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## **CARIM EAST – CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION**

Co-financed by the European Union

# ***National Minorities and Migration in Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine***

**Iryna Ulasiuk**

CARIM-East Research Report 2013/33



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**CARIM-East**  
**Creating an Observatory of Migration East of Europe**

**Research Report**  
**CARIM-East RR 2013/33**

**National Minorities and Migration in**  
**Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine\***

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## **CARIM-East – Creating an Observatory East of Europe**

This project which is co-financed by the European Union is the first migration observatory focused on the Eastern Neighbourhood of the European Union and covers all countries of the Eastern Partnership initiative (Belarus, Ukraine, the Republic of Moldova, Georgia, Armenia and Azerbaijan) and Russian Federation.

The project's two main themes are:

- (1) migration from the region to the European Union (EU) focusing in particular on countries of emigration and transit on the EU's eastern border; and
- (2) intraregional migration in the post-Soviet space.

The project started on 1 April 2011 as a joint initiative of the European University Institute (EUI), Florence, Italy (the lead institution), and the Centre of Migration Research (CMR) at the University of Warsaw, Poland (the partner institution).

CARIM researchers undertake comprehensive and policy-oriented analyses of very diverse aspects of human mobility and related labour market developments east of the EU and discuss their likely impacts on the fast evolving socio-economic fabric of the six Eastern Partners and Russia, as well as that of the European Union.

In particular, CARIM-East:

- builds a broad network of national experts from the region representing all principal disciplines focused on human migration, labour mobility and national development issues (e.g. demography, law, economics, sociology, political science).
- develops a comprehensive database to monitor migration stocks and flows in the region, relevant legislative developments and national policy initiatives;
- undertakes, jointly with researchers from the region, systematic and *ad hoc* studies of emerging migration issues at regional and national levels.
- provides opportunities for scholars from the region to participate in workshops organized by the EUI and CMR, including academic exchange opportunities for PhD candidates;
- provides forums for national and international experts to interact with policymakers and other stakeholders in the countries concerned.

Results of the above activities are made available for public consultation through the website of the project: <http://www.carim-east.eu/>

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## **Abstract**

The dissolution of the Soviet Union resulted in massive depopulation in the former Soviet republics and unprecedented migration flows, including persons belonging to national minorities. Citizens of a once indivisible country were suddenly divided into “those of our kind” and “outsiders” – natives and national minorities/ immigrants. The latter were often not guaranteed citizenship and they were frequently denied basic rights. A significant percentage of national minorities have thus become forced migrants and refugees, leaving neighbouring states under threat of violence or because of discrimination.

The primary interest of this paper rests upon the interconnection of minority and migration issues. It brings together two topics which have usually been discussed apart. The paper aims to investigate the interrelation of the minority regimes adopted by Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine, and migration. It seeks to open up the discussion on the extent to which certain policies and rights for national minorities can be meaningfully extended to new migrant minority groups. It also asks what lessons are to be learnt from the treatment of national minorities as far as future migration legislation is concerned.

## Introduction

The dissolution of the Soviet Union resulted in massive depopulation in the former Soviet republics and unprecedented migration flows, including persons belonging to national minorities. Citizens of a once indivisible country were suddenly divided into “those of our kind” and “outsiders” – natives and national minorities/ immigrants. The latter were often not guaranteed citizenship or basic rights, and were subjected to laws requiring the use of the state language. A significant percentage of national minorities have thus become forced migrants and refugees leaving neighbouring states under threat of violence or because of discrimination.

The primary focus of the paper is the interconnection of minority and migration issues. The present research aims to investigate the interrelation of migration with the minority regimes adopted by seven former Soviet Union republics: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine. It seeks to open up a discussion on the extent to which certain policies and rights for national minorities can be meaningfully extended to new migrant minority groups. It also asks what lessons are to be learnt from the treatment of national minorities in regard to future migration legislation. The author’s interest in selected countries, is mostly dictated by the scarcity of the literature on the topic and the author’s wish to fill the gap. Not least important is the interest in seeing the evolution of the legislative instruments in case studies in national minority and migrant rights. Starting in 1991 from very similar positions, 20 years later, the minority and migrant regimes in the above countries are in quite different shapes. These regimes can cast some interesting light on the dynamics and the driving forces in the development of these, as will be argued, more and more interconnected areas of law.

The paper is structured as follows. It opens with a discussion of the status of national minorities in the USSR before 1989. Then the facts of the countries’ ethnic diversity, the changes in ethnic composition in view of recent migratory processes are explored. The central part of the paper is a comparative analysis of the general national minority legislative framework focusing on legislative instruments in three interconnected domains of minority rights<sup>1</sup>: equality/non-discrimination as the basic principle of international human rights law; education as an essential tool for the maintenance of identity and an important determinant for a person’s future position in life; and participation in social and economic life as a pre-requisite for combating social exclusion. Where necessary comparisons with migration laws of the case studies are provided in order to show the possible complementarities of the two sets of legislative instruments. The assessment of the legislative provisions is done primarily in light of the European standards for minority protection, namely the Framework Convention for the Protection of National Minorities (FCNM) adopted under the aegis of the Council of Europe. The choice is determined by the fact that the FCNM is the only legally binding international instrument completely devoted to national minority rights and extensively dealing with all aspects of protection to be afforded. All of the countries (apart from Belarus) under analysis are members of the Council of Europe and are parties to this instrument. Reference is also made to various documents resulting from the international monitoring practice, including, among others, that of the Advisory Committee under the FCNM<sup>2</sup> and the Council of Europe’s European Commission against Racism and Intolerance (ECRI).<sup>3</sup>

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<sup>1</sup> The choice is based on the contents of the UN Minorities Declaration and other international minority rights standards.

<sup>2</sup> The Advisory Committee is the independent expert committee responsible for evaluating the implementation of the Framework Convention in State Parties and for advising the Committee of Ministers. The results of this evaluation consist in detailed country-specific opinions adopted following a monitoring procedure which involves the examination of State Reports and other sources of information as well as meetings on the spot with governmental interlocutors, national minority representatives and other relevant actors.

<sup>3</sup> European Commission against Racism and Intolerance ECRI is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, anti-Semitism and intolerance at a pan-European level and from the angle of human rights protection.

It is hoped that the proposed analysis will provide an insight into the main features of minority policies and law and the way in which the minority regime adopted by the case studies influences or determines migration tendencies. The provisions quoted herein are not to be considered exhaustive, as the intention is to highlight general legislative trends in the field of minority protection and its effect on migration patterns. The research paper ends with a summary of the main ideas developed in the rest of the paper. The emphasis there is on the interrelation of the treatment of national minorities and migration, and some general observations that result from this interrelation.

### **The status of national minorities in the USSR before 1989 and migration: restriction of mobility**

The Soviet Union held together ethnically complex societies. The largest non-Russian nationality groupings were accorded equality of status as union republics. However, the collapse of the Soviet empire revealed a wide gap between the ideal of equality and the reality of systematic discrimination against some ethnic groups. Every Soviet citizen was born into a certain nationality, fixed in various identity documents (passports, birth certificates, etc.). A person's ethnic belonging made a difference in school and university admissions and it could be crucial in employment, promotions and participation in economic, social and particularly in political aspects of life. Moreover, the freedom of movement of ethnic minorities was limited by the system of internal passports and the registration (*propiska*)<sup>4</sup> which particularly affected ethnic minorities in rural and sparsely populated regions. They were initially excluded from the passport system and consequently were not entitled to move even within the borders of the administrative unit where they lived<sup>5</sup> (Moiseenko, 2004 :89). Later deportations of several disfavored ethnic groups (Crimean Tatars, Ingushs, Germans, Chechens, Kalmyks, Koreans, Meskhetian Turks, etc.) from their native lands were aimed at the destruction of their unity ethnic identity. An estimated 5.9 million persons in the USSR were sent into internal exile from 1919 to 1953.<sup>6</sup> The ethnicity-based deportations stigmatised whole ethnic groups as "public enemies" and diminished their freedom of movement and choice of place of residence, chances to get access to higher education, employment, etc.

While central Soviet power was able, at times, to foster a sense of common Soviet identity within non-Russian ethnic groups securing periods of relative tranquillity within the nationalities domain, Soviet nationalities policy did not generally help intra-ethnic integration. Consequently, when Soviet power and ideology weakened, ethnicity as a basis of group solidarity, and ethnic nationalism as a political doctrine, challenged the *status quo*.

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<sup>4</sup> The passport/*propiska* (registration) system, developed under Stalin in the 1930s and maintained by his successors, authorized the holder to reside at a specified address in a particular town.

<sup>5</sup> Moiseenko V.(2004) *Internal Migration*, TEIS, Moscow, p.89.

<sup>6</sup> Polian, P. (2001) *Against Their Will: The History and Geography of Forced Migrations in the USSR*. Memorial, Moscow, pp.312-313.



## National minorities in the ethnic composition of armenia, azerbaijan, belarus, georgia, moldova, russia and ukraine and the recent migration of national minorities<sup>7</sup>

Among the former Soviet republics **Armenia** has always been the most ethnically homogeneous. Between the 1989 and 2001 censuses the share of national minorities dropped from 6.7 percent to 2.2 percent (of the total population) leading to a near-total ethnic Armenian majority in present day Armenia: almost 98 percent of the total population of 3.2 million is ethnically Armenian. Currently, the most numerous minority remaining in Armenia is the Yezidi minority representing 73 percent of the non-Armenian population<sup>8</sup>. All other nationalities together account for 27 percent. Various national minorities in Armenia are concentrated in Armenian cities, with the exception of Assyrians, Yezidis and Kurds who are mostly rural dwellers. It is also worth noting that Armenia's minorities are dispersed throughout the country. Comparative data on the 1989 and 2001 censuses presented in the table below speaks for significant demographic changes that occurred in Armenia during the first ten years after independence:

**Table 1. Ethnic characteristics of the population of armenia**

Ethnic group	2011	2001		1989	
	Total	Total	Percentage of total population	Total	Percentage of total population
Armenian	2,961,514	3,145,354	97.8	3,083,616	93.3
Azeri	No data	-	-	84,860	2.6
Kurd	2,131	1,519	0.05	4,151	0.1
Yezidi	35,272	40,620	1.3	51,976	1.6
Russian	11,862	14,660	0.5	51,555	1.6
Ukrainian	1,176	1,633	0.05	8,341	0.2
Assyrian	2,769	3,409	0.1	5,963	0.2
Greek	No data	1,176	0.04	4,650	0.1
Other	4,030	4,640	0.1	9,664	0.3
Total	3,018,854	3,213,011	100	3,304,776	100

Source: National Statistical Service of the republic of Armenia: <http://www.armstat.am/en/?nid=52> and [http://armstat.am/file/article/sv\\_03\\_13a\\_520.pdf](http://armstat.am/file/article/sv_03_13a_520.pdf)

Hundreds of thousands of people left Armenia for various reasons: radical politics; economic and social changes after independence; the termination of large enterprises for environmental purposes; the Nagorno Karabakh conflict; an economic blockade along the Azerbaijani-Armenian and Turkish-Armenian borders; and the 1988 earthquake. Among them there were Armenians but also a high number of Azeris, Russians and other ethnic groups. As a matter of fact, before the dissolution of the USSR the most sizeable minority in Armenia were the Azeris. Together with Muslim Kurds they

<sup>7</sup> An important reservation should be made with regard to the data provided in this part of the paper. Due to the fact that ethnicity has been a sensitive issue in the former Soviet countries, a lot of them have opted to abstain from collecting ethnicity data (apart from census results) and as a consequence data on the ethnic belonging of migrants are scarce, often not publicly available and when available incomplete. Although conscious of the limitations of the statistical data provided for some of the countries, the author has opted to include in the report the materials at hand to shed some light at the movement of the main ethnic minorities in the presented case studies.

<sup>8</sup> The Yezidis are a heterodox Kurdish-speaking community, originating in northern Iraq and distinguished from other Kurds by adherence to the Yezidi religion, a minority faith of mixed origins. The Yezidis of the South Caucasus form part of a larger Yezidi global community, located predominantly in the historic homeland of the Yezidi faith, northern Iraq, and also in Turkey, Syria and, increasingly, Western Europe.

departed *en masse* at the beginning of the conflict in Nagorny Karabakh.<sup>9</sup> Similarly Armenia received an influx of ethnic Armenians from Azerbaijan. The table below reflects the migration tendencies of the ethnic groups in the years following the 2001 census:

**Table 2. Arriving**

Year	Assyrian	Yezidi	Armenian	Greek	Russian	Ukrainian	Total
2002	11	95	9,155	10	87	6	9,392
2003	8	84	9,605	2	100	10	9,827
2004	8	68	9,503	0	57	12	9,662
2005	8	76	10,441	0	55	6	10,441
2006	7	71	9,126	0	48	8	9,126
2007	2	104	9,795	2	34	3	9,795
2008	6	141	10,399	0	28	3	10,399

Source: ACFC/SR(2009)010: Annex 2

**Table 3. Departing**

Year	Assyrian	Yezidi	Armenian	Greek	Russian	Ukrainian	Total
2002	22	247	10,286	2	293	33	10,927
2003	16	276	9,003	1	194	27	9,548
2004	12	263	8,719	2	176	26	9,227
2005	10	223	8,903	3	127	8	9,303
2006	5	126	7,787	1	102	15	8,053
2007	8	126	7,206	0	92	7	7,461
2008	3	75	6,603	0	53	5	6,747

Source: ACFC/SR(2009)010: Annex 2

**Belarus** has an ethnic majority and several numerous ethnic groups. According to the 2009 national census ethnic Belarusians make up 84% of the population. The main minority groups include Russians, Poles, Ukrainians, Jews, Armenians, Tatars, Roma, Azeris, Lithuanians and Moldovans. As the table below shows, compared to the results of the 1989 and 1999 censuses, whereas the titular nation, the Belarusians, have somewhat grown in number by 2009, other ethnic groups have experienced a notable decline.

<sup>9</sup> Nagorny Karabakh was an autonomous region of Soviet Azerbaijan populated by a local Armenian majority.

**Table 4. Ethnic characteristics of the population of belarus**

Ethnic group	Total			Percentage of total population		
	1989	1999	2009	1989	1999	2009
Belarusian	7,904,623	8,159,073	7,957,252	77.9	81.2	83.7
Russian	1,342,099	1,141,731	785,084	13.2	11.4	8.3
Polish	417,720	395,712	294,549	4.1	3.9	3.1
Ukrainian	291,008	237,014	158,723	2.9	2.4	1.7
Jewish	111,977	27,810	12,926	1.1	0.3	0.1
Armenian	4,933	10,191	8,512	0.0	0.1	0.1
Tatar	12,552	10,146	7,316	0.1	0.1	0.1
Gipsy	10,762	9,927	7,079	0.1	0.1	0.1
Lithuanian	7,606	6,387	5,087	0.1	0.1	0.1
Azeri	5,009	6,362	5,567	0.0	0.1	0.1
German	3,517	4,805	2,474	0.0	0.0	0.0
Moldavian	4,964	4,267	3,465	0.0	0.0	0.0
Georgian	2,840	3,031	2,400	0.0	0.0	0.0
Chuvash	3,323	2,242	1,277	0.0	0.0	0.0
Latvian	2,658	2,239	1,549	0.0	0.0	0.0
Uzbek	3,537	1,571	1,593	0.0	0.0	0.0
Kazakh	2,266	1,239	1,355	0.0	0.0	0.0
Chinese	78	75	1,642	0.0	0.0	0.0
Arab	101	490	1,330	0.0	0.0	0.0
Total	10,151,806	10,045,237	9,503,807	100	100	100

Source: National Statistical Committee of the Republic of Belarus:  
[http://belstat.gov.by/homep/en/census/2009/pc\\_publications.php](http://belstat.gov.by/homep/en/census/2009/pc_publications.php)

Thus, between 1999 and 2009 the number of Russians fell by 31.3%, Poles by 25.5%, Ukrainians by 33% and Jewish citizens by 54.6%. These demographic changes should be analysed against a general 5.4% drop in the number of people inhabiting Belarus within that decade. This was caused by falling birth rates, the ageing of the population in general and a deteriorating ecological situation caused by the accident at the Chernobyl nuclear power plant in 1986. The latter has had a lasting adverse impact on the country's economy and on the health of its population,<sup>10</sup> two factors among many others which could encourage some national minorities, at least, to seek their fortune outside Belarus.

The data below provides an insight into the level of migration of national minorities and reveals that unlike Armenia and other countries of the former Soviet Union, Belarus has not been experiencing significant losses in the share of national minorities (except for Jews) in the migration exchange with other states.

<sup>10</sup> See more in UN Human Rights Council, Working Group on the Universal Periodic Review, Eighth session. Geneva, 3–14 May 2010. National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Belarus, para.6.

**Table 5. Arriving**

Year	Belarusian	Russian	Polish	Ukrainian	Jewish	Armenian	Tatar	Moldovan	Total
2003	5,661	6,082	276	2,210	112	214	117	100	18,146
2004	4,394	4,866	184	1,452	95	202	99	88	14,642
2005	3,993	4,390	126	1,326	69	178	64	78	13,031
2006	4,199	4,772	178	1,396	78	212	63	91	14,124
2007	4,007	4,421	203	1,425	79	225	69	117	14,155
2008	3,760	4,747	368	1,694	87	244	44	135	17,413
2009	4,076	5,260	436	1,934	100	281	43	174	19,892
2010	4,080	4,667	409	1,823	54	170	48	127	17,169

Source: Population of the Republic of Belarus: Statistical Yearly Book. Minsk 2005, 2006, 2009, 2012

**Table 6. Departing**

Year	Belarusian	Russian	Polish	Ukrainian	Jewish	Armenian	Tatar	Moldovan	Total
2003	5,052	3,563	116	687	412	40	59	17	12,986
2004	4,804	3,348	113	677	305	33	45	7	12,510
2005	4,344	3,649	126	515	246	35	25	13	11,082
2006	3,444	2,021	70	413	111	29	21	9	8,498
2007	4,239	2,039	77	435	136	37	10	10	9,479
2008	4,160	1,767	103	372	108	27	18	9	9,268
2009	3,295	1,453	67	257	88	28	17	8	7,643
2010	3,087	1,173	68	228	88	29	18	6	6,866

Source: Population of the Republic of Belarus: Statistical Yearly Book. Minsk 2005, 2006, 2009, 2012

The data presented reveal that the highest share of incoming ethnic groups belongs to Belarusians, Russians and Ukrainians. This should come as no surprise due to the cultural commonalities these ethnic groups have traditionally shared, their linguistic proximity and a high level of Russification in post-Soviet Belarus. What does come as a surprise is the share of Poles, who are among the top arrivals from the ex-Soviet republics, in particular from the Baltic states. As Bukhovets points out, the specificity of the new Poles from the Baltic states was their ability to preserve their language and culture even during the Soviet times. 73.6% of them named Polish as their native language.<sup>11</sup> This definitely poses a question of how the established framework for traditional national minorities, including the Polish minority, might influence the integration and legal protection of those Polish migrants. It would, indeed, seem difficult, for example, to distinguish between the national Polish minority and Polish migrants speaking the same language so as to deny the latter and not the former the right to make use of their language in certain contexts.

In **Azerbaijan** the mid-late 1970s were characterised by a weak outflow of Azerbaijan's national minority groups, as was the case in the other republics of the South Caucasus. But in the 1980s-1990s this transformed into a steady and large-scale migratory outflow. In fact, according to the official census data from 2009 and estimates of the authorities of Azerbaijan national minorities constitute 8.4% of the

<sup>11</sup> Bukhovets, O. (2012) "Ethnic Structure of Immigration in Belarus in the First Years of Independence: "Polish Anomaly"?" CARIM-East Explanatory Note 12/113 September 2012, [http://www.carim-east.eu/media/exno/Explanatory%20Notes\\_2012-113.pdf](http://www.carim-east.eu/media/exno/Explanatory%20Notes_2012-113.pdf).

population of Azerbaijan compared with 9.4% and 17.3% in respectively 1999 and 1989. The dynamics of the development of the national composition of the population of Azerbaijan is the following:<sup>12</sup>

**Table 7**

Ethnic group	2009		1999		1989	
	Total	Percentage of total population	Total	Percentage of total population	Total	Percentage of total population
	8,922,400	100	7,953,400	100	7,021,200	100
Azeris	8,172,800	91.6	7,205,500	90,6	5,805,500	82,7
Lezgins	180,300	2	178,000	2,2	171,400	2,4
Armenians	120,300	1.3	120,700	1,5	390,500	5,6
Russians	119,300	1.3	141,700	1,8	392,300	5,6
Talish	112,000	1.3	76,800	1,0	21,2	0,3
Avars	49,800	0.6	59,900	0,6	44,1	0,6
Turks	38,000	0.4	43,400	0,5	17,7	0,2
Tatars	25,900	0.3	30,000	0,4	28,6	0,4
Tats	25,200	0.3	10,900	0,13	10,2	0.14
Ukrainians	21,500	0.3	29,000	0,4	32,3	0,5
Sakhurs	12,300	0.1	15,900	0,2	13,3	0,2
Georgians	9,900	0.1	14,900	0,2	14,2	0,2
Jews	9,100	0.1	8,900	0,1	30,8	0,4
Kurds	6,100	0.1	13,100	0,2	12,2	0,2
Udins	3,800	0.04	4,100	0,05	6,1	0,1
Other	9,500	0.1	9,6	0,12	41,5	0,6

Source: The State Statistical Committee of Azerbaijan, [http://www.azstat.org/statinfo/demographic/en/AP/\\_AP\\_1.shtml](http://www.azstat.org/statinfo/demographic/en/AP/_AP_1.shtml)

The significant demographic changes and the decrease in the number of national minorities in the country has been caused by emigration for economic reasons. But it depends even more on the socio-political processes that have taken place since 1990 and the instability brought about by the conflict in Nagorny Karabakh.<sup>13</sup> The consequences of the latter include an influx of war refugees and displaced persons and huge post-war migration out-flows. Thus, the growth of the Azerbaijani share of the population has accelerated with the addition of an estimated 200,000 Azerbaijani deportees and refugees from Armenia. At the same time the period has been marked by the quickening rate of Armenian emigration. Armenians were one of the biggest ethnic groups in Azerbaijan. Between

<sup>12</sup> The data on the ethnic composition based on the results of the 3 censuses carried out in Azerbaijan in 1989, 1999 and 2009 are available at: [http://www.azstat.org/statinfo/demographic/en/AP/\\_AP\\_1.shtml](http://www.azstat.org/statinfo/demographic/en/AP/_AP_1.shtml). It should be noted, however, that the ACFC has drawn attention to the inaccuracy of some of these figures noting that they are contested by some of the groups of the national minorities concerned. Furthermore, it should be added that there are estimated to be several thousand asylum-seekers and other persons of Chechen origin, as well as numerically smaller national minorities residing in Azerbaijan who are not reflected in the results provided by the authorities. ACFC 1<sup>st</sup> Opinion on Azerbaijan, ACFC/INF/OP/I(2004)001, Strasbourg, 26 January 2004, footnote 3.

<sup>13</sup> See more on the reasons for leaving Azerbaijan by various ethnic groups in 'Away from Azerbaijan, Destination Europe. Study of Migration Motives, Routes and Methods', International Organization for Migration, Geneva, 2001, available at: <http://www.belgium.iom.int/pan-europeandialogue/documents/migration%20from%20azerbaijan%20to%20EU.pdf>

the censuses of 1979 and 1989, the Armenian population in Azerbaijan declined, from 475,000 to 390,000. Then, for obvious reasons, many Armenians left Azerbaijan. Now there are reckoned to be only about 120,000 Armenians in the country, making up a mere 1.3% of the total population. Changes in the numbers of Azerbaijan's ethnic Russian population, together with the representatives of other ethnic groups have also been significant.<sup>14</sup>

The ethnic composition of **Georgia** has undergone significant changes over the past decades. Georgia was once the most multiethnic region in the South Caucasus. But the number of persons belonging to national minorities on its territory has shrunk notably since 1989. While ethnic minorities in 1989 made up 29.9% of the population, their number in accordance with the 2002 census<sup>15</sup> dropped to 16.2%. The table below reflects the major changes in the number of persons belonging to the ethnic groups inhabiting the territory of Georgia:<sup>16</sup>

**Table 8**

Ethnic group	2002		1989	
	Total	Percentage of total population	Total	Percentage of total population
Georgian	3,661,173	83.8	3,787,393	70.1
Azeri	284,761	6.1	307,556	5.7
Armenian	248,929	5.7	437,211	8.1
Russian	67,671	1.5	341,172	6.3
Ossetian	38,028	0.9	164,055	3.0
Yezid <sup>17</sup>	18,329	0.4	-	-
Greek	15,166	0.3	100,324	1.9
Kist <sup>18</sup>	7,110	0.2	-	-
Ukrainian	7,039	0.2	52,443	1.0
Jew	3,772	0.1	24,720	0.5
Abkhaz	3,527	0.1	95,853	1.8
Assyrian	3,299	0.1	6,206	0.1
Kurd	2,514	0.1	33,331	0.6
Chechen	1,271	0.0	609	0.0
Other	8,946	0.1	49,968	0.9

Source: State Department for Statistics of Georgia, [http://www.geostat.ge/index.php?action=page&p\\_id=677&lang=eng](http://www.geostat.ge/index.php?action=page&p_id=677&lang=eng)

<sup>14</sup> See more on the history of the presence of the most numerous ethnic groups in Azerbaijan and the various reasons for their coming to and leaving the country in Mamedov, A. "Aspects of the Contemporary Ethnic Situation in Azerbaijan", *Central Asia and the Caucasus*. 2000. No.1, available at: [http://www.ca-c.org/journal/eng01\\_2000/05.mammedov.shtml](http://www.ca-c.org/journal/eng01_2000/05.mammedov.shtml).

<sup>15</sup> The census could not be carried out in the breakaway regions of Abkhazia and South Ossetia.

<sup>16</sup> The table does not yet reflect the presence of one ethnic group, namely the Meskhetian Turks. They were deported from Soviet Georgia in 1944 and are now being repatriated. On the contentious aspects of this process see among others, Blacklock, D (2005) 'Finding Durable Solutions for the Meskhetians'. A Presentation of Preliminary Findings and a Roundtable Discussion with Government and Civil Society Actors in Georgia. Report on the Joint Conference Organized by the ECMI and the State Minister of Georgia on Conflict Resolution'.

<sup>17</sup> After the population Census of 1939, Yezids were counted together with the Kurds. During the 2002 Census, this group was separated at the request of the Centre for Yezid Traditions "Ra Zibun".

<sup>18</sup> Before the 2002 Census, Kists were not separated from the category of "other ethnicities".

These changes in the population of Georgia were caused by the processes that took place in 1990s: rapidly deteriorating socio-economic conditions, the conflicts in the territories of the Autonomous Region of South Ossetia and the Autonomous Republic of Abkhazia and subsequent emigration. The present report does not analyse the situation in the two regions mentioned since they are *de facto* out of the Georgian control. However, it should be understood that the armed conflict in South Ossetia and Abkhazia has had a lasting effect on the perception of the minority issue in Georgia. In fact, the question of minorities is often understood through the prism of these conflicts reinforcing the widely held view that the minorities are a potential threat.<sup>19</sup> Emigration has affected the Georgian population as a whole,<sup>20</sup> including the Georgian majority, but particularly national minorities. National minorities were driven out of Georgia by the rapid worsening of the social and economic situation, escalating political tensions and at the beginning of the 1990s by the dominant nationalist rhetoric – “Georgia for the Georgians” clearly “unwelcoming” the ethnic minorities in new Georgia. While discrimination never reached critical dimensions, “a vague future and a fear factor” prompted minority representatives to emigrate.<sup>21</sup> The beginning of 1992 was marked by the accession to power of the new government which rejected nationalist policies. Notwithstanding that, emigration flows did not decrease due to unemployment, deterioration in living standards and limited possibilities to exercise professional capacity and skills by persons belonging to national minorities. The situation in the remote regions of the country was even worse. Weak administration, poor infrastructure, economic hardship, unemployment and destruction of social connections have left some ethnic groups isolated and marginalized. This has been perceived as being a matter, at least in part, of ethnic belonging<sup>22</sup> and has provided additional motivation for ethnic non-Georgians to leave. As a result, emigration has been cited by the representatives of minorities as “an indicator of the insufficient level of integration of Georgian society”, “the difficulties that prevent these persons from effectively participating in the social, economic and political life of the country – the language barrier in particular – as well as the discriminatory attitudes that they face because of their ethnic origin or religion.”<sup>23</sup>

In **Moldova** the official figures from the most recent 2004 population census indicate that Moldovans, the titular ethnic group, make up 75.8%, followed by 24.2% of Ukrainians, Russians, Gagauz, Romanians, Bulgarians and some other numerically smaller minorities.

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<sup>19</sup> ‘Ethnic minorities in Georgia. Report on International Fact-finding Mission. No. 412/2’, Fédération Internationale des Ligues des Droits de l’Homme April 2005, p.6.

<sup>20</sup> The total population decreased from 5,400,841 in 1989 to 4,371,535 in 2002.

<sup>21</sup> Country of Origin Information Reports: Azerbaijani and Greek Populations in Georgia, January – September, 2003, United Nations High Commissioner for Refugees, United Nations Association of Georgia, p.7.

<sup>22</sup> Report submitted by Georgia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR(2007)001, Strasbourg, 16 July 2007, paras.19-23. See also Komakhia, M. ‘Georgia’s Ethnic History and the Present Migration Processes’, available at: <http://www.diversity.ge/eng/resources.php?coi=0%7C15%7C13>.

<sup>23</sup> ACFC Opinion on Georgia, Strasbourg, 10 October 2009, ACFC/OP/I(2009)001, para.31.

**Table 8**

Ethnic group	2004 <sup>24</sup>		1989 <sup>25</sup>	
	Total	Percentage of total population	Total	Percentage of total population
Total	3,383,332	100	4,335,360	100
Moldovans	2,564,849	75.8	2,794,749	64.5
Ukrainians	282,406	8.4	600,366	13.8
Russians	201,218	5.9	562,069	13
Gagauzians	147,500	4.4	153,548	3.5
Romanians	73,276	2.2	2,477	0.1
Bulgarians	65,662	1.9	88,419	2
Others	30,157	0.89%	51,623	1

Source: National Bureau of Statistics of Moldova: <http://www.statistica.md/pageview.php?l=en&idc=295&>

The results of the 2004 population census show that the total number of persons belonging to national minorities has substantially decreased and that the relative size of each minority group has also been altered. The Moldovan authorities have reported a drop in the share of the Ukrainian population of 2.9%. The number of Russians decreased by 3.9%. The proportion of Bulgarians and other nationalities has fallen by respectively 0.1% and 1.7%.<sup>26</sup> The only minority that has grown in size is the Gagauz minority. Members of the various national groups are dispersed throughout Moldovan territory, the Gagauz population being the exception: the majority live in the autonomous Gagauz Administrative Territorial Unit (Gagauz-Yeri). Controversies persist over the total number of persons belonging to the Roma minority. In the census of 2004 12,271 persons identified themselves as Roma (0.4% of the population). The Population Register gives a figure of 20,888 persons registered as Roma in 2008<sup>27</sup>. The UNDP Survey on Roma in the Republic of Moldova estimates the Roma population at 15,000. Other non-governmental sources give higher figures, up to 250,000 persons.<sup>28</sup>

Among the reasons for the change in the national structure of the Moldovan population the authorities have named: the “intensification of emigration of persons belonging to national minorities,” the falling birth rate of all national minorities as a result of socio-economic crisis and also as a result of changing age structure of the population.<sup>29</sup> Furthermore, according to government sources some 56,000 persons fled to Ukraine and 51,000 become displaced within Moldova following

<sup>24</sup> Reference is made to Moldovan-controlled territory, excluding Transnistria whose authorities organized a separate census in 2004. The data for the latter are available at: <http://www.transnistria.info/independent-transnistria-news/pmr-2004-census-detailed-results.html>.

<sup>25</sup> The data on the last Soviet census of 1989 are available at: [http://demoscope.ru/weekly/ssp/sng\\_nac\\_89.php?reg=9](http://demoscope.ru/weekly/ssp/sng_nac_89.php?reg=9).

<sup>26</sup> Third Report Submitted by Moldova Pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/III(2009)001, Strasbourg, 24 February 2009, p.6.

<sup>27</sup> Comments of the Government of Moldova on the Third Opinion of the Advisory Committee on the Implementation of the FCNM by Moldova, GVT/COM/III(2009)001, Strasbourg, 11 December 2009 ,p.8

<sup>28</sup> United Nations Development Program (UNDP): *Report on Roma in the Republic of Moldova*, Chisinau, 2007, available at: [http://www.undp.md/publications/roma%20\\_report/Roma%20in%20the%20Republic%20of%20Moldova.pdf](http://www.undp.md/publications/roma%20_report/Roma%20in%20the%20Republic%20of%20Moldova.pdf), pp.31-34.

<sup>29</sup> Comments of the Government of Moldova on the Third Opinion of the Advisory Committee on the Implementation of the FCNM by Moldova, GVT/COM/III(2009)001, Strasbourg, 11 December 2009, p.7



the Transnistrian conflict,<sup>30</sup>. According to government sources, there were approximately 25,000 internally displaced persons in Moldova in May 2004.<sup>31</sup>

The estimates of the 2002 all-Russia census indicated that Russians constituted nearly 80 percent of the population. The other 20 percent consists of minority groups, and constitutes approximately 28 million people. The largest groups are indicated in the table below.

**Table 9**

Ethnic group	2002		1989 <sup>32</sup>	
	Total (Mln. Persons)	Percentage of total population	Total (Mln. Persons)	Percentage of total population
<b>Total</b>	145.16	100	147.02	100
<b>Russians</b>	115.87	79.8	119.87	81.5
<b>Tatars</b>	5.56	3.8	5.52	3.8
<b>Ukrainians</b>	2.94	2.0	4.36	3.0
<b>Bashkirs</b>	1.67	1.2	1.35	0.9
<b>Chuvashs</b>	1.64	1.1	1.77	1.2
<b>Chechens</b>	1.36	0.9	0.90	0.6
<b>Armenians</b>	1.13	0.8	0.53	0.4
<b>Moldovans</b>	0.84	0.6	1.07	0.7
<b>Belarusians</b>	0.81	0.6	1.21	0.8
<b>Avars</b>	0.76	0.5	0.54	0.4
<b>Kazakhs</b>	0.66	0.5	0.64	0.4
<b>Udmurts</b>	0.64	0.4	0.71	0.5
<b>Azerbaijani</b>	0.62	0.4	0.34	0.2
<b>Maris</b>	0.60	0.4	0.64	0.4
<b>Germans</b>	0.60	0.4	0.84	0.6
<b>Kabardinians</b>	0.52	0.4	0.39	0.3
<b>Ossets</b>	0.51	0.4	0.40	0.3
<b>Darghins</b>	0.51	0.4	0.35	0.2
<b>Buryats</b>	0.45	0.3	0.42	0.3
<b>Yakuts</b>	0.44	0.3	0.38	0.3
<b>Kumyks</b>	0.42	0.3	0.28	0.2
<b>Ingushs</b>	0.41	0.3	0.22	0.1
<b>Lezghins</b>	0.41	0.3	0.26	0.2

Source: Federal Service of National statistics: <http://www.perepis2002.ru/content.html?id=11&docid=10715289081463>

<sup>30</sup> Transnistria is a breakaway territory with limited recognition. The session was propelled by linguistic (the introduction of the Moldova language and return to the Latin script was opposed by Russian language speakers) and ideological (opposition to Western democracy v. the desire to preserve Soviet structures ) confrontation.

<sup>31</sup> 'Moldova: Situation Analysis and Trend Assessment.' A Writenet Report by Argentina Gribincea and Mihai Greu commissioned by United Nations High Commissioner for Refugees, Protection Information Section (DIP), October 2004, p.18

<sup>32</sup> The results of the 1989 census are available at: [http://demoscope.ru/weekly/ssp/sng\\_nac\\_89.php?reg=1](http://demoscope.ru/weekly/ssp/sng_nac_89.php?reg=1)

A comparative analysis of the results of the last Soviet 1989 census and the first Russia's independent 2002 census can also be indicative of the effects of the migration processes on the ethnic makeup of the Russian Federation. At the time of the breakup of the Soviet Union, there were 128 nationalities in Russia in the 1989 census; and there were 53 ethnic homelands. Of the 15 major nationalities, a total of 43.4 million people lived outside of their homelands in 1989. Thus, when the Soviet Union broke up, significant ethnic unmixing followed, with many people belonging to national minorities believing that their standard of living would be best in their own homeland thanks to preferential access to better jobs, schools, and other resources. When 25 million Russians found themselves suddenly members of minority groups in successor states, they either: stayed and accommodated themselves as minorities in the newly independent states, which often meant learning local languages; or they chose migration back to their homeland (though many had been born and lived their entire lives outside Russia). Among major push factors behind the migration of both Russians and non-Russians there was local discrimination, ethnic violence, and resulting economic decline. Aside from the war in Chechnya, most ethnic violence has not been aimed at Russians, but they have nevertheless been caught in the crossfire.<sup>33</sup> Tajiks, Armenians, Georgians, and Azeris provoked by episodes of violence during the post-Soviet period in their ethnic homelands, all moved in big numbers, thereby significantly increasing their population size in Russia.

The data on the arrival and departure of persons belonging to major national minorities are provided in tables 10 and 11.

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<sup>33</sup> 'By 1992 the International Red Cross had estimated that about 150,000 ethnic Russians had migrated from CIS states, and at the end of 1993, 2 million Russians and non-Russians had arrived from the near abroad in the first two post-Soviet years. As many as 300,000 of the 375,000 Russians in Tajikistan left that country in the first years of the civil war that began in 1992, and in 1994 more than half the Russian arrivals came from Chechnya, Azerbaijan, Georgia, and Tajikistan. However ... by the end of 1994, almost 60 percent of Russian arrivals came from Kazakhstan, Kyrgyzstan, and Uzbekistan, driven not by armed conflict but by local discrimination ...'. Library of Congress. Country Study: Russia: "Migration Patterns", available at: [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+ru0067\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+ru0067)).

**TABLE 10. ARRIVING**

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007 <sup>34</sup>
<b>Total</b>	979300	1191355	866857	647026	587651	513551	379726	359330	193450	184612	129144	119157	177230	186380	286956
Russian	623659	749974	519380	369765	348878	293602	205171	192332	110228	99683	66076	65831	92576	82647	94984
Other nationalities of Russia			69824	59035	44764	40261	31045	28529	15788	13275	9550	7421	10093	8239	7722
Azeri	13950	18056	19335	20996	17476	13769	11038	10947	3296	2921	1884	1196	2 489	5345	14976
Armenian	46339	63918	49898	38305	26960	22814	19333	19945	7138	7491	5757	3547	7 157	11358	26344
Belarusian	19493	25421	18984	14132	12908	10463	7467	6071	2799	2819	1833	1820	2 544	2028	2258
Georgian	8309	14228	11646	8887	6758	4975	4261	4495	2142	1451	968	616	811	1055	1918
Kazakh	6823	9258	8840	8008	9976	8316	5889	5013	2105	1946	1304	1452	2 022	1862	2050
Kyrgyz	1085	1142	908	924	923	881	653	678	395	428	276	403	1 332	2394	7644
Latvian	758	776	565	423	306	239	177	172	73	72	40	32	41	42	139
Lithuanian	1220	942	807	542	517	362	337	309	168	146	82	64	92	84	145
Moldovan	7557	7645	5814	5459	4889	3961	3078	3263	1383	1263	981	811	1 385	2033	4037
Tajik	4159	4918	5958	6798	5300	4900	3645	3782	1766	1481	1004	640	1 305	2550	9198
Turkmenistan	758	935	875	1467	1140	829	547	404	233	218	311	220	231	285	531
Uzbekh	5202	6507	6086	4901	4425	3836	3084	3331	1814	2020	1597	1130	2 069	3880	10678
Ukrainian	105100	137539	100562	82903	79408	67129	47106	42361	18158	17699	11225	8886	13 623	13564	21334
Estonian	486	491	317	265	358	217	157	156	95	45	41	35	73	24	55

Source: Statistical Books of the Russian Statistical Committee (Rosstat) 'Population and Migration of the Population of the Russian Federation 1993-2007.

<sup>34</sup> After 2007 Russia does not collect information on ethnic belonging of either Russian citizens or migrants because according to Federal Law №52 of 27.07.2006 ethnic belonging is qualified as confidential information and can not be disclosed

**Table 11. Departing**

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
<b>Total</b>	493119	345623	347338	291642	232987	213377	214963	145720	121166	106685	94018	79795	69798	54061	47013
Russian	202552	141749	153739	132959	107747	99497	101140	67961	54965	47599	42452	37122	32311	26063	22215
Other nationalities of Russia			37137	24975	19534	15550	16904	10310	6733	4646	3781	3365	2905	2432	2232
Azeri	9217	4899	4438	3935	9835	3091	3028	2273	1627	1270	1295	871	1 305	1050	892
Armenian	3730	3357	4446	4618	19814	3396	3089	2126	1646	1297	1078	721	657	634	625
Belarusian	24845	14803	12814	11200	21089	8831	8535	5470	4127	2869	2007	1590	1 388	1357	1089
Georgian	2262	1757	1770	1860	3470	1365	1238	788	644	345	279	209	212	186	202
Kazakh	13515	8118	5966	4706	15461	3163	3246	2679	2617	2727	3047	3368	3 573	3728	3474
Kyrgyz	2045	1045	675	498	318	304	264	166	161	112	90	64	45	97	111
Latvian	490	285	250	225	708	117	167	71	60	44	44	26	23	22	18
Lithuanian	970	566	491	433	1262	296	281	140	100	79	72	63	48	36	47
Moldovan	7553	4425	3822	3225	3921	2064	1871	939	563	497	409	308	253	168	178
Tajik	1217	999	1040	742	1356	758	651	378	342	271	259	113	116	133	166
Turkmenistan	1957	907	489	313	681	294	255	167	100	51	64	45	51	52	18
Uzbekh	4874	2760	2178	1709	2082	995	1050	660	401	278	260	168	136	137	161
Ukrainian	91841	56251	50900	42919	93337	30473	30361	17657	11630	9259	6898	5122	4 465	3916	3532
Estonian	240	254	204	143	990	137	187	97	65	54	47	60	39	32	27

Source: Statistical Books of the Russian Statistical Committee (Rosstat) 'Population and Migration of the Population of the Russian Federation 1993-2007.

According to the estimates of the 2001 census,<sup>35</sup> the present ethnic and national structure of Ukrainian society may be described as follows. Ukraine's population includes 37.5 million Ukrainians, the national majority, 77.8 percent of the total population of the country, and 10.9 million (22.2 percent) members of other nationalities. During the years that have passed since the population census of 1989<sup>36</sup> the number of ethnic Ukrainians has increased by 0.3 percent and their national percentage has increased by 5.1 percent. Russians are the second most numerous ethnic group in Ukraine and also its largest minority. Since 1989 their number has decreased by 26.6 percent and at the date of the census it constituted 8.3 million people. The proportion of Russians in the total population has decreased by 4.8 percent and now amounts to 17.3 percent. Eight other national minorities include from 100,000 up to 275,000 persons each: 275,800 Belarusians (0.6 percent of Ukraine's total population), 258,600 Moldovans (0.5 percent), 248,200 Crimean Tatars (0.5 percent), 204,600 Bulgarians (0.4 percent), 156,600 Hungarians (0.3 percent), 151,000 Romanians (0.3 percent), 144,100 Poles (0.3 percent), and 103,600 Jews (0.2 percent). Several ethnic groups have populations from 30,000 to 100,000 and include Armenians, Greeks, Tatars, Azerbaijani, Georgians, Germans and Gagausians. Other nationalities make up 177,100 people (0.4 percent of the total population). The 2001 census also refers to approximately 47,000 Roma in Ukraine. This figure, however, has been contested by Roma organisations who consider that a more accurate estimate would be approximately 400,000 persons.<sup>37</sup> The ECRI in their fourth report on Ukraine gives two main explanations for this disparity in figures: the Roma's own reluctance to declare their ethnic origin, for fear that they will become targets of discrimination; and the incorrect recording as Romanians of persons who chose not to declare their ethnic origin as "Gypsy" but as "Roma".<sup>38</sup> The 2001 census figures have also indicated a marked decrease in the number of Russians, Byelorussians, Moldovans, Bulgarians, Poles and Jews. There may be various reasons explaining this decrease, among which changing the ascribed nationality<sup>39</sup> and migration (due to the linguistic controversies, anti-Semitism manifestations along with economic motivations) are among the most plausible ones.<sup>40</sup> Some data on the outflow of national minorities are given below.

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<sup>35</sup> Available in English at: <http://www.ukrcensus.gov.ua/eng/>.

<sup>36</sup> Available in English at: <http://www.ukrcensus.gov.ua/eng/>.

<sup>37</sup> ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, para.66.

<sup>38</sup> ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, para.67.

<sup>39</sup> Hrytsenko, O. (2008) *Imagining the Community: Perspectives on Ukraine's Ethno-cultural Diversity*, Nationalities Papers, Vol.36, No.2, pp.197-222, at p.199.

<sup>40</sup> 'Migrants and ethnic minorities in post-Communist Europe: Negotiating Diasporic Identity', *Ethnicities*, June 2009, Vol. 9: 226-245.

**Table 12. Departing**

Migrants by ethnicity	Year							
	1994	1995	1996	2002	2003	2004	2005	2006
Ukrainian	98,221	83,601	83,118	36,287	32,499	21,514	16,057	13,059
Azerbaijani	1,210	910	867	152	78	72	45	50
Belarusian	6,343	4,748	4,838	1,127	826	570	409	335
Bulgarian		1,014	773	102	178	81	108	45
Armenian	1,853	1,445	1,552	277	201	167	102	72
Georgian	552	428	520	83	56	45	19	31
Jew	29,393	23,240	20,468	4,063	2,692	1,486	759	342
Kazakh	301	197	198	27	23	12	22	12
Moldovan	3,791	3,015	2,529	400	349	192	181	82
German	2,799	2,603	2,233	1,288	927	783	317	98
Polish		781	704	140	133	77	58	34
Russian	163,830	120,518	111,726	26,629	20,151	13,804	8,673	7,225
Crimean Tatar	3,289	2,550	2,585	368	334	237	169	162
Uzbekh	612	367	372	42	40	33	26	22
Roma	255	278	33	21	15	14	0	
Total	328,319	256,425	246,724	76,264	63,699	46,182	34,997	29,982

Source: Information has been received from Ukrainian State Statistic Service on the basis of the written request

The population outflow from Ukraine has been accompanied by a similar inflow of various ethnic groups, as can be seen from Table 13.

**Table 13. Arriving**

Migrants by ethnicity	Year							
	1994	1995	1996	2002	2003	2004	2005	2006
Ukrainian	77,776	66,036	51,301	16,417	15,006	12,785	11,420	10,786
Azerbaijani	1,814	1,319	1,445	491	458	523	564	904
Belarusian	3,387	2,905	2,180	588	467	461	376	384
Bulgarian		788	592	191	142	143	148	157
Armenian	6,013	4,402	3,029	920	812	960	997	1,174
Georgian	1,618	1,154	824	276	341	370	428	615
Jew	1,174	1,000	758	419	362	447	316	298
Kazakh	183	158	114	56	35	40	34	54
Moldovan	3,173	2,892	2,238	649	561	524	514	827
German	833	697	453	113	107	119	100	83
Polish		481	438	106	74	87	65	59
Russian	71,112	64,612	49,320	13,213	12,202	11,508	10,263	10,040
Crimean Tatar	9,262	10,840	7,867	2,247	1,652	2,198	3,393	2,617
Uzbekh	461	607	444	182	137	180	216	362
Roma		215	163	20	22	21	26	57
Total	187,392	166,551	129,538	42,473	39,489	38,567	39,580	44,227

Source: Information has been received from Ukrainian State Statistic Service on the basis of the written request

The most noticeable figure of the arrival of ethnic groups is connected the return of Crimean Tatars. It should be mentioned that in 1940s over 200,000 Crimean Tatars were deported from Ukraine<sup>41</sup> and although they were rehabilitated in 1967, the Crimean Tatars were not allowed to return to the Crimea until 1988. Since then their number on the peninsula has increased sharply. At the time of the 2001 census, 248,200 Crimean Tatars lived in Ukraine (their numbers fivefold greater than the 1989 census), and in the Autonomous Republic of Crimea they made up 12 percent of the population. Finally, in the early 1990s, armed conflicts and ethnic tension in some post-Soviet states became another important source of immigration to Ukraine. A randomly conducted survey by the State Committee for Statistics revealed that 12 percent of immigrants from the FSU residing in the Ukraine were prompted to move as result of ethnic tension in their native countries. The 2001 census has shown that compared to 1989, there was an increase in the number of people from the CIS countries involved in war, in particular, the number of Azeris increased by 22.2 percent (from 37,000 in 1989 to 45,000 in 2001) and Georgians by 45.3 percent (from 23,500 in 1989 to 34,200 in 2001), while the number of Armenians nearly doubled (from 54,200 in 1989 to 99,900 in 2001). Finally, the 2001 census results point to another feature of Ukraine which is comparatively unusual: the fact that, as a consequence of history, Russian is the mother tongue or the language of common use for many people who identify themselves in ethnic terms as Ukrainians, together with some smaller ethnic groups such as Belarusians, Jews, Greeks, Tatars, Georgians, and Germans.

### **National minority legislative framework**

The various aspects of national minority life are governed in the countries under analysis through generally liberal, though at times vague constitutional provisions, the international treaties to which the states are parties, including the FCNM (except for Belarus) and other legislation not dealing specifically with national minority rights. In Belarus, Ukraine, Moldova and Russia minority rights are protected through specific instruments concerned exclusively with the rights of national minorities.

Notwithstanding efforts since 2003 to draft a national minority law, **Armenian** legislation governing the treatment of national minorities has not yet been unified under one legal act. Consequently, the definition of the term “national minority” does not exist. However, in practice the term “national minority” has been used to mean “the nationals of the Republic of Armenia permanently living in the Republic of Armenia, who are different from the basic population by its ethnic origin”.<sup>42</sup> Recently there seems to be an overwhelming consensus in Armenia among the authorities and persons belonging to national minorities that there is actually no need to adopt a law on national minorities that “such a law would create more problems than it would solve” and that the current sectoral legislative and administrative arrangements are satisfactory.<sup>43</sup> This change of the rhetoric is obviously conditioned by the assumption by Armenia of obligations under a number of international conventions and treaties concerning human rights in general and national minority rights in particular, including the FCNM ratified in 1998, and which, according to Article 6 of the Armenian Constitution, are the integral part of the Armenian legal system. This general legislative reform has resulted in the development of a certain institutional framework of relevance to the protection of national minorities. Thus, the Department for Ethnic Minorities and Religious affairs was set up in 2004 and was later transformed into the Coordinating Council for National and Cultural Organisations of National Minorities, composed of representatives of eleven national minorities. In contrast,

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<sup>41</sup> Stepanenko, V. ( 2000) *A State to Build, A Nation to Form: Ethno-policy in Ukraine* in Biro, A.-M., Kovacs, P. (eds.) *Diversity in Action: Local Public Management of Multi-Ethnic Communities*, available at [http://gi.osi.hu/publications/books/Diversity\\_in\\_Action/2\\_7](http://gi.osi.hu/publications/books/Diversity_in_Action/2_7), at pp. 312-3.

<sup>42</sup> 1<sup>st</sup> Report Submitted by Armenia under the Framework Convention for the Protection of National Minorities (FCNM), ACFC/SR(2001)004 , Strasbourg, 11 June 2001, para.19.

<sup>43</sup> 3<sup>rd</sup> ACFC Opinion on Armenia, Strasbourg, 20 April 2011, ACFC/INF/OP/III(2010)006, paras.14, 35.

Armenia adopted two major laws in the migration domain: the 2006 Law On Foreigners and the 2008 Law on refugees and Asylum<sup>44</sup>.

In **Azerbaijan** the conflict with the Armenian minority, resulting in the bloodshed in Nagorny Karabakh, has complicated the management of minority rights issues and generated a certain sensitiveness to ethnic diversity discourses linking persons belonging to certain national minorities with separatism and ‘disloyalty’ towards the State.<sup>45</sup> It has also had a hampering effect on the development of the legislative and institutional framework for national minority protection. The continuing denial of minority issues being of concern in the country,<sup>46</sup> the emigration of national minorities and the increasing emphasis on “Azerbaijanism” have reportedly taken away the incentive for legislating in the field of minorities<sup>47</sup> which in some cases has even been perceived as a potential threat to the social cohesion and integrity of the country rather than enhancing stability and social cohesion life.<sup>48</sup> The instruments concerning minority policies remain scarce and are limited to the Presidential Decree of 1992 on the rights and liberties of national minorities and Article 45 of the Constitution of Azerbaijan, which establishes the right to study in minority languages. This stands in sharp contrast with the proliferation of laws concerning migration. In the first decade after the independence Azerbaijan adopted its Law on Immigration (1998) and its Law on Labour Migration (1999), its Law on the Legal Status of Aliens and Stateless Persons (1996), its Law on Status of Refugees and Internally Displaced Persons (1999), its Law on Exit from the Country, Entry into the Country and Passports (1994) and in 1996 the Law on Registration According to the Place of Residence and Sojourn. National minority rights are though underdeveloped. There is no definition of the term “national minority” in the Azerbaijani legislation. However it seems that the authorities have adopted a rather inclusive approach to who may be considered a person belonging to national minorities and who can thus benefit from the rights accorded to them:

Although there is no definition of “national minority” in national legislation, the Government of Azerbaijan had never faced the issue of recognition or non-recognition of any language or ethnic groups as national minorities, since it proceeded from the fact that every person has the right to freely determine his belonging to any national minority.<sup>49</sup>

The reluctance of the Azeri authorities to legislate in the field of national minorities is also reflected in the absence of institutions in charge of dealing with national minority-related issues. As a matter of fact, the institutions operating in the past, such as the State Committee for Work with National Minorities and the Consultative Council for National Minorities, no longer function. Azerbaijan has then no institutional structure to deal specifically and on a regular basis with national minority issues.

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<sup>44</sup> All the laws dealing with migration mentioned in the report are available at the website of the CARIM-East project: <http://www.carim-east.eu/database/legal-module/>.

<sup>45</sup> See the Parliamentary Assembly report of 30 March 2007 on honouring the commitments and obligations of Azerbaijan, para. 216; see also ECRI Report on Azerbaijan (fourth monitoring cycle), CRI(2011)19, para.28.

<sup>46</sup> This notion is reflected in several state reports submitted by Azerbaijan to international monitoring bodies. Thus, for example, in their first report under the FCNM the Azerbaijani authorities stated that ‘At no time in the history of Azerbaijan have there been recorded cases of intolerance or discrimination on ethnic, religious, language and cultural grounds’, Report submitted by Azerbaijan, pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR(2002)001, Received on 4 June 2002, p.15. This kind of statements stands in contrast with reality. For example, over the period 1992-1994 Azerbaijan had to address tensions with the Lezgin and Talysh minority resulting from the Lezgin minority representatives refusing to join the Azerbaijani army in Karabakh and a failed attempt to proclaim a Talysh Republic within the territory of Azerbaijan by a separatist movement. Popjanevski, J., *Minorities and the State in the South Caucasus: Assessing the Protection of National Minorities in Georgia and Azerbaijan*, Washington: Central Asia-Caucasus Institute, 2006, p.59.

<sup>47</sup> Popjanevski, J., *Minorities and the State in the South Caucasus: Assessing the Protection of National Minorities in Georgia and Azerbaijan*, Washington: Central Asia-Caucasus Institute, 2006, p.73.

<sup>48</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, para.15.

<sup>49</sup> Report submitted by Azerbaijan, pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR(2002)001, Received on 4 June 2002, p.20.



Similarly to Azerbaijan and Armenia, **Georgia** has no law directly concerned with minorities either. Although civil society has put forward a number of pieces of draft legislation, none of them have been adopted.<sup>50</sup> Georgia has not been active in legislating in migration matters either with a major migration law adopted only in 2005.<sup>51</sup> The Georgian legislative minority rights framework is thus based on the constitutional principle of equality and non discrimination of all citizens (Article 14) and on the constitutionally guaranteed right to freely develop one's own culture and to use one's mother tongue in public and private (Article 38). Accession to the Council of Europe in 1999 and therefore the Framework Convention on National Minorities,<sup>52</sup> imposed obligations on Georgia to establish conformity between national legislation and international minority rights standards to which it is a party.<sup>53</sup> This has driven the Georgian authorities to introduce a number of measures aiming at enhancing rights of national minorities. Thus, in 2009 the Government of Georgia approved the National Concept for Tolerance and Civil Integration accompanied by the Action Plan providing for a detailed programme of activities until 2014. This was funded from the state budget and aimed at the integration of national minorities into Georgian society.<sup>54</sup> The National Concept has also shed some light on who can actually benefit from the national minority legislative framework. Upon accession to the FCNM, a major internal debate on the possible definition of "national minority" took place. It resulted in the Resolution<sup>55</sup> which defined "national minorities" as persons who have Georgian citizenship, are distinct from the majority of the population in terms of language, culture and ethnic identity, have lived on Georgian territory for a long period and who live "compactly" on Georgian territory. Georgia has been criticized for its restrictive approach, namely the compact settlement precondition for the enjoyment of minority rights. Georgia "has accepted the recommendations",<sup>56</sup> and the National Concept explicitly indicates that its scope is not restricted to regions inhabited by substantial numbers of national minorities. More generally it should be noted that the national minority issue continues to be treated by the authorities, mostly simply as a conflict prevention exercise (creating negative associations towards national minorities on the part of the majority) and from the perspective of the integration of national minorities without due consideration of their identity, cultural and linguistic aspirations.<sup>57</sup> As one study concluded, "both majority and minorities perceive minority rights or integration initiatives, respectively, as stepping stones to inimical ideological projects (secession, assimilation), rather than as possessing intrinsic value in their own right"<sup>58</sup>.

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<sup>50</sup> Opinions differ as to the need to introduce specific legislation on national minorities. See more on this in Popjanevski, J. (2006), "Minorities and the State in the South Caucasus: Assessing the Protection of National Minorities in Georgia and Azerbaijan", Silk Road Paper September 2006, Central Asia-Caucasus Institute & Silk Road Studies Program, at pp.29-30; Svanidze, G. (2006), 'Concept On the Policy Regarding the Protection and Integration of Persons Belonging to National Minorities in Georgia', ECMI Georgia Occasional Paper No. 2, pp.25-26.

<sup>51</sup> Georgian Law on the Legal Status of Aliens was adopted in 2005. In 1996 Georgia also adopted the Law on the Rules of Registration of Georgian Citizens and Aliens Residing in Georgia and the Issuance of ID (Residence) Cards and Passports to Georgian Citizens and also Law on Internally Displaced Persons.

<sup>52</sup> Georgia ratified the FCNM in 2005.

<sup>53</sup> The provisions of the international instruments signed and ratified by Georgia are directly applicable in the Georgian legislation. Article 6 of the Constitution, Article 20.2 of the Law of Georgia on Normative Acts and Article 6 of the Law of Georgia on International Treaties.

<sup>54</sup> See a very detailed analysis of this instrument in Svanidze, G. (2006), 'Concept On the Policy Regarding the Protection and Integration of Persons Belonging to National Minorities in Georgia', ECMI Georgia Occasional Paper No. 2, pp.5-7, 23-24.

<sup>55</sup> Resolution of the Parliament on the ratification of the FCNM No. 1938-II of 13 October 2005.

<sup>56</sup> Report submitted by Georgia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR(2007)001, Strasbourg, 16 July 2007, p.3. See also Comments of the Government of Georgia on the First Opinion of the Advisory Committee on the Implementation of the FCNM by Georgia, GVT/COM/I(2009)002, Strasbourg, 10 October 2009, p.3.

<sup>57</sup> ACFC Opinion on Georgia, Strasbourg, 10 October 2009, ACFC/OP/I(2009)001, paras.59-60.

<sup>58</sup> Broers, L. (2008), Filling the Void: Ethnic Politics and Nationalities Policy in Post-Conflict Georgia, *Nationalities Papers*, Vol.36, No.2, at pp. 319-320.

In Belarus, Moldova, Ukraine and Russia specific laws governing national minorities interests have been in place.

In **Belarus** a framework law on National Minorities<sup>59</sup> was adopted in 1992, shortly after the dissolution of the Soviet Union. It defined national minorities as “persons who permanently reside in the territory of the Republic of Belarus, who hold the citizenship of the Republic Belarus and who differ from the majority of the population of the republic by their origin, language, culture or traditions”(Article 1). Direct and indirect limitations of national minorities’ rights and freedoms, attempts to assimilate them against their will and to force people to indicate their nationality are prohibited by the Law. National minorities are guaranteed equal political, economic and social rights, among others: the right to use one’s own language, including in education; the right to establish cultural bonds with countrymen abroad; the right to practice religion; to preserve one’s heritage; to create and enter public associations and to vote; as well as to enjoy positive rights of state assistance for developing national culture and education. As previously mentioned Belarus is not a member of the Council of Europe and is not a party to its instruments. Nevertheless, Belarus is a party to the CIS Convention on the Provision of the Rights to Persons Belonging to National Minorities of 21 October, 1994.<sup>60</sup> However, the place of international treaties is not clearly defined in the Belarusian Constitution. The Constitution does not contain a provision on the direct applicability of international treaties nor does it proclaim that international treaties take priority over contrary domestic legislation. The Constitution recognises in general terms the supremacy of the commonly recognised principles of international law (Article 8) and states broadly that the state guarantees rights and freedoms to the citizens of Belarus granted by the Constitution, laws and stipulated by the international obligations of Belarus (Article 21). The implementation of international treaties is hence done through their transposition into domestic law.

Belarus has also been active in legislating in the migration field and has adopted a series of laws at the beginning of independence, including the 1993 Law on the legal Status of Foreign Citizens and Stateless Persons, the 1995 Law on Refugees and the 1998 Law on Immigration.<sup>61</sup>

In **Moldova** minority rights issue an acute issue after two conflicts, the first in Transnistria and the second in Gagauzia,<sup>62</sup> both ethnically and politically motivated. The Constitution of Moldova recognises and guarantees all its citizens the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity (Art. 10(2)). The 2001 law on national minorities adopted a rather inclusive approach by providing no list of officially recognised national minorities. This implies that all persons who meet the criteria set out in the definition on national minorities as “persons residing in the Republic of Moldova and of Moldovan nationality who have particular ethnic, cultural, linguistic and religious features which distinguish them from the - Moldovan - majority of the

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<sup>59</sup> Law of Belarus on National Minorities of 11 November 1992 No.1926-XII.

<sup>60</sup> Osipov points out that the implementation of this Convention has not been effective by the parties due to the lack of the mechanism monitoring the compliance with state obligations similar to that adopted by the Council of Europe’s Conventions. Osipov, A. (2012) ‘Minority Issues in the Republic of Belarus, Europe and the World’ [Вопросы меньшинств в Республике Беларусь, Европе и мире], p.180.

<sup>61</sup> A new Law on the Legal Status of Foreign Citizens and Stateless Persons entered into force in Belarus on 20 July 2010.

<sup>62</sup> The Gagauz, a Christian people of Turkic origin, who have lived in the south of Moldova since the nineteenth century. From an economic perspective, this area is one of the most under-developed (backward), since it lacks the necessary water resources for agriculture; industry also lags behind. Under the totalitarianism, the Gagauz people were deprived of education in their own language, which was neglected, and scant attention was paid to cultural development. This overall situation provoked an instinctively rebellious attitude towards the authorities. These feelings paved the way for the conflict which erupted in 1991 and which kindled separatist movements - the proclamation of an independent republic of 26 villages in the region (the Gagauz population is 153,458 persons, or 3.5% of the population). The conflict was settled by granting the Gagauz Territorial Administrative Unit a special legal status, based on considerable internal administrative and cultural autonomy. Report Submitted by Moldova Pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/I(2000)002, Strasbourg, 29 June 2000, p.5.

population and who consider themselves to be of different ethnic origin” can seek protection under the forenamed law. On the other hand, Moldova has been criticized for introducing Moldovan citizenship as a prerequisite for access to the protection offered by the Law.<sup>63</sup> Taking into account that persons seeking to obtain Moldovan citizenship continue to face a number of difficulties<sup>64</sup> the citizenship criterion represents an undue obstacle in access to protection pertaining to minority rights. It should be mentioned that the law under discussion is an organic law that required, for its effective implementation, the subsequent introduction of other laws and the harmonisation of the existing legislation with its provisions.<sup>65</sup> The resulting body of legal provisions developed by Moldova has included, among others, the Law approving the main lines of the national policy (December 2003), a legal text with an important political dimension and guidelines. The public authorities are required to follow this in all spheres of action relating to consolidation of the Moldovan State, and the development of a distinctive state and national identity. Certain measures to protect national minorities, in legislative and other terms, are also provided for in the Action Plan of the Government of Moldova “European Integration: Freedom, Democracy, Prosperity” for 2009-2013<sup>66</sup>; the Law on Freedom of Conscience and Religious Associations, the Law on Education, the Law on political parties and socio-political organisations and several other legislative acts, including a very recent law on equality of chances (anti-discrimination law). It should also be mentioned that alongside the legislative framework Moldova has set up specialised organisations dealing with minority issues, namely the Bureau of Interethnic Relations (until 2005 the Department for National Relations and Use of Languages); the Presidential Committee for Inter-ethnic Relations, a specialised service in the Ministry of Education and Science.<sup>67</sup> The so-called Parliamentary Advocates (Ombudsman) are entitled to submit cases to the Constitutional Court, including applications in respect of legislative acts concerning human rights.<sup>68</sup> While the socio-economic crisis affecting Moldova as a whole is one of the factors that make the implementation of a minority rights framework difficult.<sup>69</sup> No less important is a certain inertia of the State in the field. In 2009 the Advisory Committee drew attention to the fact that “the importance given to minority-related issues and minority policy by the authorities has been decreasing.”<sup>70</sup> Less support (human and financial) has been allocated to the minority issues which has resulted in “the decreasing level of resources allocated to the work of the Bureau for Interethnic Relations, the lowering of its status, and the closure of the unit dealing with minority education in the Ministry of Education”.<sup>71</sup> Interestingly, while the major minority law was adopted in 2001, Moldova had started legislating on migration issues back in 1994 with the adoption of the Law on the Legal Status of Foreign Citizens and Stateless Persons. Having said that a comprehensive migration legislation started to take shape only recently with the adoption of two major laws: Law on the Regime for Foreigners in 2010 and Law on Asylum in 2008.

<sup>63</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009.

<sup>64</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para.36.

<sup>65</sup> Article 29 of the Law on the rights of persons belonging to national minorities and the legal status of their organisations, adopted on 19 July 2001.

<sup>66</sup> See a detailed description of the Plan in Comments of the Government of Moldova on the Third Opinion of the Advisory Committee on the Implementation of the FCNM by Moldova, GVT/COM/III(2009)001, Strasbourg, 11 December 2009, p.3.

<sup>67</sup> Report Submitted by Moldova Pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/I(2000)002, Strasbourg, 29 June 2000, p.3.

<sup>68</sup> See more in Svetlicinii, A., 2005, ‘The Institute of Parliamentary Advocates (Ombudsman) in the Republic of Moldova: Part of the National Mechanism for Protection of Human Rights’, Free Law Journal, Vol. 1, No. 2, pp. 211-229.

<sup>69</sup> ACFC 2<sup>nd</sup> Opinion on Moldova, ACFC/INF/OP/II(2004)004, Strasbourg, 24 May 2005, para.14.

<sup>70</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para. 18.

<sup>71</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para.18.

The legislative framework of the **Russian Federation** in the field of national minority rights is grounded on the international treaties to which Russia is a party, Constitutional provisions, federal and regional laws. The Constitution of the Russian Federation employs such terms (without defining them) as national *minorities* (Article 71c, Article 72,1b), indigenous small peoples (Article 69) and small ethnic communities (Article 72, 1m), and further, in Article 5, enshrines the principle of the equality and self-determination of all peoples of the Russian Federation. The Constitution connects the protection and regulation of the rights of national minorities with the regulation and protection of human and civil rights and freedoms, with the guarantee of the rule of law and order in the state, and with the issues of citizenship generally. The rights of indigenous small peoples and small ethnic communities are linked with the rights to land and other natural resources, which serve as the basis of the life and activity of the peoples living in the territories concerned,<sup>72</sup> as well as with the right to protection of their habitat and traditional way of life.<sup>73</sup> Another important constitutional arrangement that influences the legislative treatment of national minorities is the asymmetrical federal structure of Russia.<sup>74</sup> As a result of such territorial composition “minorities fall within various categories with different legal regimes, ranging from “forced migrants” to “numerically small indigenous peoples of the north” which raises particular challenges when determining the applicability of various legislative minority instruments.<sup>75</sup> The basic law in the sphere of minority protection is the Law on National Cultural Autonomy adopted in 1996.<sup>76</sup> It is considered by the authorities of the Russian Federation to be “a central normative element in the implementation of the European instruments on minority rights.”<sup>77</sup> In the context of the complexity of the federalist structure adopted by the Russian Federation, the law could indeed be important because it allows the national and linguistic communities that do not have their own politico-administrative structures to also enjoy the right to constitute themselves as autonomous territorial entities and to create the necessary conditions for the preservation and promotion of their own cultures, identities and languages.<sup>78</sup> What undermines the effectiveness of the law is its poor implementation, inconsistencies in the distribution of responsibilities for the implementation of minority laws between federal and regional authorities, rapid and frequent changes in the minority framework in recent years.<sup>79</sup> The dissolution of the Soviet Union forced Russian legislators to fill the gap in response to growing migratory flows from Russia and to Russia, especially from the former Soviet republics. Thus, in 1993 two federal laws were enacted – the

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<sup>72</sup> Article 9(1).

<sup>73</sup> On the federal level the special legal status of such peoples is ensured both by the Constitution (Articles 69, 71, 72) and the Federal Law No.82-FZ of 30 April 1999 “On Securing Rights of Small Indigenous Peoples”, Federal Law No.49-FZ of 7 May 2001 “On the Territories of Traditional Use of Natural Resources by the Indigenous Minorities of the North, Siberia and the Far East of the Russian Federation”; the Federal Law No.104-FZ of 20 July 2000 “On general principles of arranging communities of the Indigenous Minorities of the North, Siberia and the Far East of the Russian Federation”.

<sup>74</sup> According to the Constitution of 1993 (Article 65), the Russian Federation is composed of 89 constituent entities referred to in the Russian language and law as ‘subjects of the Federation’. However what makes Russian federalism a case *per se*, is the fact that the Russian Federation includes six different types of constituent units (republics, autonomous regions, regions, territories, autonomous areas, cities of federal status), each with its own distinctive status and powers. For example, republics are referred to as states and enjoy a greater degree of autonomy than other entities. Among other things they have the right to their own constitutions and legislation, and to establish their own state symbols (flag, coat of arms, national anthem), state language, etc. (Article 5(2) of the Constitution).

<sup>75</sup> ACFC Opinion on the Russian Federation, ACFC/INF/OP/I(2003)005, Strasbourg, 13 September 2002, para.24.

<sup>76</sup> Federal Law No. 74-Φ3 of 17.06.1996 On National Cultural Autonomy .

<sup>77</sup> PACE, Doc. 10568, *Honouring of Obligations and Commitments by the Russian Federation*, 3 June 2005, Explanatory memorandum by Mr Atkinson and Mr Bindig, para.413.

<sup>78</sup> Leprêtre, M. (2002) *Language Policies in the Soviet Successor States: A Brief Assessment on Language, Linguistic Rights and National Identity*, Papeles del Este, No.3, Universidad Complutense de Madrid, at p.19 available at: <http://www.ucm.es/BUCM/cee/papeles>.

<sup>79</sup> ACFC 2<sup>nd</sup> Opinion on the Russian Federation, ACFC/OP/II(2006)004, Strasbourg, 2 May 2007, para.10; Second Report on the Russian Federation, European Commission against Racism and Intolerance, CRI(2001)41, Council of Europe, 13 November 2001, paras.13-15.

Law on Refugees and the Law on Forced Migrants – followed in 1996 by the Law on the Order of Entry and Exit of the Russian Federation and in 1999 by a law which addressed the status of the Russian diaspora abroad.<sup>80</sup> More recently, in 2002, Russia adopted the Law on the Legal Status of Foreign Citizens and the Law on the Migration Registration of Foreign Citizens in 2006.

In **Ukraine** the late 1980s and the early 1990s were marked by the adoption of a very advanced legislation on minority rights. The Declaration for Rights of Nationalities of Ukraine adopted in 1991, the Law on National Minorities in 1992 were viewed as the most favorable for ensuring minority rights. The Law on National Minorities provides in Article 3 the only available definition of the term “national minority”: “to national minorities belong groups of Ukrainian citizens, who are not of Ukrainian nationality, but show feeling of national self-awareness and affinity,” extending the right to minority protection to a vast spectrum of peoples. Since then, though the authorities have repeatedly pledged to carry out the necessary reforms in order to adapt the national legislation in accordance with relevant international instruments to which Ukraine is a party, little effort has been made to further develop the existing minority legislative framework. As a result, the framework no longer suits the reality of today’s Ukraine and has been repeatedly criticized as outdated, lacking coherence and clarity, containing a number of shortcomings.<sup>81</sup> The situation is further complicated by a dissolution in December 2010 of the State Committee for Nationalities and Religion,<sup>82</sup> which had been reportedly developing some draft amendments to the 1992 law.<sup>83</sup> However, the status of these amendments is at present unclear and in practice there has still been no change.<sup>84</sup> With regard to migration issues, EU aspirations, in this author’s opinion, have made the Ukrainian legislator more consistent. As a result, the following pieces of legislation were introduced over the last fifteen years: the Law on Immigration in 2001, followed in 2003 by the Law on the Freedom of Movement and Free Choice of Residence; these laws were complemented more recently by the Law on the Legal Status of Foreigners and Stateless People (2011); and the Law on Refugees and Persons in Need of Additional and Temporary Protection (2011).

## Equality and Non-discrimination

Together with equality before the law and equal protection of the law without any discrimination, non-discrimination provides the foundation for the enjoyment of human rights. As Shestack has observed, equality and non-discrimination “are central to the human rights movement.”<sup>85</sup> What we clearly see in the case studies is that legislative protection against discrimination are weak and inconsistent in all of the countries under analysis, except for Moldova, which has recently adopted a particularly progressive anti-discrimination law, discussed further below. There is no specific anti-discrimination law in Armenia, Azerbaijan, Georgia, Belarus, Ukraine or Russia<sup>86</sup> providing legal definitions of key

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<sup>80</sup> Law on the State Policy of the Russian Federation in respect to Co-nationals abroad’ of 24 May 1999.

<sup>81</sup> ACFC 2<sup>nd</sup> Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, para.9. See also Committee of Ministers, Resolution CM/ResCMN(2011)8 on the implementation of the Framework Convention for the Protection of National Minorities by Ukraine.

<sup>82</sup> The State Committee for Nationalities and Religion had played an important role in developing, coordinating and overseeing action against racism and xenophobia in Ukraine.

<sup>83</sup> ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, para.7.

<sup>84</sup> ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012.

<sup>85</sup> Shestack, J. (1984) “The Jurisprudence of Human Rights”, in Th. Meron (ed.), *Human Rights in International Law: Legal and Policy Issues*, p. 101.

<sup>86</sup> As will be seen later in the discussion, Russian legislation contains the definition of discrimination.

concepts, standards of protection or effective remedies and sanctions.<sup>87</sup> National minorities in all of the case studies enjoy general constitutional protection of their equal rights.<sup>88</sup> Thus, the constitutions provide for equality before the law and entitlement to equal protection of a person's rights.

On the same note, the criminal codes of the countries studied here address the issue of discrimination. Thus, the Criminal Code of **Armenia** criminalises actions aimed at the "incitement of national, racial or religious hatred, at racial superiority or humiliation of national dignity" (Article 226) and lays down sanctions for any violation of equality carried out on racial or ethnic grounds; provision is made for possible remedies for victims of discrimination. Article 190 of the Criminal Code of **Belarus** also envisages liability for intentional direct or indirect violation or restrictions on rights and freedoms. The Criminal Code foresees punishment for inciting racial, national or religious hatred or enmity (Article 130) and makes it an aggravating circumstance (Article 64(1-9)). The Criminal and Criminal Procedure Codes of **Azerbaijan** provide for the prohibition of racial and ethnic discrimination and violence in a number of articles.<sup>89</sup> In the civil sphere, a person who has been subjected to discrimination has, according to Article 16, parts III and IV, of the Labour Code, the right to appeal to the court and demand restoration of the violated rights.. Similar articles are contained in various other laws concerning political parties, trade unions and non-governmental organizations (public associations and funds). Law enforcement authorities are obliged to protect all citizens regardless of racial belonging or ethnic affiliation.<sup>90</sup> In **Georgia** the anti-discrimination principle is reiterated in the Criminal Code, Criminal Procedure Code, Civil Code and Civil Procedure Code. Thus, the Criminal Code in Articles 142-143 prohibits discrimination and direct or indirect limitation of persons' rights based on national or ethnic identity. Notably, it also prohibits favouring any individual on these grounds. Furthermore, national or ethnic grounds are considered as aggravating circumstances in all criminal offences.<sup>91</sup> Anti-discrimination provisions also exist in the legislation on administrative

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<sup>87</sup> This has been pointed out by various international monitoring bodies. See, for example, ECRI Second Report on Azerbaijan, adopted 28 June 2002 and made public 15 April 2003, paragraph 16; ACFC 1<sup>st</sup> Opinion on Azerbaijan, ACFC/INF/OP/I(2004)001, Strasbourg, 26 January 2004, para.24. ACFC 2<sup>nd</sup> Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, para.13-14. See also European Roma Rights Centre: "Written Commends of the European Roma Rights Centre Concerning Ukraine for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 69th Session, July 31-August 18, 2006", 19 June 2006, pp. 7-8.

<sup>88</sup> The Belarusian Constitution in Article 22, the Constitution of Armenia in Article 14, the Constitution of the Republic of Azerbaijan in Article 25, the Constitution of Georgia in Article 14, the Constitution of Russia in Article 19 and Article 24 of the Ukrainian Constitution.

<sup>89</sup> Article 6 of the Criminal Code establishes that those who committed crimes are equal before the law and subject to criminal responsibility irrespective of race, nationality, religion, language, etc.( A similar provision is incorporated in Article 7 of the Law on courts and judges: 'justice is administered on the basis of everyone's equality before the law and the courts irrespective of race, nationality, religion, language...') According to Article 154 violation of equality of citizens is a crime against constitutional human rights and freedoms. Article 283 proscribes that 'actions intended to arouse national, racial or religious hostility, to lower national dignity, as well as to restrict the rights of citizens, or to establish superiority for citizens on the ground of their national or racial identity, attitude to religion' are also recognized as actions that should be prosecuted in criminal terms. In compliance with Article 61.1.6 'committing an offence inspired by motives of national, racial or religious hostility, religious fanaticism...' is recognized as an aggravating circumstances. Article 111 of the Criminal Code of the Republic of Azerbaijan stipulates liability for 'crimes committed with the purpose of organizing and providing superiority of one racial group for oppression of another racial group'. In accordance with Article 11 of the Criminal Procedural Code, 'criminal proceeding is conducted on the basis of everyone's equality before the law and the courts. The bodies of criminal proceeding provide none of those participating in the criminal proceeding with advantages on the grounds of citizenship, social,... racial, national, ... and religious identity, language ...' (a similar provision is contained in Article 8 of the Civil Procedural Code'). In accordance with Article 7.1 of the Code on Administrative Offences persons who committed administrative misdemeanours are equal before the law and are called to administrative responsibility irrespective of their ethnic or racial belonging.

<sup>90</sup> According to Article 5, part I, of the Law On Police law enforcement authorities shall protect from unlawful acts the rights and legal interests of all persons irrespective of race, nationality, religion, language, etc.

<sup>91</sup> Article 53.3 as amended on 27.03.2012 was a reaction to the appeal by the ECRI to review legislation to make racist motivation for a crime an aggravating circumstance in respect of all criminal offences, not just their limited number

matters. For example, Article 4 of the General Administrative Code<sup>92</sup> proscribes any discriminatory measures on the grounds of ethnic origin, including taking different decisions in respect of persons in analogous situations. In 2006 the new Labour Code was adopted with guarantees against direct and indirect discrimination (Article 2) in the labour market, including with respect to persons belonging to national minorities.<sup>93</sup> Similarly Article 161 of the new Criminal Code of **Ukraine**<sup>94</sup> lays down responsibility for inciting inter-ethnic enmity or hatred, for disparagement of national honour or dignity and for the limitation of the rights of, or the institution of privileges in respect of, citizens on the basis of ethnic origin or linguistic or other characteristics.

Unlike other countries under discussion, which do not offer a comprehensive definition of the term “discrimination”, the term “discrimination” has been explicitly incorporated in Article 136 of the Criminal Code of **Russia** and has been defined as violation of the rights, freedoms and legal interests of a person and citizen on the grounds of sex, race, nationality, language etc.. Punishment for discrimination ranges from a fine to two-years imprisonment. However, apart from the mentioned broad constitutional and criminal law equality guarantees, Russian law is lacking detailed and comprehensive civil and/or administrative law provisions with regard to discrimination in a number of pertinent fields, the only exception being the Labour Code.<sup>95</sup> Article 3 of the latter document contains progressive provisions aimed at combating ethnic and racial discrimination in the field of employment. There is no other comprehensive provision in civil and administrative law which would prohibit ethnic discrimination in the same way as the Labour Code.

Like the other countries under analysis in the present paper, **Moldova** has long denied the need for legal protection against discrimination, claiming that the existing legislative framework is sufficient to prevent and combat discrimination. Indeed, anti-discrimination and equality provisions have been scattered round a big number of legislative acts. Under the pressure of the UN, Council of Europe bodies and more importantly, in this author’s opinion, the EU incentive of liberalisation of the visa regime in exchange for a series of legislative reforms, including the adoption of a comprehensive effective anti-discrimination law, the current government enacted a progressive anti-discrimination law, renamed ‘the law on ensuring equality’. With regard to national minorities, the law bans direct discrimination, in which a person is treated less favourably than another in a comparable situation, as a result of his or her ethnicity and indirect discrimination, meaning “where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin [or any other protected ground] at a particular disadvantage compared with other persons”. The Law also envisages the establishment of a new monitoring and enforcement body, the Council for Preventing and Combating Discrimination. While the law cannot transform a society overnight, it will undoubtedly become an important tool that allows victims and their defenders to stand up for equality and to seek protection against discrimination in various fields of life so far not covered by the existing legislation.

The issue of non-discrimination is addressed by the legislators of all the seven case studies in their migration laws which also have equality guarantees amongst their provisions. The laws all provide that immigrants shall have rights, freedoms, and responsibilities equal to the citizens of the countries,

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(premeditated murder, premeditated health injury, torture, etc.) as it was the case before. See ECRI report on Georgia, adopted on 28 April 2010, para.11

<sup>92</sup> The Code which regulates the activities of the administrative bodies in Georgia.

<sup>93</sup> Labour Code of Georgia, adopted in 2006, section 2(3).

<sup>94</sup> Law of Ukraine ‘On Introducing Amendments to the Criminal Code of Ukraine as to Crimes on the Grounds of Race, National or Religious Intolerance’ of 05.11.2009. The Code was amended in view of the increase in racially motivated crimes. See more on this in Shadow Report to Ukraine’s 19th to 21th Periodic Report under the ICERD, the “Social Action” Centre – “No Borders” Project, July 2011, footnote 9, p.7.

<sup>95</sup> The new Labour Code (Federal Law No. 197-FZ of 2001) entered into force in 2002.

unless otherwise provided by the Constitution and laws.<sup>96</sup> Georgian Law on Legal Status of Aliens in Article 27.2 also prescribes that aliens shall be on equal terms before the law irrespective of their origin, nationality, language and religion. Interestingly, Article 5 (2) of the Law on Foreigners of Armenia, Article 4 of the Azerbaijani Law on the Legal Status of Aliens and Stateless Persons and Article 37 of the Law of Georgia on the Legal Status of Aliens pose an explicit obligation on foreigners to respect, among other things national customs and traditions. Article 15 of the Belarusian Law on the Legal Status of Foreigners and Stateless People guarantees, meanwhile, immigrants the right to the preservation and development of their own native language and culture, national traditions and customs. Similarly the above mentioned Georgian law provides foreigners in Georgia with the right to use their mother tongue, observe and develop national culture and traditions on condition it does not harm the national security and public safety. The Law of Moldova on the Regime for Foreigners goes a step forward in Article 5 and explicitly requires the state (central specialized and local public authorities) to provide assistance to foreigners granted with the right of residence in their integration into economic, social and cultural life through the activities such as: state language courses; provision of information on the rights and obligations of migrants; educational courses in the history, culture, civilization and legal system of Moldova.

It is important to stress that all the countries under analysis in the present report have some anti-discrimination provisions in their legislation on criminal and administrative procedures, social security and labour relations, political participation and, indeed, some other areas of life. While enshrined in the Constitution and present across a range of different legal acts provisions of non-discrimination based on ethnic affiliation are not included in the legislation covering other important fields for national minorities. There, though, the provision of equal, non-discriminatory treatment is essential for the protection of their interests. These areas include access to housing, social protection and public goods and services. What most legislation (apart from the Moldovan and to a certain extent Russian legislation) fail to provide for a definition of either discrimination generally or discrimination on grounds of ethnic belonging. Nor does the relevant legislation provide a list of prohibited grounds of discrimination, which makes it difficult for ethnic minorities, particularly for newly arrived ethnic groups, to ensure protection against some forms of discrimination, where one of the protected characteristics is ethnic belonging. Unsurprisingly, according to the authorities of the countries examined here crimes on the grounds of national/ethnic origin or racial hatred have not or have only rarely been recorded in the courts. Eloquent in this respect is the statement of the Azerbaijani authorities, who claim that “since the Republic of Azerbaijan has restored its State independence the law enforcement agencies did not register a single case regarding discrimination of citizens on grounds of their ethnic, cultural, religious or linguistic identity”<sup>97</sup> No cases of ethnic-related discrimination have ever been filed, either to the Ombudsman’s office, or to the Azerbaijani courts.<sup>98</sup> The case law on ethnic discrimination is extremely low or non-existent in other countries as well.

This is an alarming reality rather than an encouraging fact. It suggests that although there are anti-discrimination provisions in a number of areas, coupled with rather general constitutional provisions they do not provide adequate protection. The international monitoring bodies signal that the absence of case-

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<sup>96</sup> Armenian laws on Foreigners (Article 5) and Refugees and Asylum (Article 15), the Belarusian Law on the Legal Status of Foreigners and Stateless People (Article 4), Azerbaijani Law on the Legal Status of Aliens and Stateless Persons (Article 4) and the Law on the Status of Refugees and Internally Displaced Persons (Article 6), Georgian Law on Legal Status of Aliens (Article 27.1); Laws of Moldova on the Regime for Foreigners (Article 4.1) and On the Legal Status of Foreign Citizens and Stateless Persons in Moldova (Article 5(1)), Article 3 of the Law of Ukraine on the Legal Status of Foreigners and Stateless Persons and Article 14 of the Law on Refugees and Persons in Need of Additional or Temporary Protection; Article 4 of the Law on the Legal Status of Foreign Citizens.

<sup>97</sup> Report submitted by Azerbaijan, pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR(2002)001, Received on 4 June 2002, p.27.

<sup>98</sup> Safikhani, A., ‘Information on the activities of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan in the field of combating discrimination and promoting equality’, OSCE Review Conference, Astana. 26 - 28 November, 2010, available at: <http://www.osce.org/home/73756>.



law and claims of discrimination on grounds of ethnic origin, the limited access of these persons to effective remedies, including legal remedies can result from: the fact that “the existing legislation is scattered and not easily accessible”;<sup>99</sup> “a lack of awareness of discrimination, in the judiciary and society at large”; “insufficient knowledge among persons belonging to national minorities of existing legal remedies in cases of discrimination as well as a lack of confidence in the justice system”;<sup>100</sup> a general lack of access to information as well as persons’ poor command of the Georgian language,<sup>101</sup> in which legislation is written; and “a widespread lack of confidence in the judicial system, particularly among persons belonging to national minorities, who are not inclined to go to the courts if their rights are violated”. Another possible explanation for the absence of anti-discrimination case law is the lack of statistics on the practical application of such legislation,<sup>102</sup> but also the overall lack of data on national minorities in areas such as employment, housing, etc to evaluate any discrimination minority representatives might face.<sup>103</sup> Another problem is the absence of an official system of monitoring of discrimination and racism and insufficient awareness of this problem, both among potential victims, the judiciary, law enforcement institutions and society at large. The lack of comprehensive anti-discrimination legislation also leads to a lack of awareness of the existing provisions on the part of the judiciary, public officials and the police and as a consequence reluctance on the part of the prosecution and the courts to use anti-discrimination provisions.<sup>104</sup> As a UN Human rights Advisor aptly characterised this paradox: ‘Around us is an elaborated – and at present lifeless – legal machinery’.<sup>105</sup>

The absence of anti-discrimination case law also runs counter reported cases of unequal treatment of national minority representatives in various aspects of life. While the Belarusian authorities claim that “in the performance of their duties, the internal affairs authorities have adopted comprehensive measures to prevent acts of discrimination against ethnic minorities”,<sup>106</sup> NGOs draw the State’s attention to instances of discrimination, in particular with respect to the Roma population.<sup>107</sup> Similarly, the recent escalation of tensions between the Belarusian authorities and the politically-active Polish minority represented by the Union of Belarusian Poles (UPB) has resulted in the replacement of the UPB leadership; restrictions were also imposed, at least temporarily, on Polish language newspaper publishing and the use of Polish language teachers from Poland.<sup>108</sup>

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<sup>99</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, para.16.

<sup>100</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, para.38; ECRI Report on Azerbaijan (fourth monitoring cycle), CRI(2011)19, paras.27-28.

<sup>101</sup> In accordance with one of the surveys, in Samtskhe-Javakheti and in Kvemo Kartli, respectively 75.4% and 83.1% of those who belong to national minorities say they do not speak the state language. National Integration and Tolerance in Georgia. Assessment survey report 2007-2008, p.38.

<sup>102</sup> ACFC 1<sup>st</sup> Opinion on Armenia, Strasbourg, ACFC/INF/OP/I(2003)001, 16 May 2002, para.92.

<sup>103</sup> ECRI Fourth Report on Armenia, adopted 7 December 2010, paras.38-39. Osipov also draws attention to the fact that while Belarus is among the countries whose citizens file the biggest number of complaints to the Human Rights Committee under the International Covenant on Civil and Political Rights, there are no complaints connected with the violation of equality on the grounds of ethnic affiliation (2012:176-177).

<sup>104</sup> ACFC Opinion on Georgia, ACFC/OP/I(2009)001, Strasbourg, 10 October 2009 paras.38-39. Also see comments in Popjanevski, J. (2006), “Minorities and the State in the South Caucasus: Assessing the Protection of National Minorities in Georgia and Azerbaijan”, Silk Road Paper September 2006, Central Asia-Caucasus Institute & Silk Road Studies Program, at pp.54-55.

<sup>105</sup> Cahn, C. ‘A Comprehensive Anti-Discrimination Law for the Republic of Moldova’, [http://www.un.md/news\\_room/pr/2011/04\\_03/index.shtml](http://www.un.md/news_room/pr/2011/04_03/index.shtml).

<sup>106</sup> A/HRC/15/16/Add.1. UN General Assembly, Human Rights Council, Fifteenth Session. Report of the Working Group on the Universal Periodic Review. Belarus. Addendum. Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review, 15 September 2010, para.38.

<sup>107</sup> Minority Rights Group International (MRG) 2013 “Belarus. Current State of Minorities and Indigenous Peoples”, <http://www.minorityrights.org/?lid=4667#current>.

<sup>108</sup> Minority Rights Group International (MRG) 2013 “Belarus. Current State of Minorities and Indigenous Peoples”, <http://www.minorityrights.org/?lid=4667#current>.

In Armenia non-governmental sources also point to the existence of certain cases of stereotyping and discrimination, especially with respect to the Yezidi minority. Reference has been made to cases of mistreatment of Yezidi soldiers in the army.<sup>109</sup> Other cases of discrimination include: the aggressive behaviour of law enforcement agencies; police indifference to mistreatment; and the biases of local authorities (resulting in the unfair distribution of local resources).<sup>110</sup>

In Azerbaijan there is evidence that persons belonging to some national minorities, and especially those belonging to the Armenian minority, continue to face widespread discrimination in various fields and hostility. This is triggered by the media and tolerated by the authorities, with the justification of the continuing conflict over Nagorno-Karabakh. A study conducted under the aegis of the UNHCR has concluded that “while discrimination against ethnic Armenians is not a proclaimed official policy in Azerbaijan, clearly there is a certain amount of discrimination in every day life against them, which is tolerated by authorities. Such discrimination is not such as to amount to persecution per se, however in individual cases it is possible that the cumulative effect amounts to it.”<sup>111</sup> It is, indeed, disconcerting that the mere fact of being suspected of being of Armenian origin, or of having contacts with Armenia, can be problematic and lead to accusations of “disloyalty”.<sup>112</sup> Moreover, individuals in mixed Armenian-Azerbaijani families are subject to registration by the authorities and face general difficulties in their relationship with the state when claiming their rights.<sup>113</sup> It then comes as no surprise that many Armenians residing in the country hide their ethnic identity and try to keep their profile low in order to avoid maltreatment by ethnic Azeris.<sup>114</sup> Persons belonging to other national minorities, in particular Russians, have also been facing discriminatory treatment, notably in housing (forced evictions and violations of property rights).<sup>115</sup> Other instances of discriminatory treatment include obstacles in access to public employment, housing, public services, payment of pensions and other social benefits and difficulties in the restitution of properties.<sup>116</sup>

In Moldova in contrast to the existing guarantees and no-existent anti-discrimination case law a recent survey has confirmed the fact that discrimination and marginalization of certain groups remains a problem.<sup>117</sup> Hence, some groups have been repeatedly identified by international law review bodies as being particularly vulnerable. The most discriminated groups in Moldova, include, among others, women belonging to ethnic minorities,<sup>118</sup> ethnic minorities and in particular Roma<sup>119</sup> and others

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<sup>109</sup> The Human Rights Situation of the Yezidi Minority in the Transcaucasus (Armenia, Georgia, Azerbaijan). A Writenet Report commissioned by United Nations High Commissioner for Refugees, Status Determination and Protection Information Section (DIPS), May 2008, p.19.

<sup>110</sup> 1<sup>st</sup> Advisory Committee under the FCNM (ACFC) Opinion on Armenia, Strasbourg, 16 May 2002, ACFC/INF/OP/I(2003)001, paras. 41, 97; 2<sup>nd</sup> ACFC Opinion on Armenia, Strasbourg, 24 October 2006, ACFC/INF/OP/II(2006)005, paras.49,58; ACFC/INF/OP/III(2010)006. 3<sup>rd</sup> ACFC Opinion on Armenia, Strasbourg, 20 April 2011, ACFC/INF/OP/III(2010)006: paras.70, 83; ECRI Second Report on Armenia, adopted 30 June 2006, p.24.

<sup>111</sup> ‘International Protection Considerations Regarding Azerbaijani Asylum-Seekers and Refugees’, UNHCR, Geneva, September 2003, para.124.

<sup>112</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, paras.16, 67. See also ECRI Report on Azerbaijan (fourth monitoring cycle), CRI(2011)19, paras.98-101.

<sup>113</sup> ACFC 1<sup>st</sup> Opinion on Azerbaijan, ACFC/INF/OP/I(2004)001, Strasbourg, 26 January 2004, para.31.

<sup>114</sup> Committee on the Elimination of Racial Discrimination, “Concluding observations – Azerbaijan”, CERD/C/AZE/CO/4, 11 March 2005; ‘International Protection Considerations Regarding Azerbaijani Asylum-Seekers and Refugees’, UNHCR, Geneva, September 2003, paras. 117-125.

<sup>115</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, para.40.

<sup>116</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, para.39. See also ‘Background Paper on Refugees and Asylum Seekers from Azerbaijan’, UNHCR, Centre for Documentation and Research, October 1999, pp. 12-14, available at: <http://www.unhcr.org/refworld/pdfid/3ae6a6504.pdf>.

<sup>117</sup> Ludmila Malcoci, 2011, *Perceptions of the Population of the Republic of Moldova on Discrimination: Sociological Study*, Soros Foundation, Moldova.

<sup>118</sup> United Nations Committee on the Elimination of Discrimination against Women, “Concluding Comments of the Committee on the Elimination of Discrimination against Women: Republic of Moldova”, 25 August 2006

regarded as “Gypsies”,<sup>120</sup> non-European immigrants,<sup>121</sup> religious minorities,<sup>122</sup> children belonging to a different ethnic group or of different faiths.<sup>123</sup>

In Russia, the European monitoring bodies have also drawn attention to a poor record of discrimination cases before the courts<sup>124</sup> in contrast to reported numerous instances of discrimination towards some persons belonging to national minorities, including: unjustified document checks by law-enforcement officials; selective and disproportionate stops and searches; unlawful and unprovoked use of violence; forceful entry into homes and unwarranted detentions;<sup>125</sup> biased decisions of courts;<sup>126</sup> and acts of violence and harassment against persons belonging to ethnic minorities committed by members of organisations referring to themselves as Cossacks.<sup>127</sup>

In Ukraine the international monitoring bodies have also indicated that the lack of statistical data on the number and nature of cases of discrimination registered by courts and other complaint mechanisms are particularly worrying.<sup>128</sup> This is particularly the case in view of the fact that discriminatory attitudes are fuelled by media and some political parties and public authorities.<sup>129</sup> It is alarming too because of the increase in instances of discrimination (arbitrary street document inspection, police misconduct, discrimination in education and at work etc.<sup>130</sup>) and racist attacks, manifestations of anti-Semitism and Islamophobia reported by different sources. These include Crimean Tatars, Roma and asylum seekers, refugees, immigrants or foreign students and other persons of non-Slavic appearance.<sup>131</sup>

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<sup>119</sup> Of interest are the results of a recent sociological survey carried out by the Soros Foundation in Moldova that revealed that the Roma are perceived to be among the most disadvantaged groups in Moldova (48% of respondents considered that Roma are the most frequently discriminated people). ‘Perceptions of the Population of the Republic of Moldova on Discrimination: Sociological Study’, 2011, Soros Foundation-Moldova, pp.5, 25-26.

<sup>120</sup> UNDP, *Roma in the Republic of Moldova*, UNDP Moldova, 2007; United Nations Committee on the Elimination of Racial Discrimination, “Concluding Observations of the Committee on the Elimination of Racial Discrimination: Moldova”, CERD/C/MDA/CO/7, 16 May 2008; Council of Europe’s European Commission Against Racism and Intolerance (ECRI), “Third Report on Moldova”, Adopted on 14 December 2007, CRI(2008)23.

<sup>121</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para. 74.

<sup>122</sup> CERD/C/MDA/CO/7, 16 May 2008; Council of Europe’s European Commission Against Racism and Intolerance (ECRI), “Third Report on Moldova”, Adopted on 14 December 2007, CRI(2008)23.

<sup>123</sup> United Nations Committee on the Rights of the Child, “Concluding Observations: Republic of Moldova”, 30 January 2009.

<sup>124</sup> Third Report on the Russian Federation, European Commission against Racism and Intolerance, CRI(2006)21, Council of Europe, 16 May 2006, para.66. See also ACFC Second Opinion on the Russian Federation, ACFC/OP/II(2006)004, Strasbourg, 2 May 2007, paras.44-46. It should be noted that unlike discrimination case law, the number of sentences for incitement of hatred or enmity; abasement of human dignity is on the rise. See Third Report Submitted by the Russian Federation Pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/III(2010)005, Strasbourg, 9 April 2010, Figure 1, p.14.

<sup>125</sup> ACFC 2<sup>nd</sup> Opinion on the Russian Federation, ACFC/OP/II(2006)004, Strasbourg, 2 May 2007, paras.71,73. See also FIDH (International Federation for Human Rights), Center for the Legal and Social Protection of Roma of North-Western, Russia, St. Petersburg Memorial: International fact-finding mission, *The Roma of Russia, the subject of multiple forms of discrimination*, n°407/November 2004.

<sup>126</sup> Second Report on the Russian Federation, European Commission against Racism and Intolerance, CRI(2001)41, Council of Europe, 13 November 2001, para.17.

<sup>127</sup> Second Report on the Russian Federation, European Commission against Racism and Intolerance, CRI(2001)41, Council of Europe, 13 November 2001, para.37.

<sup>128</sup> ACFC 2<sup>nd</sup> Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, para.14, ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, para.28.

<sup>129</sup> See examples in ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, para.49-50. See also Shadow Report to Ukraine’s 19th to 21th Periodic Report under the ICERD, the “Social Action” Centre – “No Borders” Project, July 2011, p.31.

<sup>130</sup> See more examples further in the text.

<sup>131</sup> ACFC 2<sup>nd</sup> Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, para.18, ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, para.43.

## Educational Rights of National Minorities

Education is indeed a corner stone of the successful civil integration of both national minorities and new minorities originating from migration. As such the issue of the educational rights of the two groups has been given considerable attention by the legislator in recent years in all of the countries examined. But it has nevertheless remained an issue of concern as the discussion below clearly indicates.

Educational rights in the countries examined here are governed by corresponding Constitutions and laws. At the constitutional level, there is uniformity among the case studies in stipulating the right of all citizens, including persons belonging to national minorities, to education. Furthermore, national minorities, like other citizens, are guaranteed the right to higher and professional education in state educational establishments free of charge, usually on a competitive basis.<sup>132</sup>

The education laws further specify in which language the right to education can be exercised. In particular Article 4 of the **Armenian** Law on Education envisages that public education of national minorities may be organized in their mother tongue or national language; it also proscribes the compulsory teaching of the Armenian language. The choice of the language of education in **Belarus** is conditioned by Article 17 of the Constitution which, following the referendum in 1995, constitutionalized bilingualism by designating both Belarusian and Russian as the state languages in Belarus. Article 90, part 6 of the Education Code stipulates that the decision of administrative organs, as well as the request of citizens, can initiate the establishment of minority language programs. These can include full or partial instruction in the language of a national minority in different levels of state educational institutions. According to Article 6 of the Law of **Azerbaijan** On Education the right to choose the language of education is provided by means of establishing classes and groups and creating conditions for their functioning. Pursuant to Article 4.3 of the Law on the Public Education of **Georgia**, citizens of Georgia for whom Georgian is not their native language shall have the right to obtain full public education in their native language following the curriculum elaborated in accordance with the law. In these public schools learning the State language is compulsory. The 2008 Code for Education of **Moldova** guarantees in Article 7(3) the provision of free public education and the right to choose the language of education and training at all levels. Article 6(2) of the Law on Education of the **Russian Federation** proclaims linguistic freedom in education; it provides for the right of citizens of the Russian Federation to receive basic (primary and secondary) general education in their native language(s). Article 6 of the Law on National Minorities of **Ukraine** guarantees education for all and the right to receive instruction in native languages and to study such languages.

Educational rights of migrants are mentioned in the laws of all of the countries under analysis. Thus, a broad provision of Article 25 of the Armenian law on Refugees and Asylum grants immigrants the right to basic general education equal to citizens of Armenia. Similar wording is found in Article 36 of the Law of Georgia on the Legal Status of Aliens and Article 12 of the Law of Moldova on the Legal Status of Foreign Citizens and Stateless Persons. Article 14 of the Belarusian Law on the Legal Status of Foreigners and Stateless People specifies that immigrants permanently residing in Belarus are entitled to the same rights in education as the citizens of Belarus. Article 19 of the law of Azerbaijan on the Legal Status of Aliens and Stateless Persons entitles foreign citizens and stateless persons permanently residing in the country to the right to education on an equal footing with citizens; whereas other categories of migrants can obtain education, but only on condition of payment for the education. Refugees and forced migrants also have the right to receive education in accordance with Article 6 of the Law on the Status of Refugees and Internally Displaced Persons, although the law remains silent about whether studying at a state institution is conditional upon payment. In Ukraine the Law on Refugees and Persons in Need of Additional or Temporary Protection makes reference to the right to receive education in accordance with the laws of Ukraine (Article 13). Russia specifically addresses the educational rights of refugees by

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<sup>132</sup> See Article 35 of the Constitution of the Republic of Armenia; Article 42 of the Constitution of Azerbaijan; Article 49 of the Constitution of the Republic of Belarus, Article 35 of the Constitution of Georgia; Article 35 of the Constitution of Moldova; Article 43 of the Constitution of the Russian Federation; Article 53 of the Ukrainian Constitution.

stipulating in Article 8 (11) of the Law on Refugees that the state shall facilitate the admission of children of refugees into state and municipal educational institutions.

In a general fashion, the above-mentioned provisions of the various documents meet relevant international standards regarding the educational rights of national minorities and migrants and are in conformity with the standards set up by the Council of Europe. However, they are not without flaws and their implementation is not completely effective in the countries under analysis. This means inequality of access and inequality in terms of the quality of education in respect to some ethnic groups.

In **Armenia** the forenamed inequities allegedly exist for the following reasons: economic reasons; the discriminatory attitude of some pupils and teachers towards pupils of ethnic minorities; high rates of absenteeism, especially from Yezidi and Kurdish pupils, due to seasonal migration to the highlands; and high drop-out rates among girls of mainly Yezidi and Kurdish ethnic backgrounds.<sup>133</sup> Another hindrance to the enjoyment of the right to quality education is the insufficient availability of pre-school education.<sup>134</sup> As a result, pupils from ethnic backgrounds do not have an opportunity to learn the language (the Armenian language) in which they would be educated before they actually go to primary school and find themselves behind from the start.<sup>135</sup> Moreover, there are only a small number of schools for pupils belonging to national minorities (there are only a small number of Russian schools and none for the other national minorities) and there are hardly any classes in a minority language. No education in minority languages, apart from Russian, exists mainly because, according to the authorities, most persons belonging to national minorities are dispersed throughout Armenia. Taking into consideration the fact that that information on admission examinations to higher educational institutions is published and school competitive examinations are organised exclusively in Armenian, this attitude may be viewed as being discriminatory towards national minorities, and even more so to minorities generated by immigration. Hence, the participation of national minorities in secondary and higher education (especially for Yezidi, Kurds and Molokans) remains low. The subsequent ineffective participation of minorities in various aspects of public life is a natural outcome. This is, then, coupled with difficulties in finding employment regardless of education level,

In **Belarus** education is offered in two state languages, Belarusian and Russian, and two minority languages, Lithuanian and Polish. However, the Russian-language medium education dominates, which places Belarusian-language speakers (both the titular nation and some national minorities, in particular the Roma minority) and other minority language speakers at a specific disadvantage. Regarding the Belarusian majority, concerns have been expressed as to the reduced opportunities for studying in Belarusian, including at the level of higher education.<sup>136</sup> Regarding national minorities, especially the Roma minority, NGOs report<sup>137</sup> that Belarusian speaking Roma pupils are linguistically behind in Russian classrooms and consequently that their access to higher educational institutions is limited. Reportedly, 50 percent of the Roma population is illiterate: 85 percent do not complete

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<sup>133</sup> 1<sup>st</sup> Report Submitted by Armenia under the Framework Convention for the Protection of National Minorities (FCNM), Strasbourg, 11 June 2001, ACFC/SR(2001)004: paras. 172-174; 1<sup>st</sup> Advisory Committee under the FCNM (ACFC) Opinion on Armenia, Strasbourg, 16 May 2002, ACFC/INF/OP/I(2003)001: paras.64,67; ACFC/INF/OP/II(2006)005. 2<sup>nd</sup> ACFC Opinion on Armenia, Strasbourg, 24 October 2006, ACFC/INF/OP/II(2006)005: paras. 94,95.

<sup>134</sup> Karapetyan, S., Manasyan H., Harutyunyan N., Mirzakhanyan A. and M. Norekian (2011), *Armenia: Social Protection and Social Inclusion. Country report*, Yerevan, pp.4-42; ECRI Fourth Report on Armenia, adopted 7 December 2010, para.71.

<sup>135</sup> 1<sup>st</sup> Advisory Committee under the FCNM (ACFC) Opinion on Armenia, Strasbourg, 16 May 2002, ACFC/INF/OP/I(2003)001: para.180.

<sup>136</sup> Alternative Report of Belarusian NGOs to UN Human Rights Committee about Implementation of International Covenant on Civil and Political Rights prepared by Belarusian Helsinki Committee and human rights center 'Viasna', Minsk 2010, pp.25-26.

<sup>137</sup> Minority Rights Group International (MRG) 2013 "Belarus. Current State of Minorities and Indigenous Peoples", <http://www.minorityrights.org/?lid=4667#current>.

secondary education.<sup>138</sup> There are no schools in Romani and requests voiced by the Roma community to open a Romani-speaking school have been refused.<sup>139</sup> There is no official acknowledgement of this situation either.<sup>140</sup> The Polish community has also expressed concern at the refusal by the Belarusian authorities to grant permission to construct two new Polish-speaking schools.<sup>141</sup>

In **Azerbaijan**, the reforms aimed at the strengthening of the position of the state language has resulted in a rather rapid transition to a new curriculum with the Azerbaijani language as the medium of instruction. While it may prove to be a useful integration tool for national minorities in the long run, an aggressive enforcement of language requirements in the education field may put some minority groups compared to Azeri-speakers at a disadvantage in education, especially higher education, and, then, later in the labour market.<sup>142</sup> Azerbaijan has also been repeatedly criticized by European experts for failing to implement equal access to education provisions with respect to children of Chechens, who are not Azerbaijani citizens and who have not been recognised as refugees by the authorities<sup>143</sup>. Such children have reportedly had serious problems in terms of their access to education.<sup>144</sup> A new governmental decree of 2003 addressed the problem and granted school-aged Chechen refugees formal access to public schools. Since then, the situation has improved and Chechen children have attended local state schools. According to the UNHCR, around 80% of children of refugees and asylum seekers receive education.<sup>145</sup> Nonetheless, there still exist obstacles to obtaining real access to public schooling, many of which also affect Azerbaijani students, especially with regard to higher education.<sup>146</sup>

While Article 9.1 of the Law of **Georgia** on Public Education stresses that “everyone shall have equal right to public education in order to *fully develop his/her personality and obtain the knowledge and skills required for successful private and public life*”,<sup>147</sup> the situation in non-Georgian schools has long proved to be a starting point for the *de facto* isolation of persons belonging to national minorities in many areas of public life in Georgia. One particular issue of concern has been the poor or non-command of Georgian that many graduates of non-Georgian schools in Georgia have had, especially in the regions where ethnic minorities were settled compactly.<sup>148</sup> Moreover, for years schools which teach in a minority language have used textbooks supplied by neighbouring countries, which do not correspond to the Georgian curriculum. This has prevented minority language learners from competing

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<sup>138</sup> A/HRC/4/16 UN. Economic and Social Council, Commission on Human Rights, Sixty-second session. Report of the Special Rapporteur on the Situation of Human Rights in Belarus, Adrian Severin’, 15 January 2007, para.77.

<sup>139</sup> Ulasiuk, I. (2011), “Language Policies and Law in Education in Post-Soviet Belarus”, *International Journal for Education Law and Policy*, 1: 25-33.

<sup>140</sup> A/HRC/15/16/Add.1. UN General Assembly, Human Rights Council, Fifteenth Session. Report of the Working Group on the Universal Periodic Review. Belarus. Addendum. Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State under Review, 15 September 2010.

<sup>141</sup> Ulasiuk, I. (2011), “Language Policies and Law in Education in Post-Soviet Belarus”, *International Journal for Education Law and Policy*, 1: 25-33.

<sup>142</sup> ACFC 1<sup>st</sup> Opinion on Azerbaijan, ACFC/INF/OP/I(2004)001, Strasbourg, 26 January 2004, para.69.

<sup>143</sup> ACFC 1<sup>st</sup> Opinion on Azerbaijan, ACFC/INF/OP/I(2004)001, Strasbourg, 26 January 2004, para.41.

<sup>144</sup> The Laws on Place of Residence and Registration and the Legal Status of Refugees and IDPs did not apply to Chechens; the Government did not consider Chechens to be legal residents and required them to register with the police. Chechens may receive three-month visas, but not residence permits.

<sup>145</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, para.79.

<sup>146</sup> Mørck, A. *Chechen Refugees in Baku, Azerbaijan. A Needs Assessment*, Norwegian Refugee Council, April 2006, p. 14, available at:  
[http://www.chechnyaadvocacy.org/refugees/NRC%20Survey%20-%20Chechen%20refugees%20in%20Aze%202006%20final%20\(2\).pdf](http://www.chechnyaadvocacy.org/refugees/NRC%20Survey%20-%20Chechen%20refugees%20in%20Aze%202006%20final%20(2).pdf).

<sup>147</sup> The emphasis is added by the author.

<sup>148</sup> Report submitted by Georgia pursuant to Article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR(2007)001, Strasbourg, 16 July 2007, para.149.

on an equal footing with their counterparts attending schools which teach in Georgian.<sup>149</sup> From this perspective, a compulsory university entrance examination introduced in 2005, comprising a test in Georgian and in Georgian literature, represented a considerable obstacle to students from the minority-language education system. Such students have an extremely low pass rate, so their presence at Georgian universities has fallen very significantly since 2005.<sup>150</sup> On the one hand, this has prompted many of the young from the minority-language education system to leave for higher education and, jobs or career advancement. This results in the emigration of the most intellectually skilled.<sup>151</sup> On the other hand, those young school leavers who stay in Georgia see their opportunities to get into the labour market restricted by their lack of access to higher education.<sup>152</sup> It is necessary to say that several measures have been introduced by the Georgian authorities to counter the *de facto* exclusion from higher education of students belonging to national minorities and thus to enhance their chances for employment and participation in public life in Georgia. Among other things it was made possible for part of the examination (the “general competences test”) to be taken in Armenian or in Azeri; courses to prepare students for the examination have also been organised; the Ministry of Education approved new transitional standards of Georgian language teaching for non-Georgian schools and introduced a quota system aimed at increasing the number of national-minority representatives in Georgian Universities.<sup>153</sup>

In **Moldova**, education has become one of the recurrent flashpoints of the ethno-political crisis in light of the closing in Transnistria in 2004 of six schools, which were teaching in the Moldovan language, with the Latin script.<sup>154</sup> The situation was likened by the High Commissioner for National Minorities (HCNM) to “linguistic cleansing”.<sup>155</sup> Although the schools were eventually re-opened, education has remained a very sensitive issue in the Moldovan society and has undergone a series of reforms. One of the results of these reforms was the adoption in 2008 of the Code for Education, which directly deals with the educational rights of persons belonging to national minorities in a number of articles concerning equal opportunities and equal access to education irrespective of race, nationality, ethnic origin or language<sup>156</sup> and the promotion of inter- and multicultural dialogue and ethnic tolerance.<sup>157</sup> It should be mentioned that the State guarantees in Article 7(3) of the Code the right to choose the language of education and training at all levels of education. However, this right appears to be limited, since teaching in branches such as medicine, law, public security and the military is allowed only in the State language. Representatives of national minorities have drawn attention of the authorities that the students belonging to national minorities may, because of a

<sup>149</sup> ACFC Opinion on Georgia, ACFC/OP/I(2009)001, Strasbourg, 10 October 2009, para.125.

<sup>150</sup> ACFC Opinion on Georgia, ACFC/OP/I(2009)001, Strasbourg, 10 October 2009, footnote 39.

<sup>151</sup> ACFC Opinion on Georgia, ACFC/OP/I(2009)001, Strasbourg, 10 October 2009, para.131.

<sup>152</sup> ACFC Opinion on Georgia, ACFC/OP/I(2009)001, Strasbourg, 10 October 2009, para.131.

<sup>153</sup> See among others, Decree No.188 of the Minister of Education and Science which approved the “Georgian Language Program” and its subprogram “Enhancement of the Georgian Language Teaching and Learning at the Pre-School Level in Regions Populated by Minority Communities” with the aim to improve Georgian language skills among preschool students. Of note is also “National Minorities’ Integration through Multilingual Education: the Policy paper and Implementation Plan for 2009-2014” developed in 2008 with the support of the OSCE HCNM. On these and other measures see more in Comments of the Government of Georgia on the First Opinion of the Advisory Committee on the Implementation of the FCNM by Georgia, GVT/COM/I(2009)002, Strasbourg, 10 October 2009, p. 28. See more on the recently introduced measures in Second Report Submitted by Georgia Pursuant to Article 25, Paragraph 2 of the FCNM, ACFC/SR/II(2012)001, Strasbourg, 30 May 2012, pp.90-98. See also ECMI Annual Report 2007. Excerpts on the Caucasus, p.4.

<sup>154</sup> The schools were closed because, the government claimed, they were not properly registered. In reality, the schools were trying to teach Moldovan in the Latin script despite the reservations of the Transnistrian authorities who claimed that Moldovan should be written in Cyrillic.

<sup>155</sup> ‘OSCE: Linguistic cleansing underway in Transdnistria’, 15 July 2004, available at: <http://www.osce.org/hcnm/56534>.

<sup>156</sup> Article 3(4).

<sup>157</sup> Article 5(g).

language barrier, be disadvantaged in accessing the forementioned specialised fields and, consequently, in accessing employment in public services and central and local governments.<sup>158</sup> The Code also made the study of the State language, the Moldovan language, compulsory in all educational institutions.<sup>159</sup> The latter is particularly important because “many persons belonging to national minorities continue to have little or no command of the State language”, which “results in reduced opportunities to participate effectively in public affairs and in socio-economic life.”<sup>160</sup> Although efforts have been made by the Moldovan authorities to keep up with guaranteed educational rights, recurrent concerns are voiced by different bodies with regard to the implementation of the forenamed rights and their compliance with international standards. Thus, the Institution of the Parliamentary Advocates in Moldova registered some cases of discrimination in education on grounds of the ethnic affiliation: xenophobic attitude of the administration of a preschool institution toward the parents of Roma origin and unjustified limitation of access to recreational facilities of persons belonging to Roma minority.<sup>161</sup> It also becomes clear from another report that Roma children have lower enrolment in education, higher drop-out rates, notably of girls, much lower educational attainments and higher illiteracy than in the majority population.<sup>162</sup> The provision of teaching of the State language for persons belonging to national minorities, at school and in other contexts, continues to be insufficient, despite the various programmes implemented by different actors in recent years.<sup>163</sup> Teaching of minority languages continues to be provided only at the schools having Russian as the main language of education which reportedly results in persons belonging to national minorities often having a poor command of the State language (which becomes their third language). Furthermore, this system increases the tendency of some persons belonging to national minorities to identify with the Russian-speaking minority and to set aside their distinct identity.<sup>164</sup> The limited opportunities to study the State language as part of higher education also constitute an obstacle for students belonging to national minorities having studied in schools with Russian as the main language of education.<sup>165</sup>

In **Russia** children belonging to certain minorities repeatedly face disadvantages in their access to educational institutions. This is particularly the case with stateless persons, including the Roma and certain displaced populations. The difficulties are reportedly connected with absence of registration.<sup>166</sup> While the Law on Education contains an anti-discriminatory component and places no requirements regarding the provision of documents for school, in reality access to education is often hindered or completely impossible for children from Roma families.<sup>167</sup> The European expert bodies have also expressed concerns with regard to the situation of children living in remote and economically impoverished settlements, whose parents cannot afford to transport them to school; and to the fact that this situation disproportionately affects persons belonging to national minorities, including Roma children, children belonging to the Dargin minority, children of Chechen and Ingush displaced

<sup>158</sup> Third Report Submitted by Moldova Pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/III(2009)001, Strasbourg, 24 February 2009, p.10.

<sup>159</sup> Article 7 (3,(9)).

<sup>160</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para.27.

<sup>161</sup> Comments of the Government of Moldova on the Third Opinion of the Advisory Committee on the Implementation of the FCNM by Moldova, GVT/COM/III(2009)001, Strasbourg, 11 December 2009, p.8.

<sup>162</sup> United Nations Development Program (UNDP): *Report on Roma in the Republic of Moldova*, Chisinau, 2007, pp.11-12.

<sup>163</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para.27.

<sup>164</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para.136.

<sup>165</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para.149.

<sup>166</sup> ACFC 2<sup>nd</sup> Opinion on the Russian Federation, ACFC/OP/II(2006)004, Strasbourg, 2 May 2007, paras.227-228; see also Third Report on the Russian Federation, European Commission against Racism and Intolerance, CRI(2006)21, Council of Europe, 16 May 2006, para.71 and Second Report on the Russian Federation, European Commission against Racism and Intolerance, CRI(2001)41, Council of Europe, 13 November 2001, para.33.

<sup>167</sup> Report of Anti Discrimination Center Memorial, *Discrimination and Violation of Roma Children's Rights In Schools of the Russian Federation*, 2009.



persons.<sup>168</sup> Moreover, the children belonging to these minorities have higher non-attendance rates and a tendency to under-achieve at school,<sup>169</sup> and some of them are segregated in separate classes (this primarily concerns Roma, Meskhetian Turks and other visible minorities).<sup>170</sup>

In **Ukraine** education has been one of the areas of public life where the language issue has been particularly sensitive. It has required, over the years, the intervention of the Constitutional Court of Ukraine on several occasions and the direct involvement of international experts, including the HCNM, in order to resolve or rather to calm controversies surrounding the use of languages. Following the establishment of Ukrainian as the state language in 1989 the government of Ukraine has focused its efforts on the promotion of a new status for Ukrainian in education.<sup>171</sup> New educational language policies concerned mandatory Ukrainian study for all students in all school types, regardless of the local language of instruction. Furthermore, efforts have been made to move towards university teaching in Ukrainian alone. This has been done in accordance with the Constitutional Court's ruling on the use of the State language<sup>172</sup> and the Ministry of Education Decree<sup>173</sup> requiring all final examinations in secondary education and entrance examinations to higher education institutes to be conducted in Ukrainian, even for those students who complete their *curricula* in educational institutions with minority languages. As a result of such policies, there has been a trend towards the closure of Russian schools even in regions where Russian speakers form a significant part of the population or even the local majority.<sup>174</sup> There have also been complaints about the unavailability or the poor availability of education of and in other minority languages. This concerns in the first place the returned Crimean Tatars. The number of schools in their language is reportedly insufficient to cover their needs. The ECRI indicated in their fourth report that only one in ten Crimean Tatar children has access to education in their mother tongue.<sup>175</sup> Concerning other minorities, the situation is complicated as well. Thus, an increasing number of Ukrainian classes in certain Romanian schools are being opened at the expense of the Romanian language, notably in Transcarpathia. Roma children continue to be discriminated against in the field of education.<sup>176</sup> Polish minority representatives point out that in certain villages with an overwhelming Polish majority, local authorities continue to object to the introduction of bilingual education. Bulgarian minority representatives note that in areas with a significant Bulgarian population, most of the schools are only allowed to offer 1 to 2 hours a week of courses in Bulgarian.<sup>177</sup> Such developments, coupled with the shortage of textbooks and qualified teachers,<sup>178</sup> combined with the obligation to take entrance examination to higher education in Ukrainian, and the absence of effective legal remedy against arbitrary refusals by the local authorities for the introduction of minority language education can discourage parents from sending their children

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<sup>168</sup> ACFC 2<sup>nd</sup> Opinion on the Russian Federation, ACFC/OP/II(2006)004, Strasbourg, 2 May 2007, para.229.

<sup>169</sup> ACFC 2<sup>nd</sup> Opinion on the Russian Federation, ACFC/OP/II(2006)004, Strasbourg, 2 May 2007, para. 236.

<sup>170</sup> Third Report on the Russian Federation, European Commission against Racism and Intolerance, CRI(2006)21, Council of Europe, 16 May 2006, para.71-72.

<sup>171</sup> Third Report Submitted by Ukraine Pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, ACFC/SR/III(2009)006, Strasbourg, 7 May 2009, p.46.

<sup>172</sup> Constitutional Court's ruling N°10-rp/99 on the use of the State language.

<sup>173</sup> Ministry of Education adopted, in December 2007, Decree No. 1171.

<sup>174</sup> The only exception is the Crimea where the Russian language has been the dominant language in a large majority of schools in contrast to the limited availability of instruction in other minority languages and in Ukrainian. See ACFC 2<sup>nd</sup> Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, para.189.

<sup>175</sup> ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, para.92.

<sup>176</sup> ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, para.140.

<sup>177</sup> ACFC 2<sup>nd</sup> Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, para.190.

<sup>178</sup> ACFC 2<sup>nd</sup> Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, paras.169-170.

to educational institutions with minority languages and can limit the opportunities of minority representatives in higher education and in the labour market.

In order to raise the achievement of minority ethnic pupils, it is important to ensure that they have a safe environment where they feel valued, and where they are ready to learn; an access to the curriculum and development of their language skills. Until these conditions are met, some ethnic groups will feel marginalised in education and consequently in other fields of life, as the discussion below will illustrate

## Participation of National Minorities in Social and Economic Life

Effective participation of persons belonging to national minorities encompasses their economic and social life. It requires states, on the one hand, to remove the barriers preventing minority access to various areas of public life, for example the economic sector and social services; and, on the other hand, to actively promote the participation of marginalised group, such as national minorities, in the forenamed spheres. The implementation of the above has proved to be an uneasy task for all of the seven countries under analysis.

All of the relevant countries in their legal instruments proclaim equality in access to economic and social rights irrespective of ethnic belonging. For example, Article 11 of the **Armenian** Law on Civil Service lays down that citizens of Armenia who satisfy the passport requirements for a given appointment to the civil service, who speak Armenian and who are over the age of 18 have the right to employment in the civil service irrespective of nationality, race, sex, faith, or other status. Similarly, Article 24 of the Law of **Belarus** on Public Service provides that no restrictions shall be placed on public service owing to race, nationality, religion etc. Article 16.1, part I, of the Labour Code of **Azerbaijan** stipulates a general prohibition of discrimination between workers on the grounds not related to their professional qualities and skills, including among others, grounds of citizenship, race, belief, nationality and language. In accordance with Article 6 of the Law On employment, one of the main directions of the State policy of Azerbaijan in the field of employment is “providing all citizens irrespective of race, nationality, religion, language ...with equal opportunities for the enjoyment of the right to work and free choice of employment”. Pursuant to Article 22 of the Constitution of **Georgia**, any individual within the territory of Georgia has the right to freedom of movement and of free choice of residence. In accordance with the Law on the Rules of Registration, Issuing of ID (Residence) Cards and the Georgian Passports the information on nationality or ethnic origin is no longer included in identity documents and thus cannot adversely affect the possibilities the Georgian state offers to its citizens in various fields of life because of the persons’ ethnic affiliation. The new (2010) Labour Code in Article 2.3 prohibits any discrimination in employment relations based on ethnic belonging. Article 13 (d) of the Law of Georgia on Public Service defines as the main principle of public service in Georgia the equal accessibility of public service to all citizens of Georgia based on their abilities and professional competency, but also states that lack of knowledge of the state language can be grounds for dismissal (Article 98.1). In **Moldova**, the Law on civil service and status of public officials<sup>179</sup> does not limit access to public service on the grounds of the ethnic origin, Article 24 of the Law on National Minorities even requires that the representation of national minorities in the executive and in the judiciary at all levels, as well as in the army and law enforcement agencies, shall be “approximately proportional”. The Labour Code of the **Russian Federation** prohibits racial and ethnic discrimination in the work place (Article 3). Regarding the legislative basis for the participation of national minorities in social and economic life in **Ukraine**, Article 24 of the Ukrainian Constitution guarantees citizens of the state equal constitutional rights and freedoms, including in the areas under discussion. In accordance with Article 2 of the Labour Code, all citizens have equal rights to work regardless of their ethnic origin and are treated equally when they approach government-run employment centres or seek vocational training. Similar provisions exist with regard to their access to health care, etc.

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<sup>179</sup> Law No.158-XVI of 4 July 2008.

With regard to the economic and social rights of migrants the laws of the countries under analysis provide migrants and refugees with a wide range of entitlements, including the right to equality in their access to the labour market, social and health benefits etc.<sup>180</sup> However, a closer look at these provisions and those governing the rights of national minorities gives indications that equality is formal rather than real. Several concerns are worth our further attention.

Most of the case studies use *the knowledge of the state language* as a pre-requisite to for access to civil service posts. Thus, for example, the mandatory **Armenian** language requirements for appointment to civil service posts may place representatives of national minorities at a disadvantage. Language is also an issue for the many refugees who came to Armenia as a result of the Nagorno-Karabakh conflict and who were illiterate in Armenian. The Armenian law on Foreigners (Article 22) proclaims that immigrants “shall have the right to freely manage their working skills, choose the type of profession and activities, be engaged in economic activities not prohibited by the legislation of the Republic of Armenia”. However, a 2008 UNESCO report indicates, the language policies in place, have proved to be a barrier to the access of immigrants to employment and one of the factors contributing to a further outflow of persons from Armenia because the support provided by the Armenian authorities in assisting refugees (especially adults) in learning Armenian is inadequate.<sup>181</sup>

In **Azerbaijan** certain language requirements were introduced strengthening the position of the Azerbaijani language in public life (for example, that Azerbaijani is to be used generally in the provision of services). The Law on State Language, the instrument by which this was achieved, will likely to have a detrimental impact on participation in the labour market of some persons belonging to national minorities.<sup>182</sup> As the Advisory Committee noted in their second opinion, since the adoption of the forenamed law,

... there has been no active policy to encourage the learning of the State language to adults who do not have a full command of this language. This is of concern especially for the Russian-speaking population, which includes not only persons belonging to the Russian minority but also persons belonging to other minorities, who chose Russian as a language of education. The change of alphabet introduced in 2001 added to the difficulty of having to learn the State language. As a result, many persons belonging to national minorities have, reportedly, faced difficulties upon access to the labour market, in particular public service jobs...<sup>183</sup>

In **Georgia**, the requirement to use Georgian as the state language in all spheres of public life has not been implemented strictly and minority languages are used in the public sphere at local level in certain regions. However, there are no legislative provisions enabling a legal basis to be given to this practice. The proposals made by organisations representing national minorities with a view to the granting to these minority languages of the status of working languages, or even official languages at local level (at least until the local population reaches a satisfactory level of knowledge of Georgian),

<sup>180</sup> Just to give a few examples: Article 6 of the Law of Azerbaijan on the Status of Refugees and Internally Displaced Persons; Articles 11,12,15,17 of the Law of Azerbaijan on the Legal Status of Aliens and Stateless Persons and Article 10 of the Law of Azerbaijan on Labour Migration; in Georgia Articles 30, 31, 33, 34, 41 of the Law Legal Status of Aliens; Articles 7 and 9 of the Law of Moldova on the Legal Status of Foreign Citizens and Stateless Persons; in Ukraine Articles 13-16 of the Law on refugees and Persons in Need of Additional or Temporary Protection; in Russia Article 13 of the Law on the Legal Status of Foreign Citizens and Article 8 of the Law on refugees; Articles 10-13 of the Law on the Legal Status of Foreign Citizens and Stateless Persons in Belarus; Chapter 4 of the Law of Armenia on Foreigners.

<sup>181</sup> The Development and State of the Art of Adult Learning and Education (ALE) National Report of the Republic of Armenia by Ministry of Education and Science of the Republic of Armenia, 20 April 2008, [http://www.unesco.org/fileadmin/MULTIMEDIA/INSTITUTES/UIIL/confintea/pdf/National\\_Reports/Europe%20-%20North%20America/Armenia.pdf](http://www.unesco.org/fileadmin/MULTIMEDIA/INSTITUTES/UIIL/confintea/pdf/National_Reports/Europe%20-%20North%20America/Armenia.pdf), para.4.3.

<sup>182</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, para.157.

<sup>183</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, para.148.

have been rejected by the authorities.<sup>184</sup> Examples here, include the Armenians in the region of Samtskhe-Javakheti and Azeris in the Kvemo-Kartli region. Linguistic requirements applied to various occupations in public-service employment, namely in the spheres of education, social services, etc (mainly through Georgian language tests) have constituted a serious obstacle to access to employment or retention of jobs for persons belonging to minorities.<sup>185</sup> Moreover, there have been reports that due to the requirement of the knowledge of the State language persons belonging to minorities have been replaced in their jobs by those belonging to the majority who, in their turn, at times do not have sufficient command of minority languages. This has resulted in the an information vacuum in some regions and the fact that central policies are not communicated properly to the Georgian population,<sup>186</sup> in misunderstandings and problems of communication between persons belonging to national minorities and new employees, creating problems of access to certain public goods and services for persons belonging to these minorities, to say nothing of creating uncertainty as to the retention of the persons belonging to national minorities in their employment.<sup>187</sup> There has also been evidence that some applicants do not acquire positions even though they demonstrate a good knowledge of the state language. This suggests that ethnicity is sometimes a more important criteria for eligibility to public employment than knowledge of the state language.<sup>188</sup> National minorities are also scarcely represented in the posts of responsibility. Hence, their possibilities to lobby the interests of the groups concerned are extremely limited.<sup>189</sup>

In **Moldova** the Law on civil service and the status of public officials of Moldova<sup>190</sup> does not limit access to public service on the grounds of the ethnic origin. Article 24 of the Law on National Minorities, in fact, *requires* that the representation of national minorities in the executive and in the judiciary at all levels, as well as in the army and law enforcement agencies, shall be “approximately proportional”. However, the employment of persons belonging to national minorities, and especially those representing numerically smaller minorities, in the State administration and in public services remains low.<sup>191</sup> Insufficient command of the State language among national minorities is coupled with poor opportunities for language training of civil servants, lack of incentives and possibilities of learning the language in areas where persons belonging to minorities live in substantial numbers.<sup>192</sup> This often constitutes a barrier in accessing public employment or for retention of public employment in Moldova.<sup>193</sup>

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<sup>184</sup> Georgia’s Armenian and Azeri Minorities. Executive Summary and Recommendations, Europe Report No.178, 22 November 2006, p.22; Popjanevski, J. and Nilsson, N. (2006), National Minorities and the State in Georgia. Conference Report, Central Asia-Caucasus Institute & Silk Road Studies Program, at pp.5-6. See also comments in ACFC Opinion on Georgia, ACFC/OP/I(2009)001, Strasbourg, 10 October 2009, para.111.

<sup>185</sup> See more on the intricacies of the professional language testing, ‘Georgia’s Armenian and Azeri Minorities. Executive Summary and Recommendations’, Europe Report No.178, 22 November 2006, pp.23-24.

<sup>186</sup> Popjanevski, J. and Nilsson, N. (2006), National Minorities and the State in Georgia. Conference Report, Central Asia-Caucasus Institute & Silk Road Studies Program, at p.6.

<sup>187</sup> ACFC Opinion on Georgia, ACFC/OP/I(2009)001, Strasbourg, 10 October 2009 paras.48, 151-153,159.

<sup>188</sup> Universal Periodic Review on Georgia Focused on Rights of National Minorities in Georgia, a report prepared by Public Movement “Multinational Georgia, 11.07.2010, p.4; Popjanevski, J. and Nilsson, N. (2006), National Minorities and the State in Georgia. Conference Report, Central Asia-Caucasus Institute & Silk Road Studies Program, at p.14; Country of Origin Information Reports: Azerbaijani and Greek Populations in Georgia, January – September, 2003, United Nations High Commissioner for Refugees, United Nations Association of Georgia, p.19.

<sup>189</sup> ACFC Opinion on Georgia, ACFC/OP/I(2009)001, Strasbourg, 10 October 2009, para.151.

<sup>190</sup> Law No.158-XVI of 4 July 2008.

<sup>191</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para.170. As the Moldovan authorities acknowledge: ‘There hasn’t been created any mechanisms of realization’ of the discussed guaranteed right.’ Comments of the Government of Moldova on the Third Opinion of the Advisory Committee on the Implementation of the FCNM by Moldova, GVT/COM/III(2009)001, Strasbourg, 11 December 2009, p.22.

<sup>192</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para.147.

<sup>193</sup> The Moldovan authorities recognise that ‘...linguistic integration is one of the problems of national minorities that prevents them from wide public employment...’. Comments of the Government of Moldova on the Third Opinion of the

Another factor causing difficulties for some ethnic groups in their attempts to access labour markets but also social protection and health care is *the residency registration requirement*. For example, although **Azerbaijan** has replaced the Soviet era system of residency permits with a system of residency registration taking into account the fact that persons belonging to national minorities were often particularly subject to the problems inherent in the old system, some ethnic groups continue to “encounter difficulties in obtaining residency registration, which seriously hampers their access to basic rights, including birth or marriage registration, enrolment in school, etc.”<sup>194</sup> Particularly vulnerable in this respect are persons from mixed Armenian-Azerbaijani families and people of Chechen origin, who are seeking asylum in Azerbaijan. As Matveeva writes, the former have been subject to “discrimination and harassment at every level, be it health and education, or be it the labour and housing market. In many cases even pensions are withheld to elderly people of Armenian ethnicity who were born and spent their whole lives in Azerbaijan”.<sup>195</sup> The difficulties of the Chechens, as the monitoring bodies have stressed, have also been exacerbated by the fact that they are denied access to the asylum procedure, that entered into force in 2004. In practice, it makes it very difficult for them to make a living and they have to rely heavily on foreign assistance for meeting their basic needs (accommodation, food, health care).<sup>196</sup>

In **Russia**, whereas Article 27 of the Constitution guarantees freedom of movement and choice of place of residence, the residency registration system in certain subjects of the federation and as a result citizenship procedures have proved to entail considerable disadvantages affecting a great number of persons belonging to national minorities and have led to discrimination in access to basic rights, including education, medical services and social security benefits. The residency registration system, which is supposed to be notificatory in nature, has been applied by some authorities in a discriminatory manner. Thus, for example, though medical aid must be provided to everyone free of charge,<sup>197</sup> in practice, there are reports of aid being refused to sick persons not locally registered.<sup>198</sup> The residency registration system has been used as a means to control migration into their territories.<sup>199</sup> Generally, it should be said that the existence of illegal restrictions on registration and illegal rules establishing registration as a precondition to access other rights have particularly affected large numbers of former Soviet citizens living in the Russian Federation, including those living without any legal status. According to the information provided by the Advisory Committee under the FCNM,

persons deprived of registration still face *de facto* problems ensuring implementation of their civil, social and economic rights. People may be denied access to public services, such as free medical services, education, pensions, child and unemployment allowances, unless they hold registration at their place of residence, and employers are required to hire only individuals holding registration. The Advisory Committee has received information that in Krasnodar *krai*, persons lacking registration have even been denied access to courts, thereby depriving them of the right to appeal against decisions deemed discriminatory by the applicant. Finally, the Advisory Committee is

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Advisory Committee on the Implementation of the FCNM by Moldova, GVT/COM/III(2009)001, Strasbourg, 11 December 2009, p.23.

<sup>194</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, para., 81.

<sup>195</sup> Matveeva, A.1999, ‘Final Report – Azerbaijan’, 5th Country of Origin Information Workshop Organised by UNHCR in Cooperation with ACCORD and the Slovak Migration Office, Bratislava, 13-14 December 1999, p. 90, <http://www.unhcr.org/refworld/pdfid/402cfb704.pdf>. See also similar examples in a more recent report of the UNHCR ‘International Protection Considerations Regarding Azerbaijani Asylum-Seekers and Refugees’, UNHCR, Geneva, September 2003, paras. 117-118. See also ACFC 1<sup>st</sup> Opinion on Azerbaijan, ACFC/INF/OP/I(2004)001, Strasbourg, 26 January 2004, para.31.

<sup>196</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, para.80.

<sup>197</sup> According to the ‘Basis of Legislation of the Russian Federation on Health Protection’ of 22 July 1993 and to the federal law ‘On Medical Insurance of Citizens in the Russian Federation’ of 28 June 1991.

<sup>198</sup> Second Report on the Russian Federation, European Commission against Racism and Intolerance, CRI(2001)41, Council of Europe, 13 November 2001, para.30.

<sup>199</sup> ACFC 2<sup>nd</sup> Opinion on the Russian Federation, ACFC/OP/II(2006)004, Strasbourg, 2 May 2007, paras.51-53.

aware that the registration process has led to incidents of corruption among the police who demand bribes in exchange for processing registration applications and during spot checks for registration documentation, with Roma and persons belonging to minorities originating in the Caucasus and Central Asia targeted in particular.<sup>200</sup>

The situation of the Meskhetian Turks is particularly indicative of the described tendencies. The Parliamentary Assembly of the Council of Europe adopted a Resolution on the situation of the deported Meskhetian population on 18 March 2005, in which it noted that “since the Meskhetian Turks are refused residence registration and are not recognised as citizens of the Russian Federation, they are deprived of basic civic, political, economic and social rights. This situation, which exists to this very day, is unacceptable. It is furthermore particularly worrying that the regional administration applies deliberately discriminatory practices with respect to Meskhetian Turks”.<sup>201</sup> Similar concerns have been expressed by the ECRI in their third report with regard to difficulties encountered by other small ethnic groups such as the Yezidi, for example.<sup>202</sup>

Alongside the mentioned language and residency requirements, socio-economic rights seem to be conditioned by various other pre-requisites in different case studies. Let us give just a few examples. In the **Russian Federation** NGOs report that some Chechens, for instance, have been fired in the wake of terrorist attacks against the Russian population, allegedly because their employers have been pressurised by authorities. Job applications are sometimes openly rejected only because of the applicant’s ethnic origin.<sup>203</sup> Socio-economic difficulties, unemployment also appear to affect disproportionately a number of persons belonging to minorities that have been internally displaced by war, national minorities which do not have, or reside outside of, their own territorial formations as well as persons belonging to “titular nations” (including several Finno-Ugric groups) which nevertheless find themselves in a vulnerable situation within their territorial formations,<sup>204</sup> small indigenous peoples of the North and other ethnic groups, including Roma.<sup>205</sup> **In Armenia**, international monitoring bodies seem to have arrived at the conclusion that there does not appear to be an overall pattern of systematic exclusion of persons belonging to minorities from the labour market in Armenia.<sup>206</sup> However, research shows that there still exist instances of discrimination in access to employment in the case of the Yezidi minority and more specifically in the access of national minorities to public service. Equality of access still remains a “distant utopia” rather than “a tangible future”.<sup>207</sup>

Another common concern for the countries under analysis is the absence of reliable and easily accessible data on the socio-economic situation of persons belonging to national minorities and migrants. It is, indeed, an essential precondition for developing effective measures to address socio-economic discrimination and encourage effective equality: particularly as it is necessary to compare these figures with those of the majority population. Until this pre-requisite is a reality, laws remain a dead letter. Thus, in **Belarus**, information on the access of various ethnic groups, both national minorities and migrants, to the Belarusian labour market is scarce. Therefore, the situation of

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<sup>200</sup> ACFC 2<sup>nd</sup> Opinion on the Russian Federation, ACFC/OP/II(2006)004, Strasbourg, 2 May 2007, paras.59, 272.

<sup>201</sup> Parliamentary Assembly of the Council of Europe, Resolution 1428(2005) on the situation of the deported Meskhetian population, 18 March 2005, para. 3.

<sup>202</sup> Third Report on the Russian Federation, European Commission against Racism and Intolerance, CRI(2006)21, Council of Europe, 16 May 2006, para.111.

<sup>203</sup> Third Report on the Russian Federation, European Commission against Racism and Intolerance, CRI(2006)21, Council of Europe, 16 May 2006, para.76

<sup>204</sup> ACFC 2<sup>nd</sup> on the Russian Federation, ACFC/OP/II(2006)004, Strasbourg, 2 May 2007, para.69.

<sup>205</sup> ACFC 2<sup>nd</sup> on the Russian Federation, ACFC/OP/II(2006)004, Strasbourg, 2 May 2007, para.272.

<sup>206</sup> ACFC 2<sup>nd</sup> Opinion on Armenia, Strasbourg, 24 October 2006, ACFC/INF/OP/II(2006)005: para.43.

<sup>207</sup> Selimyan, G.(2004) “Ethnic Minorities in Public Administration in the Republic of Armenia: Distant Utopia or a Tangible Future”, the 12th NISPACEE Annual Conference “Central and Eastern European Countries inside and outside the European Union: Avoiding a new divide”, Vilnius, Lithuania, May 13–15, 2004.

exclusion of various ethnic groups is not entirely clear. Moreover, social exclusion has not yet emerged as a research subject in Belarus and it is, therefore, not analysed. Nonetheless, some reports and studies indicate that for some ethnic groups (both national minorities and migrants) access to the labour market is quite restricted. A survey conducted among employers in Belarus indicates that ethnicity is considered an important factor in employment decisions. As a result, persons of Slavic origin have a more favourable standing in the labour market and are normally preferred to those from the Caucasus. Also, religion plays a vital role in employment preferences: the vast majority of entrepreneurs (90%) prefer to employ Christians.<sup>208</sup> In addition, the status of the Roma in the labour market in Belarus is reportedly undermined. Frequent lack of identity documents, generally low qualification and the high rate of illiteracy all play their part. Negative stereotyping results too, it is alleged, in discrimination against Roma in the workplace and in securing employment and more generally hamper equal participation in economic life. One study reported an unemployment rate among the Roma in Belarus of 93 percent.<sup>209</sup> Having no access to formal employment, the Roma thus depend upon social benefits and face a higher risk of poverty.<sup>210</sup> The high prevalence of Roma in informal sector employment also limits their access to benefits based on social insurance contributions, including health care, unemployment benefits and social services.<sup>211</sup>

The European monitoring bodies in their assessment of socio-economic participation of national minorities in the life of the **Azerbaijani** society have also repeatedly pointed out to the absence of reliable statistical data. This prevents an evaluation of whether persons belonging to national minorities are, in general, maltreated in various aspects of socio-economic life or their position is determined by overall socio-economic difficulties all people living in Azerbaijan are going through.<sup>212</sup> This is particularly true of the persons belonging to the Budukha national minority and in particular refugees and internally displaced persons, including Kurds, Meskhetians<sup>213</sup> and other persons belonging to national minorities who have arrived in Azerbaijan relatively recently after facing persecution elsewhere.<sup>214</sup>

Another factor determining the exclusion of national minorities and new minorities alike from effective participation in socio-economic life is that, as in the case of **Moldova**, many persons belonging to national minorities often live in economically marginalised rural or border areas. This in itself limits their participation in socio-economic life.<sup>215</sup> Some groups remain particularly vulnerable and face isolation from socio-economic life and public affairs. Among such groups are the Roma who, according to non-governmental sources, continue facing, among other things, instances of non-

<sup>208</sup> Lynova, T. (2002), "A Social Portrait of the Belorussian Entrepreneurship", *ECOWEST*, 2(4), 614-635, at pp. 628, 630-632.

<sup>209</sup> Minority Rights Group International (MRG) 2013 "Belarus. Current State of Minorities and Indigenous Peoples", <http://www.minorityrights.org/?lid=4667#current>.

<sup>210</sup> Astrov, V., Holzner, M., Leitner, S., Vidovic, H. (2010), *Social Protection and Social Inclusion in Belarus, Moldova and Ukraine - Synthesis Report*, The Vienna Institute for International Economic Studies, p.xiii.

<sup>211</sup> CRC/C/BLR/CO/3-4. UN Committee on the Rights of the Child. Fifty-sixth session 'Consideration of Reports Submitted by States Parties under Article 44 of the Convention. Concluding observations: Belarus', CRC/C/BLR/CO/3-4, 17 January – 4 February 2011, para.2.7.

<sup>212</sup> ACFC 2<sup>nd</sup> Opinion on Azerbaijan, ACFC/OP/II(2007)007, Strasbourg, 10 December 2008, para.158; ACFC 1<sup>st</sup> Opinion on Azerbaijan, ACFC/INF/OP/I(2004)001, Strasbourg, 26 January 2004, para.30. See also Garbe-Emden, B., Horstmann, S. and Y. Shajanian Zarneh, 2011, 'Social Protection and Social Inclusion in Armenia, Azerbaijan and Georgia, Synthesis Report', *Gesellschaft für Versicherungswissenschaft und -gestaltung e.V.*, p.12.

<sup>213</sup> In 1944 Meskhetian Turks, who originally lived in Georgia, were deported to the Central Asian republics. After 1992, especially following the massive violence in Uzbekistan's Fergana Valley. They had to leave their homes for a second time. Now they are scattered all over the CIS countries, with many of them finally having ended up in Azerbaijan. Pentikäinen, O. and Trier, T. 'Between Integration and Resettlement: The Meskhetian Turks', ECMI Working Paper No.21, September 2004, p.19.

<sup>214</sup> ACFC 1<sup>st</sup> Opinion on Azerbaijan, ACFC/INF/OP/I(2004)001, Strasbourg, 26 January 2004, paras. 29,30.

<sup>215</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para.153.

registration of children at birth leading to their exclusion from health care and social protection.<sup>216</sup> Low levels of employment and employability are key features of the Roma labour market performance in Moldova.<sup>217</sup> In Gagauzia, representatives of the Gagauz community reported a lack of employment opportunities and investments in Gagauzia leading to an increase in the emigration of the Gagauz – and especially those with a higher level of education, such as medical doctors and teachers.<sup>218</sup>

In *Ukraine* as well, unemployment continues to disproportionately affect persons belonging to national minorities. Prejudice and discrimination are observed in both private and public sector employment.<sup>219</sup> Particularly affected remain the Crimean Tatars and the Roma . Thus research indicates that the average unemployment rate of Crimean Tatars is more than twice the overall rate in Crimea; Crimean Tatars are also reported to be significantly underrepresented in the judiciary, the police and the civil service. This is confirmed by figures cited by the authorities, according to which only 8.5% of public servants employed by Crimean ministries and national committees are Crimean Tatars, and 7.6% of the total workforce of district state administrations and executive bodies are from among the deported peoples.<sup>220</sup> No official statistics exist on the current rate of unemployment of Roma but Roma NGOs estimate that only 38% of Roma have work. This compares with an overall unemployment rate in Ukraine, according to the authorities, of less than 9%.<sup>221</sup> Generally, as one study reports, in Ukraine ethnic minorities face lower welfare levels than the rest of the population:

Most Roma are reported to live in conditions of poverty, 50% of them are estimated to lack sufficient daily nutrition. Many of them are living in settlements with substandard conditions and little access to public transport or public utilities such as electricity or waste removal; overcrowding of dwellings is another problem to be mentioned. The availability of proper dwelling appliances such as running water, baths or showers or sewerage is much lower than for the average population.

Many Crimean Tatars are reported to live in 'compact living' communities with unsatisfactory infrastructure; for instance, only 27% of the households are connected to the public water system, only 3% have access to gas pipelines and sewerage and heating networks are practically absent. A deterioration of the health status and increasing mortality rates among Crimean Tatars are reported.<sup>222</sup>

Furthermore, the effective participation of persons belonging to formerly deported peoples in social and economic life is hampered by the issue of access to land.<sup>223</sup>

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<sup>216</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para.50.

<sup>217</sup> United Nations Development Program (UNDP): *Report on Roma in the Republic of Moldova*, Chisinau, 2007, pp.12-13.

<sup>218</sup> ACFC 3<sup>rd</sup> Opinion on Moldova, ACFC/OP/III(2009)003, Strasbourg, 11 December 2009, para.177.

<sup>219</sup> ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, p.9.

<sup>220</sup> ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, para.92. See also comments in ACFC 2<sup>nd</sup> Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, para.219.

<sup>221</sup> ECRI Report on Ukraine (fourth monitoring cycle), CRI(2012)6, adopted on 8 December 2011, published on 21 February 2012, para.144.

<sup>222</sup> Astrov, V., Holzner, M., Leitner, S., Vidovic, H., 2010, *Social Protection and Social Inclusion in Belarus, Moldova and Ukraine - Synthesis Report*, The Vienna Institute for International Economic Studies, pp.44-45.

<sup>223</sup> ACFC 2<sup>nd</sup> Opinion on Ukraine, ACFC/OP/II(2008)004, Strasbourg, 20 March 2011, paras.220, 226.



## Conclusion

The discussion in the present research paper has shown that sudden demise of the Soviet Union entailed not only global geopolitical changes, but it also significantly altered the ethnic map of the former Soviet space. From a legal perspective, the dissolution of the USSR has posed challenges in the newly independent states in respect of guaranteeing the rights of the traditionally neglected groups, national minorities, and reflecting the changing reality caused by migration processes.

The new political and economic realities made persons belonging to national minorities confront difficult choices regarding their future. Faced with political instability, collapsing incomes and rapidly rising unemployment some minority representatives have opted for emigration, including not infrequently to their kin-states, as a way of providing for their future. This, in its turn, has accentuated the necessity for the recipient countries to make legal choices with respect to the treatment of the newly arrived. The question as to whether the latter can also benefit from the measures aimed at protecting local national minorities remains, however, not an easy one to answer. It would indeed seem difficult, for example, to distinguish in practice between citizens and non-citizens speaking the same language so as to deny the latter and not the former the right to make use of their language in certain contexts.

Not all of the representatives of national minorities have, however, been willing or able to leave their countries of residence. Those who remained have often found themselves in a disadvantageous situation. Not knowing the official language of their newly independent countries, they have been left out of the social and economic life of society. Minorities in the post-Soviet space generally, and in the countries under analysis in particular (apart from Belarus) have also often been the victims of armed conflicts and internal strife. The situation of refugees and internally displaced persons from minority backgrounds has become of special concern. Persons belonging to national minorities have also often been victims of multiple discrimination and on many occasions they have lacked access to, among other things, adequate housing, land and property, education and even a nationality, to say nothing of effective participation in public life.

Although ethnic discrimination has been cited only as a background factor of migration incentives to national minorities, secondary to more urgent factors such as unemployment, economic hardship and the inability to pursue meaningful careers,<sup>224</sup> the present research paper has tentatively indicated the direct link between migration of persons belonging to national minorities and their discriminatory treatment in their countries of residence. It has been shown that the level of discrimination of national minorities is underestimated, and that the absence of information about court proceedings on ethnic discrimination is by no means an indicator of the absence of discrimination but rather an indicator of the continuing lack of awareness among persons belonging to national minorities themselves and among the judiciary and legal professions about the rights of national minorities under domestic legislation, as well as under the international instruments to which the States are party to, a lack of confidence in the work of the police, fuelled by reports of harassment and even extortion by certain law-enforcement officials and also discriminatory application of legislation. Antidiscrimination provisions remain in most cases a dead letter, while ethnic discrimination occurs on a daily basis in various fields of life. The level of stereotyping of and prejudices against some national minorities disseminated in the media and also in the political discourse remains high. Doubts have thus been expressed in the present paper that the issues concerning the unfair treatment of minority groups can be addressed adequately in the absence of legislation setting out an overarching comprehensive framework within which it is possible for individuals to pursue legitimate complaints against illegal acts of discrimination.

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<sup>224</sup> Zakareishvili, P. and G. Svanidze, *Emigration from Georgia and Its Causes: The Results of a Sociological Survey of Public Opinion*, Tbilisi: International Centre "For a Peaceful Caucasus", 2001, pp.18-19

It has been argued that the present situation of economic and social disadvantage experienced by many national minorities stems in large part from their limited access to education. Minority communities' integration is hampered by lack of real incentives to learn the state language and to continue to live and work in their countries of residence, on the one hand, and limited possibilities of receiving education in their native languages and remain nevertheless valuable members of the society in which they live, on the other hand. The educational policies in place in most countries under analysis discourage the most capable young people to remain in the country and study in institutions of higher education. It has thus been emphasised in the present paper that integration of ethnic minorities must be based on the principles of equal opportunities in education, ensuring equal access to quality education and that any solutions that are based on, or lead to, segregation and poor education are inadmissible.

Furthermore, beyond constraints on their educational rights, traditional and new ethnic groups also experience constraints on their rights in the context of labour. Economic policies in place do not normally create genuine job opportunities that will benefit members of national minorities. On the opposite, as the discussion in the present paper has accentuated, members of even traditionally residing national minorities, to say nothing of recent comers, are among the most marginalised on the labour market. It has, hence, been stressed that sustained economic growth is an indispensable condition, together with the creation of decent employment conditions, to alleviate poverty and social exclusion among traditional and new ethnic minorities.

Finally, against a background of continuing political, economic and social change, the states under analysis have begun to more widely recognise the ethnic minorities' concerns and have taken some positive steps over recent years which are relevant to combating ethnic discrimination in various aspects of public life. At the same time the critical evaluation of the laws and practices in the case studies has also revealed that problems of racism, xenophobia and ethnic discrimination persist, however and are in part linked to the difficulties encountered in ensuring that existing legislation and policies are applied properly at the central and local levels.

So what lessons can be learnt from legal approaches to the treatment of national minorities in Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine and applied in relation to new minorities generated by recent and future immigration?

Immigration is becoming an increasingly important reality within territories where traditional national minorities live. Adopting responsive policies of cultural recognition and accommodation of diversity in respect to traditional minorities might prove useful for the development of sound policies for the integration of new migrant minority groups. The following factors must be taken into consideration.

First, legal provisions reflect the country's political will and determine how far an ethnic minority (both traditional and new) has access to crucial sectors of the country. Until minority rights and integration initiatives are viewed as possessing intrinsic value, the integration of traditional and new minorities will remain a constant destabilising element in the countries across Europe. This is true for countries with numerous ethnic groups. But it is also true for more ethnically homogeneous states, like Armenia and Belarus. There a review of the national minority legal framework and its implementation may become indicative of the state's ability to tackle problems more successfully. It may also highlight the government's strategy towards ethnic minorities and the more general democratic development in the country.

Second, the unfair treatment of minority groups can be addressed adequately only if there exists legislation setting out a comprehensive framework within which it is possible for individuals to pursue legitimate complaints against illegal acts of discrimination. Furthermore, the efficacy of such legislation should be evaluated on the basis of statistics concerning national minorities and migrant minority groups in such areas as employment, education, dependence on welfare, housing, political participation, etc.

Third, the integration of both types of minorities is often seen as meaning that minorities have an equal chance to fully participate in various aspects of life in the country. However, integration cannot succeed if the same rights are given to disadvantaged groups (national and new minorities alike) and to the citizens of the host country: if unequal groups are treated as if they were equal, equal opportunities are already unequal. The causes of inequality require legal interventions in the form of positive actions and sustained application of policies and laws in order to tackle the accumulated disadvantages from which many national and new minorities suffer, and in order to change the practices which are barriers to full participation.

Finally, the achievement of a sustainable inclusive society depends on all its members – whether or not they have the legal status of “citizen” – having the ability and the motivation to participate in a full range of social, cultural and economic activities. These requirements, in turn, depend on all members of the society having access to the resources – both material and symbolic – that are necessary for full participation in these activities and on the recognition and validation of their contribution to these activities.