UNIVERZA V LJUBLJANI
FAKULTETA ZA DRUŽBENE VEDE

Katherine Marie Sklar

Analiza relevantnosti in vpliva Sveta Evrope na Slovenijo

Analyzing the Relevancy and Impact of the Council of Europe on Slovenia

Magistrsko delo

Ljubljana, 2013

UNIVERZA V LJUBLJANI
FAKULTETA ZA DRUŽBENE VEDE

Katherine Marie Sklar

Mentor: izr. prof. dr. Branwell DuBose Kapeluck
Somentor: red. prof. dr. Bogomil Ferfila

Analiza relevantnosti in vpliva Sveta Evrope na Slovenijo

Analyzing the Relevancy and Impact of the Council of Europe on Slovenia

Magistrsko delo

Ljubljana, 2013

Zahvala

My deepest thanks to my mentors Dubose Kapluk and Bogomil Ferfila, and friend Jasna Panič. I would never have made it so far if not for your endless support and kindness.

Analyzing the Relevancy and Impact of the Council of Europe on Slovenia

In this master's thesis I explore the impact of the Council of Europe upon Slovenia regarding minority rights. This thesis reveals the connection between theory and practice, as well as complexity of minority rights theory. The Council of Europe is hampered by the lack of power granted to it by its member nations, as well as its inability to create theoretically coherent policies. Although the European Court of Human rights can have real impact, it still has limited reach due to structural inefficacies and a lack of country cooperation. As a case study, Slovenia's policy disagreements with the Council regarding minority rights reflect their disagreements over theory, as well as the futility of the Council to create effective legislation. However, Slovenia also provides a positive example of cooperation with the Council, with some change resulting from their interaction.

Keywords: Council of Europe, Slovenia, International Relations, Minority Rights, Theory

Analiza relevantnosti in vpliva Sveta Evrope na Slovenijo

V tem magistrskem delu sem raziskala vpliv Sveta Evrope na Slovenijo v zvezi s pravicami manjšin. Magistrsko delo razkriva povezave med teorijo in prakso, kakor tudi kompleksnosti teorije manjšinskih pravic. Svet Evrope ovira pomanjkanje moči, ki mu jo dajejo države članice, kakor tudi njegova nezmožnost ustvarjanja teoretično usklajenih politik. Čeprav ima lahko Evropsko sodišče za človekove pravice dejanski učinek, je njegova moč še vedno omejena zaradi strukturnih neučinkovitosti in pomanjkljivega sodelovanja držav članic. Primer Slovenije, kot študije primera, kaže kako politična nesoglasja države članice s Svetom Evrope o pravicah manjšin izražajo njihove spore o teoriji, kot tudi nezmožnost Sveta, da bi oblikoval učinkovito zakonodajo. Vendar pa Slovenija ponudi tudi pozitiven primer sodelovanja s Svetom, ter kaže na nekatere spremembe, ki izhajajo iz njune interakcije.

Ključne besede: Svet Evrope, Slovenija, mednarodni odnosi, pravic manjšin, teorije

Table of Contents

1 Introduction

With its membership of forty-seven countries and 800 million citizens, the Council of Europe has huge potential to be a dominant actor in promoting human rights and democracy. But what power does the Council actually wield? Moreover, the Council aims to promote human rights, but determining the precise nature of human rights is not a simple task. If the Council cannot take theoretical positions on human rights to begin with, then it will face problems later in formulating coherent and useful policy. In my thesis I will analyze the Council of Europe's capacity as a supporter of human rights. I will focus particularly on the role and impact of the Council on its constituent nations regarding minority rights, using Slovenia as a case study. Concentrating on minority rights will allow me to reveal the theoretical complexity involved in dealing with human rights and how this complexity has real effects on formulating and implementing policy.

Although the Council of Europe (hereafter referred to as the Council) deals with many aspects of human rights and democratic governance, I have chosen to focus upon minority rights because minority rights demonstrate how a seemingly simple and intuitively correct rights issue can be incredibly complicated. Given the atrocities of World War II, there is now a strong consensus that minority rights should not be neglected and that there exists a duty to prevent the persecution of the most disadvantaged among us, but from there matters become more complicated. It is complicated to determine exactly what minority rights are and who should get them, complicated to devise ameliorative policies, and complicated to implement such policies. Dealing with minority rights would test even a well-functioning organization, much less an organization like the Council, which has an apparent identity crisis.

Minority rights are also a valuable topic to examine because of their relevancy in today's world and for the implications that protecting minority rights has for society. Managing ethnic and minority tensions is challenging all over the globe, and Europe is not immune to these difficulties. Moreover, minority rights may be a gauge of the openness and just nature of a society. Minority rights are among the easiest to

ignore because minorities are the least able to fight for their rights, and the most prone to stigmatization by the majority.

The Council is struggling to prove its relevancy and effectiveness. The Council has chosen to focus on human rights and democratic governance, but unless countries grant it definitive oversight on these issues, the Council lacks enforcement mechanisms needed to have substantive influence on these matters. For example, Freedom House recently released a highly critical report on the Ukraine regarding its rapidly degenerating human rights situation (Kramer, 2012). The Ukraine has been a member of the Council since 1995, and has signed such treaties as the Convention for the Protection of Human Rights. Russia, Hungary, Romania, and Turkey are more examples of members of the Council that have recently faced accusations of human and civil rights violations. This leads one to question the power of the Council in places that it should really matter.

To evaluate the relevancy and effectiveness of the Council, I will use a case study country, drawing upon Slovenia. Slovenia, a member state of the Council since 1993, has a long history of interaction with the Council and an interest in minority rights. Given Slovenia's past with the Council and relative cooperation, it will be a good lens through which to consider the Council's relevancy and effectiveness. It would be easy to use another country that has been less cooperative than Slovenia, but I wish to present a balanced representation of the Council.

This thesis will argue that although the Council could play an important role in protecting human rights, it needs greater power and internal efficiency to carry out its mandate if it is to be an important international body. Moreover, the Council's lack of agreement on the theoretical background regarding issues such as minority rights with its member nations make its policies weaker and more difficult to enforce. Slovenia illustrates the lack of enforcement power of the Council, as well as the value of the Council so long as its constituent nations are cooperative with its proposals and suggestions.

1.1 Methodology and Research Design

This thesis shall draw predominately upon research and analysis of qualitative primary and secondary sources. I will focus upon the scholarly debate surrounding the

effectiveness and role of the Council, as well as use official documents provided by the Council. For the theoretical background of my thesis, I will draw upon academic research on issues relating to national sovereignty and the relationship between member nations and intergovernmental organizations. The European Court of Human Rights was recently reformed in April of 2012. I will use official documents provided by the Council on these reforms, as well as academic research.

A central concern of my thesis is the effectiveness of the Council. I will evaluate effectiveness based on the rational-system approach, which asserts, "an action is effective if it accomplishes its specific objective aim." (Barnard 1968). In accordance with this methodology, I will evaluate the Council by examining its goals of protecting minority rights. If the Council largely meets this goal, then for the purposes of this thesis, it is effective. This focus is best given my case study and speaks to the larger problems facing the Council. If the Council cannot convince its member country Slovenia to merely apply its suggested norms, then this is a larger problem than budget considerations or other measurements of effectiveness.

My thesis will be divided into three sections. In my first section I will analyze minority rights theory. Minority rights theory is an important place to start because it lays the foundation for theoretical inconsistencies that I will argue inhibit the Council from formulating coherent policies. In this section I will focus upon two key debates concerning minority rights, first, are minority rights derived from individual rights or group rights, and second, whether there are any substantive differences between so-called National Minorities and mere minorities.

In my second section I will focus on the Council. I will sketch out the historical origins of the Council, and then provide an overview of the Council's operations and various components. I will give the European Court of Human Rights special attention due to its role as the only arm of the Council that has something resembling executive powers. While the Council can create laws, and countries are bound to follow them, the Council cannot force compliance. Only the Court has the power to directly reprimand and punish countries that fail to abide by the laws. Next, I will return to minority rights, and examine the Council's Framework Convention for the Protection of National Minorities. I will analyze the theoretical premises that underlie the ideas promoted by the European Council in the Framework, and discuss how these theoretical complexities can causes problems for the Council's policy

standpoints. For this section of my paper I shall principally draw upon academic papers and texts, as well as documents published by the Council.

In my third section, I will evaluate the impact of the Council on my case study country of Slovenia. I will begin by reviewing the interaction of the Council with Slovenia, and give a brief background into Slovenia's policy positions on National Minorities. Next, I will investigate the dialogue between the Council and Slovenia through the Framework Convention for the Protection of National Minorities and the European Court of Human Rights. To study this interaction, I will use the official documents of the Council and academic papers and court decisions pertaining to Slovenia.

The conclusion of my thesis will be a synthesis of my findings. I will remark upon the overall functionality of the Council, and its role as a tool for influencing policy as evident in Slovenia. This section will be my own analysis.

2 Minority Rights Theory

Examining the ideology that shapes public policy is valuable. Without theory, policy has no legs to stand upon. Even if one argues for policy based on practicality, what is "practical" can vary depending on the thinker's perspective. Policy is the outcome of people attempting to apply justice in what seems to be a terminally unjust reality. Differing perceptions regarding the right thing to do can result in different policy standpoints. This is the situation we have with the Council and Slovenia. These are two different entities with unique theoretical perspectives on minority rights, and thus different approaches to policy. I propose that the inconsistencies between the Council's and Slovenia's theories on minority rights affect the Council's effectiveness.

In this section of my thesis, I will begin by explaining the origins of minority rights as an idea before delving into the theory that has developed around it. I will then start by examining necessary assumptions for minority rights, and then analyze if minority rights are derived from group rights or individual rights. Finally, I will examine the differentiation between national minorities versus mere minorities. This section will provide a background for the differences between Council and Slovenian policy, as well as illustrate how theoretical stances on minority rights can have real effects on policy. It is one thing to say that you want to protect minority rights, but it is another to say exactly what those rights are. This section will demonstrate just how complicated it is to make this determination.

2.1 Minority Rights Policy Origins

In order to evaluate the current situation of minority rights both theoretically and practically within Europe, particularly the rights laid out by the Council in the Framework Convention and in Slovenian policy, it is helpful to consider a wider perspective on minority rights in European history.

Prior to World War I, Europe did not pay much attention to minority rights as we conceive of them today, and when it did, the protections were meager. Europe was a land dominated by vast empires; multi-ethnic and multi-cultural countries were the

norm. The deficit in substantial minority rights, according to international law, continued until World War I and the establishment of the League of Nations finally brought some attention to minority rights and autonomy. U.S. President Woodrow Wilson pushed strongly for the right of national self-determination, which is still used by minorities today as justification for desiring independent statehood or greater autonomy within nations. This is the beginning of the somewhat arbitrary distinction that the international community makes between valid and non-valid claims to nationhood. Some groups deserve self-determination, while others do not.

Minorities were not totally neglected. To compensate for the lack of validation, the League of Nations wished to guarantee internal minority rights, perhaps out of humanitarian concerns (Aukerman 2000, 1042). During this time, President Wilson pushed for minority protection through individual rights, rejecting the minorities' wish for group rights. His ideology triumphed. Nations were mandated to ensure basic rights for all of their citizens, including equal rights for their minorities (Fink 2000, 389). Some scholars argue that minority rights were developed with the recognition that the division of power failed to grant each nations' right to self-determination given the tremendous complications involved in divvying up territory, particularly in Central and Eastern Europe (Aukerman 2000, 1035). Unfortunately, the League of Nations lacked an efficient enforcement mechanism to ensure the rights that it theoretically protected. States were not pleased to sacrifice their sovereignty to the League of Nations (Fink 2000, 389). The member states' reluctance to grant supremacy made it very difficult for the League to carry out the laws that it mandated. The challenge of relinquishing sovereignty to larger entities continues today.

There was a drastic shift in attitudes towards minority rights after World War II. The international response to WWII's human rights atrocities began with the United Nations' Declaration on Human Rights in 1948, although it neglected mentioning protection of national minorities. In 1971 the UN Commission on Human Rights finally "created a submission to investigate the prevention of discrimination and the protection of minorities" (Fink 2000, 396). Even so, it was not until 1992 that the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, or Linguistic Minorities was issued. At last it explicitly says, "States shall protect the existence and the national or ethnic, cultural, religious, and linguistic identity of minorities within their respective territories and shall encourage the conditions for the

promotion of that identity." It was a long journey to arrive at this point, and by 1992 more atrocities occurred that emphasized the need for minority rights.

In the wake of the Cold War during the early 1990's, many peoples were clamoring for statehood and the topic of minority rights came to center stage. The Balkan region imploded into ethnic violence. A complicated triangular relationship arose "between the minority communities themselves, the states in which they live, and their external national 'homelands'" (Brubaker 1995, 109). All of this chaos led to great fear for international stability, and states looked nervously at their own minorities who might call upon self-determination as justification for secession or annexation. The resulting international legislation from the EU, NATO, and UN that arose during this time period melded humanitarianism with pragmatism (Fink 2000, 397). The bloody conflicts witnessed in the Balkans shocked the world and touched people's hearts and states pragmatically did not want such conflicts to arrive at their doors.

The resulting world order is now split on how best to accommodate minorities. There are those that believe in minority rights as depicted by Wilson, which amounts to only individual rights and leaves nations' territorial sovereignty intact. Then there are those newer nations whose very existence is due to the right to self-determination, and who therefore are inclined to a broader group-rights conception of minority rights (Fink 2000, 398). It is easy to imagine who might be in favor of what. It is out of these sentiments that the Council and Slovenia, a product of the Yugoslav break-up, developed their minority rights policies.

2.2 Minority Rights: Necessary Assumptions

In this section I will provide a basic background on minority rights theory. I will begin by explaining the importance of the underlying assumptions for minority rights. These assumptions include the existence of minority rights, that cultural diversity is a good to be desired for its own sake, and that positive rights exist.

Before moving on, it should be acknowledged that the creation of the category of minority rights is itself an assumption. Bas de Gaay Fortman persuasively argues in his paper, "Minority Rights: A Major Misconception," that the whole concept of minority rights is false and contrived, and distinguishing between human rights and

minority rights is even detrimental to human rights (Fortman 2010). Although I agree that the support for minority rights as a philosophical concept may be somewhat weak, it is a commonly used categorization, and one that we must engage with to understand how minority rights function as a concept in Europe.

In order to assert the existence of minority rights, one must first assume the existence of human rights and positive rights. Since minority rights are perceived as a subset of human rights, one must accept the existence of human rights in order to support minority rights. Simplistically phrased, human rights represent morally valid claims (Jovanovic 2005, 638). Such morally valid claims might include a right to live, education, and food. In practice, human rights straddle moral rights and legal rights, and are a category of legal rights whose validity is derived from a human moral right. The challenge is determining which 'human' rights are the most important and should become legal rights, thereby entering into the more narrow standard discourse of human rights (Jiwei Ci, 248). For example, we might argue a moral right to life entails a human right to be treated at emergency medical centers, but access to crosswalks is not typically considered a human right, although it also secures a moral right to life. Complications like this involved in determining the precise nature of human rights continue infinitely.

Minority rights rely on other presumptions. In general, theories that support minority rights reject the aim of assimilation and presume the importance of cultural diversity (Verkuyten 2000, 532). In order for minority rights to make sense, there must be some added benefit to maintaining cultural identity that otherwise would not be met. If minority rights are an instrumental good, only to insure the benefits of full social participation, then this aim would be just as efficiently fulfilled through a policy of assimilation. Something must be missing. One suggestion is that assimilation denies free choice, and that this free choice can only be enabled by robust cultural options (Oestreich 1999, 117). Cultural diversity in this situation is a fundamental right of a liberal society.

Liberal philosopher Will Kymlicka is well known for his central argument for minority rights. Kymlicka argues that cultural context is necessary for formulating a conception of the good, and thereby determining how we will live our lives. This makes cultural context vital for individual autonomy. Kymlicka maintains that we must protect some minority cultures from the majority if these minority cultures are to provide the fundamental cultural context for their peoples (Kymlicka 1992, 140).

However, part of this argument rests on the important assumption that having a variety of cultures is important, and that the minority culture is better suited to secure this cultural context over the mainstream culture.[1] If the only role a culture has is shaping identities, then minority rights are not needed; whatever culture the group assimilated into would provide the key context that forms identities and enables autonomy. It is also distinctly unfair to expect a minority to find the same range of meaningful life choices in another culture (Oestreich 1999, 118). This is why not only must culture be valued, but also cultural diversity. How should these cultural differences be supported? Many theorists would say that not only is the government obligated to allow a cultural minority group the right to speak its own language, but also it is obligated to provide the assistance to do so. It is from this support of diversity that we arrive at a positive conception of minority rights.

The government's duty to actively aid the minority groups entails that minority rights are positive rights. This is an important distinction that has large policy implications. Rights are considered be negative or positive. Negative rights are the rights that obligate others, including the government, to not interfere with us in crucial ways (Ci 255). Negative rights include fundamental liberties like freedom of speech or freedom of religion. These are the rights that allow us to live as we wish without interference. Positive rights are the rights that obligate others to assist us (Ci 255). Many governmental services fall into this category, including the right to education or the right to unemployment benefits (essentially, the right to not starve.) Proponents of minority rights are often seeking to establish minority rights as positive rights. These rights extend to such areas as schooling, media, street signs, and civil documents, promoting civil servants who are capable of speaking the minority group's language, and national symbols (Kymlicka 1998, 144). Without the existence of positive rights, one is left with a more libertarian model that guarantees that nobody will interfere with nor support the group's maintenance of cultural practices. Within Europe particularly, minority rights are considered to be positive rights, and therefore the

[1] For an excellent critique of Kymlicka's key arguments, see Brian Walker's article, "Plural Cultures, Contested Territories: A Critique of Kymlicka" (1997). Among Walker's criticisms are that Kymlicka's model does not work in our modern culturally diverse society, and the exaggerated importance Kymlicka places on ethnicity in cultural identity. Kymlicka's arguments seem weak upon greater examination to me as well, but this is yet another assumption I must accept for the sake of argument. It is also interesting to note that the Council of Europe's key minority rights legislation was passed in 1995, when Kymlicka's theories were experiencing great attention. Perhaps modern legislation might have treated the topic differently in light of the criticism that has mounted against him since this time.

government has an obligation to fund such enterprises as schools or media organizations.

In my view, the best argument for minority rights as positive rights is their role as a societal equalizer. Positive rights "are not designed as privileges but rather are intended to make up for structural inequalities affecting the minority..." (Aukerman 2000, 1028). In other words, members of mainstream society are already the beneficiaries of their cultural context; they inherently receive all the support they need to shape their identities. The members of minority groups do not receive the same benefits. Members of minority groups will need to be given special rights to ensure that they will be on the same level of cultural fulfillment. The state is not an impartial actor, and its citizens who are in the cultural majority already enjoy the 'group rights' that are needed to preserve their culture (Wright 612). These rights might seem like privileges, but they are actually compensation. Aukerman terms this phenomenon of group-differentiated rights 'Equality in difference.' We must treat groups differently so that they may be to be treated the same (Aukerman 2000, 1037-1038). Assuming that maintaining a cultural diversity is important, then this is a solid response to the complaint that minority rights are sufficiently dealt with through negative rights.

In addition, treating groups differently is arguably fundamental to preserving the spirit of substantive democracy. Democracy may be considered to be manifested in two different forms, that of formal democracy and substantive democracy. Formal democracy is procedural, constructed around democratic structures and rules. Substantive democracy seeks to further the spirit of democracy, which involves "regulating power relations in such a way as to maximize the opportunities for individuals to influence the conditions in which they live, to participate in and influence debates about the key decisions which affect society" (Kaldor and Vejvoda 62). If one believes not only in procedural democracy, but also in substantive democracy, then there is a clear obligation to encourage minority rights so as to better ensure their participation in society.

2.3 Minority Rights: What are they, and do they belong to Groups or Individuals?

Defining minority rights is a complicated question, accompanied by the even more complicated issue of to whom these rights apply. Determining whether minority rights are derived from group rights or individual rights impacts who will benefit from minority rights, and what sort of rights they will receive. Group rights for minorities will give them considerably stronger rights then they would have otherwise, (the strongest manifestation of group rights is arguably self-determination displayed through secession) while individual rights would be weaker. However, proponents of minority rights as group rights must also defend the concept of group rights to begin with, which is not necessarily straightforward. Moreover, even if one grants that minority rights are group rights, then there is the difficulty of figuring out why ethnic minority groups should get these rights and not other cultural societal minority groups such as family farmers or cat lovers (Gilbert 1996, 163). This is particularly problematic because socially marginalized groups beyond the non-"traditional" minorities may need protection even more than ethnic groups, such as the mentally disabled (Jovanović 2005, 636). These questions will later come to haunt policy makers, who all use the phrase minority rights but have differing views on these important details.

Determining the exact nature of minority rights is problematic. The general concept is simple- cultural preservation is generally considered the central minority right, with other specific rights ensuring this broad idea. Yet the exact particulars about how to protect cultural preservation are not firm. As mentioned earlier, proponents of minority rights support measures in such areas as schooling, media, street signs, and civil documents, promoting civil servants who are capable of speaking the minority group's language, and the usage of national symbols (Kymlicka 1998, 144). The exact application will vary depending on the situation. For example, the extent to which minority languages should be accommodated or taught is something that must be determined by the individual states based on a variety of factors.

Two possible minority rights that are particularly controversial are autonomy and representation. Greater autonomy automatically allows the minority to protect their own culture, while greater representation in the government for small minorities

is thought to combat against systematic disadvantages (Oestreich 1999, 127). However, both autonomy and greater representation can be particularly challenging to carry out. Since greater representation entails granting a disproportionate amount of say to a small group of people, this raises the concern that such representation could be undemocratic. (Certainly a violation of procedural democracy, although arguably not substantive democracy.) Some countries may be hesitant to grant autonomy to minority groups out of fear that the minority will use their autonomy to grasp at self-determination and a cascade effect will occur (Oldenquist 2002, 272). Autonomy may also be impractical for smaller minority groups that might not be territorial concentrated. However, this points out that the degrees of control will presumably vary based on circumstances (Wright 621). There is no one-size fits all solution with minority rights, and the degree of autonomy that a minority group might need or be capable of supporting will vary in each situation.

Self-determination is not widely considered by institutions to be among minority rights, although the concept is deeply bound up with many of the ideas behind minority rights (Stanovičić 1992, 364). Simply put, the overlap arises because if we accept that ethnic groups have a right to self-determination in their historical territory, then it would be inconsistent for us to accept to deny the right to self-determination to minority groups who would otherwise qualify for this group right. However fundamental it may be, determining which groups deserve the right to self-determination is a huge topic well beyond the scope of this thesis. The question alone of who should receive minority rights is already problematic enough.

Another important question is if minority rights are group rights or individual rights. This will also have impact on what rights are considered minority rights. To briefly review, human rights straddle the divide between legal and moral rights. In the liberal tradition, moral rights result from the individual's right to autonomy. Hence, individual human rights are conceptually easy to accept. Group rights, or collective rights, are much harder to justify, although belonging to a group may give us something that fundamentally shapes our identities. There is no individual to whom to accord rights, which counters the key role of the individual in liberal political theory (Oestreich 1999, 116). Therefore, in order to defend minority rights as group rights, one must defend the existence of group rights. To prove the existence of group rights, the classic defense is that some rights can only be manifested by groups, not individually. For example, the right to self-determination of a nation cannot be

manifest individually (Jones 1999, 89). This is a right that could only granted to a group.

As to the contention that there is no individual to whom to assign rights, there are two ways to defend the moral standing of group rights: either by defining group rights as corporate, or collective (Jones 1999, 90). The first is the more classic stance of group rights as corporate rights. According to this idea, the group itself has moral standing apart from its individual members. Jovanović defends this line of thought when he proposes that the group does have a kind of shared consciousness that exists separate from the individual (Jovanović 2005, 631). As evidence of this, a group consciousness can die while the individual can go on living, as is the case with assimilation. However, if we wish to discuss group rights as human rights, then with this conception we are still lacking the individual that makes human rights coherent.

The other option is collective rights. Collective rights are granted to a group based on the moral standing of the individuals within the group. This method allows the idea of rights that can only be exercised by groups, while simultaneously using the individuality of its members to justify group rights as human rights (Jones 1999, 89). While the collective conception of group rights is more appealing since it is based off of individual rights, there are some complications in using this theory. The collective group rights theory, as originally developed by Joseph Raz, ties group rights to the shared interest of individuals. For Raz, this implies an aggregate aspect to group rights – the more people have a shared interest, the stronger the right (Raz 1995). This should be born in mind when using the collective conception of group rights. In contrast, the corporate conception relies on the intrinsic goodness of cultural plurality, which entails that the minority rights should be the same regardless of group size (Jovanović 2005, 641). Both perspectives have potential distasteful complications for their adherents. On one side we are left in the possibly bad situation of granting less rights based on population size, leaving minority groups with less members more susceptible to discrimination, while on the other we could grant an absurdly disproportionate amount of rights to a tiny group of people.

The alternative to minority rights as group rights would be to consider them as individual rights. Using the individual as the source of rights is simpler to justify according to liberal political theory, although it leaves the onus of cultural preservation up to the individual. Many international documents and organizations attempt to justify minority rights without granting special rights to the group as an

independent organism. In fact, the general liberal political framework presumes indifference to ethno-cultural differences, and considers these differences better suited to the private affairs of the individual (Jovanović 626). For example, Article 27 of the International Convent on Civil and Political Rights protects people who are members of minority groups, but it does so from the individualist, negative freedom standpoint. The Convent prevents the state from restricting language use, but does not seem to obligate the state to actively fund the language protect dying languages (Wright 1999, 608-610). This theoretical stance has practical implications in terms of policy. If the state has no positive obligation to the minority group, then it is only left with a negative obligation to the individual.

If one takes the group rights stance for minority rights, then the question of who should qualify for them remains. Segments of society beyond traditional (ethnic) minority groups could claim collective consciousness because of their role in creating a valuable cultural context. Family farming communities or urban neighborhoods in danger of gentrification are strong examples of this (Walker 1997, 217-218). All of these groups might qualify as unique cultural institutions that define their member's identities, but they are not regarded to have the same group rights that might an ethnic community. Pinpointing why traditional minority groups have a special status over others may rely on the argument that only some minority groups have the value of serving as a strong socializing force, and that these are ethnic cultural groups (Jovanovic 2005, 636). Other possible criteria for the superiority of some minority groups over other such groups are attachment to land, historical presence based on first claims, and past repression and current vulnerability (Aukerman 2000, 1040-1041). There may be no straightforward and procedural way to establish which groups should receive minority rights and which should not, but these could serve as starting point for consideration.

The debate surrounding the nature of minority rights is still unresolved, yet policy makers still use both the group (corporate or collective) and individual minority rights conceptions. Some groups receive minority group rights, while other groups must be satisfied with the less substantive protection of individual rights. This inconsistent application of the usage of minority rights has real-world ramifications as different bodies attempt to protect minority rights.

2.4 National Minorities vs. Mere Minorities

The Council attempts to answer the question of why some minorities receive group rights while others do not by differentiating between national minorities and other minorities. (I will refer to these minorities as mere minorities.) Although the Framework Convention uses this national minority terminology as the basis for the Framework, it fails to supply a definition for national minority. While the Council might wish that it would be straightforward and intuitive to differentiate between national minorities and mere minorities, it is not so simple.

The Council asks governments to separate worthy groups from the rest are by drawing upon the designation of national minority status. Given their lack of definition, it is reasonable that they are considering some of the standard criteria for determining which groups should receive minority rights in general. Certainly the term national minorities implies that only minorities selected by the state can qualify, and it also suggests some connection with the roots of the nation (Gilbert 1996, 163). General criteria include attachment to land, historical presence based off first claims, and past repression and current vulnerability, group self-consciousness and a desire for self-preservation, and that the group's role as a socializing force (Aukerman 2000, 1040-1041). These criteria are not meant to serve as necessary or sufficient conditions for establishing a worthy minority group, but rather are a starting place for discussion. Policy makers like to turn to one of these criteria in particular when deciding national minority status: 1) historical presence, and one criterion that is not listed above, 2) if the groups have a plausible claim to statehood, either in and of themselves or through their affiliation with another nation.

This first criterion, historical presence, is a straightforward justification for granting special rights. The logic being that if a group was here first or has been here for a long time, then they have a claim to the land and should be given the autonomy that they deserve. This is deeply connected with the idea of self-determination. Examples of the use of historical presence to justify group minority rights abound within Europe and the United, including the semi-autonomous regions within the UK and Spain and semi-autonomous Native American communities (McCorquodale 1994, 864). The people that were there first may also be referred to as those that were indigenous to the land. Although the phrase indigenous is often used in post-colonial situations, it can be relevant in Europe as well. The central idea is the same: those that

were there first have a special claim to the land and should receive special rights (Aukerman 200, 1014). Mere minorities may be equal in their cultural value or vulnerability, but if they lack the historical ties to the land then they are missing something vital. Indeed, the separation between national minorities and mere minorities could also be described as one between indigenous rights verses minority rights. If one argues that national minorities have a special status based on their historical claim, then they are essentially prioritizing the "indigenous" peoples. This is somewhat the policy that we have seen in Slovenia, where national minorities are the ones that have a historical claim to the land upon which they reside, although these lands are within Slovenian state borders.

The second criterion of whether the groups have a plausible claim to statehood, either in and of themselves or through their affiliation with another nation, is more straightforward and has less to do with historical justification. This position is described well by Arnold Suppan and Valeria Heuberger. Aukerman provides a translation from the original German:

> A nation can be described as a community of people, a large social group, which through specific objective and subjective conditions becomes integrated into an at least partly homogeneous society, while at the same time being conscious of itself as a political community and desiring to have a common state. A national minority is a part of such a nation, albeit divided off from it and living in another state. In addition there are ethnic groups which, on account of their numerical weakness and/or diaspora condition, cannot become a political nation (Aukerman 1027).

This proposed definition has considerable merit. It creates a straightforward definition for national minorities, and it would be easy to determine which minorities are and which minorities are not 'national.' The importance of a connection with a kin-state is particularly strong in Europe (Gilbert 1996, 169). This also may explain why national minorities receive more rights than mere minorities. Given their connection to other states, national minorities may receive more protection and respect than non-national minorities because of the diplomatic implications involved with the treatment of their brethren. Alternatively, minorities that lack a connection to a state have no greater entity to turn to for recourse, so they also should be granted special rights for

their own protection. This seems to represent the situation of the Roma, who lack an international advocate for their treatment due to their diaspora. This definition also explains the exceptional treatment of some minorities that do not have state representation or could not due to population size but have linguistic and cultural uniqueness and could make a claim to their own state.

While this definition is useful to figure out who might qualify for minority rights (it leaves out troublesome cases such as rural farmers or cat-lovers), it gives minority rights to a wider selection of groups than states might like, and it is not featured in international law. Even so, this type of classification for national minority, which draws upon general definitions for minority in addition to a possible connection with a kin-states, is likely how the Framework Convention's use of national minority should be interpreted (Gilbert 1996, 170). However, the Framework never explicitly lays out criteria, leaving the states free to select their own criteria. As we will see later, the lack of any solid justification for separating national minorities from mere minorities will have huge implications for the Council in both creating and implementing their minority rights policy across their member nations.

2.5 Section Summary

Minority rights are a theoretically complex issue. In the attempt to establish minority rights, we can see problems with how they fit into a schema of human rights, and the problematic nature of determining if they are based on individual or group rights. This has a large impact on the scope of minority rights. If one believes that minority rights are negative, then the government need do very little and simply not interfere with the individual's wishes. The burden is on the individual or group of individuals to preserve his or her culture. If the nature of minority rights is positive, then the government has a greater duty to provide whatever tools the minority might need to protect their culture, including such items as language instruction in schools and government offices, religious rights, media outlets, and cultural centers.

Next, there is the difficulty of determining what minority rights should entail, and to whom they should be granted. What minority rights should entail will be somewhat situational, since meeting the end of preserving cultural identity may require greater measures for some minorities but less for others. If these rights should

be granted to individuals or groups is another problem without a clear answer. This is a deep point of theoretical disagreement that will be a point of conflict between the Council, which is careful to frame minority rights as individual rights, and Slovenia, which has a strong group-rights conception of minority rights.

Finally, there is the issue of separating out the worthy minority groups from the unworthy. Minority rights can be very strong and create a huge obligation from the state, thus it is reasonable to try to sort out which groups can claim this obligation and which must be satisfied with individual rights. The Council's answer relies on the undefined phrase 'national minority,' leaving it up to us to surmise what the Council means and up to the states to do with it what they will.

Throughout this section, it is clear minority rights are not straightforward. There are enough substantive ways to disagree that one reasonable conception of minority rights could look drastically different from another. Unfortunately, the differences between the Council's views and the views of its member states will affect the Council's ability to protect minority rights. While the focus is upon minority rights, minority rights are only one aspect of human rights, and by no means the most theoretically fraught. Given the complicated nature of human rights theory, the enormity of the task that the Council has taken on to protect human rights is clear, since first they need to take on the task of determining what they are to begin with. Yet this is the least emphasized challenge facing the Council- far better known is their struggle to take meaningful actions at all.

3 The Council of Europe

The Council of Europe has assigned itself a huge undertaking. Protecting human rights and furthering democracy is a challenge, and the Council faces much criticism regarding its effectiveness. There is concern that countries may use the Council as a façade, mimicking engaging in dialogue with the international community and professing beliefs in human rights and democracy, while actually ignoring them. In this section I will raise two main claims critical of the Council: Firstly, that it is unable to operate well due to a lack of power given to it by its member states, secondly, that it struggles with taking substantive positions on the theoretical aspects of its mission. These points will be raised throughout this part of my paper. I will also briefly examine the judicial arm of the Council, and argue that, although it has numerous issues, it is the strongest tool of the Council and thus there is good reason for preserving it.

I will begin this section with a brief discussion on the historic origins of the Council and Minority Rights in Europe and an overview of how the Council functions (including the Court). Then, I will return to the topic of minority rights, beginning with a historical outline of minority rights and Europe, and then examining the Framework Convention for National Minority Rights. The Framework Convention will serve as an example to understand how the Council's lack of power compromises the theoretical consistency and thereby operational power of the Convention.

3.1 Origins & Functioning of the Council

The Council is a product of the anguish of World War II, created to support reconstruction and cooperation among nations. Founded in 1949, prior to the European Coal and Steel Community in 1950 that would later result in the European Union, it was envisioned to become a great unifier. In his 1949 speech in Strasbourg, Winston Churchill makes several remarks that clearly define the founders' aspirations for the Council. He proclaimed that the founders hoped that it would one day be the "parliament of Europe," and show the force and strength that lies within a united

Europe. The Council attempted to become the sort of cohesive European institution that its founders wished for. It created a parliamentary assembly, wrote the Convention for the Protection of Human Rights and created a court system to implement it. The Council also originally delved into such issues as education, culture, youth and sport by creating the European Cultural Convention in 1954, as well as other social and economic projects in later legislation. Two of the famous symbols of European unity, the blue and yellow-starred flag, and European Anthem based on Ode to Joy, were originally adopted by the Council (1955 and 1972 respectively) although today we connect these symbols with the European Union. However, even close to the beginning of the Council, its weaknesses were evident, and it was seen as in danger of being "sunk" (Boothby 1952, 332).

Despites its original wider aspirations and large membership size, the Council has not become the rallying point for greater European integration. Instead, it has struggled with its identity in the face of the rise of the European Union, and mired in a "sea of polite conversation and political correctness" ("Council of Europe: A Breath of Fresh Air?" Economist May 13 2004). In 2005, the Council convened a summit in Warsaw to define how the Council fits into a Europe dominated by the European Union. The Council needed an overhaul. It required adopting a new mission statement, defining its role within Europe given the existence of other institutions, and giving it "a clear political mandate for the coming years." (Terry Davis, Oslo 2004). The result of the Council's soul-searching was that the Council would focus on promoting the common fundamental values of human rights, rule of law and democracy. Although these three mission points are far from the Council's wider original mission to be the catalyst from European integration, they give the Council a new way to frame its mission and a place within the current European institutional framework.

One of the Council's problems is that its current structure has multiple layers of bureaucracy, leaving it open to accusations of inefficiency. (Of the Council's relatively small budget of approximately 385,000,000 Euros for the year 2013, approximately a fourth is designated for operating costs.) The central components of the Council are the Committee of Ministers, the Parliamentary Assembly, the position of Secretary General, and European Court of Human Rights. Also attached to the Council are the Congress of Local and Regional Authorities, the Commissioner for Human Rights, the Conference of INGO's, and the deputy Secretary General.

Furthermore, the Secretariat itself employees the permanent and temporary staff of the Council. It is no wonder given all these parts, combined with the limited budget of less than 400 million Euros that must stretch over 47 member states, that the Council is criticized as inefficient, not to mention its lack of power to force member states to comply with its edicts (Jordan 2003, 686).

There are several important bodies within the Council, all of which are hampered by a lack of real enforcement power. The Secretary General, who leads the Council, is elected for a five-year term by the Parliamentary Assembly. The Secretary General works on strategic planning of the Council and steers its course, and is also is the figurehead of the Council, serving as its official representative and voice to the public. The decision making process within the Council seems splintered between the Committee of Ministers and the Parliamentary Assembly. The Committee of Ministers, composed of the foreign ministers from member states, determines official policy, budget, and the program of activities. However, it is the Parliamentary Assembly, whose members are selected by the various national parliaments, that is the actual deliberative group that creates treaties and legislation. Only one part of the Council arguably has real power beyond the internal organization- only the Court has the ability to take action against violators of the Council's treaties. Otherwise, the Council must resort solely to "soft power of pressure, shaming, and the threat of expulsion" to motivate countries to comply with human rights norms (Jordan 2003, 686). The only option to force any real action regarding human rights is the European Court of Human Rights.

The European Court of Human rights addresses violations of the European Convention on Human Rights, on behalf of states or individuals. The countries that have signed on to the European Convention on Human Rights, a necessary step to join the Council, all are subject to the rulings of the Court of Human Rights. The Court serves as the last course for justice for those whose cause has been rejected elsewhere. The Court's decisions not only impact those that it is adjudicating for, but also can raise social awareness and pressure. Although countries might not care about the opinion of the Council, these rulings can have implications on a wider scale. For example, when Hungary was attempting to apply for a loan from the IMF in 2012, it was also under fire for accusations of corruption and human rights violations. The Council was able to motivate Hungary to back down from some of its more radical positions because the loan from the IMF is contingent on the EU's agreement (*The*

Economist: "Salami Tactics: Behind the Public Rows, Hungary is Trying to Satisfy its Critics" March 24 2012). Since the EU and the Council work together, and human rights are an important point for both organizations, the Court's rulings have greater sway upon member countries than they otherwise might.

Even as the strongest tool of the Council to defend and perpetuate human rights norms, the Court does have weaknesses. I will examine two main concerns: firstly, that the court lacks internal efficiency in terms of handling the case load, and secondly, the sorts of judgments that the court hands down are not creating lasting change (Shany 229). If the Court does cannot process cases quickly enough, then citizens will be less likely to view it as a viable and useful way to secure justice, and if the rulings are too limited in scope then the Court is not impacting the human rights situation on the ground. Such problems would compromise the ability of the Court to protect human rights.

The internal inefficiency of the court is something that both the critics and the Council have been aware of, and recent reforms have tried to address this. In some senses, the European Court of Human Rights has been wildly successful; too successful. In 2011 the court had 140,000 pending cases, and it continues to receive 50,000 new applications yearly. Given that the court issues approximately 1,500 decisions a year, this means that as of 2011 it will take 93 years to take care of the backlog of cases not even taking into consideration the new applications (Cerna 512). Many of these cases involve similar issues. (Ironically one such common issue the court makes rulings on is judicial delay.) In response to this tremendous backlog, there have been many attempts at reform. Protocol 14 was adopted in 2004, in light of the fact that 60% of the applications the court receives are repetitive, regarding issues that court has already made judgments and created court law on, and over 90% of the applications that are processed are later declared inadmissible. Among other items, Protocol 14 attempted to reinforce the filtering capacity of the court regarding applications, better admissions criteria, and measures for dealing with repetitive cases (Factsheet Protocol 14 – the reform of the ECHR) Even after this protocol was issued, putting these concepts into practice and continuing to reform the court has been a challenge. Protocol 14 did not enter into force until 2010. Three major conferences have been held to continue the momentum to reform the court: the Interlaken Conference in 2010, the "Izmir Declaration" following a conference in Turkey in 2011, and lastly the Brighton Conference in 2012. The most pivotal of these

conferences was at Interlaken, where concept of "pilot judgments" to deal with case duplication was established, as well as a statute of limitations. (Final Comments, Federal Councilor Eveline Widmer-Schulpf, Head of the Swiss Federal Department of Justice and Police.) Change is clearly attempting to be made, but it is an uphill battle.

The duplication of cases is also a challenge because it is partially not the court's fault. Countries must disseminate the rulings within their countries and actively apply them within their courts, as they are legally bound to do anyway in accordance with the Convention on Human Rights (Brighton Declaration, 20 April 2012). This is the most obvious solution to solving the problem of the court's caseload. However, persuading the worst offending countries to comply with greater dissemination of the rulings might be challenging since they have already shown a predilection to ignore the Convention to begin with. Over half of the cases brought before the Court in 2011 come from only five countries: Russia (28.9%), Turkey (10.9%) Romania (8.6%) Ukraine (7.5%) and Italy (7.3%) (Cerna 2011). We are left with an unfortunate scenario. It would seem that the court is inefficient in instilling human rights norms, but the court cannot perpetuate norms if countries fail to cooperate with them.

The larger question of what sorts of judgments the Court makes and if countries obey them is even more fundamental. If the Court makes decisions that the member nations do not follow, then it loses legitimacy. There would be little reason for people to turn to the Court if nothing would come of it beyond a body acknowledging that you have been wronged (Shany 2012, 227). However, if the Court only grants weak reparations that countries are happy to abide by, then there is the danger of allowing countries to violate human rights in exchange for occasional minor monetary costs. Some say the use of monetary compensation for those whose rights have violated is thus inefficient. While one individual might benefit from such a ruling, it is questionable if the ruling would be strong enough to inspire a country to make lasting policy changes in favor of better human rights (Shany 2012, 227). As a result of these concerns, the Court must walk a fine line. If it is be an instigator and defender of norms, then it must be a cause for change instead of a tollbooth for rights violators. However, if the Court is too forceful and aggressive, countries may wish to withdraw from the Council to avoid being subject to its will, or ignore the Court altogether. After all, disturbingly there is nothing to force a country, beyond the power of its own law, to abide by the decisions of the Court of Human rights.

The Court has reason to be careful. It is conceivable that countries might leave the Council, thereby not falling under its jurisdiction. If there is not enough pressure to stay in the Council, then countries might leave. For example, in the UK there has been increasing criticism of the Court of Human rights for compromising national sovereignty. In December of 2012, two members out of the nine-member Commission on a Bill of Rights advocated for withdrawing from the European Convention on Human Rights. ("UK bill of rights commission fails to reach consensus" *The Guardian* 18 December 2012) The compulsion for states to remain within the Council is weak beyond societal pressure. Unlike the European Union, which brings significant benefits along with the obligations, the Council cannot offer any incentives beyond its good name.

3.2 Minority Rights: Framework Convention for National Minority Rights

In this part of my thesis I will examine one product of the Council's deliberations, the Framework Convention for National Minority Rights. First I will explain what the Framework is, and then I will remark on how the theory explored in Section I is manifest within this Framework. Finally, I will briefly explain how although the framework is for the most part theoretically consistent, the lack of definition for national minorities exasperates the Council's challenge to protect human rights.

The Framework Convention for the National Minority Rights is a series of 32 articles within 5 sections that support the rights of national minorities to maintain their ethnic, cultural, religious, and linguistic identities and expresses and supports their identities. The Framework was originally created as a Declaration of the Heads of State and Government of the member States of the Council in 1993, adopted by the Committee of Ministers in 1994, and then opened for signing by the member states in 1995 (Explanatory Report 1-2). The Framework was made in consultation with a committee of experts who were mandated to make specific legal standards (Explanatory Report 11). Within the introduction of the Framework, one of the reasons cited for its existence is that "the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent…" However, it also conceivable that the Framework

Convention was somewhat inspired by the terrible ethnic cleansing and violence in the Balkan region that entered into full chaos in 1991 and had already shown its awful effects by 1993. Frankly, the existing standards of nondiscrimination were not ensuring minority rights (Gilbert 1996, 173). The Framework Convention is a document that at its heart wants to honor differences and promote co-existence, the opposite of the ethnic conflict and tensions that filled the news at the time.

When countries sign on to the Framework Convention, they agree to a monitoring program with a five-year review cycle. The monitoring cycle has several steps, and begins with an internal evaluation by the country. Then, the Council's official Advisory Committee, composed of 18 independent experts, evaluates the country on their own. They do so through visits with governmental and non-governmental officials, and through evaluating written and non-written sources. The Committee then issues an opinion, which the States have a four-month window to comment upon publicly. Finally, the Committee of Ministers issues an opinion with recommendations for the State. All of these documents are made public. Follow-up meetings do occur for the actors within the state to address the Committee's proposals and to evaluate how best to move forward. The framework is legally binding, which makes it appear to be a strong document. However, it is weak because there are no measures within the framework that are directly applicable (Gilbert 1996, 188). The manner in which the countries carry out the concepts advocated by the framework is up to them.

I will now briefly review the articles by section within the Framework Convention, and afterward highlight the more troublesome ones for further review.

The most substantive parts of the Framework occur in Section I and II, which lay out details regarding what qualifies as minority rights. Section I establishes that minority rights are "an integral part of the international protection of human rights," (Article 1) and that minorities should be allowed to exist and pursue the preservation of their culture. Section II details the obligation of the states towards the minorities. In particular, the States must "promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority" (Article 2). Assimilation shall be prohibited (Article 5). Particularly interesting is Article 9, which outlines that minorities should "not be discriminated against in their access to the media," and must even "adopt adequate measures in order to facilitate access to the media" for

minorities. Articles 10 and 11 address the right to language use, particularly in situations with the government and in public. Article 12, 13, and 14 address the right to educational opportunities and perpetuation of knowledge about the minority's history, as well as the right to learn in their own language. Article 15 is the right to participle in public affairs and all social spheres. Article 16 prohibits measures that alter the population distribution of minorities. Articles 17 and 18 protect the right of the minorities to engage with others across national borders, both individuals and NGOs, and the coordination of protection of minorities across borders. Article 19 simply says that countries should do their best to respect the aforementioned rights.

The remainder of the Framework, Section III, IV, and V, detail the mechanics of how the Framework will be implemented. Section III is about how minorities must have equal respect for the rights of others, that the Framework does not condone actions against the sovereignty of any state, (secession,) and that these rights are derived from general human rights. Section IV is about implementation and monitoring. Section V states that the Convention is open to signing and ratification, and rules pertaining to these actions. These procedural elements are not particularly full of substantive points to dwell on, so I will spend the majority of my analysis on Sections I and II.

Before I turn back to the articulated rights, I would like to acknowledge one important procedural point. Article 28, part 2, states that "in respect of any member State which subsequently expresses its consent to be bound by [the Convention]…" This means that agreeing to abide by the Convention is optional. This demonstrates both the limited utility of the Convention, as well as the powerlessness of the Council. The Council cannot force its member states to agree to protect minority rights, only those countries which "consent to be bound" by the Framework are party to it, drastically limiting the Framework's impact. This leaves open the danger that only those countries that are already inclined to protect minority rights will sign up, leaving the minorities that might benefit the most from such a document outside of its influence. Although most Council countries did sign up, four of them did so while refusing to participate in the review process, and four refused to altogether. Turkey, well known for their problematic relationship with their Kurdish minority, is among the countries that did not sign on, as was France, which repeatedly denies further autonomy to Corsica. (Geographical reach of the FCNM/Couverture géographique de la FCNM) It is troublesome that from the beginning, the Framework is weakened by

the Council's own lack of power, and is inherently thwarted in its mission to protect minorities in need.

The Framework is an interesting representation of some of the theory presented in section one of this paper, sometimes internally coherent and sometimes not. I will now and examine what stances the Framework takes on some of the key issues of minority rights. These issues that I will comment on relating to the Framework are the underlying assumptions behind minority rights, group rights vs. individual rights. I will also delve into how the Framework reflects the council's stance on the nature of national minorities.

For the most part, the Framework is in accordance with the underlying assumptions that I presented in Section 1. The Framework assumes the existence of minority rights, and it implies that cultural diversity is a good to be desired for its own sake, and that positive rights exist. There is an explicit connection between minority rights as a moral issue and human rights. Minority rights are depicted as derived from moral principles. The rights and freedoms are said repeatedly to "flow" from "principles" of the Framework Convention. This phrasing is stated in the Introduction and Articles 3, 16, 19, 20, 23, as well as used throughout the accompanying Explanatory Report. Such phrasing eliminates the possibility that these rights are from an arbitrary list, removed from a moral code. Instead, these rights come from principles based on ideas about fundamental rules that should govern behavior. Minority rights are also placed squarely within the category of human rights at the beginning, and presuming minority rights are human rights, then they should be enforced (Galenkamp 1991, 291.). Article 1 proclaims that minority rights "form an integral part of the international protection of human rights…" As I mentioned in Section 1, minority rights must qualify as human rights to exist. Thus far, the Framework Convention is consistent with the assumptions necessary for minority rights.

Throughout the Framework, it is clear that the Convention assumes that cultural diversity is a good to be desired for its own sake. There are no mentions of securing minority rights for any reason other than because they are a right. However, the introduction provides a long list of reasons for why the Framework was made, and it cites reasons beyond simply that these rights should be secured because they are rights. Before everything else, it states that:

> Considering the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage;
> Considering that *one of the methods by which that aim is to be pursued* is the maintenance and further realization of human rights and fundamental freedoms; (FCPN 2, Emphasis my own.)

Using the procurement of human rights as the "method by which" the "aim" of achieving greater unity between member states is a case of using minority rights as an instrumental good. As I remarked in Section 1, using minority rights as an instrument to secure something else is problematic from a strictly theoretical standpoint. Although further phrasing indicates minority rights are a fundamental good, this instrumental aspect to the Framework cannot be denied on the whole. It is reasonable to assume that countries signed the Framework with reasons other than protecting minority rights as the right thing to do. Certainly, the Convention was motivated by the desire create an atmosphere of tolerance for international stability (Aukerman 1045). Several phrases do highlight minority rights as an end in itself, including in the introduction that that the expression, preservation, and development of minority identity is a right within a democratic society, as well as the whole of Article 1 (FCPN 2, 3). The Framework's combination of theory (minority rights as good end in of itself) with practicality (minority rights as a mean to a stable society) makes sense given its attempt to straddle the two worlds of somewhat idealist human rights aims and the realist political situation of states.

The last presumption, the existence of positive rights, is strongly supported within the Framework. Throughout the Framework are lists of the rights that the government is obligated to give national minorities. One strong example is regarding media in Article 9. Not only should governments "not hinder the creation and use" of media, (part 3) but they are also mandated to "adopt adequate measures in order to facilitate access" (part 4). This is a clear case of assuming minority rights involve positive rights. Additional examples abound, including the obligation of states to provide special language assistance in government and schools (Article 10 and 14).

It should come as no surprise that the Framework accepts the presumptions involved in minority rights, and the one tenuous item, that of minority rights as an end to itself, is pragmatically to be expected. I will now turn to the contentious issues of

minority rights as group rights vs. as individual rights, the extent of self-determination, and the nature of national minorities. From there onward, however, the Framework must take a stance on more difficult issues, such as whether minority rights are group rights.

Group rights vs. individual rights is a delicate matter, partially because the Council likely does not want to encourage secessionist claims. If minority rights are treated as group rights, then it could be easy for the minority to advocate for secession. One of the most notable group rights is self-determination, which is inherently connected to secession. It is the central justification that has been used over and over again by groups and states to argue for their autonomy. If the Council were to argue that minority rights are group rights, and for a strong use of self-determination, then it would be perceived as threatening the territorial integrity of its member nations. The Council is composed of preexisting nations, none of whom would wish to encourage secession. It is logical that they would try to avoid any language that would connect minority rights with secession. The issue of group rights is also challenging because, as demonstrated in section 1, group rights as a concept still are not as established and recognized as individual rights.

The Council avoids taking a controversial stance by assuming that minority rights are individual rights. Throughout the Framework and its Explanatory Report are consistent denials that minority rights are group rights. The Framework repeatedly refers to rights given to persons, not groups. For example, Article 4 states that measures to protect minority rights should be granted to promote equality for "persons belonging to a national minority," and Article 5 says that states should "promote the conditions necessary for persons belong to national minorities," and so on in every Article. This careful phrasing is consistent with the theory that rights can only be granted to individuals, not groups. The promotion of equality between individuals that belong to minorities is also one of the sound reasons I explored in Section 1 of my thesis for justifying minority rights without turning to group rights and self-determination. Although minority groups themselves might prefer the stronger, more robust depiction of minority rights as group rights and then receive all the benefits of self-determination, this document does not support this conception.

The Framework is also firm in its intent to respect "the territorial integrity and national sovereignty of states" (Framework 3). Two articles are devoted to removing any hope that minorities might have that the Framework would help them to alter

national borders or justify secession. Article 20 states that members of minorities must respect "national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities." This leaves no doubt that dissent through unlawful means will not be supported. By writing and signing this document, the states are agreeing that while they will support minority rights, they also maintain that minorities should follow the rules and not create disturbances. Article 21 is even more explicit. It affirms that:

"Nothing in the present framework Convention shall be interpreted as implying any right to engage in any activity…contrary to the fundamental principles of international law and in particular of the sovereign equality, territorial integrity and political independence of States."

This is a clear assurance to any state ratifying this that their minorities will not be able to turn around and use the Framework as grounds for secession or annexation. Later, in the Explanatory Report while addressing the approaches and fundamental concepts behind the Convention, part 13 affirms that the Convention "does not imply the recognition of collective rights. The emphasis is placed on the persons belonging to national minorities…" (Convention 13). This approach is indeed deliberate. However, although there is outright denial of group rights, one might argue, "by reaching beyond a non-discrimination approach towards the goal of the long-term cultural protection, European states are implicitly recognizing the importance of groups" (Aukerman 1031). There may be something to this. If the member states were to sufficiently honor individual rights, then there would be no need for a special Convention for minorities. There must be something special about minorities that goes beyond normal individual rights that are already protected. By creating this convention, the Council is implicitly acknowledging the importance of the group identity.

By far the most problematic theoretical issue for the convention is the lack of criteria by which minorities qualify for minority rights. The term, 'national minorities' is undefined both by the Council and the Framework. This neglect is absurd since this is the central topic of the Framework, although it is also somewhat comprehendible. The Council is not the first international organization to shy away from defining minorities, as nations have different conceptions of what they are. To this day, international law lacks a criterion for simple minorities, much less the Council's term of national minority (Gilbert 1996, 163) As acknowledged in the 2003 Explanatory

Report, the Steering Committee for Human Rights "noted that there was no consensus on the interpretation of the term 'national minorities'" (Explanatory Report 12). This lack of consensus was never clarified. In the remarks on the approaches and fundamental concepts, the Council attempts to defend their lack of definition. They selected a "pragmatic approach, based on the recognition that at this stage, it was impossible to arrive at a definition capable of mustering general support..." (Declaration 13). Yes, this decision was highly pragmatic in terms of acceptance by the member states of the Council. However, this choice is not so pragmatic if the goal is to protect the most vulnerable members of society. By taking this approach, countries can pick and choose which minorities are "national," leaving those that the Convention should be most helpful to beyond reach (Gilbert 1996, 163). Moreover, as I mentioned in Section 1, the distinction between national minorities vs. mere minorities is problematic. In the next section, I will see how this lack of definition is used by Slovenia as the Slovenians decide for themselves what is a national minority. Also, although the Framework does not provide any definition for national minority, within the official dialogue it does appear that the evaluating committee pushes Slovenia to expand their definition, which is inconsistent with their official silence on the matter.

It is clear that the Framework is a product of both the good intent and inefficiency of the Council. The Framework is an attempt to carry out the Council's mission to protect the rights of its citizens, particularly of their most vulnerable, but it is unable to enforce it. The review process might inspire already motivated countries, but it is not legally binding. Moreover, countries do not even have to sign on to the Convention, and if they do, they can ignore the review process altogether, such as Belgium. The Council left the term national minorities up for interpretation, leaving it weak enough to entice states to participate. While the individual nature of the rights is consistent with other international law and is a sound theoretical concept, it is also somewhat paradoxical to devote a whole convention to the protection of minorities, which are groups by nature. In the end, -"the success of the Convention is dependent on domestic legislation and procedures to protect minorities" (Gilbert 1996, 180). The Convention is only inspiration, not a tool of force.

3.3 Section Summary

The Council of Europe faces many challenges. It has limited power and a limited budget. Even its strongest component, the Court, is bogged down with inefficiency and too many cases. All of this, and it has also chosen to take on human rights, one of the most theoretically fraught subjects available. As demonstrated in Section I. with an examination of one aspect of human rights, minority rights, it is very difficult to take a consistent and logical stance on these issues. The result is documents like the Framework Convention, which is somewhat theoretically consistent but whose power is weakened by the Council's inability to take substantive positions on the central topic: national minorities. In my last section, I will explore how these weaknesses impact the Council's interaction with Slovenia.

4 Case Study: Slovenia

Slovenia highlights the strengths and weaknesses of the Convention and the power of the Council. Slovenia is predisposed to promote minority rights, although it has a group-rights based conception of minority rights, different from the individual perspective used by the Council. However, Slovenia does face some criticism regarding minority rights, particularly respecting the Roma and minorities from other ex-Yugoslav nations. While it would be easy to examine a country such as Azerbajan and declare that the Council is indeed useless, Slovenia offers a balanced perspective on the relationship between the Council and a relatively compliant country.

In this section of my thesis I will begin by laying out the background for Slovenian minority rights policy, and raise the concerns that Slovenia's bifurcated minority rights policy regarding national and non-national minorities is not justly applied, and may be theoretically problematic. Next, I will examine how the Convention affected Slovenia's policies though the review process. I will focus on the treatment of three topics: Firstly, the situation concerning the Roma's official legal status within Slovenia, secondly, if the Framework Convention should apply to a wider scope than officially stated to include members of the other former Yugoslav republics and the German minority, and lastly I will investigate the case of the "erased" in Slovenia from the register of permanent residents and the interference of the Court.

4.1 Slovenian Minority Rights Prior to the Convention

On first glance, Slovenia has a generous set of minority rights. Groups designated as autochthonous communities receive such benefits as fiscal support for cultural development, language privileges, and even a double-voting rights privilege that guarantees a special representative for each Community in Parliament. However, the groups that are not designated as autochthonous communities do not receive these substantial benefits, leading Slovenia to a bifurcated system of minority rights that treats minorities differently depending on which category they are placed in. This raises the concern of if this bifurcated system of benefits for minorities fairly applied,

or fair to begin with. Before delving into this matter, I will first outline what rights are granted to the autochthonous communities and other minorities.

Given Slovenia's origins, its stance on the group-rights conception of minority rights seems reasonable. Slovenia itself used self-determination, the strongest manifestation of group rights, to secede (McCorquodale 1994, 883). This idea is reinforced in Article 3 of the Slovenian Constitution, which states that the Slovenian nation was "founded on the permanent and inalienable right of the Slovene nation to self-determination" (Constitution). Slovenia had many factors in favor of its ethnic secessionist movement, and its justifications have likely informed its conception of what is a valid autochthonous community (later called national minorities). Slovenia's people had the distinct name of Slovene, the distinct language of Slovenian, and were historically territorially concentrated on territory called Slovenia (Oldenquist 273). These attributes all gave Slovenia a sense of nationhood, and the right to group rights such as self-determination.

Self-determination was an important factor for Slovenian independence, and Slovenian legislators did not neglect the rights of other national minorities to group rights when drafting their constitution. Slovenia gave generous benefits to those minorities that they felt were qualified for them, i.e. matched the same criteria that Slovenians had used to justify their own right to self-determination. Within the Slovenian constitution, such groups are referred to as 'autochthonous communities' (Constitution). Although the word 'autochthonous' is never defined, these groups all have distinct national affiliations and languages, and were territorially concentrated in a region to which they also had historical ties. The groups that Slovenia found to qualify as autochthonous communities are the Hungarians and Italians (Article 5). Both of these groups have historical ties to particular regions within Slovenia, their own languages, and distinct cultures, as well as their own nation-states.

Slovenia grants autochthonous communities very substantial group rights. Their rights are almost fully enumerated in Article 64 of the Constitution, (Special Rights of the Autochthonous Italian and Hungarian National Communities in Slovenia). It begins by stating, "The communities and their members shall be guaranteed the right..." Such language of granting of rights to communities and not just the people that belong to the communities is a clear indication that Slovenia considers these to be group rights. The particular rights which Article 64 articulates include a right to national symbols and the right to identity and establish cultural and

media organizations. Students have the right to learn in their own language, and bilingual schools will be compulsory for both the minority and majority residing in the area where the community has traditionally settled. The community has the right to have relations with their "nations of origin and respective countries." Moreover, Slovenia is obligated to provide "material and moral support for the exercise of these rights" (Constitution). Slovenia grants these groups the communities the positive right to assistance, not just the negative right to be left alone to pursue their own ends. Perhaps the greatest right guaranteed to the autochthonous communities through Article 64 is the right to double voting. Each community is entitled to send their own representative to the National Assembly, in addition to voting for the National Assemblymen in their geographical district (Constitution).

Other articles add to the rights of these autochthonous communities. The special representatives of the minorities in parliament have veto power regarding all legislation concerning their special rights, granted to them in Article 15. Article 11 guarantees that the languages of minorities in ethnically mixed areas are official languages. All of the aforementioned measures are to be enforced regardless of the numerical strength, and strongly rely upon the concept of collective rights (Komac 44). This has worrisome implications for double voting power. They already have disproportionate sway within the National Assembly and this will only increase as these communities shrink (Žagar 2006, 16). For example- given that the population of Slovenia is approximately two million and there are ninety members of the National Assembly, then this means that there is one representative for approximately twenty-two thousand people. Yet the Italian population with about two thousand people has the power to elect their own representative plus engage in the same general election as the rest of the population. As the communities shrink, the power of one Italian or Hungarian voter will simply become more outsized.

The Romani community is not granted the status of autochthonous community, although they arguably qualify. The Roma have a culture and language unique from Slovenia's, and the Roma have traditionally resided in certain regions within the Slovenian border. Although the Roma are not designated as autochthonous communities, they are the subject of Article 65, which simply states, "the status and special rights of the Romani Community living in Slovenia shall be regulated by law." (One such example is the Program of Measures for the Help to Roma, launched in 1995, which discusses economic and educational assistance, as well as help

integrating into the mainstream society and fostering their own cultural identity (State report #1, 9).) While Article 65 forces the legislature to deal with protecting the Roma, it also completely lacks specificity as to what these rights might be. This flexibility could be beneficial and wise, but it is in great contrast to the carefully articulated rights of the autochthonous communities in the previous article.

Although Slovenia grants a generous list of individual to minority groups, it explicitly states that non-autochthonous communities do not qualify for group rights. In their initial 2000 Report, section 26 states that "Members of less numerous religious and linguist communities…living in Slovenia and immigrants from the former Yugoslav republics…do not have the status of a national minority in the sense of collective holders of rights" (State Report 1, 12). This denial of group rights to these communities still leaves them with basic human rights, of course, but it definitively locks them out from asking for any formal group rights akin to the ones that the autochthonous communities receives. For example, Article 61 ensures that members of non-autochthonous communities are granted the right of national affiliation, and under Article 41 people have the right to whatever religious beliefs they prefer and can teach these practices to their children. Article 62 states that "Everyone has the right to use his language and script in a manner provided by law..." These provisions, in addition to other basic human rights guarantees, are still far less than the autochthonous minorities receive.

The bifurcated system of minority rights that separates minorities into two groups, national and non-national, raises concerns on many levels. I have already discussed how it gives the autochthonous communities disproportionate power on a national scale, but the system itself may be inconsistently applied, and reinforce the exclusion of minority groups from mainstream society. The bifurcated system denies some groups autochthonous status that might qualify. In addition to the Roma, the German communities do not have the status of autochthonous community although they have historical presence in a territorial region that was disrupted during the war. Their presence was not honored in the Slovenian constitution, nor was their advocacy for the revitalization of the German community. (Komac 40-41). It seems inconsistent that the Slovenian Constitution emphasizes historical presence and does not tie numerical value to securing the rights of an autochthonous community, yet the constitution will allow one community (the Italians) greater rights than another (the Germans) based on their current population size when ostensibly it should not matter.

Beyond the inconsistent application of the autochthonous communities status, the bifurcated system itself may not be fair. The demographic information reveals that Slovenia is devoting a lot of rights to very few, including the remarkable power of double voting, while the rest of their minorities do not receive such rights. According to the 1991 census data, 12.16% of the population did not identify as Slovenian. Of this, only .16% are Italian and .43% are Hungarian. Other minorities are far larger, including the Croats (2.76%), Serbs (2.44%), and Muslims (later identified as Bosnians) (1.37%). In addition, .63% are designated as Yugoslavs, or predominately children from ethically mixed marriages (1991 Survey). These statistics demonstrate the disproportionate amount of rights very few people receive, especially when considering that the members of non-autochthonous minority communities are equally if not more prone to discrimination.

Moreover, there is a darker element to only explicitly honoring some minority communities and Slovenians within the constitution- it seems to exclude members of all other groups from having a legitimate place in Slovenian society. Given accusations of discrimination against minorities by both society and the government, it is possible that this differentiation has negatively impacted the situation of non-autochthonous minority groups. It is worth acknowledging that if all non-Slovenian minorities received the same rights, or if there were no explicit mention of minority rights at all, thereby giving all members of society de facto equality, then the problems of a bifurcated system would not exist.

4.2 Framework Convention for National Minorities: Applied

The Framework mandates a review process to monitor how the countries are implementing the review process. The cycle in its entirety begins with a State Report, followed by the Opinion of the Advisory Committee (the Council sends an Advisory Committee to collect information,) then Comments issued by the state regarding the Opinion, and finally, a Resolution also issued by the state. Slovenia, which ratified the Convention in 1998, submitted their first report in 2000. For Slovenia, their results are predominately positive, but the reports are also critical and point the way towards improvement. The Comments laud the Slovenian state's treatment of minority rights and implementation of the Framework Convention, and from the beginning stated that

Slovenia "has made particularly commendable efforts" regarding the situation of the Hungarian and Italian minorities (Comments #1, 2). Given the generous rights granted to these minorities, it is not surprising that the Council praises them on this front. The Advisory Committee also noted "the spirit of co-operation" demonstrated by Slovenia (Comments #1, 5). This acknowledges the genuine will of Slovenia to abide by the Framework Convention and prove themselves as good protectors of human rights.

Even so, the Advisory Committee does take issue with some of Slovenia's implementation of the Framework Convention. I will focus on three matters. Firstly, the situation concerning whether Roma should be considered National Minorities and their official legal status within Slovenia, secondly, if the Framework Convention should apply to a wider scope than officially stated to include members of the other former Yugoslav republics and the German minority, and lastly I will look into the case of the "erased" in Slovenia from the register of permanent residents. The first two topics illustrate the theoretical differences between Slovenia and the Council, and demonstrate how these differences affect the implementation of the framework. The last problem concerning the "erased" is an interesting example of a specific criticism and the interference of the Court. These examples depict an overall upward trajectory in terms of the treatment of minority rights in Slovenia, which I believe is an accurate summation and in accordance with the rest of the findings of the Council, which I do not have time to explore in depth here.

4.2.1 The Roma: Autochthonous or Not?

The Advisory Committee advocates for far more rights for the Roma on many levels. Among the particular rights of Roma that have not been addressed include language rights in schooling and governmental offices, and in general, school concerns and political participation the Roma communities remain an issue. The most profound complaints by the Committee in the original comments regard the Roma's official status within Slovenia. The Committee suggests that Slovenia has applied an arbitrary use of the definition of 'autochthonous' and that the Roma may be unjustly excluded from this classification. The continuing legal uncertainty regarding the use of 'autochthonous' is damaging for the Roma's access to other rights. The Roma do

not have the same right representation on a national scale as the Hungarian and Italian communities, or even in a local sense.

The complaint about the lack of autochthonous status for the Roma reveals interesting problems for both Slovenia and the Council. According to the Framework, it is up to the individual states to determine national minorities. Slovenia designated the autochthonous Italian and Hungarian communities as the National Minorities, in addition to stating that Framework provisions will apply to the "members" of the Roma community. (Note that the Roma are still not technically designated as National Minorities, and that they are not considered as qualifying for group rights.) As the Committee remarks, this is inconsistent with the domestic policy of Slovenia that only grants special rights to the Hungarian and Italian communities (Comments #1, 7). Moreover, the Committee points out that the Roma communities within Slovenia are treated differently depending upon if they are considered "autochthonous." Since there is no legal definition for autochthonous, this results in a variety of interpretations within the government, and the arbitrary denial of rights. The Committee maintains that Slovenia should "review the relevance and justification for retaining ['autochthonous' as a criterion]." (Comments #1, 8). This is a profound criticism of a central feature of Slovenia's minority rights policy.

The Committee's points against Slovenia are valid. Their use of the term autochthonous seems to be arbitrary and unfair, and has problematic results in terms of creating coherent policy across the government. Part of Slovenia's reluctance may be due to the challenge in distinguishing between different Roma communities, one of which could qualify as "autochthonous" and the other not. Even so, Slovenia does not worry about the rights of Hungarians or Italians outside of the "autochthonous" areas, so it is odd that Slovenia won't also apply this same sort of logic to the Roma.

Despite Slovenia's inconsistency regarding the Roma, it is also questionable if the Committee can legitimately criticize them on this issue. The Framework lets countries determine who qualifies as national minorities. The Council's interest in who Slovenia designates as autochthonous is also questionable because Slovenia's ties the term autochthonous to group rights, while the Framework is a non-group rights document. It is Slovenia's choice to select national minorities, and tie this to their current system. Although the committee maintains that it can comment on this issue because "the Framework Convention should not be the source of arbitrary or unjustified distinctions" (Comments #1, 7) this may not be strong ground for

criticism. Slovenia maintains that the provisions of the framework apply to the members of the Roma, the same as it does to the Italian and Hungarian National Minorities. The Committee might disagree with the internal designation of names, but Slovenia is not making any meaningful distinction between the Roma and Italian and Hungarian communities since all are party to the Convention. Slovenia's initial reaction to the opinion of the Committee on the matter of determining who should qualify as a national minority is in accordance with this logic. The Comments to the opinion of the Council's Advisory Committee rightfully point out that although the Roma count as an "ethnic community or a minority with special ethnic characteristics" it does not have the status of national minority (Comments #1, 2). This is their decision.

By the time of the Second Opinion, the Slovenian government had not changed its stance on the scope of the Framework to include only autochthonous communities. The Committee responds by reiterating its stance that this distinction is harmful since some of the Roma are treated as autochthonous, and therefore worthy of minority rights and qualifying under the Framework Convention, while others are not (Opinion #2, 5, 9). The lack of regulation is fine if the individual rights are enough, but given the reports of discrimination on a number of levels, it seems that special protections should be in place. This is one of the reasons that minority rights exist to begin with- to protect minorities when individual rights are not enough.

Even so, the second Opinion did hail several improvements to the Slovenian policy regarding the Roma. This is particularly true for the Act Amending the Local Government Act (no. 51/2002) that was part of a series of acts designed to aid the integration of Roma into public and social affairs. This particular act was to guarantee by 2002 the right of the Romani community to have a representative on the Municipal Council within particular districts. There was reluctance by some of the required municipalities to enact the law, and despite the action of the Constitutional Court, three municipalities still had not complied (Comments 1, 11-12). This reluctance demonstrates the degree to which relations are strained between some members of the Roma community and their surrounding majority population. (On a separate note, it is also interesting that Slovenia is taking such steps such as mandated presence in elected government councils, since it seems like a group right.)

By the time of the third cycle there was more progress in terms of creating legislation and legal precedent regarding the Roma. The Constitutional Court had

made decisions regarding the issue of the "autochthonous" status of the Roma, and decided to apply it to the Roma only at the local level (Opinion #3, 6). This is a significant development of substantial legal basis regarding the Roma, although compliance remains an issue (Opinion #3, 5). Moreover, while this does go towards integrating the Roma into the current system of minority rights within Slovenia, it also codifies the differential treatment of Roma groups. This has real effects in their treatment. For example, there are Roma that live in places beyond the twenty designated municipalities (Opinion #3, 8). These Roma have no guaranteed representation on local councils, yet may be likely to face the same discrimination and problems as the Roma in the designated municipalities.

As of the latest cycle, Slovenia stands firm on its actions regarding the Roma. In the final comments, Slovenia defends its stance on the use of the term 'autochthonous.' The Slovenian response remarks that the Constitutional court differentiates between groups of Roma who have lived in Slovenia "for centuries," and those who immigrated more recently when it comes to matters of local self-government (Comments #3, 3). They also remark that this differentiation is only used to determine matters of self-government, and that all other Roma rights are ensured by Article 65. Moreover, these traditionally group-oriented rights "are not granted to individuals as such, but to Roma communities as special local communities in order to protect their ethnic character. As this is not an individual human right or a fundamental freedom…this issue cannot in itself constitute discrimination…"(Comments #3, 3). The Committee approaches the rights given to the Roma as individual rights, but in doing so they fail to acknowledge the Slovenian use of group rights and the foundations that underlie their application.

As the Slovenian comments point out, they have not been lax to combat the general discrimination faced by all Roma. As part of the National Programme of Measures for Roma for the Period 2010-15, many training efforts and other projects have taken place to increase tolerance and aid the Roma with various problems in areas ranging from schooling to housing (Comments #3 8, 10). Moreover, in 2007 the Roma Community Council was established to advise Parliament on Roma issues, aiding them in their participation with national government. This Community Council is open to all members of the Roma community, not just those designated from autochthonous communities. (However, the Committee notes that this Council does not "sufficiently reflect the diversity of the views within the Roma community"

(Opinion #3, 8).) The Council might still find issue with the phrasing and terminology used by Slovenia, but the reality is that attempts are being made to protect the Roma's rights, and Slovenia's differentiation between autochthonous Roma and non-autochthonous Roma is not inconsistent with their treatment of other minorities who have special rights only within the autochthonous areas.

4.2.2 Non-Autochthonous/Roma Minority Peoples

The Advisory Committee makes a plea to include other minorities under selected articles of the Convention, and includes their concerns for these groups within the original Criticism. The groups that the Committee mentions are mostly comprised of people from former Yugoslav nations -Croatians, Bosnians, Serbians, Macedonians, Montenegrins, and Albanians, - as well as the local German-speaking minority. This topic brings up two points: Firstly, it is particularly noteworthy that the Committee would like a wider approach as to which the Convention applies to, since the Convention only theoretically applies to designated National Minorities that Slovenia has already selected. Secondly, some of these communities might qualify as autochthonous communities although Slovenia never recognized them as such, not even implicitly as is the case with some of the Roma communities. For example, the Committee urges continued support of the German-speaking minority, who although they have an historical presence, also lack status as an autochthonous community. These communities are suggested as national minorities because, as with the Roma, they also face discrimination and assimilation, which are what minority rights are supposed to guard against.

The problem of whether these minorities should qualify at all under the Framework Convention is an interesting one. By the time of the second cycle, the groups themselves requested to be recognized as national minorities and thereby qualify to receive special rights (Opinion #2, 10-11). Unlike the Roma, most of these populations arguably do not have the same argument for qualifying as 'autochthonous' and therefore automatically considered as National Minorities in terms of the Framework by the Slovenian government. Even so, both the Slovenian government and the Committee consider the conditions of these groups throughout the review process. Or, in the words of the Committee, "consider the inclusion of persons

belonging to [these groups]…in the application of the Framework Convention on an article-by-article basis" (Opinion #1, 10). Although this is carried out in practice, by the time of the second cycle there was no official dialogue regarding the choice expanding the scope of the Framework to include these minorities (Opinion #2, 5). Despite this, the Comments deal extensively with issues relating to these minority groups, discussing such concerns as language rights, assistance with cultural projects, and tolerance (Opinion #2, 6-7).

Adding to the debate of whether these non-autochthonous groups should be considered under the Framework is that some of these groups should qualify as autochthonous after all. From the very first Report and Opinion, a reminder of the German-speaking minority's historical presence is raised (Opinion 1, 9). In the Comments of Slovenia regarding the Third Opinion, Slovenia goes into depth regarding the possibility of establishing Serbian, Croatian and German communities as autochthonous. Apparently during the drafting of the Slovenian Constitution, the possibility was raised that the Serbian community in Bela Krajina and the Croatian communities in particular areas along the border could be included for special protections. They also voiced concern about the German ethnic group "which has long been thought to have disappeared" (Comments #3, 4-5). The Government for Nationalities commissioned a study entitled, 'National/ethnic vitality of members of the Serbian, Croatian and German ethnic groups in their traditional settlement – Analysis of immigration to Slovenia from EU Member States.' This study has not yet been concluded by the time of the publishing of these comments (Comments #3, 5).

The comments do mention that these communities are very small- in the case of the Bela Krajina community, only 300 people reside in traditionally Serbian area (Comments #3, 5). However, it's interesting that Slovenia is implying this population data should have an influence on their rights, since they explicitly state that population numbers will not have an influence on their treatment of the Italian and Hungarian communities. Given the constant population decline of particularly the Italian community, the Slovenian government will need to confront this issue if it is to be consistent.

This question aside, the Committee is more positive about the situation of the newly phrased "persons belonging to the new national communities." Dialogue between these groups and the government finally begun in 2007. The Committee is pleased by the recognition of "new national communities, and that policies and

programs are being created to support the integration of these communities and support of their cultures and languages" (Opinion #3, 19). These improvements still do not take into account the desire of some of these would-be autochthonous communities to gain the rights of the other autochthonous communities. For example, although improvements have been made, by the time of the third cycle the German-speaking community remarks that it still would like to be recognized as an autochthonous national minority (Opinion #3, 10). This lingering desire for the same recognitions goes to show that such phrasing does matter and has importance for the communities, no matter how much Slovenia would like to believe that these other measures will satisfy them.

All of those communities which are not recognized as autochthonous communities are treated the same, and practically speaking although there has been no official dialogue, it is clear from both the treatment by the Council and Slovenia that this framework is applied widely. For example, in reference to fighting intolerance and hate speech, Slovenia addresses the situation of gay rights in Slovenia and the actions taken to combat homophobia (Comments #3, 16). The homosexual population is not considered a "national minority," but as you can see here they are included in the debate to protect the rights of many different types of minorities. The recognition of the new national minorities will also allow Slovenia to create policy and respond to their concerns within the legislature.

In any case, it is doubtful that Slovenia will ever treat the non-autochthonous groups equally as the autochthonous communities. In the third cycle, Slovenia remarks that "the public efforts of certain societies and associations of the people who immigrated to the Republic of Slovenia from the former Yugoslavia…may be understood as endeavors to obtain the recognition of collective rights" (Third Report, 15). This steadfast reluctance of Slovenia to grant group rights explains why they disagree so profoundly with the Committee on this matter. The Committee is upfront about their disapproval of Slovenia's use of "autochthonous" as the criterion for qualifying as a national minority. In their words, they "have serious doubts regarding the relevance and justification" of the manner in which Slovenia differentiates between its minority groups, and that "these distinctions are based on insufficiently defined concepts" (Opinion #2, 11). This profound disagreement about the validity of the term 'autochthonous' sharply divides the Council and Slovenia.

4.2.3 The question of the Erased

Beyond the larger issues of application, the review cycle also covers the details of minority rights. One that's particularly interesting is that of the so-called "erased." This is the accusation that a segment of the population was unfairly removed from the register of permanent residents following Slovenia's secession from Yugoslavia ("Slovenia: 20 years later – Issue of the erased remains unresolved" 23 February 2012). The vast majority of the erased were from other ex-Yugoslav nations and the Roma community. Slovenia initially argued that these individuals were not treated unfairly, and that they had full notice that they were to submit their documents within a six-month window. The counter-augment is that this was not a sufficient amount of time, and that many people were not informed of this policy, resulting in discriminatory policy towards non-Slovenians. The evolution of the treatment of this topic over the course of the three cycles highlights the strengths and weaknesses of both the Convention and the Council.

In the initial cycle, this topic did not receive much attention. The Committee only briefly mentions it in terms of generally diminishing treatment of citizens from former Yugoslavia after Slovenian independence. At the end of this paragraph, the Committee "also notes that certain sources mention the removal of a significant number of persons from the register of permanent residents… due to their non-Slovene or mixed ethnic origin, a point of view contested by the authorities" (Comments #1, 9). The "also notes" and "certain sources mention" make the Committee sound hesitant, and they never end up accusing Slovenia of any wrongdoing on this matter. Slovenia's Comments on the Opinion do not respond to this allegation at all. The closest Slovenia comes is defending its treatment of Roma regarding citizenship and residency permits, maintaining that the Roma who are not members of the Romani community "traditionally residing in Slovenia" are treated no different from other foreigners (Comments #1, 4). This opinion occurred after the first time that Slovenia's Constitutional Court dealt significantly with the matter of the erased in 1999, in which the erasure was deemed unconstitutional.

In the second Opinion, the Committee revisits this topic with far more force and attention. They devote a whole section to the matter. The positive developments that the committee notes include the Constitutional Court decisions which ruled in favor of restoring the rights of those that were illegally removed from the register of

permanent residents, as well as the legislature's attempt to act in line with the court's rulings (Opinion #2, 14). This ruling occurred in 2003. Unfortunately, these developments are mitigated later. The government initiatives to return these rights went nowhere. Finally in 2004, a referendum was held on the Act on the Implementation of Item no. 8 of Constitutional Court Decision no. U-I-246/02, otherwise known as the "Technical Act on Erased Persons." It was voted down by 94.7% of the electorate which turned out (31.45% of the population) (Opinion #2, 15). Given both the lack of willpower by the legislature and the people of Slovenia to resolve this issue for the past ten years, no further action seems imminent. The Slovenian response to this was that citizens from the former SFRY can apply for permanent residence permits more easily than others, and that more action, including laws and a more robust migration policy will take place (Comments #2, 9-10). Although Slovenia would like to deal with this issue, the reluctance of lawmakers and citizenry to take care of it does not bode well for the future.

In the end, it took external pressure to achieve significant progress. By the time of the Third Opinion in March of 2010, the Act Amending the Act Regulating the Legal Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia had passed in 2009 which "puts an end to long-standing violations" of those who were erased from the register of permanent residents (Opinion #3, 16). Note that this occurred seven years after the Constitutional Court ruling. However, the Committee points out that problems remain under the act. It may be very challenging for people to prove that they were removed from the list and forced to live abroad, and the act simultaneously casts doubt on if people who have lived outside of Slovenia for more than ten years can still qualify for residency (Opinion #3, 16).

The Slovenian response to the accusations that this law will not be sufficiently circumspect is quite lengthy. In sum, there is a provision within the act (Article 1c, paragraph 3) that allows for justified absence as a result of having been deleted from the register of permanent residence for up to five years. If the person returned in the second five-year period, then they are considered to be residing in Slovenia. If this criterion is met, then the individual is eligible for residency permit (Comments #3, 11). Even so, these measures were not deemed enough by the international community. These criteria put the onus on the individual to prove their residency through an "extremely complex procedure", as well as left them with the obligation to

pay administrative fees although the whole situation was the fault of the state. The matter of financial compensation for the erased was also neglected ("Slovenia: 20 years later – Issue of the erased remains unresolved" 23 February 2012). Although the Constitutional Court had done its job, the legislature's failure to take sufficient action resulted the Council's interference with Slovenian policy beyond the Framework.

On June 26 2012, the European Court of Human Rights issued their ruling on *Kurić and Others v. Slovenia*, a case concerning the erased of Slovenia. The case was originally submitted in 2006 on behalf of eleven applicants, all claiming to be unjustifiably erased from the list of permanent residents. They submitted that Slovenia had violated the Convention for the Protection of Human Rights and Fundamental Freedoms thrice: firstly by arbitrarily denying permanent residency (Article 8), secondly by having no legal remedies, (Article 13), and thirdly that Article 1 of Protocol 1 had been breached by an arbitrary denial of pension rights (pages 1 & 2 of court documents). This case concluded after the third cycle. In the end, the Court ruled in favor of Kunić and Others and maintained that Slovenia had violated the Convention. Note that this case was filed because of the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms, not the Framework Convention for the Protection of National Minorities. This suggests that perhaps individual rights are sufficient to protect minorities, and, as we already knew, the Framework Convention is weak. This case also shows that the Council is perhaps not completely useless- if the European Court of Human Rights and the Council that wrote the Convention did not exist, then there would be no sure recourse for those whose rights had been violated such as the Erased.

4.3 Section Summary

The disagreements between Slovenia and the Advisory Committee on theoretical issues are profound, and as is clear from the situation of the Roma and non-autochthonous minorities, these differences affect policy standpoints. Moreover, through the dialogue between Slovenia and the Convention, the weaknesses of the Framework shine through. However, these disagreements do not necessarily hold back Slovenia from making changes to their policies, and the Framework's weaknesses do not completely disable the Council from having an impact on minority

rights. Slovenia did make significant improvements from the start of the review process to the end (Third Opinion 2011, 1). In this sense, the Council has had a positive impact on the situation of minority rights in Slovenia. (However, Slovenia was already inclined to protect minority rights, leaving the question open of how much impact the outside review processes really had.)

Through the interaction of the Council and Slovenia, we can observe something larger about the nature of minority rights and how they may be effectively protected. While the review process may have inspired change, the only time the Council was able to force Slovenia to change its policies was through the European Court of Human Rights. This is a process that would have taken place regardless of the Framework Convention of Human Rights, and was argued over points that had nothing to do with minority rights but everything to do with individual rights. If individual rights are sufficient to create meaningful change and protect the rights of minority group members, this leaves the question open of why we might need minority rights at all.

Moreover, although the Framework was attempting to appeal to countries as well through a focus on individual rights, it failed to take into account potential countries' usage of minority rights as group rights. This had tangible effects in Slovenia, where the designation of "National Minority" was intrinsically tied up in a notion of group rights, and thus limiting the scope of the Framework Convention far more than its creators liked. However, this is partially the Council's own fault, since they left the decision of who should be a national minority completely up to the whims of each member country, without providing so much as suggested criteria.

5 Conclusion

In this thesis, I set out to argue that the Council of Europe's lack of enforcement mechanisms and theoretical inconsistency with the goals or stated minority rights policies of its member nations hamper its goal of protecting minority rights, and its strongest asset is the European Court of Human Rights. To do so, I drew upon the example of the Framework Convention and its application in Slovenia.

I began by exploring the theory behind minority rights. This is important background for understanding the real implications that theory has on policy, and is a fundamental component of understanding the true nature of the disagreement between the Council and Slovenia over the question of whom the Framework should apply to. In this section I begin by examining the necessary assumptions for minority rights (including that human rights and positive right exist, and that cultural pluralism is good.) Next, I explore the debates surrounding if minority rights are by their nature group rights or individual rights, and if it is fair to make the distinction between 'national' minorities and non-national minorities. Slovenia and the Council will have divergent views on both of these questions.

The second section of the thesis focused on the Council itself, explaining how its mission is hampered due to a lack of power. I draw upon the subject of minority rights and the Framework Convention to illustrate how the theoretical inconsistencies regarding minority rights are reflected in the Council's policies and how the Council's nature inhibit its mission. I conclude by arguing that the Council's lack of power granted to it by its member nations compromises the Council's ability to create strong legislation and enforce it even if it was more theoretically sound. However, given the unique, albeit dysfunctional, Court of Human Rights, the Council still fulfills a special role within Europe.

In the final section of my thesis, I observe how two conflicts between the Council and Slovenia through the Framework conclude. Although both demonstrate the futility of the Committee's criticism, one focuses on how the theoretical divide effects the implementation of the Framework, while the second concerns a specific rights violation concern and the Court's interference. When the Committee pressures Slovenia to expand the reach of the Framework to include the Roma and other

minorities, this reveals a deeper conflict over who are valid minorities. The case of the disappeared demonstrates the limitations of the legally binding Framework; in the end the wronged peoples look for recourse in the individual rights enumerated in the Convention and take their concerns to the Court instead of being aided by the Framework. In addition, this case also raises the question of whether enumerated minority rights are needed when individual rights may be sufficient.

My results were consistent with my thesis, but I was surprised by a few findings. The lack of clarity behind minority rights theory is worrisome. It is a phrase that could easily be tossed around without having a real understanding of what is involved. This is especially true when attempting to distinguish between minorities that deserve special rights and those that do not. Historical justification is particularly problematic for me, since it assumes that an individual has greater rights than another based solely on ancestry. However, although I originally assumed that group-minority rights would have no good defense, I did like the idea that minority rights are a way to ensure equality. For one group to be disadvantaged and needing help to access the same opportunities as the majority seems reasonable, and is completely divorced from the historical justification that I find distasteful. Regarding the Council, I found the Court of Human Rights' sentencing to be an intriguing topic. If countries can simply pay their way out of human rights abuses, it will be challenging for the Court to instigate any real change.

Finally, within the dialogue between Slovenia and the Committee, it was interesting to observe Slovenia's policy evolution towards non-national communities. Although the official stance did not change, Slovenia's inclusion of the other minorities was a tacit agreement that these minorities are protected under the framework. This may imply something of the Slovenian authorities that work with the Committee, and the reality of how challenging changing the constitution would be. The Committees inability to accept Slovenia's criteria for national minorities also seemed like a suborn refusal to accept that Slovenia uses a bifurcated system of minority rights that involves group rights.

This thesis adds to the dialogue surrounding the Council and its role within Europe, and gives further evidence of the need to grant international organizations real power if States would like them to accomplish their goals. Moreover, this research is applicable for the field of minority rights within Europe and beyond. Ethnic tensions may have calmed down within large parts of Europe, but the situation

in the Balkan region is still tenuous. The Middle East is also famously dominated by sectarian politics. Outside powers often have some say or impact in these situations, and this thesis demonstrates the importance of understanding the theoretical background that underlies these countries perspectives on topics like minority rights. Slovenia is only a mild example. In addition, although it may be challenging for the Council to understand Slovenia's perspective on minority rights, it is even harder for us from the U.S., where we take a highly negative-rights viewpoint on minority issues to even conceive of the need of minority rights. It is vital that we gain a greater understanding of other perspectives on this issue so that we can effectively work with our allies.

Further research on this topic is needed to understand what works best in terms of maintaining good relations between the majority and minorities, as well as exploring alternatives to the current Council system. This thesis only deals with the theory behind minority rights and how this affects policy, as well as if the Council can be an effective force regarding human rights, so going into greater depth on these questions would be a good avenue to pursue. Moreover, a more in-depth study on whether monitoring programs such as the one mandated by the Framework are effective would be very useful for the Council and other international organizations that seek to use soft power instead of force to inspire change.

Given the chance, I would like to have had more space with which to explore nationalism's impact on minority rights and the Council. Nationalism is a powerful force that impacts minority rights and the Council since nationalism creates a non-inclusive idea of the state that works against supporting minority cultures and against sacrificing autonomy to give more power to supranational organizations that encourage a larger common identity like the Council. I also feel that a comparative study would be very rewarding. I would like to continue my research in Germany and other nations that deal with minority rights and immigration policy on a larger scale than Slovenia, where the consequences of creating inclusive societies is even more profound.

I hope that through this thesis I have not only revealed the connection between theory and practice, but also the complexity of minority rights theory. This is only one small corner of human rights theory. Statesmen should not neglect to carefully analyze their assumptions when they legislate regarding such issues. When it regards issues of rights, what may be intuitively correct to one body may not be so true for

another. In these days when we strive to lesson conflict within and among nations, it is more important than ever that we carefully consider our beliefs and the reasons behind them to create the most coherent policy.

I also hope I have drawn attention to a little-understood entity within Europe, the Council of Europe, which struggles to be a relevant player. While it has chosen a lofty mission, the Council is not armed to carry it out. Since the Council currently offers the only recourse for citizens who have been wronged by their countries and cannot find justice through their own court systems, the Council deserves greater attention from its member nations. It is in the interest of every citizen of the Council of Europe to push for greater support of the Council and reform so that the Council can better accomplish its task.

6 Summary in Slovenian (Povzetek v slovenščini)

S članstvom sedeminštiridesetih držav in 800 milijonov državljanov, ima Svet Evrope velik potencial, da deluje kot dominantni akter pri spodbujanju človekovih pravic in demokracije. Toda kakšno moč lahko Svet Evrope dejansko uveljavlja? Poleg tega si Svet Evrope prizadeva za spodbujanje človekovih pravic, vendar določanje natančne narave človekovih pravic ni preprosta naloga. Če Svet že na samem začetku ne more sprejeti teoretičnih stališč o človekovih pravicah, se bo kasneje soočal s problemi pri oblikovanju usklajene in uporabne politike. V magistrskem delu sem analizirala zmogljivosti Sveta Evrope kot zagovornika človekovih pravic. Osredotočila sem se posebej na vlogo in vpliv Sveta, ki ga ima na države članice v oziru na človekove pravice ter uporabila Slovenijo kot študijo primera. Osredotočanje na pravice manjšin mi omogoča razkriti teoretično kompleksnost, ki se pojavlja, kadar imamo opravka s človekovimi pravicami ter kako ta kompleksnost vpliva na dejanske učinke pri oblikovanju in izvajanju politike.

Čeprav se Svet Evrope (v nadaljnjem besedilu tudi: Svet) ukvarja s številnimi vidiki človekovih pravic in demokratičnega vladanja, sem se odločila osredotočiti na pravice manjšin, ker le-te pokažejo, kako je lahko na videz preprosto in intuitivno pravilno vprašanje pravic neverjetno zapleteno. Glede na grozote druge svetovne vojne, obstaja močan konsenz, da manjšinskih pravic ne bi smeli zanemariti in da obstaja dolžnost, da se prepreči preganjanje najbolj prikrajšanih med nami. Toda tukaj postanejo zadeve bolj zapletene. Težko je natančno določiti, točno kaj pravice manjšin so in kdo bi jih naj dobil, težko je oblikovati melioracijske politike ter izvajati take politike. Ukvarjanje s pravicami manjšin, bi preizkusilo tudi dobro delujočo organizacijo, kaj šele organizacijo, kot je Svet, ki se očitno sooča s krizo identitete.

Manjšinske pravice so tudi dragocena tema za preučevanje zaradi njihove pomembnosti v današnjem svetu in posledic, ki jih ima zaščito pravic manjšin za družbo. Upravljanje etničnih in manjšinskih napetosti je izziv po vsem svetu, Evropa pa prav tako ni imuna na te težave. Poleg tega so lahko manjšinske pravice merilo za odprtost in pravično naravo družbe. Manjšinske pravice so med tistimi, ki jih je najlažje prezreti, saj imajo manjšine najmanj možnosti, da se borijo za svoje pravice, in so najbolj nagnjene k stigmatizaciji s strani večine.

Svet Evrope si prizadeva dokazati svojo relevantnost in učinkovitost. Svet se je odločil osredotočiti na področje človekovih pravic in demokratičnega upravljanja, vendar če države ne dodelijo dokončna nadzora nad temi vprašanji, Svet nima mehanizmov nadzora, ki so potrebni za vsebinski vpliv na te zadeve. Freedom House je, na primer, pred kratkim objavila zelo kritično poročilo o Ukrajini glede njenega hitro poslabšanega položaja na področju človekovih pravic (Kramer, 2012). Ukrajina je članica Sveta Evrope od leta 1995 in je podpisala pogodbe, kot je Konvencija o varstvu človekovih pravic. Rusija, Madžarska, Romunija in Turčija so nadaljnji primeri članic Sveta, ki so nedavno soočile z obtožbami o kršitvah človekovih in državljanskih pravic. To vodi k vprašanju moči Sveta Evrope na področjih, kjer je ta res pomembna.

Da bi ocenila ustreznost in učinkovitost Sveta, sem naredila študijo primera na eni izmed njegovih članic – Sloveniji. Slovenija, članica Sveta od leta 1993, ima dolgo zgodovino interakcij s Svetom in se zanima za manjšinske pravice. Glede na slovensko zgodovino s Svetom in relativno sodelovanje, nam daje dober vpogled, preko katerega lahko preučimo relevantnost in učinkovitost Sveta Evrope. Lahko bi uporabila katero drugo državo, ki je bila manj kooperativna kot Slovenija, vendar sem želela Svet Evrope predstaviti na uravnovešen način.

Glavna teza magistrskega dela je, da čeprav bi Svet lahko igral vlogo pri varstvu človekovih pravic, potrebuje večjo moč in notranjo učinkovitost, da bi lahko opravljal svojo nalogo, če želi biti pomemben mednarodni organ. Še več, pomanjkanje soglasja med Svetom in državami članicami o teoretičnem ozadju v zvezi z vprašanji, kot so pravice manjšin, pomeni, da so njegove politike šibkejše in jih je težje uveljaviti. Primer Slovenije kaže na pomanjkanje izvršne moči Sveta Evrope, kot tudi pomen, ki ga ima Sveta, dokler države članice delujejo v skladu z njegovimi predlogi in pobudami.

Preprosto povedano, to delo obravnava dve dinamiki; povezave med teorijo in politiko manjšinskih pravic ter vplivom Sveta Evrope na svoje volivce. Ti dejavniki se združijo pri analizi izvajanja Okvirne konvencije za varstvo narodnih manjšin s strani Sveta Evrope na primeru Slovenije. S sledenjem različnih teoretičnih izhodišč Sveta Evrope in Slovenije o pravicah manjšin, lahko opazimo, zakaj se spori med Slovenijo in Svetom Evrope pojavijo v zvezi s to politiko.

Prvo poglavje raziskuje temelje teorije manjšinskih pravic. Ta del poda ozadje razlike med politiko Sveta Evrope in Slovenije, kot tudi prikazuje, kako lahko imajo

teoretična stališča glede pravic manjšin konkretne učinke na politiko. Drugo poglavje analizira delovanje Sveta Evrope in njegovih politik v zvezi s pravicami manjšin. Sproži dve glavni kritiki Sveta Evrope: Prvič, da ne more dobro delovati zaradi pomanjkanja moči, ki mu jo dajejo države članice, ter drugič, da ne zavzema vsebinskih stališč o teoretičnih vidikih svojega poslanstva. Okvirna konvencije za varstvo narodnih manjšin služi kot primer, kako pomanjkanje moči Sveta Evrope ogroža teoretično doslednost in tako tudi operativno moč konvencije. Tretje poglavje podaja študijo primera izvedeno na Sloveniji in kaže, kako se politike Sveta Evrope izvajajo prek procesa pregledovanja, kot ga določa Okvirna konvencija. V tem poglavju je poudarek na obravnavanju treh tem: Prvič, situacija v zvezi z uradnim pravnim statusom Romov v Sloveniji, drugič, če se naj Okvirna konvencija uporablja za širše področje, kot je uradno navedeno, ter naj vključuje državljane nekdanjih Jugoslovanskih republik in nemško manjšino, in nazadnje sem raziskala primer »izbrisanih« iz registra stalnih prebivalcev v Sloveniji in poseg Evropskega sodišča za človekove pravice.

Metodologija

Magistrsko delo temelji pretežno na raziskavi in analizi kvalitativnih primarnih in sekundarnih virov. Osredotoča se na akademske razprave o učinkovitosti in vlogi Sveta Evrope, kot tudi na uradne dokumente, ki jih je izdal Svet. Za teoretično ozadja mojega dela, črpam iz akademskih raziskav o vprašanjih, ki se nanašajo na nacionalno suverenost ter razmerja med državami članicami in medvladnimi organizacijami. Evropsko sodišče za človekove pravice je bilo v zadnjem času, aprila 2012, reformirano. Uporabila sem uradne dokumente, ki jih je Svet pripravil ob teh reformah kot tudi akademske raziskave.

Osrednja zadeva mojega magistrskega dela je učinkovitost Sveta Evrope. Učinkovitost sem ocenila glede na pristopu racionalnega sistema (*rational-system approach*), ki pravi da je dejanje učinkovito, če dosega svojo izrecno določen cilj (Barnard 1968). V skladu s to metodologijo sem podala oceno Svet Evrope tako, da sem preučila njegove cilje za zaščito pravic manjšin. Če Svet po večini dosega te cilje, je, za namene tega dela, učinkovit. Ta poudarek je najbolje podan v moji študiji primera in govori o večjih težavah, s katerimi se sooča Svet Evrope. Če Svet ne more prepričati svojo države članice Slovenije, da zgolj uporabi norme, predlagane z

njegove strani, potem je to večji problem kot so proračunski vidiki ali druga merila učinkovitosti.

Glavne ugotovitve

Ta magistrsko delo razkriva povezave med teorijo in prakso, kakor tudi kompleksnosti teorije manjšinskih pravic. Svet Evrope ovira pomanjkanje moči, ki mu jo dajejo države članice, kakor tudi njegova nezmožnost ustvarjanja teoretično usklajenih politik. Čeprav ima lahko Evropsko sodišče za človekove pravice dejanski učinek, je njegova moč še vedno omejena zaradi strukturnih neučinkovitosti in pomanjkljivega sodelovanja držav članic. Primer Slovenije, kot študije primera, kaže kako politična nesoglasja države članice s Svetom Evrope o pravicah manjšin izražajo njihove spore o teoriji, kot tudi nezmožnost Sveta, da bi oblikoval učinkovito zakonodajo. Vendar pa Slovenija ponudi tudi pozitiven primer sodelovanja s Svetom, ter kaže na nekatere spremembe, ki izhajajo iz njune interakcije.

Znotraj dialoga med Slovenijo in Odbora ministrov Sveta Evrope (v nadaljevanju: Odbor ministrov), je bilo zanimivo opazovati razvoj slovenske politike do ne nacionalnih skupnosti. Če prav uradno stališče ni spremenilo, je vključitev drugih manjšin v Sloveniji tihi dogovor, da se te manjšine zaščitene v okviru Okvirne konvencije. To kaže na pripravljenost slovenskih oblasti za sodelovanje z Odborom ministrov ter tudi na realnost, kako zahtevno je spremeniti ustavo. Nezmožnost Odbora ministrov, da bi sprejel slovenska merila za narodne manjšine, se zdi kot je vztrajno zavračanje dejstva, da Slovenija uporablja razcepljen sistem manjšinskih pravic, ki vključuje pravice skupin.

Magistrsko delo se vključuje v dialog o Svetu Evrope in njegovi vlogi v Evropi, ter daje dodatne dokaze o potrebi, da države članice dajo mednarodnim organizacijam resnično moč, če želijo, da bi le-te dosegale svoje cilje. Poleg tega se ta raziskava lahko uporablja na področju pravic manjšin v Evropi in izven nje. Etnične napetosti so se morda umirile v večjem delu Evrope, vendar pa to še zdaleč ne velja za situacijo na Balkanu. Tudi na Bližnjem vzhodu prevladujejo sektaške politike. Zunanji akterji imajo pogosto nekaj vpliva v teh situacijah in to magistrsko delo kaže na pomen razumevanja teoretičnega ozadja, na katerem temeljijo pozicije držav o temah, kot so manjšinske pravice. Slovenija je le blag primer. Poleg tega, v kolikor Svet Evrope le s težka razume stališče Slovenije do manjšinskih pravic, je to še težje za Združene

države Amerike (ZDA). V ZDA vlada nima namreč nikakršnih obveznosti zaščititi posebne pravice manjšin. Pomembno je, da pridobimo boljše razumevanje drugih vidikov o tem vprašanju, saj lahko le tako bolj uspešno sodelujemo z našimi zavezniki.

Upam, da sem v tem magistrskem delu pokazala ne samo povezave med teorijo in prakso, ampak tudi kompleksnost teorije manjšinskih pravic. To je samo majhen del teorije o človekovih pravicah. Državniki ne bi smeli zanemariti skrbnega preučevanja svojih predpostavk pri sprejemanju zakonodaje v zvezi s temi vprašanji. Kar se tiče vprašanja pravic, se pogosto dogaja, da kar je intuitivno pravilno za enega akterja, še ne pomeni, da je tako tudi za druge. V času, ko si prizadevamo za zmanjševanje konflikta znotraj narodov in med njimi, še nikoli ni bilo tako pomembno natančno preučiti naših prepričanj in razloge za njih, ter tako ustvariti kar se da koherentno politiko.

7 Bibliography

Amnesty International. 2012. "Slovenia: 20 years later – Issue of the Erased remains unresolved." *Press Release*. 23 February. Available at: http://www.amnesty.org/en/for-media/press-releases/slovenia-20-years-later-issue-erased-remains-unresolved-2012-02-23 (December 6, 2013).

Aukerman, Miriam J. 2000. Definitions and Justifications: Minority and Indigenous Rights in a Central/East European Context. *Human Rights Quarterly* 22.4: 1011–1050.

Barnard, Chester I. 1968. *The Function of the Executive: (30th Anniversary Edition)*. Cambridge: Harvard University Press.

Boothby, Robert. 1952. The Future of the Council of Europe." *International Affairs (Royal Institute of International Affairs 1944-)* 28.3 (July): 331–337.

Bowcott, Owen. 2012. UK Bill of Rights Commission Fails to Reach Consensus. *The Guardian,* 18 December.

Brubaker, Rogers. 1995. Nationalizing States, and External National Homelands in the New Europe. *Daedalus* 124.2 (Spring): 107–132.

Cerna, Christina. 2011. Duplication and Divergence in the Work of the United of United Nations Human Rights Treaty Bodies: Introductory Remarks. *Proceedings of the Annual Meeting (American Society of International Law)* 105 (March): 512–515.

Ci, Jiwei. 2005. Taking the Reasons for Human Rights Seriously. *Political Theory* 33.2 (April): 243–265.

Council of Europe. 1995. *Framework Convention for the Protection of National Minorities and Explanatory Report.* H(95)10.

--- 2000. *Report Submitted by the Republic of Slovenia Pursuant to Article 25, Paragraph 1, of the Framework Convention for the Protection of National Minorities.* ACFC/SR(2000)004.

--- 2002. *Opinion on Slovenia.* Advisory Committee on the Framework Convention for the Protection of National Minorities. Adopted on 12 September 2002. ACFC/INF/OP/I(2005)002.

--- 2003. *Comments of the Government of Slovenia on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities*. Advisory Committee on the Framework Convention for the Protection of National Minorities. Received on 14 March 2003. GVT/COM/INF/OP/I(2005)002.

Council of Europe. 2004. A Breath of Fresh Air? *The Economist*. May, 13. Accessed online, from the Print Edition.

--- 2005a. *Second Opinion on Slovenia.* Advisory Committee on the Framework Convention for the Protection of National Minorities. Adopted on 26 May 2005. ACFC/INF/OPII(2005)005.

--- 2005b. *Comments of the Government of Slovenia on the Second Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Slovenia,* Advisory Committee on the Framework Convention for the Protection of National Minorities. Received on 1 December 2005. GVT/COM/INF/OP/II(2005)005.

--- 2008. *Geographical Reach of the FCNM/Couverture géographique de la FCNM*. 24 of September, Map.

--- 2010a. *Protocol 14- The Reform of European Court of Human Rights.* 15 May 2010. Factsheet.

--- 2010b. *Third Report Submitted by Slovenia Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities.*. Received on 28 April 2010. ACFC/SR/III(2010)007.

--- 2011a. *Third Opinion on Slovenia.* Advisory Committee on the Framework Convention for the Protection of National Minorities. Adopted on 31 March 2011. ACFC/OP/III(2011)003.

--- 2011b. *Comments of the Government of Slovenia on the Third Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities by Slovenia*. Advisory

--- 2012. High Level Conference on the Future of the European Court of Human Rights - Brighten Declaration, April 20 2012.

Committee on the Framework Convention for the Protection of National Minorities. Received 28 October 2011. GVT/COM/III(2011)006.

Davis, Terry. 2004. Speech by Terry Davis, Secretary General of the Council of Europe. Delivered in Oslo, 6 September.

Fink, Carole. 2000. Minority Rights as an International Question. *Contemporary European History* 9.3: 385–400.

Fortman, Bas de Gayy. 2010. *Minority Rights: A Major Misconception*. Presented as Valedictory Address as Chair in Political Economy of Human Rights at Utrecht University, delivered in the Dom Church, Utrecht, the Netherlands.

Galenkamp, Marlies. 1991. Collective Rights: Much Ado About Nothing? A Review Essay. *Netherlands Quarterly of Human Rights* (9)2: 291–307.

Gilbert, Geoff. 1996. The Council of Europe and Minority Rights. *Human Rights Quarterly* 18.1: 160–189.

McCorquodale, Robert. 1994. Self-Determination: A Human Rights Approach. *The International and Comparative Law Quarterly* 43.4: 857–885.

Javanović, Miodrag. 2005. Minority Identities through Collective Rights. *Human Rights Quarterly* 27.2: 625–651.

Jones, Peter. 1999. Human Rights, Group Rights, and Peoples' Rights. *Human Rights Quarterly,* 21.1: 80–107.

Jordan, Pamela A. 2003. Does Membership Have its Privileges? Entrance into the Council of Europe and Compliance with Human Rights Norms. *Human Rights Quarterly* 25.3 (August): 66–688.

Kymlicka, Will. 1992. The Rights of Minority Cultures: Reply to Kukathas. *Political Theory* 20.1 (February): 140–146.

Kaldor, Mary and Ivan Vejvoda. 1997. Democratization in Central and East European Countries. *International Affairs (Royal Insistute of International Affairs 1944-)* 73.1 (January): 59–82.

Komac, Miran. 2004. The Protection of Ethnic Minorities in the Republic of Slovenia and the European Charter for Regional or Minority Languages. *Revista de Llengua i Dret,* 41: 39–104.

Kurić and Others v. Slovenia. 2011. European Court of Human Rights. 11 January. 26828/06.

Oestreich, Joel E. 1999. Liberal Theory and Minority Group Rights. *Human Rights Quarterly* 21.1 (February): 108–132.

Oldenquist, Andrew. 2002. Ethnicity and Sovereignty. *Studies in East European Thought* 54.4: 271–284.

Statistical Office of the Republic of Slovenia. 2002. *Section 15, Population by ethnic affiliation, age groups and sex, Slovenia Census 20*02. Census of Population, Households and Housing.

Raz, Joseph. 1995. Rights and Politics. *Indiana Law Journal* 71: 27–44.

Slovenia. 1991. Constitution. Adopted December 23.

Shany, Yuval. 2012. Assessing the Effectiveness of International Courts. A Goal-Based Approach. *The American Journal of International Law* 106.2: 225–270.

Stanovičić, Vojislav. 1992. Problems and Options in Institutionalizing Ethnic Relations. *International Political Science Review/revue internationale de science politique,* 13.4: 359–379.

Verkuyten, Maykel and Ali Aslan Yildiz. 2006. The Endorsement of Minority Rights: The Role of Group Position, National Contex, and Ideological Beliefs. *Political Psychology*, 27.4: 527–548.

Walker, Brian. 1997. Plural Cultures, Contested Territories: A Critique of Kymlicka. *Canadian Journal of Political Science/Revue canadienne de science politique* 30.2 (June): 211–234.

Wright, Jane. 1999. Minority Groups, Autonomy, and Self-Determination. *Oxford Journal of Legal Studies* 19: 605–629.

Council of Europe. 2004. A Breath of Fresh Air? *The Economist*. May, 13. Accessed online, from the Print Edition.

Hungary and Europe: Salami Tactics. 2012. *The Economist*. March 24. Accessed online, from the Print Edition.

Widmer-Schulpf, Eveline. 2010. *Final Comments, Councilor Eveline Widmer-Schlumpf, Head of the Swiss Federal Department of Justice and Police*. Presented at the Conference on the future of the European Court of Human Rights, Interlaken.

Žagar, Mitja, Miran Komac, Mojca Medvešek in Romana Bešter. 2006. *The Aspect of Culture in the Social Inclusion of Ethnic Minorities.* Evaluation of the Impact of Inclusion Policies under the Open Method of Co-ordination in the European Union: Assessing the Cultural Policies of Six Member States. Final Report – Slovenia.