European Yearbook on Minority Issues, forthcoming

Protecting minority rights through an individual rights mechanism: the Strasbourg Court, and some significant developments to June 2012

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Introduction

The European Convention on Human Rights is essentially a document of the Eighteenth Century. With one possible exception[1] it proclaims "first generation", civil and political rights, and bears a remarkable resemblance to the French Declaration of Rights of Man and of the Citizen of 1789, and to the revolutionary American Bills of Rights. It protects the rights of individuals, physical and legal, and of groups of individuals; but not of groups as such. Collective rights are the province of the European Social Charter of 1961.

In Volume 7 of the *European Yearbook for Minority Issues,* Leto Cariolou surveyed *Developments in the Field of the European Court of Human Rights Concerning the Protection of Minorities*, from December 2007 to February 2009.[2] She also noted a number of complaints which had been communicated but not yet adjudicated.

This article first of all returns to the origin and context of the European system for the protection of human rights, in order to take stock of the efficacy of that system for the protection of minority rights. Next, I review some of the analytical tools developed by some of the leading scholars in the field. Third, I turn to a closer look at *Timishev v Russia*[3], the first case in which the Strasbourg Court applied Article 14 to a Chechen complaint.

The article then focuses on some of the landmark judgments since early 2009, under the following headings:

Roma and discrimination

The landmark judgment in *D.H. and Others v. the Czech Republic*[4] has been followed in the December 2009 Chamber judgment in *Muñoz Díaz v. Spain*[5];

[1] The very oddly phrased Article 2 of Protocol 1 to the ECHR: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

[2] Cariolou, Leto, "Recent Case Law of the European Court of Human Rights Concerning the Protection of Minorities", *European Yearbook of Minority Issues*, Vol. 7, 2007/8. Leiden: Brill, 2010, pp.513-544; Electronic copy available at: http://ssrn.com/abstract=1468869

[3] Application no. 55762/00 & 55974/00, Judgment of 13 December 2005

[4] Application no. 57325/00, Judgment of 13 November 2007

First judgment under Protocol 12 to the ECHR: electoral rights and discrimination

A new landmark was established in December 2009, the Grand Chamber judgment in *Sejdić and Finci v. Bosnia and Herzegovina*[6];

An important correction on Roma education

On 16 March 2010 the Grand Chamber reversed a controversial chamber judgment in *Oršuš and Others v. Croatia*[7].

Forced sterilisation and Roma

The Court heard, with admirable speed, the case of *V.C. v Slovakia*[8]

Is there a right to "linguistic freedom"?

There was less success for the applicant in *Birk-Levy v France* [9]

Origins and context

Here I summarise briefly the background as concerns the ECHR.[10] The founding documents of the Council of Europe displayed a certain allergy to minority or group rights. Brownlie and Goodwin-Gill have correctly stated that the Council of Europe was "an organization created in 1949 as a sort of social and ideological counterpart to the military aspects of European co-operation represented by the North Atlantic Treaty Organisation. [It] was inspired partly by interest in the promotion of European unity, and partly by the political desire for solidarity in the face of the ideology of Communism".[11] In other words, the Western European states wished to demonstrate that they were as serious about the "first generation" civil and political rights, as the USSR and its allies undoubtedly were with regard to the "second generation" social and economic rights. After all, the "communist" states guaranteed the rights to work, pensions, social security, health care, education and so on not only in their constitutions but in practice. This provided the fundamental legitimacy of the "communist" order, and is a

[5] Application no. 49151/07, Judgment of 8 December 2009
[6] Applications nos. 27996/06 and 34836/06, Judgment (Grand Chamber) of 22 December 2009
[7] Application no. 15766/03, Judgment (Grand Chamber) of 16 March 2010
[8] Application no. 18968/07, communicated on 28 April 2008, Admissibility Decision of 16 June 2009, Chamber Judgment 8 November 2011
[9] Application no. 39426/06, Inadmissibility Decision of 21 September 2010 (in French); summary in English at http://www.codexnews.com/codex/contents.nsf/WNPPrintArticles/F0AA732F7FF563B4C22577B90034BE13/$file/Decision_on_the_admissibility_Birk-Levy_v__France.pdf (accessed on 31 May 2012)
[10] See B. Bowring (2008) "European Minority Protection: The Past and Future of a "Major Historical Achievement"" 15 *International Journal on Minority and Group Rights* 413-425
[11] I. Brownlie and G. Goodwin-Gill, *Basic Documents on Human Rights* , 5th ed. (Oxford University Press, Oxford, 2006) p. 609

reason why the USSR collapsed, indeed rotted away, rather than being overthrown. It also explains the continuing nostalgia for the late Soviet way of life.

And, as Eide observes, "[p]rincipally, support for minority rights came from Central and Eastern Europe, including the USSR".[12]

Minorities are not mentioned in the European Convention on Human Rights (ECHR), with the exception of Article 14, which states that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as … association with a national minority".[13]

This is a right which is subsidiary to and can only be pleaded in conjunction with the other substantive Convention rights, and for a long period very few cases concerning minorities were adjudicated. Writing in 1996, Geoff Gilbert not only described the 1995 Framework Convention for the Protection of National Minorities[14] as a "weak first attempt", but also observed that "[u]ntil minority rights can be adjudicated before the Strasbourg organs of the ECHR, the Framework Convention is the worst of all worlds".[15] By 2002, six years later, Gilbert acknowledged that the European Court of Human Rights (the ECtHR) had in fact developed a "burgeoning" case-law on minority rights.[16] Gilbert pointed out that while the ECHR contains no minority rights provision, a minority group can qualify as a victim of violation, and can complain to the Court as a group.[17] And at the time he wrote that article, Gilbert could state that "… the Court does not generally recognise indirect discrimination."[18] I will return to the important recent developments in the Court's jurisprudence.

In 2007 Anneleen Van Bossuyt observed that "

> the jurisprudence of the ECtHR is carefully progressive. Especially since 2000, the ECtHR has made use of the substantive provisions of the ECHR in support of minority protection. The ECtHR generally deals with minority protection when scrutinizing the margin of appreciation of states.[19]

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[12] A. Eide, 'The Framework Convention in Historical and Global Perspective', in M. Weller (ed.), *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford University Press, Oxford, 2005) , p. 41.
[13] See F. de Varennes, 'Using the European Court of Human Rights to Protect the Rights of Minorities', in Council of Europe, *Mechanisms for the Implementation of Minority Rights* (Council of Europe Publishing, Strasbourg, 2004)., p. 87
[14] Framework Convention for the Protection of National Minorities, opened for signature on 1 February 1995
[15] G. Gilbert, 'The Council of Europe and Minority Rights', 18 *Human Rights Quarterly* (1996) p. 189.
[16] G. Gilbert, 'The Burgeoning Minority Rights Jurisprudence of the European Court of Human Rights', 24:3 *Human Rights Quarterly* (2002) pp. 736–780.
[17] Ibid. , p. 739
[18] Ibid, p.747
[19] A. Van Bossuyt, 'Fit for Purpose or Faulty Design? Analysis of the Jurisprudence of the European Court of Human Rights and the European Court of Justice on the Legal Protection of Minorities'.

She noted as follows:

> The Court refers to the limited margin of appreciation of states[20] and makes clear that parties may not forbid the application of registration of an association because it aims to promote the culture of a minority.[21] After all, pluralism is built on the genuine recognition of and respect for diversity and the dynamics of traditions and of ethnic and cultural identities.[22] The Court held the same line of reasoning in subsequent judgments.[23]

She was able to conclude that its written human rights treaty has provided a rather important starting point:

> This mainly explains why the ECtHR, in contrast to the ECJ, gradually took some clear stances towards minority protection, such as placing positive obligations upon states to protect the rights of minorities to their culture and identity.[24]

However, even if a minority group as such can complain to the Strasbourg Court, such cases are extremely rare or non-existent. Thus, the case of *Kalderas Gypsies v. Germany and The Netherlands*[25] was held inadmissible, as was that of *Rassemblement Jurassien and Unité Jurassienne v. Switzerland* .[26] A few applications have been brought by political parties,[27] municipalities[28] and churches, but these have been brought on the basis that they are legal persons.[29]

The revival of Article 14

In any event, as I have already noted, a minority group cannot complain of the violation of a specifically minority right since these are not to be found in the ECHR (with the exception of Article 14, and then only in connection with a substantive right). And until recently it has been practically impossible to persuade the Court to find that discrimination has occurred

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Issue 1-2007 *Journal on Ethnopolitics and Minority Issues in Europe* , pp. 1-20, at http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2007/Issue1/1-2007_van_Bossuyt.pdf (accessed on 31 May 2012), p.5

[20] *Sidiropoulos v. Greece* Application No. 26695/95, Judgment of 10 July 1998, para. 40.

[21] Ibid, para 44

[22] *Ourano Toxo and others v. Greece* Application No. 74989/01, Judgment of 20 October 2005, para. 35.

[23] *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* Application Nos. 29221/95 and 29225/95, Judgment of 2 October 2001, para. 89; and *Ourano Toxo and others v. Greece,* ibid, para. 40.

[24] Van Bossuyt (2007) p. 17.

[25] Application nos. 7823/77 and 7824/77, admissibility decision of 6 July 1977

[26] Application no. 8191/78, admissibility decision of 10 October 1979

[27] See *Freedom and Democracy Party (ÖZDEP) v. Turkey* (Application no. 23885/94, 8 December 1999); *Fryske Nasjonale Partij v. The Netherlands* (Application no.11100/84, 12 December 1985); *Refah Partisi (the Welfare Party) v. Turkey* (Application no. 41340/98, 13, February 2003); *United Communist Party of Turkey v. Turkey* (Application no. 19392/92, 30 January 1998).

[28] *Inhabitants of Leeuw-st. Pierre v. Belgium* (Application no. 2333/64, decision 15 July1965).

[29] See for example *Canea Catholic Church v. Greece* (Application no. 25528/94, Judgment of 10 January 2001); *Cha'are Shalom ve Tsedek v. France* (Application no. 27417/95, Judgment of 27 June 2000); *Holy Monasteries v. Greece (*Application nos. 13092/87 and 13984/88, 09.12.1994); *Metropolitan Church of Bessarabia v. Moldova* (Application no. 45701/99, Judgment of 13 December 2000*); Supreme Holy Council of the Muslim Community v. Bulgaria* (Application no. 39023/97, Decision of 13 December 2001).

save where the ground is gender. And even in cases where the violation could hardly have occurred if there were no discrimination, the Court, having found the violation of a substantive right, considers it unnecessary to consider Article 14.[30] I note more than one such case below.

However, it was more recently been argued that Article 14 has at last begun to bite. The late Kevin Boyle noted in 2006 that "over the last few years a new approach is emerging in which concern over systematic discrimination and exclusion is moving in from the margins of the Convention's jurisprudence… a significant shift in the approach to Article 14…".[31]

In the same issue of the *EHRAC Bulletin*[32], Dina Vedernikova addressed the issue of "The European Court's treatment of ethnic or national discrimination". She explained the burden and standard of proof under Article 14, and helpfully summarised the current jurisprudence:

> The question of the standard of proof is closely linked to the distribution of the burden of proof. By invoking Article 14, the onus is on the applicant to establish that he/she has been less favourably treated than others, and that racism was a causal factor of this. The burden then shifts to the government to establish that there was an "objective and reasonable justification" for the discriminatory treatment, i.e. it must show that there was a "legitimate aim" and that the measure in question was "necessary in a democratic society".
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> In the earlier chamber judgment in *Nachova*, the Court had held that the burden of proof shifts to the respondent Government, where "the authorities made no attempt to investigate whether discriminatory attitudes had played a role, despite having evidence before them that should have prompted them to carry out such an investigation". Unfortunately, in the later *Nachova* judgment[33], the Grand Chamber departed from such a principle and stated that "the question of the authorities' compliance with their procedural obligation is a separate issue".
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> However, the Grand Chamber did not exclude the possibility that in certain cases of alleged discrimination the Court may require the Government to disprove an arguable allegation of discrimination and – if they fail to do so – find a violation of Article 14 of the Convention on that basis.

[30] See *Slivenko v. Latvia* (Application no. 48321/99, Judgment of 9 October 2003), discrimination alleged against "ethnic Russians"; and *Özgür Gündem v. Turkey* (Application no. 23144/93, Judgment of 16 March 2000), discrimination alleged against "Kurds".
[31] K. Boyle, Issue 5 *EHRAC Bulletin* (Summer 2006) pp. 1–3. Electronic copy available at: http://ssrn.com/abstract=1468869
[32] Issue 5 *EHRAC Bulletin* (Summer 2006) Electronic copy available at: http://ssrn.com/abstract=1468869, pp. 3-5
[33] *Nachova and Others v. Bulgaria* (No. 43577/98 & 43579/98), Judgment of 6 July 2005

She pointed out that despite the endemic nature of ethnic and national discrimination in Russia, especially in some of its regions, there had until 2006 been only one Strasbourg judgment on this issue, *Timishev v Russia*. [34]

From the very first Kurdish cases against Turkey, and later the Chechen cases against Russia, the applicants have sought to persuade the Court that they have suffered violations of Article 14, taken together with other articles of the Convention. Indeed, it is hard to understand why the individuals concerned have suffered such egregious violations but for the fact that theyv were Kurds or Chechens. However, in 2010, Kirill Koroteev assessed "Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya: The Approach of the European Court of Human Rights in Context"[35], and his analysis confirmed that the Court in almost every Chechen case avoided any findings concerning Article 14, despite the best efforts of the applicants' representatives.

Chechens and a new life for Article 14

One of the most significant judgments of the past decade was the Chamber judgment of 13 December 2005, in the case of *Timishev v. Russia* (noted above). This was noted only in a footnote in Leto Cariolou's article.[36]

The applicant was a Russian national of Chechen ethnic origin. Since 15 August 1996 he had been living in Nalchik, in the Kabardino-Balkaria Republic of Russia, as a forced migrant. On 19 June 1999 Mr Timishev and his driver were travelling by car from Nazran, in the Ingush Republic, to Nalchik.

According to the applicant, their car was stopped at the checkpoint on the administrative border between Ingushetia and Kabardino-Balkaria. Officers from the Kabardino-Balkaria State Inspectorate for Road Safety refused him entry, referring to an oral instruction from the Ministry of the Interior of Kabardino-Balkaria not to admit anyone of Chechen ethnic origin.

On 1 September 2000 the applicant's nine-year-old son and seven-year-old daughter were refused admission to their school in Nalchik, which they had attended from September 1998 to May 2000, because the applicant could not produce his migrant's card - a document

[34] *Timishev v. Russia* (No 55762/00 & 55974/00), 13/12/05
[35] K. Koroteev "Legal Remedies for Human Rights Violations in the Armed Conflict in Chechnya: The Approach of the European Court of Human Rights in Context." v.1 n.2 *Journal of International Humanitarian Legal Studies*; Dec 2010, pp.275-303; see also Dia Anagnostou "Does European human rights law matter? Implementation and domestic impact of Strasbourg Court judgments on minority-related policies" v.14 n.5 (2010) *The International Journal of Human Rights* pp.721-743
[36] At Cariolou (2010) p.515, n.5

confirming his residence in Nalchik and his status as a forced migrant from Chechnya. The applicant had had to hand in his migrant's card in exchange for compensation for the property he lost in the Chechen Republic. The headmaster agreed to admit the children informally, but advised the applicant that the children would be immediately suspended if the education department discovered the arrangement. The applicant complained unsuccessfully about the refusal to admit his children to the school.

The applicant complained to the European Court that he was refused permission to enter Kabardino-Balkaria because of his Chechen ethnic origin and about the refusal to admit his children to their school. He relied on Article 2 of Protocol No. 4, Article 14 and Article 2 of Protocol No. 1 to the ECHR.

Finding that the restriction on the applicant's liberty of movement was not in accordance with the law, the Court held that there had been a violation of Article 2 of Protocol No. 4.

As to Article 14, the Court noted that the senior police officer of Kabardino-Balkaria had ordered traffic police officers not to admit "Chechens". As ethnic origin was not listed anywhere in Russian identity documents, the order barred the passage not only of anyone of Chechen ethnicity, but also those who were merely perceived as belonging to that ethnic group. That was found to represent a clear inequality of treatment regarding the right to liberty of movement on account of one's ethnic origin. Racial discrimination, being a particularly invidious kind of discrimination, required from the authorities special vigilance and a vigorous reaction.

The Government did not offer any justification for the difference in treatment between people of Chechen and non-Chechen ethnic origin in the enjoyment of their right to liberty of movement. In any event, the Court considered that no difference in treatment which was based exclusively or to a decisive extent on a person's ethnic origin was capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures. Thus, the Court concluded that there had been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 4.

As to Article 2 of Protocol No. 1, the Government confirmed that Russian law did not allow children's right to education to be made conditional on the registration of their parents' residence. The applicant's children were therefore denied the right to education provided for by domestic law. Thus, the Court concluded that there had also been a violation of Article 2 of Protocol No. 1.

This brave first step of the Court with regard to Article 14 was also their last, for the time being.

Progress on indirect discrimination

However, the jurisprudence of the Strasbourg Court was, in 2007, revolutionised on the question of indirect discrimination.

In his 2009 comparative analysis of minority protection[37], Gaetano Pentassuglia correctly identified the significance of *D.H. and Others v. the Czech Republic*.[38]

> … *D.H. and Others* failed on the merits before a Chamber, which set a problematically high probatory standard to establish discrimination on account of race (or indeed ethnic or national origin). The Grand Chamber remarkably reversed the Chamber's decision to uphold the notion of indirect discrimination without the need to prove discriminatory intent. The Grand Chamber's focus was, not on the wording of the statutory provisions governing placements in special schools, but on whether the manner in which that legislation had been applied in practice had resulted in a disproportionately high number of Roma pupils being place in special schools without justification.[39]

He also emphasised the fact that the Grand Chamber grounded the concept of indirect discrimination on "a wealth of international, supranational and domestic jurisprudence."[40]

In a more recent article, Pentassuglia has attempted an analytical overview of the current state of affairs.[41] He emphasised, as organising principles, pluralism, identity and non-discrimination, and concluded:

> Ill-equipped to deal with minority issues on its face, the ECHR as interpreted by the Court has nevertheless started to generate meaningful protection for minority groups defined by ethnicity, language or religion. Construed around the broad areas of pluralism, identity and non-discrimination, the contemporary jurisprudence of the Court reflects a view of the 1950 Convention which is arguably more complex than the one projected onto the European legal landscape at the time of its adoption.[42]

As to pluralism, he cited *Timishev* (above) as authority for the proposition that "The pluralism jurisprudence – primarily revolving around (the lifting of) restrictions on pro-minority entities or events – largely reinforces negative obligations, while still upholding diversity as a positive value, as "a source of enrichment"." He correctly observed that "it was

[37] G. Pentassuglia *Minority Groups and Judicial Discourse in International Law: A Comparative Perspective* (Leiden: Martinus Nijhoff Publishers, 2009)
[38] Application no. 57325/00, Judgment of 13 November 2007
[39] Pentassuglia (2009) p.94, referring to paras 184-185 of *D.H. and Others*
[40] Pentassuglia (2009) p.94, n.143
[41] G. Pentassuglia (2012) "The Strasbourg Court and Minority Groups: Shooting in the Dark or a New Interpretive Ethos?" 19 *International Journal on Minority and Group Rights* 1-23
[42] Pentassuglia (2012) p.21

effectively not until *Chapman v. the United Kingdom* in 2001[43] that the Court not only confirmed the link between private and family life and minority identity but also found an "emerging international consensus recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle"."[44] He pointed in addition to the cases decided on issues of Sami identity.[45]

Thus, he was able to point optimistically to a conclusion that:

> General human rights treaties apply to all the individuals (and groups) within states parties' jurisdiction. They create comprehensive frameworks which allow for flexibility and creative judging across systems. Roma rights are being considered under the ECHR independently of the specific status of Roma communities in international law. The same applies to non-citizens ethnic Russians in the Baltic States or the de facto minority of Greek-Cypriots living in Turkish-occupied Northern Cyprus. The approach to racial discrimination under Article 14, too, does in principle transcend specific issues of group status while still creating a framework for meaningful protection.[46]

D.H. v Czech Republic and *Timishev v Russia* were followed on 10 March 2011 in the case of *Kiyutin v. Russia*[47]. The applicant alleged, in particular, that he had been victim of discrimination on account of his health status in his application for a Russian residence permit. He was Uzbek, and HIV-positive. He complained under Articles 8, 13, 14 and 15 of the Convention that the decision to refuse him authorisation to reside in Russia had been disproportionate to the legitimate aim of the protection of public health and had disrupted his right to live with his family. The Court, bearing in mind that it is master of the characterisation to be given in law to the facts of the case, considered it appropriate to examine the applicant's grievances from the standpoint of Article 14 of the Convention, taken in conjunction with Article 8.

With a third party intervention by Interights, the Court found that, although the protection of public health was indeed a legitimate aim, the Government were unable to adduce compelling and objective arguments to show that this aim could be attained by the applicant's exclusion from residence on account of his health status. A matter of further concern for the Court was the blanket and indiscriminate nature of the impugned measure. There were, therefore, violations of Article 8 and 14.

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[43] Application No. 27238/95, Judgment of 18 January 2001, para. 93.
[44] Pentassuglia (2012) p.4
[45] T. Koivurova, 'Jurisprudence of the European Court of Human Rights Regarding Indigenous Peoples: Retrospect and Prospects', 18 *International Journal on Minority and Group Rights* (2011) p. 1-37, at pp. 25–26.
[46] Pentassuglia (2012) p.18
[47] Application no. 2700/10, Judgment of 10 March 2011

A further judgment on Roma and discrimination

D.H. and Others v. the Czech Republic[48] was followed on 8 December 2009 with the Chamber judgment in *Muñoz Díaz v. Spain*[49]. This judgment contained some important further extensions to the rights of Roma and other minorities; and further positive references to the *Framework Convention*.

The applicant, a Rom of Spanish nationality, complained about a refusal to grant her a survivor's pension, following the death of M.D., also a Rom of Spanish nationality, on the sole ground that they were not a married couple under Spanish law. She alleged that there had been a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1 to the Convention and with Article 12 of the Convention.

The applicant and M.D., both members of the Roma community, were married in November 1971 according to their community's own rites. The marriage was solemnised in accordance with Roma customs and cultural traditions and was recognised by that community. For the Roma community, a marriage solemnised according to its customs gives rise to the usual social effects, to public recognition, to an obligation to live together and to all other rights and duties that are inherent in the institution of marriage. The applicant had six children, who were registered in the family record book issued to the couple by the Spanish civil registration authorities (Registro civil) on 11 August 1983. On 14 October 1986 the applicant and her family were granted first-category large-family status, under the number 28/2220/8, pursuant to the Large Family Protection Act (Law no. 25/1971 of 19 June 1971).

On 24 December 2000 the applicant's husband died. He was a builder and at the time of his death had been working and paying social- security contributions for nineteen years, three months and eight days, supporting his wife (registered as such) and his six children as his dependants. He had been issued with a social-security benefit card, stamped by Agency no. 7 of Madrid of the National Institute of Social Security (Instituto Nacional de la Seguridad Social – "INSS").

The applicant was refused a survivor's pension on the ground that she had never been the wife of the deceased.

[48] Application no. 57325/00, Judgment of 13 November 2007
[49] Application no. 49151/07, Judgment of 8 December 2009

The Court held that as the applicant had been recognised for certain purposes by the Spanish authorities but not for the survivor's pension, the applicant's proprietary interests fell within the ambit of Article 1 of Protocol No. 1 and the right guaranteed therein to the peaceful enjoyment of possessions, this being sufficient for Article 14 of the Convention to be engaged.

The Court summarised the effect of *D.H. and Others* as follows. According to the Court's established case-law, discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. The “lack of objective and reasonable justification” means that the impugned difference in treatment does not pursue a “legitimate aim” or that there is not a “reasonable relationship of proportionality” between the means employed and the aim sought to be realised.

The Court held that for the applicant, to treat her relationship with M.D. as a mere *de facto* marital relationship for the purposes of the survivor's pension constituted discrimination in breach of Article 14 of the Convention taken together with Article 1 of Protocol No. 1. That discrimination was based on the fact that her application for a survivor's pension had received different treatment in relation to other equivalent cases in which an entitlement to a survivor's pension had been recognised even though the beneficiary had not been married according to the statutory formalities, whereas, in her case, neither her good faith nor the consequences of the fact that she belonged to the Roma minority had been taken into account.

In order to assess the applicant's good faith the Court took into consideration the fact that she belonged to a community within which the validity of the marriage, according to its own rites and traditions, has never been disputed or regarded as being contrary to public order by the Government or the domestic authorities, which even recognised in certain respects the applicant's status as spouse. The Court took the view that **the force of the collective beliefs of a community that is well-defined culturally cannot be ignored**. (My emphasis – BB).[50]

The refusal to recognise the applicant as a spouse for the purposes of the survivor's pension was at odds with the authorities' previous recognition of such status. Moreover, the applicant's particular social and cultural situation were not taken into account in order to assess her good faith. In this connection, the Court noted that, under the *Framework Convention for the Protection of National Minorities*, the States Parties to the Convention are

[50] Ibid, paragraph 59

required to take due account of the specific conditions of persons belonging to national minorities.[51]

The Court, however, rejected the applicant's complaint under Article 14 and Article 12 that the failure in Spain to recognise Roma marriage as having civil effects – it being the only form of marriage to produce effects *erga omnes* within her own community – even though the minority had been present in Spain for at least five hundred years, entailed a breach of her right to marry.

Judge Myjer, in his dissenting opinion, argued that the Court's jurisdiction cannot extend to the creation of rights not enumerated in the Convention, however expedient or even desirable such new rights might be. In interpreting the Convention in such a way, the Court may ultimately forfeit its credibility among the Contracting States as a court of law.

First judgment under Protocol 12 ECHR - discrimination

Another significant development since Leto Cariolou's update was the Grand Chamber's 22 December 2009 judgment in *Sejdić and Finci v. Bosnia and Herzegovina*[52].

The applicants, Mr. Sejdić and Mr. Finci are both prominent public figures. Mr. Sejdić was at the date of the judgment the Roma Rights Coordinator for the OSCE Mission to Bosnia and Herzegovina, having previously served as Coordinator of the Bosnia and Herzegovina Council for Roma (the highest representative body of the Roma Community in the state) and as a member of the Bosnia and Herzegovina Council of Ministers' Roma Council. Mr. Finci, who was assisted in the case by Minority Rights Group International, was at the date of judgment serving as Ambassador of Bosnia and Herzegovina to Switzerland, having previously held positions that included being Chair of the Constitutional Commission and the Head of the Civil Service Agency. [53]

The Constitution of Bosnia and Herzegovina (BiH) is an annex to the General Framework Agreement for Peace in BiH ("the Dayton Peace Agreement"), initialled at Dayton on 21 November 1995 and signed in Paris on 14 December 1995. Since it was part of a peace treaty, the Constitution was drafted and adopted without the application of procedures which could have provided democratic legitimacy. It constitutes the unique case of a constitution

[51] Ibid, paragraph 64
[52] Applications nos. 27996/06 and 34836/06, judgment (Grand Chamber) of 22 December 2009
[53] http://www.minorityrights.org/9519/press-releases/bosnian-jew-and-roma-win-challenge-in-european-court-of-human-rights-against-bar-on-running-for-public-office.html (accessed on 27 May 2012)

which was never officially published in the official languages of the country concerned but was agreed and published in a foreign language, English.

In the Preamble to the Constitution, Bosniacs, Croats and Serbs were described as "constituent peoples". At the State level, power-sharing arrangements were introduced, making it impossible to adopt decisions against the will of the representatives of any "constituent people", including a vital interest veto, an Entity veto, a bicameral system (with a House of Peoples composed of five Bosniacs and the same number of Croats from the Federation of Bosnia and Herzegovina and five Serbs from the Republika Srpska) as well as a collective Presidency of three members with a Bosniac and a Croat from the Federation of Bosnia and Herzegovina and a Serb from the Republika Srpska.

The applicants took issue with their ineligibility to stand for election to the House of Peoples and the Presidency on the ground of their Roma and Jewish origin, which, in their view, amounted to racial discrimination. They relied on Article 14, Article 3 of Protocol No. 1 and Article 1 of Protocol No. 12.

The Court agreed with the Government that there was no requirement under the Convention to abandon totally the power-sharing mechanisms peculiar to BiH and that the time might still not be ripe for a political system which would be a simple reflection of majority rule. The Opinions of the Venice Commission[54] clearly demonstrated that there existed mechanisms of power-sharing which did not automatically lead to the total exclusion of representatives of the other communities. The Court recalled that the possibility of alternative means achieving the same end is an important factor in this sphere (see *Glor v. Switzerland*[55]).

By becoming a member of the Council of Europe in 2002 and by ratifying the Convention and Protocols without reservations, BiH had voluntarily agreed to meet the relevant standards. It had specifically undertaken to "review within one year, with the assistance of the Venice Commission, the electoral legislation in the light of Council of Europe standards, and to revise it where necessary". Likewise, by ratifying a Stabilization and Association Agreement with the European Union in 2008, BiH had committed itself to "amend[ing] electoral legislation regarding members of the Bosnia and Herzegovina Presidency and House of Peoples delegates to ensure full compliance with the European Convention on

[54] Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative (document CDL-AD(2005)004 of 11 March 2005); Opinion on different proposals for the election of the Presidency of Bosnia and Herzegovina (CDL-AD(2006)004 of 20 March 2006); Opinion on the draft amendments to the Constitution of Bosnia and Herzegovina (CDL-AD(2006)019 of 12 June 2006);
[55] Application no. 13444/04, Judgment of 30 April 2009, § 94,

Human Rights and the Council of Europe post-accession commitments" within one to two years.

The Court was able to conclude that the applicants' continued ineligibility to stand for election to the House of Peoples of Bosnia and Herzegovina lacked an objective and reasonable justification and therefore breached Article 14 taken in conjunction with Article 3 of Protocol No. 1.

BiH had also ratified Protocol 12 to the ECHR. The Court asserted that the notion of discrimination had been interpreted consistently in the Court's jurisprudence concerning Article 14 of the ECHR. This jurisprudence had made it clear that "discrimination" meant treating differently, without an objective and reasonable justification, persons in similar situations. The Court referred to the Grand Chamber judgment in *Andrejeva v. Latvia* [56]; the Grand Chamber judgment in *Nachova and Others v. Bulgaria*; as well as to *Timishev v Russia* (above); and *Belgian Linguistics Case*[57]; and finally the Grand Chamber judgments in *Thlimmenos v. Greece*[58]: and *D.H. and Others v. the Czech Republic*[59] .

The drafters used the same term, discrimination, in Article 1 of Protocol No. 12. Notwithstanding the difference in scope between those provisions, the meaning of this term in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14. The Court did not therefore see any reason to depart from the settled interpretation of "discrimination", noted above, in applying the same term under Article 1 of Protocol No. 12 (as regards the case-law of the UN Human Rights Committee on Article 26 of the International Covenant on Civil and Political Rights, a provision similar – although not identical – to Article 1 of Protocol No. 12 to the Convention.)

The lack of a declaration of affiliation by the applicants with a "constituent people" also rendered them ineligible to stand for election to the Presidency. An identical constitutional pre-condition had already been found to amount to a discriminatory difference in treatment in breach of Article 14 as regards the House of Peoples and, moreover, the notions of discrimination prohibited by Article 14 and by Article 1 of Protocol No. 12 were to be interpreted in the same manner.

[56] Application no. 55707/00, Judgment of 18 February 2009, § 81
[57] Judgment of 23 July 1968, Series A no. 6, § 9
[58] Application no. 34369/97, ECHR 2000-IV, Judgment of 6 April 2000, § 44
[59] Application no. 57325/00, ECHR 2007, Judgment of 24 April 2010, § 175

It followed that the constitutional provisions which rendered the applicants ineligible for election to the Presidency must also be considered discriminatory and a breach of Article 1 of Protocol No. 12, the Court not considering that there was any pertinent distinction to be drawn in this regard between the House of Peoples and the Presidency of Bosnia and Herzegovina.

Accordingly, and for the detailed reasons given in the context of Article 14, the Court found that the impugned pre-condition for eligibility for election to the Presidency constituted a violation of Article 1 of Protocol No. 12.

Judge Bonello gave a spirited dissenting opinion. He pointed to "a clear and present danger of destabilising the national equilibrium", and could not "endorse a Court that sows ideals and harvests massacre."

Marko Milanovic pointed out[60] that the Court had to rely on Protocol No. 12 because the Presidency could not be defined as a "legislature" within the meaning of Article 3 of Protocol No. 1, and thus fell outside the scope of that provision. While the Article 14 prohibition of discrimination applies specifically to "the rights and freedoms set forth in this Convention"—that is, is solely accessory or parasitic in character—the one in Protocol No. 12 extends to all rights recognized by law. It is precisely the breadth of this prohibition and its implications for vast areas of economic and social policy that have led many states to balk at ratifying the protocol.[61] As of July 12, 2010, only eighteen[62] of forty-seven states parties to the Convention had ratified Protocol No. 12, which came into force (after ten ratifications) on April 1, 2005. As of 27 May 2012, no more states had ratified, while a further 19 member states had signed without ratification. Denmark, France, Poland, Sweden, Switzerland and the UK have not even signed.

Milanovic commented:

> As for Strasbourg, leaving aside its understandable refusal to condone discrimination based on ethnicity (even in exceptional circumstances), what now remains to be seen is whether its judgment will make an actual difference. The road ahead will certainly be difficult. The only actual remedy for the applicants and other Bosnian citizens similarly situated is an amendment of the Bosnian Constitution.

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[60] M. Milanovic "Sejdic & Finci v. Bosnia and Herzegovina" v.104 n.4 (2010) *American Journal of International Law* pp.636-640; Electronic copy available at: http://ssrn.com/abstract=1672883 (accessed on 27 May 2012)

[61] See M. Janis, R. Kay and A. Bradley *European Human Rights Law: Cases and Materials* (3rd edition, Oxford: Oxford University Press, 2008) pp.457-469 and 516-518.

[62] Albania, Andorra, Armenia, Bosnia and Herzegovia, Croatia, Cyprus, Finland, Georgia, Luxemburg, Montenegro, Netherlands, Romania, San Marino, Serbia, Slovenia, Spain, FYROM, Ukraine

Professor Sheri Rosenberg, counsel for Finci, responded to Milanovic[63]:

> I agree that the decision is a landmark for ECHR jurisprudence and for Sarajevo. Where we disagree though is on the potential impact in Sarajevo. I am less pessimistic than you about its potential impact in BiH.
>
> This issue has never been a particularly contentious one. All parties agree this should be changed… This is also evidenced by the handling of the case by Bosnia. (I was counsel for Mr. Finci). The hold up has been the fact that the changes to these provisions have been part of the broader constitutional amendment package.
>
> The beauty of this ruling is that it provides greater incentive than many other EU type incentives because complying with ECHR decisions is a relatively clear and bright-line requirement for EU accession. Moreover, the decision gives politicians political-cover if you will — by providing a legal reason for change outside the hands of the political process. In the end, it is a decision for not against Bosnia.

The significance of *Finci* for the development of Court's jurisprudence on minority rights cannot be overestimated.

An important correction on Roma education

On 16 March 2010 the Grand Chamber gave its judgment in *Oršuš and Others v. Croatia*[64]

The applicants were children who had been placed in Roma-only classes. In its judgment of 17 July 2008, the Chamber found no violation of Article 2 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention. It held that the applicants had been assigned to Roma-only classes because they lacked sufficient command of the Croatian language and that this measure had been justified.

The Chamber held that although *prima facie* it might appear that *Oršuš* was akin to the case of *D.H. and Others v. the Czech Republic*, a more detailed analysis showed that it was not so. First and foremost, as to the nature of the impugned practice, while the Court found that in the Czech Republic Roma children were placed in schools for the mentally challenged, as being of lower intellectual capacity, in Croatia Roma children found to lack sufficient or even basic knowledge of the Croatian language are placed in separate classes upon their enrolment in regular elementary school. It was obvious to the Chamber that these two measures differed significantly in their nature and severity. In the Chamber's view, placing a disproportionate percentage of children belonging to a specific ethnic minority in schools for the mentally retarded bore no comparison with placing Roma children in separate classes on the ground

[63] http://www.ejiltalk.org/grand-chamber-judgment-in-sejdic-and-finci-v-bosnia/ (accessed on 27 May 2012)
[64] Application no. 15766/03, Judgment of 16 March 2010

that they lacked adequate knowledge of the Croatian language. The Chamber also noted that the applicants had never contested that at the time of their enrolment in the elementary school they did not have a sufficient command of the Croatian language in order to follow the lessons in that language.

Leto Cariolou was rightly critical of this judgment, which departed significantly from the analysis adopted in *D.H. v The Czech Republic*.[65] She pointed in particular to the Chamber's focus on whether at the time of their enrolment the Roma children were legitimately placed in separate classes, rather than examining whether they had been discriminated against throughout their education; to the Chamber's reliance on their failure to protest at the time of enrolment; and to its failure to consider whether the Roma children had a realistic possibility of joining a normal class.

Interights intervened, and stressed the necessity for the Court to develop a comprehensive body of case-law on the substantive aspects of the right to education. The obligation to respect the right to education required States parties to avoid measures that hindered or prevented the enjoyment of this right. The obligation to ensure that education was both adequate and appropriate required States to take positive measures that would enable and help individuals and communities to fully enjoy the right to education. The principal aims of education could only be achieved where children from different cultural backgrounds were educated together in integrated schools.

While the applicants had made complaints under Article 2 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention, claiming that the fact that they had been allocated to Roma-only classes during their primary education violated their right to receive an education and their right not to be discriminated against, the Grand Chamber saw the case as raising primarily a discrimination issue. Thus, for the Grand Chamber, the central question to be addressed was whether adequate steps were taken by the school authorities to ensure the applicants' speedy progress in acquiring an adequate command of Croatian and, once this was achieved, their immediate integration in mixed classes.

The Grand Chamber could not ignore the fact that the applicants were members of the Roma minority. Therefore, it took into account the specific position of the Roma population, which had become a specific type of disadvantaged and vulnerable minority, requiring special protection.

[65] Cariolou (2010) pp.538-540

The Grand Chamber took the view that the applicants' case could be distinguished from *D.H. and Others v. the Czech Republic* and *Sampanis and Others v. Greece*[66], in particular regarding the relevance of the statistics in the three cases, which could have a bearing on whether there is *prima facie* evidence of discrimination and consequently on the burden of proof. It was not, in Croatia, a general policy to automatically place Roma pupils in separate classes in both schools at issue. Therefore, the statistics submitted did not suffice to establish that there is *prima facie* evidence that the effect of a measure or practice was discriminatory.

However, the Grand Chamber reminded itself that indirect discrimination may be proved without statistical evidence (*D.H. and Others,* § 188), and noted that the measure of placing children in separate classes on the basis of their insufficient command of the Croatian language was applied only in respect of Roma children. Thus, the measure in question clearly represents a difference in treatment.

The Grand Chamber noted that there was no clear legal basis for placing children in separate classes, and no specific language testing.

And as to the Government's emphasis (which the Chamber had accepted) on the parents' passivity and lack of objections in respect of the placement of their children in separate classes, as well as on the fact that they had not requested their transfer to mixed classes, the Grand Chamber reiterated its conclusion in *D.H. and Others v. the Czech Republic* that (para.203): "In the circumstances of the present case, the Court is not satisfied that the parents of the Roma children, who were members of a disadvantaged community and often poorly educated, were capable of weighing up all the aspects of the situation and the consequences of giving their consent. ..."

The Grand Chamber concluded that that there were at the relevant time no adequate safeguards in place capable of ensuring that a reasonable relationship of proportionality between the means used and the legitimate aim said to be pursued was achieved and maintained. It follows that the placement of the applicants in Roma-only classes at times during their primary education had no objective and reasonable justification.

This Judgment was however carried very narrowly by 9 votes to 8. There was Joint Dissenting Opinion by Judges Jungwiert, Vajić, Kovler, Gyumulyan, Jaeger, Myjer, Berro-Lefèvre, and Vučinić. First, the applicants had not argued that their command of the Croatian language at their enrolment in primary school was adequate – they had never objected to the

[66] Application no. 32526/05, Judgment of 5 June 2008

Government's assertion that they lacked the required level of language proficiency. Second, the dissenters accepted that decisions pertaining to the methods used to address special needs of certain pupils belong to the sphere of social policy, in which States enjoy quite a wide margin of appreciation.

Their most serious criticism of the majority was as follows (para.15, p.68-9):

> It would seem that the majority viewed the case in the first place as a means of further developing the notion of indirect discrimination in the Court's jurisprudence. To be able to do so it was, however, obliged to lean on arguments outside the concrete facts, referring to the situation of the Roma population in general... As a result, this became in some respects more a judgment on the special position of the Roma population in general than one based on the facts of the case, as the focus and scope of the case were altered and interpreted beyond the claims as lodged by the applicants before the Court. In adopting this approach, however, the majority neglected the criteria previously elaborated by the Court itself in respect of the right to education under Article 2 of Protocol No. 1 to the Convention.

On 21 June 2011 a Chamber followed *Oršuš* and other case-law and held in the case of *Ponomaryovi v. Bulgaria*[67] that the requirement for the applicants to pay fees for their secondary education on account of their nationality (Russian) and immigration status was not justified. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1.

Forced sterilisation and Roma

Leto Cariolou noted communication of the case of *V.C. v Slovakia*[68] in April 2008. The case proceeded rather speedily, with an admissibility decision in June 2009, and a Chamber Judgment in November 2011. The applicant complained that during the labour of her second child, she had been subjected to a permanent form of sterilization without her consent. In particular, she stated that she had been misled by the medical personnel at the last stage of delivery when she was made to believe that a life-saving surgery was required. The applicant made reference to a number of publications showing a history of forced sterilization of Roma women originating under the Communist regime in Czechoslovakia.

As to Article 3, the Court held that although there was no indication that the medical staff acted with the intention of ill-treating the applicant, they nevertheless acted with gross

[67] Application no. 5335/05, Judgment of 21 June 2011
[68] Application no. 18968/07, communicated on 28 April 2008, Admissibility Decision of 16 June 2009, Chamber Judgment 8 November 2011

disregard to her right to autonomy and choice as a patient. For the Court the treatment to which she was subjected attained the threshold of severity required to bring it within the scope of Article 3. As to Article 8, the absence at the relevant time of safeguards giving special consideration to the reproductive health of the applicant as a Roma woman, resulted in a failure by the State to comply with its positive obligation to secure to her a sufficient measure of protection enabling her to effectively enjoy her right to respect for her private and family life.

The applicant put forward a strong argument under Article 14, read in conjunction with Articles 3, 8 and 12. She considered that her ethnic origin had played a decisive role in the decision by the medical personnel of Prešov Hospital to sterilise her. Her complaint about discriminatory treatment was to be examined in the light of the sterilisation policies and practice existing under the communist regime and also in the context of the widespread intolerance towards the Roma in Slovakia. That climate had influenced the attitudes of the medical personnel. The indication in her medical record that she was of Roma ethnic origin and her treatment as a patient in Prešov Hospital demonstrated the climate in that hospital with regard to Roma patients and the overall context in which her sterilisation had taken place.

In addition to having been subjected to racial discrimination, the applicant alleged that she had been subjected to discrimination on the ground of her sex as she had been subjected to a difference in treatment in connection with her pregnancy. Referring to documents from CEDAW, the applicant argued that a failure by health services to accommodate the fundamental biological differences between men and women in reproduction was in breach of the prohibition on discrimination on the ground of sex. The sterilisation performed on her without her full and informed consent amounted to a form of violence against women. As such it was contrary to Article 14.

The Court considered it most natural to entertain the discrimination complaint in conjunction with Article 8 as the interference in issue affected one of her essential bodily functions and entailed numerous adverse consequences for, in particular, her private and family life. The Court stated that the materials before it indicated that the practice of sterilisation of women without their prior informed consent affected vulnerable individuals from various ethnic groups. The Court held that the information available was not sufficient to demonstrate in a convincing manner that the doctors acted in bad faith, with the intention of ill-treating the

applicant. Similarly, and notwithstanding the fact that the applicant's sterilisation without her informed consent called for serious criticism, the objective evidence was not sufficiently strong in itself to convince the Court that it was part of an organised policy or that the hospital staff's conduct was intentionally racially motivated. The Court referred to *Mižigárová v. Slovakia*.[69].

Nevertheless, it was relevant from the viewpoint of Article 14 that in their materials both the Human Rights Commissioner and ECRI identified serious shortcomings in the legislation and practice relating to sterilisations. They expressed the view that those shortcomings were liable to particularly affect members of the Roma community, who were severely disadvantaged in most areas of life. The same was implicitly admitted by the group of experts established by the Ministry of Health, who recommended special measures in respect of the Roma population. In that connection the Court had found a violation of Article 8, and did not find it necessary to separately determine whether the facts of the case also gave rise to a breach of Article 14 of the Convention.

That form of words is depressingly similar to the formulae employed by the Court in refusing to find violations of Article 14 in so many cases concerning Kurds, Chechens and Roma (not to speak of other minority groups).

Is there a right to "linguistic freedom"?

On 21 September 2010 the Chamber of the Fifth Section held inadmissible *ratione materiae* the application in the case of *Birk-Levy v France* [70], which concerned the obligation to use the French language in the French Polynesian Assembly. The Court reiterated that the ECHR did not guarantee "linguistic freedom" as such, or the right of elected representatives to use the language of their choice when making statements and voting within an assembly. Each State indisputably had a legitimate interest in ensuring that its own institutional system functioned normally. Nevertheless, the Court was not required to adopt a position on the choice of a national parliament's working language, which was determined by historical and political considerations specific to each country.

[69] *Mižigárová v. Slovakia* (Application no. 74832/01, Judgment of 14 December 2010) , at paragraphs 117 and 122

[70] Application no. 39426/06, Inadmissibility Decision of 21 September 2010 (in French); summary in English at http://www.codexnews.com/codex/contents.nsf/WNPPrintArticles/F0AA732F7FF563B4C22577B90034BE13/$file/Decision_on_the_admissibility_Birk-Levy_v__France.pdf (accessed on 31 May 2012)

Although the Institutional Act on the autonomous status of French Polynesia acknowledged the Tahitian language as "a fundamental element of cultural identity", it provided that French was the official language and that its use was compulsory for public-law entities, for private-law entities when performing public services, and for consumers in their dealings with administrative authorities and public services. Ms Birk-Levy's application under Article 10 thus fell outside the scope of the Convention and had to be rejected as being outside the Court's jurisdiction. Accordingly, her complaints under Articles 14 and 11 likewise had to be dismissed.

Some pending forced eviction cases noted in Leto Cariolou's article

Under the heading "Demolition of Roma Settlements and Forced Evictions" Leto Cariolou noted a number of cases which had been communicated to the respective Governments.[71] The first was *Evangelos Tzamalis and others v Greece* [72], in which the applicants complained of violations of Article 3 in their forced eviction. On 20 October 2009 the Chamber of the First Section held that their application must be rejected for non-exhaustion of domestic remedies. There have as yet been no decisions in *Winterstein and others v France*[73] (Articles 8 and 14; the forced eviction of the applicants, who were members of the Traveller's community, on the basis of town-planning regulations); or in *Ibishi and others v Greece*[74] (Articles 8 and 14; the eviction of the applicants, who were of Roma origin, from the settlement in which they lived for more than 10 years; no steps were taken to address their need for relocation or their subsequent poor living conditions; the eviction was carried out by the cleaning crew of a private construction company with bulldozers that levelled the applicants' sheds).

Conclusion

While it might have been premature in 2002 to describe the minority rights jurisprudence at Strasbourg as "burgeoning", there has over the past decade been solid progress, especially with regard to discrimination against the Roma populations. The Court can be seen to have developed a special concern and sensitivity for a wide range of issues confronting Roma in several Council of Europe states. The Court has now constructed a sophisticated and capable definition and procedure concerning indirect discrimination, and has been prepared, albeit on a split vote, to invade the spaces and disrupt the mechanisms created by the international

[71] Cariolou (2010) pp.522-524
[72] Application no. 5469/07 , Inadmissibility Decision of 20 October 2009
[73] Application no. 27013/07
[74] Application no. 47236/07

community for the purpose of conflict resolution. However, the Court remains as reluctant as ever to turn to Article 14 once it has found violations of substantive articles. And it remains to be seen whether, in the absence of further ratifications of Protocol 12, completely stalled now for several years with only 18 states out of 47, the Court will venture again onto that disputed territory.