cultures of recognition” are willing to learn from each other is an entirely different matter. Certainly, the lack of such willingness – to borrow a phrase from Albert Hourani (see a respective epigraph) - makes a position of numerous minorities needlessly uneasy.



## Notes

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<sup>1</sup> The first version of this paper was presented during the 16th conference of the European Society for Central Asian Studies (ESCAS) which took place in Exeter, UK on 27 – 29 June 2019. In June 2020, its expanded version was discussed during an internal research seminar at the European Centre for Minority Issues. The authors are grateful for all comments shared with us on both occasions.

<sup>2</sup> In the text the notions of minority, minority communities or minority groups are used interchangeably.

<sup>3</sup> Due to contextual differences, the structure of sub-sections discussing European and Central Asian cases differs.

<sup>4</sup> A similar remark was made with reference to the representatives of the Jewish communities residing in Denmark.

<sup>5</sup> 29 associations representing Azerbaijanis, Armenians, Afghans, Belarusians, Bulgarians, Greeks, Georgians, peoples of Dagestan, Dungans, Jews, Ingush, Kabardinians and Balkars, Kazakhs, Karachays, Kurds, Germans, Poles, Russians, Tajiks, Tatars and Bashkirs, Turks, Uzbeks, Uyghurs, Ukrainians, Czechs, Chechens, Kyrgyzs, and Yakuts. Available from: <https://assembly-kg.news/o-нac/> (accessed 11 December 2020).



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**Annex 1 / Table 1**

	Characterisation of a political system	Acknowledgement of the right to free self-identification	Formal recognition as a way of accessing minority rights	Number of directly / indirectly recognised communities	Type of direct / indirect recognition	Hierarchization of minority communities	Communities facing a potential or actual misrecognition	Key immediate recommendation
<b>Denmark</b>	Liberal democracy	Yes	Yes	Very low	Strong	Yes	Roma	Formal recognition of Roma community due to a high risk of misrecognition.
<b>Germany</b>	Liberal democracy	Yes	Yes	Low	Strong	Yes	Risk reduced with regard to Poles	Avoidance of further hierarchization of minority communities.
<b>Kazakhstan</b>	Consolidated authoritarianism	Yes	No	Medium	Weak	Yes	Some of the communities not represented in the Assembly of People of Kazakhstan (e.g. Dungans)	Widening of membership in the Assembly of People of Kazakhstan; formalization of recognition.
<b>Kyrgyzstan</b>	Unstable illiberal democracy	Yes	No	High	Weak	Yes	Uzbeks in spite of membership in the Assembly of People of Kyrgyzstan	A comprehensive protection of Uzbek minority; formalization of recognition.
<b>Poland</b>	Liberal democracy with illiberal features	Yes	Yes	Medium	Strong	Yes	Silesians	Formal recognition of Silesians, with additional recognition and protection of Silesian language.
<b>Tajikistan</b>	Consolidated authoritarianism	No	No	High	Weak	Yes	Pamiris, Roma, Yaghnobis	Immediate cease of misrecognition and forced recognition practices concerning Pamiris, Roma, Yaghnobis.



ABOUT THE AUTHORS

Sergiusz Bober

ECMI Senior Researcher

[bober@ecmi.de](mailto:bober@ecmi.de)

Aziz Berdiqulov

ECMI Researcher

[berdiqulov@ecmi.de](mailto:berdiqulov@ecmi.de)

FOR FURTHER INFORMATION SEE

EUROPEAN CENTRE FOR MINORITY ISSUES (ECMI)

Schiffbruecke 12, 24939 Flensburg

+49 461 14 14 9 0 19

E-Mail: [info@ecmi.de](mailto:info@ecmi.de)

Website: <http://www.ecmi.de>