INTERNATIONAL CONFERENCE
МЕЂУНАРОДНА КОНФЕРЕНЦИЈА

ARE MINORITY RIGHTS (STILL) HUMAN RIGHTS?

ДА ЛИ СУ МАЊИНСКА ПРАВА (ЈОШ УВЕК) ЉУДСКА ПРАВА?

28–29 September/ 28–29. септембар
BELGRADE 2023/БЕОГРАД 2023

SERBIAN ACADEMY OF SCIENCES AND ARTS
COMMITTEE FOR NATIONAL MINORITIES AND HUMAN RIGHTS
UNIVERSITY OF BELGRADE, FACULTY OF LAW
TOM LANTOS INSTITUTE, BUDAPEST

INTERNATIONAL CONFERENCE

ARE MINORITY RIGHTS (STILL) HUMAN RIGHTS?

(25 Years of Minority Rights Regime in Europe and 75 Years of the UDHR)

September 28 2023
SASA / Knez Mihailova 35/II, Belgrade

September 29 2023
University Belgrade, Faculty of Law / Bulevar Kralja Aleksandra 67, Belgrade

ORGANIZING COMMITTEE

Academician TIBOR VÁRADY, President
Professor MIODRAG JOVANOVIĆ
Professor IVANA KRSTIĆ
Professor TAMÁS KORHECZ
Dr. ANNA-MÁRIA BÍRÓ
DRAGICA PULJAREVIC, Secretary

PROGRAMME

Thursday, 28 September, 2023
SASA, Main Hall

10.00 Welcome Speech
Academician ZORAN KNEŽEVIĆ, President of SASA

I PANEL – OPENING ADDRESSES AND THE KEY-NOTE LECTURE
Chairperson: Prof. Dr. MIODRAG JOVANOVIĆ

10:10-10:30 Opening Addresses
TIBOR VÁRADY, President of the Organizing Committee
ANNA-MÁRIA BÍRÓ, Tom Lantos Institute, Budapest

10:30-11:00 Special rights and obligations: Why minority rights need institutional frameworks
TOVE H. MALLOY

11:00-11:25 Discussion

11:25-11:40 Coffee Break

II PANEL – SPECTRUM OF MINORITY RIGHTS PROTECTION
Chairperson: Academician TIBOR VÁRADY

11:45-12:10 The Council of Europe's Framework Convention for the Protection of Minorities through the Case Law of the Strasbourg Court
IOANNIS KTISTAKIS

12:10-12:35 Combining substantive equality and right to protection of identity – A necessary approach in minority protection
TIBOR TORÓ

12:35-13:15 Discussion

13:15-14:30 Lunch, SASA Club

14:30-14:55 Participation in Public Life: Is It a Special Minority Right?
BALÁZS VIZI

14:55-15:20 Territorial Dimensions of Minority Rights
ANTONI ABAT I NINET

15:20-15:50 Discussion

15:50-16:10 Coffee Break

III PANEL – SOCIETY, CULTURE, DIVERSITY: OLD AND NEW MINORITIES

Chairperson: Prof. Dr. TAMÁS KORHECZ

16:15-16:40	Fundamental Rights and New Minorities: Diversity Governance and Social Cohesion from the Perspective of Minority Rights ROBERTA MEDDA-WINDISCHER
16:40-17:05	Indigenous Peoples and Regional Ius Commune: A Category under Construction JESSIKA EICHLER
17:05-17:40	Anthropological Theory, Stakeholder Inclusion and Minority Rights – Reflections on the Investigation and Preservation of Serbian Intangible Cultural Heritage in the Western Balkans MILOŠ MILENKOVIĆ
17:40-18:30	Discussion
20:00	Conference dinner

Friday, 29 September, 2023
Conference room, University of Belgrade, Faculty of Law

9:30 Welcome speech
Professor ZORAN MIRKOVIĆ, Dean of the Law Faculty, University of Belgrade

IV PANEL – INSTITUTIONAL SETTING OF MINORITY RIGHTS PROTECTION
Chairperson: Prof. Dr. IVANA KRSTIĆ

9:35-10:05 The ECtHR, the CJEU and the Protection of Religious Minorities: A Mixed Scorecard
KRISTIN HENRARD

10:05-10:30 Two Decades of Monitoring under the Framework Convention for the Protection of National Minorities: Lessons from Northern Ireland, North Macedonia and Ukraine?
ELIZABETH CRAIG

10:30-11:00 Discussion

11:00-11:20 Coffee Break

11:20-11:45 25 Years of Implementation of the European Charter for Regional or Minority Languages
VESNA CRNIĆ-GROTIĆ

11:45-12:10 Promotion and Protection of Human Rights (With a Focus on Minority Rights) – External Action of the EU
JULIA SZELIVANOV

12:10-12:40 Discussion

V PANEL – MINORITY RIGHTS AS HUMAN RIGHTS
Chairperson: Prof. Dr. TANASIJE MARINKOVIĆ

12:40-13:05 Minority Rights are Human Rights: the Challenges of Denial and an Unfinished Architecture
FERNAND DE VARENNES

13:05-13:40 Minority Rights as Human Rights? Concept and Practice
MIODRAG JOVANOVIC, IVANA KRSTIC

13:40-14:10 Discussion

14:15-15:30 Lunch Buffet

BOOK OF ABSTRACTS

SPECIAL RIGHTS AND OBLIGATIONS: WHY MINORITY RIGHTS NEED INSTITUTIONAL FRAMEWORKS

Tove H. Malloy
Europa-Universität Flensburg, Germany

Claiming that minority rights are human rights is a mode of speaking that requires clarification. Some minority rights are universal; others are particular. Theoretically, human rights are universal because they belong to all humankind. Minority rights are also universal because they can be claimed by all members of society, but they are particular because they are assigned to specific persons or entities. Technically, this means they are special rights. This seems confusing. How can minority rights span from the universal to the particular? This paper will endeavor to disentangle this puzzle.

The main focus will be on special rights. First, it will discuss the ethical dimension of special rights through a philosophical prism of practical reasoning aimed at identifying obligations. Next, it will examine the political dimension through 'a politics of social exchange' aimed at securing mutual recognition. This will reveal that there are different levels of recognition defining diverse but distinct scopes of application. Diverse scopes indicate diversified implementation. The final discussion will therefore link these scopes to institutions in an effort to show that minority rights, whether universal or particular, require institutional frameworks to secure implementation.

THE COUNCIL OF EUROPE'S FRAMEWORK CONVENTION FOR THE PROTECTION OF MINORITIES THROUGH THE CASE LAW OF THE STRASBOURG COURT

Ioannis Ktistakis
Judge of the European Court of Human Rights

It is a well-known characteristic of the European Convention on Human Rights that, by its very nature, it protects individual rather than collective rights and, consequently, minority rights are not explicitly provided for in its text. Indeed, the only place in the original text of the Convention where a reference to a (national) minority can be found is in Article 14, which prohibits discrimination. Not surprisingly, the case law of the European Court of Human Rights in favour of members of minorities has developed largely for this reason.

From the outset and increasingly over the decades, the Court has interpreted the Convention as a living instrument. This is also reflected in the area of national minorities. While, as noted above, the Convention refers only to national minorities, the Court has identified several other social groups that should be treated as national minorities in terms of the level of protection they receive. It goes without saying that the term "minority" has regularly taken on an autonomous meaning in the Court's interpretation, irrespective of the willingness of the State concerned in a given case to formally recognise a particular group of persons as a minority in its legal system. In this way, the Court has adapted its jurisprudence to an ever-changing reality in European societies.

In order to achieve the above, the Court relied on the Framework Convention for the Protection of National Minorities (1994), which was specifically designed for this purpose. This is reflected, inter alia, in several judgments of the Court.

COMBINING SUBSTANTIVE EQUALITY AND RIGHT TO PROTECTION OF IDENTITY – A NECESSARY APPROACH IN MINORITY PROTECTION

Tibor Toró
Sapientia Hungarian University of Transylvania, Romania

Substantive equality and the right to protection of identity are the two 'foundational principles' of minority protection. The principle of non-discrimination (i.e., political, social and economic rights completed with the requirement of non-discrimination) is a core element of the universal human rights protection. Enjoyment of general human rights without discrimination, however, provides insufficient guarantees for the protection of minorities. Therefore, to put minorities on an equal footing with the majority, minority rights instruments provide for special rights to protect the identity of minorities. National minorities in their claims and European minority rights instruments (e.g. FCNM, ECRML) tend to focus mostly on identity maintenance, despite the fact that no consensus was formed regarding the substantial elements of these specific rights. This leaves large room for states in determining these aspects. This can result in a system of minority protection at the national level that seems to guarantee identity maintenance but only on an unequal basis.

By using a case study of minority education in Romania and by relying on minority rights literature on the one hand and on diversity management literature on the other, the paper proposes that an effective approach to minority protection requires focusing on both substantive equality and right to protection to identity. Such an approach could help avoiding the interpretational trap in identity maintenance and could be beneficial for minority rights protection as well.

PARTICIPATION IN PUBLIC LIFE: IS IT A SPECIAL MINORITY RIGHT?

Balázs Vizi
University of Public Service, Ludovika, Hungary

Participation in public life without discrimination is an universally recognised human right, nevertheless it does not guarantee that minorities have any influence on public affairs affecting them. In modern nation-states national/ethnic identity and majority/minority group relations are often politically sensitive and may reflect irreducible political claims on identity issues. In this context, after 1990s in the emerging European minority rights regime international documents on minority rights (e.g. the Framework Convention for the Protection of National Minorities or various OSCE documents) stressed also the importance of the right to effective participation in the public life of minorities. However international normative provisions do not recognise collective minority rights and use cautious language also on formulating participatory rights. Against this background this paper addresses the question what may the right to effective participation in public life of persons belonging to minorities entail and whether minorities' right to participation should be limited to domestic institutional structures or it may be relevant also at international level.

TERRITORIAL DIMENSIONS OF MINORITY RIGHTS

Antoni Abat i Ninet
Hebrew University of Jerusalem, Faculty of Law, Israel

At the heart of its essence, the concept of a minority inherently carries with it the reciprocal presence of a majority. This symbiotic relationship is an embodiment of the dialectical principles famously elucidated by Hegel. When we delve into the epistemological foundations of how the political and legal constructs of minorityhood are shaped, we find a compelling exemplification of Hegelian dialectics. The normative understanding and development of the concepts relies on a contradictory process despite that majority and a minority are parts of a same "Ding" or political unit.

The inherent contradiction inherent in the normative interpretation of 'minority' seemingly emerges as a response to the compelling necessity of bestowing recognition and rights upon that group which, despite being in the numerical minority, constitutes the vital '50% plus one.' These individuals coexist, cohabit, and share a shared territorial expanse with the 'other,' the majority. It's as if this normative discourse on 'minority' arises from a fundamental tension in seeking equilibrium between the numerically smaller but territorially significant group and the more abundant majority. The adversarial nature of the normative sense of "minority" seems to respond to the need of imposing recognition and rights to the 50% plus one that coexist, cohabit and share territory with the "other".

In a manner that echoes the Westphalian era, international treaties and norms concerning the safeguarding of minority rights remain embedded within the overarching framework of the state. Consequently, the acknowledgment and protection of minority rights are inextricably intertwined with the concept of statehood and its foundational elements. This linkage is particularly pronounced when we focus on the context at hand, where it pertains specifically to the concept of territory. Delving into the depths of this paper, the initial thrust involves a meticulous critical analysis of the normative landscape surrounding the 'minority' concept. This analysis will closely scrutinize the inherent and inevitable connection it shares with the form of the state and the concept of territory. Central to this exploration is an examination of the novel facets that the contemporary landscape has introduced into the realm of defining 'minority' and its interconnected concepts. Through the lens of Palermo's terminology, with 'territory' as a central focal point, this section endeavours to unearth the constraints posed by this rationale within the present epoch characterised by rapid technological advancement and globalisation. It becomes increasingly evident that while the state continues to hold primacy as the principal actor within international law, the evolving stage now encompasses a cast of non-state actors and nascent legal and political entities. Consequently, these emergent entities must also be considered as binding recipients of the protective umbrella extended to minority groups.

The following segment, constituting the third tier of this discourse, directs its focus towards the pivotal role the territorial dimension assumes in shaping the bedrock distinctions within minority groups. The implications ripple across various domains, encompassing the assertion of rights in areas such as minority languages, religious beliefs, and ethnicity. Simultaneously, the discourse extends its reach to the realm of territorial rights. In an attempt to illuminate this complex interplay, the section examines precedent-setting case-law, illuminating the intricate territorial dimensions intertwined with the realm of minority rights.

FUNDAMENTAL RIGHTS AND NEW MINORITIES: DIVERSITY GOVERNANCE AND SOCIAL COHESION FROM THE PERSPECTIVE OF MINORITY RIGHTS

Roberta Medda-Windischer
Institute for Minority Rights, Bolzano, Italy

'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.' This often-quoted and, at the same time, highly controversial statement by Max van der Stoel, the first OSCE High Commissioner on National Minorities, illustrates one of the core – and still unresolved – issues of minority rights: What or who constitutes a minority, and which individual and group rights should arise from this status? Among policymakers, academics and public opinion, there is still considerable ambiguity around the definition of minorities – not to mention "new" migrant minorities – their status and the specific rights deriving therefrom. If many controversies and debates still surround the concept and definition of minorities and, in particular, "new" minorities, fundamental rights are not clear either. In fact, despite an all-encompassing approach based on fundamental rights, whereby these rights are defined by their universality and applicability to everyone, substantial differences between specific dimensions of fundamental rights for different individuals and groups can still be seen. Additionally, a thoroughly encompassing framework for protecting the rights of new minorities, especially the right to identity and the right to participation in society, including political participation, is still lacking. This presentation aims to shed light on the heterogeneity of linguistic, religious and/or cultural new minorities, and on the fundamental rights that different types of new minorities are equipped with, in particular non-EU minorities as EU member states are concerned. In conclusion, potential ways of creating inclusive and cohesive societies that respect all types of minority rights is discussed, and a model of human and minority rights for diversity governance (the 'Tree Model') is outlined as a promising concept.

INDIGENOUS PEOPLES AND REGIONAL IUS COMMUNE: A CATEGORY UNDER CONSTRUCTION

Jessika Eichler
Sciences Po, Paris, France

With the European Court of Justice (ECJ) and the European Court of Human Rights (ECtHR), we are confronted with a multi-level human rights order in European jurisdictions, carrying considerable implications for definitional issues and dedicated rights in the field of indigenous peoples. The meaning of collective rights merits a proper examination in these contexts. Further complexity is added by the Council of Europe's 'national minority' protection framework which at times overlaps with indigenous peoples' rights, opening debates on common points of departure, claims – both substantively and procedurally – and definitional criteria. The development of indigenous peoples' rights in Europe also needs to be contextualised against the background of influential jurisprudence produced by the Inter-American and African human (and peoples') rights orders respectively. The paper hence takes as its starting point the conceptual uniqueness and particularities of indigenous rights in Europe, the dynamics these develop in view of 'national minority' rights, and also in relation to domestic tendencies, allowing us to derive at an analysis grounded in multiple legal orders, both vertically and horizontally.

ANTHROPOLOGICAL THEORY, STAKEHOLDER INCLUSION AND MINORITY RIGHTS – REFLECTIONS ON THE INVESTIGATION AND PRESERVATION OF SERBIAN INTANGIBLE CULTURAL HERITAGE IN THE WESTERN BALKANS

Miloš Milenković
University of Belgrade, Faculty of Philosophy, Belgrade, Serbia
Department of Ethnology and Anthropology

Neither 75 years after the Universal Declaration of Human Rights nor 25 years after the Framework Convention for the Protection of National Minorities, anthropology still does not know how to explain its standard academic practice – the deconstruction of identity - outside the academy. Our strict academic analyses of the history, politics, and ethics of collective identity production, imposition, suppression, or destruction are ineffective in politics, too theoretical for public administration, and, most importantly, frequently offensive to the people we study. In an era when science is expected to work in and for society, telling a community that its culture is just one of many, and that its identity, memory, and heritage are the result of continuous social construction is counterproductive. This is especially difficult in situations where post-conflict stabilization and development programs, such as those in the Western Balkans, require stakeholder participation. Contrary to anthropological research findings, what is required is exactly what both the declaration and the framework convention expect - respect for collective identities. This is especially awkward in an age of populism, re-traditionalization, and a return to primordial self-resources packaged as a struggle for collective rights. However, stakeholder inclusion is still feasible if we can overcome our sense of academic inadequacy when reconciling reality with the people we study. I approach this topic through the lens of considering how Serbs as a minority in Western Balkan states other than Serbia can preserve intangible aspects of their culture using the UNESCO paradigm of inclusive intangible heritage safeguarding. I anticipate that discussions with legal and political theorists, as well as colleagues from a variety of disciplines, will aid in finding solutions to the challenge of stakeholder inclusion while maintaining academic integrity.

THE ECTHR, THE CJEU AND THE PROTECTION OF RELIGIOUS MINORITIES: A MIXED SCORECARD

Kristin Henrard
Brussels School of Governance, Brussels, Belgium

The protection of human rights historically got a major impulse from measures aimed to protect particular, often religious, minorities. To what extent does the interpretation and application of human rights still reflect this minority protection rationale? In Europe, two major European courts deserve special attention in this respect. The ECtHR may be the European human rights court par excellence, it is well known that the CJEU has also developed an ever growing human rights jurisprudence. The ECtHR jurisprudence remains a reference point for the CJEU, but particularly in relation to the several (equality) directives, and the Charter of Fundamental Rights of the EU going beyond the rights enshrined in ECHR, also distinct lines of jurisprudence have developed.

Several lines of jurisprudence of both courts are in line with this understanding. However, both European courts also have several lines of cases concerning religious minorities that feature on the negative balance of their scorecard.

This presentation will show how and to what extent their respective case law gets a mixed scorecard regarding the protection of religious minorities. Particular attention will be had for the ECtHR's jurisprudence on the 'broad' margin of appreciation for states concerning 'church- state relations' and the different degrees to which this becomes visible in cases on recognition and registration schemes of religions, educational rights, ritual slaughter and the wearing of headscarves in the public sphere. For the CJEU, several cases concerning the wearing of headscarves at work and ritual slaughter feature prominently on the negative balance of the score card.

TWO DECADES OF MONITORING UNDER THE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES: LESSONS FROM NORTHERN IRELAND, NORTH MACEDONIA AND UKRAINE

Elizabeth Craig
University of Sussex, School of Law, Politics and Sociology, United Kingdom

The United Kingdom, the now Republic of North Macedonia and Ukraine all became States Parties to the Framework Convention for the Protection of National Minorities (FCNM) in 1998, the year the treaty came into force. This paper considers lessons from over two decades of monitoring and what this tells us about the role of minority rights monitoring in pre-, during and post-conflict situations. Whilst not intended as a conflict prevention or resolution instrument, the link between minority rights and peace and security in the continent was explicitly recognised in the Preamble to the FCNM and the experiences in relation to all three States Parties provide further indication of how this link is understood. With the signing of the Good Friday (or Belfast) Agreement in Northern Ireland coming only three months after the UK's ratification, there were different ideas about who the minorities were, with the references to respect for existing territorial integrity in the FCNM seen by some as serving to limit nationalist aspirations for further constitutional change and for an eventual united Ireland. The conflict in North Macedonia came later, but tensions between ethnic Albanians and Macedonians have continued, with the ACFC playing a key role alongside the OSCE's High Commissioner on National Minorities. Meanwhile the war in Ukraine provides an opportunity to examine the extent to which inter-ethnic relations between those identifying either as ethnic Russians and/or Russian-speakers and ethnic Ukrainians have featured in the ACFC's monitoring work.

25 YEARS OF IMPLEMENTATION OF THE EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES

Vesna Crnić-Grotić
University of Rijeka, Faculty of Law, Croatia
Member and Former Chair of the Committee of Experts
of the European Charter for Regional or Minority Languages

The European Charter for Regional or Minority Languages was adopted in 1992 when Europe was going through historical changes. Its aim was to protect regional and minority languages as part of Europe's cultural and intangible heritage. The Council of Europe was aware of the importance of their protection and promotion in contributing to the construction of a Europe based on respect for human rights, democracy and the rule of law. The Charter came into force in 1998 and today it binds 25 out of 46 member states of the Council of Europe. By ratifying the treaty, they undertook to actively promote the use of these languages in education, justice, administration, media, culture, economic and social life and cross-border cooperation. The 25th anniversary gives an opportunity to assess the progress made and the results achieved.

PROMOTION AND PROTECTION OF HUMAN RIGHTS (WITH A FOCUS ON MINORITY RIGHTS) – EXTERNAL ACTION OF THE EU

Julia Szelivanov
European Union External Action Service

In my presentation I will give an overview of the policy documents of the European Union, guiding its external action on human rights, including minority rights.

Framework: Treaty of Lisbon (human rights as a foundational value)

Institutions and actors: FAC, HR/VP, European External Action Service, Commission, Parliament (DROI), EU Special Representative for Human Rights (since 2012).

The main policy documents of human rights:

Action Plan on Human Rights and Democracy (2020-24) – long-standing priorities: combatting all forms of discrimination, abolition of death penalty, elimination of torture etc. More importance is given to empowering people and combatting discrimination on all grounds. Strong focus on HRDs.

Implementation: 13 EU guidelines on Human rights

Policy tools:

- Human Rights and Democracy Country strategies 2021–2024
- Election observation and follow up
- Global Human Rights Sanctions Regime
- Action in multilateral fora: yearly Council Conclusions on EU priorities on UN human rights fora. UNGA Third Committee, UN Human Rights Council, Treaty Bodies and UP, Regional organisations, Partnership with OHCHR.

Other tools:

- Human rights dialogues
- EU Annual report on human rights and democracy on the world (2022 published recently).
- Action by EU delegations

Specifically on minorities:

Article 22 of the Charter of Fundamental Rights of the European Union: the Union shall respect cultural, religious and linguistic diversity. Article 21: prohibits discrimination based on a number of grounds, including language. In its major policy documents, the EU calls states to respect, protect and fulfil the human rights of persons belonging to minorities, including national, ethnic, religious, and linguistic minorities in accordance with applicable international norms and standards.

Some examples of external action: Commitment to Roma equality, keeping on the agenda of multilateral fora persistent cases of violations and abuses of minorities' rights, eg. Myanmar, Ethiopia, Türkiye and China.

MINORITY RIGHTS ARE HUMAN RIGHTS: THE CHALLENGES OF DENIAL AND AN UNFINISHED ARCHITECTURE

Fernand de Varennes
National University of Ireland, Galway
United Nations Special Rapporteur on Minority Issues

Though omitted in the initial global instruments after the Second World War, the reference to and recognition of the rights of minorities gradually became more prominent from the 1970s and especially from the 1990s, the latter a response to international concerns over the proliferation of violent conflicts where minority issues and separatists movements were often prominent.
Nevertheless, the ad hoc nature of the international response to the elaboration of minority rights belies a degree of hesitancy as to the nature and even perhaps desirability of acknowledging that minorities as a distinct category had specific human rights. This hesitancy can still be seen to operate today with what the UN Secretary General described recently to be the 'inaction and even negligence' on minority rights.
This contribution highlights why the recognition and protection of the human rights of minorities continues to be a challenge, globally and in Europe, because of what remains and unfinished human rights architecture when it comes to minorities.

MINORITY RIGHTS AS HUMAN RIGHTS? CONCEPT AND PRACTICE

Miodrag Jovanović, Ivana Krstić
University of Belgrade, Faculty of Law,
Belgrade, Serbia

The opening provision of the CoE Framework Convention for the Protection of National Minorities unequivocally states that "[t]he protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights". This approach was already acknowledged with the inclusion of Article 27 in the core universal human rights instrument - the International Covenant on Civil and Political Rights (ICCPR). Thus, it is fair to say that the dominant vocabulary at the international level is that minority rights *are* human rights.

The conceptual claim behind that vocabulary implies two further implications: 1. that minority rights share the same justificatory grounds as human rights; and 2. that, insofar as human rights are by definition individual rights, the same applies to minority rights. Neither of the two, however, seems to be warranted. Namely, if human rights are, according to the traditional view, rights that we all possess simply in virtue of being humans, some such justificatory strategy should be valid for minority rights as well. This, then, opens the problem of universality – if the same set of human rights is universally held by all humans, then, *mutatis mutandis*, the same set of minority rights is/ought to be universally held by all minorities/persons belonging to minorities. The latter claim is, however, rarely if ever endorsed, because it is obviously unsupported by the prevalent international and municipal legal practice. The same is true of the second conceptual implication. For example, despite being principally phrased in the individualist language (through the "persons belonging to" formula), the opening article of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities stipulates that "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity," thereby leaving the impression that the rights to existence and identity are collective rights belonging to the referent minority groups. Also, the wording of Article 27 of the ICCPR indicates the protection of the collective interest and consequently, a violation can be found only if a minority member belongs to a particular minority group and exercises the rights "in community with the other members of their group."

Now, one may obviously provide an independent justificatory ground for the protection of minority rights *per se* (e.g. through some version of the 'politics of recognition'). But is there any justificatory route for the claim that minority rights are (to be treated as) human rights? One unexplored option concerns the so-

called "political conception", which was hinted in the late Rawls' works, articulated in Beitz's well-known book *The Idea of Human Rights* (2009), and further developed by Raz in his criticism of the "foundationalist doctrines" of human rights. In short, instead of treating them as legal instantiations of fully justified moral rights, human rights are better grasped from the vantage point of their practice in the contemporary world. The defining feature of this practice is that in violating human rights, states cannot block an outsider's intervention by employing the "none-of-your-business" argument. In Dworkin's words, human rights are taken as "trump-over-sovereignty" rights. Hence, the central premise of our paper is that *minority rights are treatable as human rights only to the extent that they are part of the respective practice in which they are taken as "trump-over-sovereignty" rights.*

In the second part of the paper we inspect the relevant international legal practice just to show that there are some significant structural obstacles that affect minority rights' "trump-over-sovereignty" potential. We want to highlight them in the following three steps.

1. Growing fluidity of the very concept of 'minority'

One way to try to rebut our central premise is to pinpoint the universality of anti-discrimination clauses of international human rights law and to argue that, in remedying structural inequalities in society, they function as an efficient tool for the minority protection, which would, then, imply that we do not need a normative roundabout for justifying minority rights as human rights. However, although undeniably important, anti-discrimination standards are only vestibular of the minority protection, and not minority rights themselves. To claim otherwise is to contribute to the growing fluidity of the concept of 'minority'. For, the inclusion of an open list of prohibited grounds, such as age, sexual orientation, disability, etc., opens the question as to whether all those grounds necessarily call for the recognition of relevant groups as 'minorities'. Despite the fact that the discussion regarding 'new' minorities is legitimate and welcome, one of its oft, and probably unintended, consequences is the relativization of the rights of 'old' minorities.

2. Admissibility and justiciability of minority rights

This leads us to the second structural problem. The strongest indication of treating minority rights as "trump-over-sovereignty" rights concerns the availability of their judicial protection and enforcement. As is well known, even the most advanced regime of minority protection, that of the CoE Framework Convention, does not rely on such institutional set-up. Therefore, the full "trump-over-sovereignty" potential of minority rights decisively depends on the willingness of other adjudicative bodies to encompass some aspects of minority rights protection through their relevant jurisprudence. While such willingness is noticeable in the practice of the European Court of Human Rights, which has created a solid jurisprudence that resonates with opinions of the Advisory Committee on the Framework Convention, the same cannot be said, for instance, of the Court of Justice of the European Union, despite the fact that the respect for "the rights of persons belonging to minorities" is among the EU's founding values (Art. 2 of TEU). While minority rights protection may have certain benefits from such a model (e.g. ECtHR developed its jurisprudence even in respect of states that are not parties to the Framework Convention), its drawbacks are heavier. Most importantly, minority rights are admissible and justiciable only insofar as they are interpretatively translatable into some of the enshrined human rights, which necessarily leaves uncovered significant and genuine aspects of the minority protection, typically their collectivist dimension.

3. The realistic sovereignty-limiting capacity of minority rights

All specifically devised minority rights instruments (Article 27 of the ICCPR, CoE Framework Convention, Coe European Charter for Regional and Minority Languages) contain ambiguous and vague language and 'claw-back clauses', including the less constructive wording (e.g. 'shall not be denied the right'). These drafting devices are not common features of the human rights language, as they leave a large margin of appreciation to the State parties and focus on their negative obligations, thereby opening the room for treaty reservations. All this, in turn, significantly affects minority rights'"trump-over-sovereignty" potential, which is the ultimate yardstick for their treatment as human rights.

Serbian Academy of Sciences and Arts thanks the following for their support: