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# To Recognize or Not to Recognize? The Concept and Recognition of Minorities in Slovenia in Light of International Monitoring

## Summary

Despite Slovenia's ethnically heterogeneous landscape, the Constitution recognizes only two groups as "autochthonous national communities": the Hungarians and the Italians. Whereas the Roma also enjoy some constitutional protection, the most numerous ex-Yugoslav ethnic groups, also known as "new communities" (Albanians, Bosniaks, Croats, Macedonians, Montenegrins, and Serbs), received legal recognition only recently. Neither the "new communities" nor the German-speaking population, however, benefit from the protection of the Council of Europe's Framework Convention for the Protection of National Minorities – regardless of the former's substantial numbers and the latter's historic presence on the territory of the State.

This paper first gives a detailed overview of Slovenia's legislation related to the concept of minorities and then evaluates it in light of the monitoring materials of the Advisory Committee of the Framework Convention, as well as those of the UN treaty bodies. The aim of the paper is to assess whether the Slovenian system is in conformity with the international obligations of the State, at least from a conceptual point of view. Based on a thorough analysis of some 30 documents adopted by international monitoring bodies, the answer seems to be negative, which may come as a surprise when contrasted with the strong international reputation of the Slovenian system of minority protection.

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This paper demonstrates that Slovenia has been adamantly and repeatedly criticized for retaining the undefined and confusing concept of “autochthony”; for adopting a restrictive approach to the recognition and provision of special protection for different ethnic groups; for making unjustified and arbitrary distinctions between “autochthonous” and “non-autochthonous” Roma communities; and for the fact that it has still not managed to definitively resolve the issue of the “erased”.

**Keywords:** ethnic communities in Slovenia, legal recognition, autochthony, UN treaty bodies, Advisory Committee of the Framework Convention for the Protection of National Minorities

## 1 Introduction: The Problem of Defining Minorities

In the legal and political context, definitions of minorities and their formal recognition form the basis for ensuring collective and individual rights for these groups and their members, which are then translated into concrete policies, institutions, and measures of protection (Žagar 2014, 44). Hence the importance of the definitional problem, also in Slovenia, even if we support the view that the real issue is not that of definition or status, but rather of creating conditions for preserving the identity of minority communities and managing diversity in increasingly heterogeneous societies (Roter 2014, 77).

Despite Slovenia's multi-ethnic character, its Constitution recognizes only three groups as (national) minorities: the Hungarians, the Italians, and the Roma. However, the first two groups enjoy a higher level of legal protection than the latter, whose rights are not regulated at the constitutional level. Albanians, Bosniaks, Croats, Macedonians, Montenegrins, and Serbs were recognized only in 2011, following a parliamentary declaration (see below). Other ethnic communities, including the German-speaking minority which has a historic presence on the territory of Slovenia, do not enjoy any legal recognition or special minority rights.

For some, such a selective arrangement may seem fully justified since, despite decades of scholarly effort, no universally accepted definition of minorities exists – and, for that matter, nor of other identity-related concepts, such as ethnicity, race, or nationality (see, for example, Alfredsson 2004; Pap 2021; Pentassuglia 2002, 55–75). In the absence of such a definition in international law in general, and in minority-specific legal instruments in particular, States enjoy a considerable degree of discretion in deciding which groups qualify as (national) minorities within their territories and may therefore claim minority rights. However, as international monitoring bodies warn, this decision cannot be arbitrary and cannot lead to unjustified distinctions. For instance, in its first opinion on Slovenia, the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter: ACFC) noted that “Parties have a margin of appreciation in [defining the concept of minorities] in order to take the specific circumstances prevailing in their country into account”, but it also emphasized that “this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3 [of the Framework Convention]”, i.e., the right to free self-identification (ACFC 2002, para. 16. cf. ACFC 2022, para. 30).

Yet, in practice, States do apply unjustified differential treatment, and their divergent interpretations of the minority concept often lead to a lower level of protection for the communities and individuals concerned. As the former UN Special Rapporteur on minority issues pointed out, “[t]he absence of consistency in understanding who is a minority is a recurring stumbling

block to the full and effective realization of the rights of minorities... [I]n many situations, persons are deemed to be ‘undeserving’ because they are not ‘traditional’ minorities, not citizens or not sufficiently ‘dominated’. The end result is that some minorities are excluded because they are not the ‘right kind’ of minority according to different parties” (UNGA 2019, para. 21).

In this context, Slovenia is not alone in recognizing only certain ethnic groups.<sup>2</sup> The situation is similar, for instance, in Austria, where individuals belonging to “autochthonous national minorities” (*autochthone Volksgruppen*, cf. Bundes-Verfassungsgesetz, Article 8, para. 2) residing in the so-called “historical settlement areas” – including, inter alia, the Slovenes in Carinthia and the Roma and Croats in Burgenland – are treated differently from individuals who do not reside in those areas (CERD 2008, para. 10).<sup>3</sup> Other States confine protection to certain types of minorities (e.g., linguistic minorities in Italy; national minorities in Russia or Ukraine<sup>4</sup>), while others still (e.g., France or Egypt) do not recognize the existence of any minorities within their territory (Nagy & Tóth 2025; Nagy & Vizi 2024; Spiliopoulou Åkermark 1997, 142).

Against this complex background, evaluating Slovenia’s system of minority protection is not a straightforward task. Thus, I only aim to present how *international monitoring bodies* assess Slovenia’s legislation and practice when it comes to the *recognition of minorities*. Specifically, I will analyse the relevant opinions of the ACFC, as well as the concluding observations of UN human rights treaty bodies, most notably the UN Human Rights Committee.

The paper consists of five chapters. Chapter 2 presents the most important details of Slovenia’s legislation concerning the concept and recognition of minorities. The methodology of the research is explained in Chapter 3, whereas the results of the analysis are set out in Chapter 4. The paper concludes with a brief summary and final observations in Chapter 5.

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2 See other examples from the post-Yugoslav region in Antić 2023, 210–214.

3 Cf. CESCR 2013, para. 24: “The [CESCR] is concerned that the strict criteria to be recognized as a national minority under the Ethnic Groups Act, in particular the requirement of an independent settlement area over a long period of time, hinders other ethnic minority groups in the state party, such as the Polish community and the Jenische, to be recognized and to receive state support to sustain their culture and identity”.

4 Ukraine also recognizes the Crimean Tatars, Karaites, and Krymchaks as indigenous peoples. See Mission of the President of Ukraine in the Autonomous Republic of Crimea 2024.

## 2 Slovenia's Legislation Concerning the Concept and Recognition of Minorities

### 2.1 Legal Status of Various Ethnic Communities

As mentioned above, against the backdrop of an ethnically heterogeneous landscape, Slovenia's Constitution recognizes only two groups as national minorities: the Hungarians and the Italians. More specifically, Article 64 thereof provides for the special rights of the "autochthonous Italian and Hungarian national communities" (*avtohtoni italijanski in madžarski narodni skupnosti*), irrespective of the actual number of their members.<sup>5</sup> The collective and individual minority rights of Italians and Hungarians are guaranteed on the basis of the principle of territorial protection in ethnically mixed areas. By contrast, Article 65 provides that the status and special rights of the "Roma community" (*romska skupnost*) shall be regulated by law. Also, when depositing its instrument of ratification of the Framework Convention for the Protection of National Minorities (hereinafter: FCNM) – a Council of Europe treaty that famously does not define its titular beneficiaries – Slovenia made the following declaration: "Considering that the [FCNM] does not contain a definition of the notion of national minorities and it is therefore up to the individual Contracting Party to determine the groups which it shall consider as national minorities, the Government of the Republic of Slovenia [...] declares that these are the autochthonous Italian and Hungarian National Minorities. [T]he provisions of the Framework Convention shall apply also to the members of the Roma community, who live in the Republic of Slovenia" (Council of Europe 2025). The peculiar wording of the declaration reveals the difference between the status of the two autochthonous communities and that of the Roma, namely that the latter are not recognized as a *national* minority. Nevertheless, they enjoy (a lower degree of) protection under the Constitution as well as international law.

The above three constitutionally recognized communities account for only a small proportion of the total population, particularly when compared with other minority groups. The 2002 census – the last official census to collect ethnic data<sup>6</sup> – recorded 6,243 Hungarians (0.32%), 2,258 Italians (0.11%), and

5 This represents a novelty of the 1991 Constitution of independent Slovenia, as the 1974 Constitution of the Socialist Republic of Slovenia referred to the Italian and Hungarian nationalities (*italijanske in madžarske narodnosti*), without imposing any requirement of autochthony.

6 Monitoring bodies have frequently noted the lack of up-to-date data disaggregated by ethnicity in Slovenia. In this context, the CERD (2015, para. 4) observed that this "may limit the effective identification of population groups suffering direct and indirect

3,246 Roma (0.17%), whereas the country is also inhabited by Serbs (1.98%), Croats (1.81%), Bosniaks (1.10%),<sup>7</sup> Muslims (0.53%),<sup>8</sup> Bosnians (0.41%),<sup>9</sup> Albanians (0.31%), Macedonians (0.20%), Montenegrins (0.14%), and other ethnic groups whose proportion does not reach 0.1% (Austrians, Bulgarians, Czechs, Greeks, Jews, Germans, Poles, Romanians, Russians, Russianians, Slovaks, Turks, Ukrainians, and Vlachs) (SORS 2002).

According to current estimates, members of ex-Yugoslav communities account for 10–11% of Slovenia’s population (Slovenian Times 2024). Most of these persons migrated from other republics of the former Yugoslavia between the mid-1960s and the early 1980s, although some traditional settlements of Serbs and Croats have existed in Slovenia for quite a long time (Dobos & Halász 2025, 89–91). Until recently, however, these communities were not recognized as minorities and did not enjoy any minority rights. The first step in this process was the adoption of a parliamentary declaration in 2011, which granted the Albanian, Bosniak, Croat, Macedonian, Montenegrin, and Serb nations the right to national self-identification and self-organization, in recognition of the fact that they had a “de facto and formal constitutive role” in all republics of the former Yugoslavia. Although the declaration did not establish a new legal status for these communities (ACFC 2017, para. 14), it acknowledges that their members “have already demonstrated a lasting desire and determination to preserve and nurture their national identity through self-organization and social activities”. Importantly, members of these communities must be both citizens and permanent residents of the Republic of Slovenia (Deklaracija Republike Slovenije o položaju narodnih skupnosti pripadnikov narodov nekdanje SFRJ v Republiki Sloveniji 2011).

Based on the 2011 declaration, the Act on the Exercise of Cultural Rights of Members of the National Communities of the Nations of the Former Socialist Federal Republic of Yugoslavia (SFRY) in the Republic of Slovenia was adopted in May 2024, following “more than two decades of efforts by these communities for being recognised as minorities in Slovenia and having their cultural rights ensured” (Slovenian Times 2024). As in the case of Hungarians and Italians, the term used for designating these groups is “national communities” (*narodne skupnosti*), but without the qualifying feature “autochthonous”

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discrimination and thus hinder efforts to define adequate policy making” to protect them.

7 According to the Statistical Office of the Republic of Slovenia, “[d]eclaration for a Bosniak as a nation was enforced by the Constitution of the Federation of Bosnia and Herzegovina in 1994”.

8 The ethnic category of “Muslims” introduced by the Yugoslav censuses after the Second World War, includes people from the territory of Bosnia and Herzegovina, who now usually declare themselves as Bosniaks.

9 In previous censuses, individuals who identified as Bosnians were included under the category “regionally declared”.

(cf. Article 1). The full term used for these groups is “national communities of members of the nations of the former SFRY” (*narodne skupnosti pripadnikov narodov nekdanje SFRJ*), and the Act explicitly lists the groups concerned: Albanians, Bosniaks, Montenegrins, Croats, Macedonians, and Serbs who are residents of the Republic of Slovenia (*Zakon o uresničevanju kulturnih pravic pripadnikov narodnih skupnosti narodov nekdanje Socialistične federativne republike Jugoslavije v Republiki Sloveniji*).

Interestingly, although Albanians are mentioned as a nation of the former SFRY, they were not recognized as such in the period of existence of the SFRY. According to the Yugoslav legal and political terminology, the term “nation” was used to designate the six state-forming South Slavic ethno-linguistic groups: Croats, Macedonians, Montenegrins, Muslims, Serbs, and Slovenes. This distinction is further reflected in the names of the republics, which – except for the Socialist Republic of Bosnia and Herzegovina – all referred to their titular nation. By contrast, the term “nationality” was used primarily to label non-South Slavic ethno-linguistic groups, which today are generally considered national minorities. The most populous of these groups were Albanians, Hungarians, Slovaks, Turks, Bulgarians, and Italians (Korhecz 2025, 33). Thus, from a conceptual point of view, including Albanians among the nations of the former SFRY is not correct.<sup>10</sup>

As regards the German-speaking minority in Slovenia, the Slovenian government “acknowledges its historical presence” (ACFC 2002, para. 24) but does not consider it a national minority for the purposes of the FCNM.

## 2.2 The Infamous Concept of Autochthony

As can be seen, there is a clear hierarchy among ethnic minorities in Slovenia, with Hungarians and Italians occupying the top position, followed by the Roma, and then the “rest”.<sup>11</sup> This highly differentiated system of minority protection is (partly) based on the much debated concept of *autochthony*, since

10 Albanians were consistently referred to as a “national minority” or a “nationality” in UN treaty bodies’ reports concerning the former Yugoslavia. Cf. e.g. CERD 1983, para. 156, 158; CERD 1990, para. 193; CCPR 1984, para. 237; CEDAW 1991, para. 338.

11 This approach is also confirmed by the monitoring practice of the European Charter for Regional or Minority Languages. This treaty entered into force in Slovenia in 2001 and provides a relatively high level of protection to the Hungarian and Italian languages under Part III. Originally, Romani was also protected under Article 7 (that is, Part II), but the National Assembly amended the act of ratification in 2007 and removed Romani from the scope of application (Komac & Novak Lukanović 2023, 74, 76–77). Nevertheless, the Committee of Experts of the Charter continues to evaluate the situation of Romani under Part II, together with Croatian, German, and Serbian, which are not recognized as traditional minority languages by Slovenian authorities. Cf. e.g. COMEX 2025, 5.

special minority rights are granted on the basis of the “autochthonous” settlement of the two national minorities. Yet neither Slovenia’s Constitution nor any legislative act defines the concept of autochthonous community (ACFC 2011, para. 8, fn. 5). Although the Constitutional Court has addressed the issue on several occasions, it has refrained from any interpretation (cf. judgments nos. U-I-283/94 of 12 February 1998 and U-I-416/98-38 of 22 March 2001).<sup>12</sup>

Some scholars argue that Slovenia further complicated the (already complex) situation when it incorporated the “anachronistic concept” of autochthony into its new Constitution in 1991 (cf. Josipovič 2014, 9).<sup>13</sup> The concept of autochthony was probably first introduced into the Yugoslav context by the prominent Croatian geographer and academic Josip Roglič in 1946, in response to Italian claims about “allogeneic” Slavs on the Adriatic coast in territories, which were subsequently appropriated by Italy. Its more intensive use began only in the second half of the 1980s (Josipovič 2014, 14). Josipovič suggests that it may have been an article published in 1989 by the Italian-Slovenian politician and geographer Franco Juri, warning of the threat of extinction faced by Italians in Slovenia, that marked a turning point in the hasty consideration of including the term in the constitutional text. If this assumption is correct, the original intention of the drafters was to strengthen the protection of two numerically weak population groups (Italians and Hungarians), in the sense of distinguishing them from the numerically larger “resettlers” from other republics of the SFRY, while at the same time preventing potential claims by the latter (partly immigrant) groups for special legal protection (ibid., 14, 24).

The problem with using the concept in the manner it is used in the Constitution<sup>14</sup> – that is, in reference to communities (people) – is that, grammatically, the term “autochthony” is understood in a physical or geographical sense. For instance, the Oxford Dictionary of Geography defines “autochthonous” as referring to properties and processes that occur within, rather than outside, an environment; thus, an autochthonous rock is rock *in situ* (Josipovič 2014, 15). In this context, the concept of autochthony, much like the everyday

12 For an English-language analysis of the minority-related case-law of the Constitutional Court of Slovenia, see Korhecz & Nagy 2025, 673-675.

13 Moreover, Josipovič (2014, 10) considers the concept of autochthony the “original sin” that has led to all the problems in defining a national minority. He also points out that Slovenia is the only country of the former Yugoslavia that introduced and maintained this “legally unclear and discriminatory concept” upon independence, even treating it as a “historical relic” (ibid., 12).

14 Based on the constitution, a series of laws and regulations refer to “areas of autochthonous settlement” or areas where such communities “live autochthonously”. Cf., for instance, the Act on Self-Governing National Communities (Zakon o samoupravnih narodnih skupnostih 1994), Articles 1 and 6.

notion of ethnicity, suggests a sense of givenness, timelessness, and immutability of ethnic/national affiliation, which does not correspond to reality (ibid., 19).<sup>15</sup> As Josipovič (2014, 27–28) convincingly argues, the “conceptual error” here is that “the specificity of a certain social and historical space is inscribed in concrete, living people”. Yet, “people do not grow from the soil like an autochthonous vine and do not have ‘roots’” [...] The drafters of the Constitution therefore failed to grasp the fact that biological ancestral continuities have nothing to do with cultural, linguistic, and group affiliations.”

In practice, the concept of autochthony not only defines ethnic relations in the context of the two national communities, but also in relation to the Roma. Although neither the Constitution nor the 2007 Act on the Roma Community (*Zakon o romski skupnosti v Republiki Sloveniji*) refer to the “autochthonous” character of the Roma community, the term is used in the Local Self-Government Act to determine which Roma communities can be represented by a councillor on the municipal council.<sup>16</sup> In fact, it has been a long-standing practice of several Slovenian authorities that only “autochthonous” Roma are eligible to benefit from special measures (cf. ACFC 2002, para. 20; ACFC 2005, para. 71; ACFC 2011, para. 28; ACFC 2022, paras. 44, 50). One such case reached the highest domestic forum of justice. In its judgment of 22 March 2001, the Constitutional Court of Slovenia ruled that the Statute of the Municipality of Novo mesto was unconstitutional because it contained no provision to ensure that the Roma community was represented on the municipal council. Furthermore, and more to the point, the Court called on Parliament to amend the Local Self-Government Act so as to establish a clearer definition of criteria governing the right to political representation at the local level, especially in view of the uncertainty surrounding the term “autochthonous” and the lack of a clearly defined minimum population threshold. As regards its own interpretation, however, the Constitutional Court limited itself to noting that Roma are “undoubtedly” autochthonous in certain areas of Slovenia, where they have lived “for centuries” (cf. ACFC 2002, para. 74; ACFC 2011, para. 28, fn. 5; ACFC 2022, para. 39, fn. 17).

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15 Consider, for instance, the fact that nowadays only a third of the “autochthonous” Italian population live in their “protected area of origin”, whereas the rest have moved to their current place of residence from elsewhere (Josipovič 2014, 26–27).

16 “In areas where an autochthonous Roma community (*avtohtono naseljena romska skupnost*) lives, the Roma shall have at least one representative in the municipal council.” The law lists 20 such municipalities (*Zakon o lokalni samoupravi*, Article 39, para. 5–6).

### 2.3 The “Erased”

There exists a distinct group in Slovenia that has attracted considerable attention from the international community: the “erased”. Although they do not constitute an ethnic minority as such, the majority of these individuals may be regarded as members of the aforementioned ex-Yugoslav ethnic communities. The “erased” are persons who were deleted from the register of permanent residents by the administrative authorities of the newly independent Republic of Slovenia without proper legal basis.<sup>17</sup> These individuals were mostly (though not exclusively) born in other republics of the former Yugoslavia, held Yugoslav citizenship and, as a rule, also the citizenship of one of the other republics of the former Yugoslavia, and lived in the then Socialist Republic of Slovenia (SRS), where they had registered permanent residence. Upon Slovenia’s independence on 25 June 1991, those who held citizenship of the SRS automatically acquired citizenship of the newly established Republic of Slovenia. Under Article 40 of the Citizenship Act, all citizens of the other republics of the former SFRY who had permanent residence in the SRS had the right to apply for Slovenian citizenship within six months. Those who, for any reason, failed to acquire citizenship also lost their permanent residence in Slovenia, together with most of the economic and social rights associated with that status (Pistotnik & Brown 2018). Even today, several members of the “new national communities” have not managed to resolve their legal status (CCPR 2024, para. 9).

### 2.4. Minority Membership Criteria

Decisions concerning minority membership (and, ultimately, the definition of their communities) rests with the self-governing national communities themselves. The Act on Self-Governing National Communities stipulates, in a somewhat circular manner, that it is the members of the Italian and Hungarian national communities who establish (municipal) self-governing national communities in the areas where they “live autochthonously” (*Zakon o samoupravnih narodnih skupnostih*, Articles 1 and 6). It follows that the right to vote is limited to those group members who live in the legally defined ethnically mixed areas (Dobos 2020, 304). In the case of the Roma, the Roma Community Council of the Republic of Slovenia consists of partly elected and partly appointed representatives. One third of its members are elected from

<sup>17</sup> Kogovšek et al. (*Brazgotine izbrisa: prispevek h kritičnemu razumevanju izbrisa iz registra stalnega prebivalstva Republike Slovenije*), cited by Josipovič 2014, 25 explain that local administrative authorities acted on the basis of a central internal instruction from the Ministry of Internal Affairs.

among Roma municipal councillors, while the remaining members are appointed by the Union of Roma of Slovenia (*Zveza Romov Slovenije*), a long-time de facto umbrella association of Roma societies in Slovenia (Komac & Roter 2015, 96; Zakon o romski skupnosti v Republiki Sloveniji, Article 10).

Although the determination of minority membership is, in principle, relevant to the exercise of all minority rights, in the Slovenian context it is of particular practical importance considering the dual voting rights of the two national communities at parliamentary and local elections,<sup>18</sup> as well as the voting rights of the Roma community at local elections. Following a 1998 Constitutional Court decision,<sup>19</sup> the 2013 Voting Rights Register Act introduced a new procedure for the entry of persons in minority electoral registers. According to this procedure, a citizen of the Republic of Slovenia must submit a declaration of minority affiliation to the commission of the respective community, which then decides on the application based on this declaration and detailed criteria to be elaborated by the self-governing national communities, including, in particular: 1) the maintenance of a long-term, solid and lasting bond with the community; 2) active efforts to preserve elements constituting the common identity of the community, including its culture or language; or 3) kinship ties, up to the second degree in the direct line, with a citizen who has already been granted the right to vote as a member of the autochthonous Italian or Hungarian national community or as a member of the Roma community (Zakon o evidenci volilne pravice, Article 12).

In the case of the Italian minority, the four self-governing national communities have officially adopted their own membership criteria, which closely resemble the text of the Voting Rights Register Act but differ slightly from one another (Ankaran 2018, Izola 2016, Koper 2016, Piran 2018).<sup>20</sup> Electoral commissions assess individual applications on the basis of the documents

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18 Outside ethnically mixed areas, persons belonging to the Hungarian and Italian minorities enjoy the right to receive education in their own language, with classes opened for a minimum of five children, based on a request by parents (ACFC 2002, para. 67). However, it seems that this right is hardly ever exercised in practice (cf. ACFC 2017, para. 80), and there are no rules on whether, and how, parents should prove the minority affiliation of their children.

19 The Court found it inconsistent with the Constitution that the Voting Rights Register Act failed to specify the criteria to be applied by the commissions of the Italian and Hungarian self-governing national communities when deciding on the registration of members of the autochthonous Italian and Hungarian national communities in a special electoral register (Ustavno sodišče 1998).

20 Article 2(6) of the Piran resolution further refers to the criteria adopted by the Council of the Self-Governing Community of the Italian Nationality (OSSIN/CAN Costiera) of Piran on 29 May 2018. I was able to obtain the minutes of the said meeting, but the relevant resolution does not in fact provide any further criteria; it merely stipulates that the Council is “in favour of the procedure for recognizing the right to vote of members of the Piran national community” (CAN 2018, 3).

submitted, and in case of lack of information, they may even hold personal interviews to identify the national and linguistic background of the applicant (Dobos 2026, 157). As for the Hungarian minority, neither the umbrella organization of the five self-governing national communities<sup>21</sup> nor the individual communities<sup>22</sup> have adopted a formal resolution on membership criteria. Instead, citizens can obtain information from an informal document titled “voting rights summary”, which fully reproduces the criteria specified in the Act.<sup>23</sup>

### 3 Research Method

The research applies qualitative legal analysis to examine how international human rights bodies assess Slovenia’s approach to the recognition of minority groups. In total, 51 documents were included in the analysis: five opinions of the Council of Europe’s ACFC (adopted in 2002, 2005, 2011, 2017, and 2022, respectively) and 46 concluding observations adopted by UN human rights treaty bodies. The latter are independent expert organs which monitor the implementation of the nine core human rights treaties adopted under the auspices of the United Nations. These treaties and their corresponding monitoring bodies are as follows (listed in the order of entry into force of the treaties):

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965) – Committee on the Elimination of Racial Discrimination (CERD);
- International Covenant on Civil and Political Rights (ICCPR, 1966) – Human Rights Committee (CCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) – Committee on Economic, Social and Cultural Rights (CESCR);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979) – Committee on the Elimination of Discrimination against Women (CEDAW);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984) – Committee against Torture (CAT);

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21 PMSNS/MMÖNK = Hungarian Self-Governing National Community of Prekmurje.

22 Šalovci, Hodoš/Hodos, Moravske Toplice, Dobrovnik/Dobronak, Lendava/Lendva.

23 The Statutory-Legal Committee of PMSNS/MMÖNK discussed the issue but ultimately decided that the criteria specified in the law would suffice and that the community may later adopt additional criteria if necessary. Personal correspondence with Tomislav Lebar, lawyer at PMSNS/MMÖNK.

- Convention on the Rights of the Child (CRC, 1989) – Committee on the Rights of the Child (CRC);
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW, 1990) – Committee on Migrant Workers (CMW);
- International Convention for the Protection of All Persons from Enforced Disappearance (CPED, 2006) – Committee on Enforced Disappearances (CED);
- Convention on the Rights of Persons with Disabilities (CRPD, 2006) – Committee on the Rights of Persons with Disabilities (CRPD).

Since Slovenia has not ratified the ICMW and the first reporting cycle under the CPED has not yet been completed, these two treaties were excluded from the analysis, and only seven treaty bodies were examined. Special emphasis was placed on the practice of the Human Rights Committee, the monitoring organ of the ICCPR, as this is the only international treaty with universal scope and general application to contain a provision explicitly addressing minority rights. Specifically, Article 27 of the ICCPR provides as follows: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” As can be seen, only those groups that “exist” on the territory of the State benefit from the protection of this provision, making the issue of recognition particularly salient. Article 30 of the CRC reproduces Article 27 of the ICCPR almost *verbatim*, with the addition of a reference to indigenous origin. Beyond these two provisions that explicitly relate to minorities, most human rights treaties contain references to the prohibition of discrimination on grounds of, *inter alia*, race, colour, descent, language, religion, national, ethnic, or social origin, etc. These factors – whether considered individually or, more commonly, in combination – constitute standard conceptual elements of a minority group, which explains the relevance of international human rights treaties in the context of recognition of minorities.

For the purposes of this analysis, I examined the concluding observations adopted on the basis of periodic State reports, which represent the final outcome of the reporting procedure. Where concluding observations had not yet been available/adopted for the most recent monitoring cycle, lists of issues prior to reporting (LoIPR) were analysed instead. Views on individual communications and general comments/recommendations (two other types of documents that treaty bodies may adopt) were occasionally included where relevant to substantiate an argument. While the subject of the paper is the evaluation of Slovenia’s minority rights framework, I also analysed the UN treaty bodies’ concluding observations on the former Yugoslavia, as an

understanding of the historical antecedents is essential to fully appreciate and comprehend the current context. However, only those documents that are expressly referred to in the text are included in the References section.

Tables 1 and 2 present descriptive statistics of the research, that is the year of entry into force of the individual treaties in Slovenia and the former Yugoslavia (Table 1), as well as the number of concluding observations adopted across all monitoring cycles and completed until the day of writing, both individually and in total (Table 2).

**Table 1:** Entry into force of the core human rights treaties in Slovenia and Yugoslavia

	ICERD	ICCPR	ICESCR	CEDAW	CAT	CRC	ICMW	CRPD	CPED
Slovenia	1992	1992	1992	1992	1993	1992	x	2008	2021
Yugoslavia	1967	1978	1971	1982	1991	1991	x	x	x

Source: United Nations Treaty Series.

**Table 2:** Number of concluding observations adopted by UN treaty bodies in Slovenia and Yugoslavia

	CERD	CCPR	CESCR	CEDAW	CAT	CRC	CRPD	CED	Σ
Slovenia	4	4	2	5	4	3	2	0	24
Yugoslavia	10	3	6	1	1	1	x	x	22

Sources: United Nations Digital Library; UN Treaty Bodies Database.

All documents analysed in the paper are available from online public databases: the UN Treaty Body Database, the United Nations Digital Library, and (in case of ACFC documents) the website of the FCNM.

## 4 International Evaluation of Slovenia's Legislation on the Recognition of Minorities

This section evaluates the Slovenian legal framework on minorities (as presented in Section 2) from the perspective of international monitoring bodies. Table 3 contains a directory of terms that UN treaty bodies use in relation to the definition of minorities in Slovenia. Terms highlighted in bold were mentioned under Article 27 of the ICCPR. Subsections 4.1–4.4 focus on the most salient themes addressed by the monitoring bodies.

**Table 3:** Terms used in relation to the concept/recognition of minorities in Slovenia in concluding observations adopted by UN treaty bodies

treaty	cycle	adopted	relevant paras.	terms used in relation to the concept/recognition of minorities <sup>24</sup>
CERD	1-4	2001	3-4, 6, 8	Bosnians, Croats, Hungarian minority, Italian minority, minority groups, nationalities, religious communities, Roma, Roma community/population, Serbs
	5	2003	7-11, 13-14	children of Roma origin, ethnic groups, ethnic and national minorities, "indigenous" communities, "indigenous" Roma, Italian and Hungarian minorities, minorities, "new" communities, "new" Roma, persons without Slovenian citizenship, Roma, Roma children
	6-7	2010	3-5, 7-13	Bosnians, "erased" people, ethnic Albanians from Kosovo, ethnic minorities, Italian and Hungarian minorities, Macedonians, migrant workers, minorities, minorities from former Yugoslav republics, minority groups, mother tongue, racial or ethnic group, Roma, Roma communities/community/minority/ people/children, Serbs
	8-11	2015	3-7, 10-15	"autochthonous" and "non-autochthonous" Roma, "erased" persons, Italian and Hungarian minorities, migrants, minority ethnic groups, minority groups, minorities from the former Socialist Federal Republic of Yugoslavia, new Roma, non-citizens, Roma, Roma communities/ population/ children/girls
CCPR	1	1994	12, 13, 19	ethnic Slovene emigrants/migrant workers, <b>Gypsies, Hungarians, immigrant communities, Italians, minorities</b>
	2	2005	10, 16-17	" <b>autochthonous</b> " (indigenous) vs. " <b>non-autochthonous</b> " (new) <b>Roma communities</b> , citizens of other republics of the former Socialist FRY living in Slovenia, <b>Roma, Roma community/minority</b>
	3	2016	3, 7, 15-16, 21-22, 23-24, 33	" <b>autochthonous</b> " and " <b>non-autochthonous</b> " <b>Roma communities</b> , "erased" persons, <b>groups within the Roma community</b> , marginalized groups, migrants, minority groups, Muslims, Roma, <b>Roma communities/community</b>
	4	2024	3-4, 6-8, 9, 18-19	aliens, "erased" persons, <b>marginalized and vulnerable people, migrants, Muslim women, religion, religious clothing or symbols, Roma, Roma communities ("autochthonous" vs. "non-autochthonous" ~), Roma community, Roma people, Roma pupils and students</b>
CESCR	1	2005	11, 13, 16, 24, 28, 32	disadvantaged and marginalized groups, "erased" = nationals of the former Yugoslavia, indigenous and non-indigenous Roma, minorities, Roma, Roma children
	2	2014	4, 6, 9, 11, 13, 16-18, 20-1, 27-8	disadvantaged and marginalized groups, "erased", ethnic minorities, migrant workers, minorities, national or ethnic minorities, Roma, Roma children, Roma communities/community/ people, vulnerable groups

24 Terms are included in the exact same way as they appear in the UN documents, even if they may seem anachronistic or incorrect (such as the occasional use of Bosnian instead of Bosniak). Quotation marks are also used in the original text.

treaty	cycle	adopted	relevant paras.	terms used in relation to the concept/recognition of minorities <sup>24</sup>
CEDAW	1	1997	<i>not relevant</i>	
	2-3	2003	222-223	minority women, Roma women
	4	2008	6, 35-36	Roma, Roma community, Roma girls, Roma women
	5-6	2015	15-16, 19, 21-22, 25, 27-32, 39-40	aliens, migrant women, non-Europeans, non-Slovenian nationals, Roma, Roma population, Roma children/girls/women
	7	2023	3,5,22,39-40, 45-48	migrant women, national minorities, Roma community, Roma girls, Roma women, Ukrainians
CAT	1	2000	204, 206, 209	aliens, minorities, Roma population
	2	2003	4-5	aliens, ethnic minorities
	3	2011	5, 17-18, 21	aliens, citizens of former Socialist Federal Republic of Yugoslavia living in Slovenia, erased, ethnic groups, marginalized groups, minorities, non-national Roma minority, Roma community, Roma communities, Roma minority, Roma minorities
	4	2023	6-7, 14-15, 26-29, 32-35, 41, 44	aliens, erased persons, foreigners, foreign prisoners, migrant children, migrants, minorities, Roma, Roma community, Roma minority, Roma people, vulnerable groups
CRC	1	1996	17	Roma children, vulnerable children
	2	2004	3, 22-23, 44-45, 48-49, 53, 66-67	Albanians, aliens, autochthonous vs. non-autochthonous Roma, Bosniacs, Croats, ethnic groups, ethnic and religious groups, minorities, minority groups, peoples, Roma, Roma children, Roma community, Roma communities, Serbs, vulnerable groups
	3-4	2013	3, 5, 16, 24-25, 30-31, 34-36, 41-44, 52, 58-61, 68-74	autochthonous vs. non-autochthonous Roma communities, children of Roma origin, citizens of Former Yugoslavia living in the Republic of Slovenia, erased people, migrant children, minority, minority groups, Roma, Roma children, Roma community, Roma communities, Roma girls, Roma population(s), vulnerable children/populations
CRPD	1	2018	6-7, 29	ethnic groups, migrants, Roma, Sinti
	2-4	2023	3	minority ethnic groups, Roma, Sinti

Sources: United Nations Digital Library; UN Treaty Bodies Database.

#### 4.1 The Issue of Autochthony

One of the most problematic issues addressed by virtually all monitoring bodies examined in this paper concerns the concept of autochthony, especially in relation to the Roma.<sup>25</sup> Owing to the distinction between “autochthonous” and “non-autochthonous” Roma,<sup>26</sup> some Roma remain outside the minority protection system and are not systematically covered by the measures to improve the socio-economic situation of the Roma community (ACFC 2005, para. 71). Furthermore, the distinction has an impact on their political

25 Independently of the issue of autochthony, the Roma are the only minority group that feature by name in the reports of all UN treaty bodies. Cf. Table 3.

26 The latter group generally refers to individuals who left other parts of former Yugoslavia to settle in Slovenia more recently, particularly since 1991. ACFC 2005, 10-11, fn. 3.

participation, as they are not guaranteed a seat in municipal councils in all municipalities where they reside (ACFC 2011, para. 28; 2017, para. 8).

Already in its first opinion, the ACFC pointed to the lack of any legal definition of the concept of autochthony in Slovenia, which makes it extremely difficult to use in practice. Interpretations of this criterion have varied considerably across different segments of administration, especially regarding the required period of presence on Slovenian territory and the question of citizenship (ACFC 2002, paras. 20, 83). The ACFC has repeatedly emphasized that, in view of the legal uncertainty surrounding the meaning of the notion of “autochthony”, as well as the inherent risks of arbitrary exclusion and discriminatory practices, Slovenia should reassess both its relevance and the justification for its continued use (ACFC 2002, paras. 20, 83; 2005, paras. 12, 27, 32, 41, 74, 174). In fact, the ACFC made it clear that this concept should not be used “as the determining criterion to define the personal scope of application of the Framework Convention” (ACFC 2005, para. 12).

The concept of autochthony also troubles the ACFC in the broader context of minority protection, as it is used as the main justification for differentiating between various ethnic groups in the country (ACFC 2005, para. 38). With a surprising twist, the ACFC turned Slovenia’s own logic against it. Since the Slovenian authorities themselves have admitted that the Croatian national community, the German-speaking ethnic group, and the Serbian national community constitute “historical ethnic groups” and are “autochthonous” in certain areas of the country, the ACFC concluded that the legal provisions applicable to autochthonous national communities should also be extended to them – albeit with due regard to local circumstances (ACFC 2022, paras. 43, 52).

The UN treaty bodies – although sometimes confusingly using the term “indigenous” instead of or alongside “autochthonous” (CERD 2003, paras. 7, 10; CCPR 2005, para. 16; CESCRCR 2005, para. 11) – have also noted the potentially discriminatory effects of the differing definitions of ethnic groups, and especially the distinction between “autochthonous” and “non-autochthonous” Roma, which may give rise to further discrimination and should therefore be eliminated (CAT 2011, para. 21;<sup>27</sup> CERD 2003, paras. 7, 10; 2015, paras. 6–7; CCPR 2005, para. 16; 2016, paras. 23–24; 2024, para. 7; CESCRCR 2005, para. 24; CRC 2004, para. 23; 2013, para. 25).

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27 Using the term “non-national Roma minority”.

## 4.2 Calling for an Inclusive Approach: Other Ethnic Groups in Slovenia

An important request from international monitoring bodies is that the personal scope of minority protection measures be as broad as possible. This applies to the whole European/UN context, not only Slovenia. For instance, in a 1994 general comment, the UN Human Rights Committee stated that it is not relevant to determine the degree of permanence implied by the term “exist” in Article 27, since States are required to ensure that the rights protected under the ICCPR are available to all individuals subject to their jurisdiction, with the exception of rights that are expressly applicable to citizens. Accordingly, Article 27 also extends to non-nationals, including migrant workers or even visitors (CCPR 1994, paras. 5.1–5.2). Similarly, the ACFC holds that several provisions of the Framework Convention (including Article 6 on tolerance and intercultural dialogue) have a wide personal scope of application covering also immigrants, refugees, and persons belonging to other groups not traditionally resident in the country concerned (ACFC 2002, para. 40). Accordingly, it evaluates the situation of these groups in Slovenia (ACFC 2002, paras. 40, 91; 2005, para. 91; 2017, paras. 10, 43, 45, 54, 82).

As previously mentioned, the ACFC has “serious doubts regarding the relevance and justification” of the distinctions made between the various ethnic groups in the country. The fact that these distinctions are based on “insufficiently defined concepts” such as “autochthony” is only one aspect of the dilemma. The other problem is that the system does not take into account the “established reality on the ground”, including the specific circumstances surrounding the dissolution of the former Yugoslavia (ACFC 2005, paras. 38–39). Thus, throughout successive monitoring cycles, the ACFC has assessed not only the rights of Hungarians, Italians, and Roma, but also that of other ethnic groups, including “new communities”,<sup>28</sup> Germans, Muslims, and Sinti.

As for the “new communities”, the ACFC has noted that they not only represent a significant proportion of the population, but most of their members had already settled permanently in Slovenia before the country’s independence, with many of them now possessing Slovenian citizenship (ACFC 2005, para. 33; cf. 2011, paras. 20, 29; 2022, paras. 25, 28). Likewise, there is a long-standing presence in Slovenia of a German-speaking minority, including the Kočevje Germans or Gottscheer, who identified as German or Austrian in the last population census (ACFC 2005, para. 36; 2017, paras. 5, 40). Although

28 This term was first used by the ACFC in its third opinion (2011, para. 15) in accordance with the 2011 declaration; previously, it had referred to these groups as former citizens of/non-Slovenes from other republics of former Yugoslavia. Cf. ACFC 2005, para. 33.

the government acknowledges their historical presence, it does not recognize them as a national minority (ACFC 2005, para. 24; 2011, paras. 20, 29; 2022, paras. 25, 28).

As regards Muslims, the ACFC (2005, paras. 46, 98, 104; 2011, para. 73) referred to repeated requests to build a mosque in Slovenia.<sup>29</sup> Muslim women were also mentioned by the CCPR (2024, para. 3) when Slovenia was asked to “explain the steps taken to eliminate discrimination based on religion, in particular the wearing of religious clothing or symbols at the workplace”.<sup>30</sup>

The ACFC (2005, paras. 13, 36; 2017, para. 13; 2022, para. 40, fn. 20) further noted a small group of people who identify as Sinti and have expressly indicated that they wished to be treated as a distinct ethnic group. Interestingly, among the seven UN treaty bodies monitoring Slovenia, only the CRPD (2016, para. 6; 2023, para. 3) mentioned the Sinti, doing so in the context of multiple and intersectional forms of discrimination against persons with disabilities, including the Sinti, the Roma, and other ethnic groups.

Based on the overall assessment of the situation on the ground, the ACFC found that the preservation and development of the identity and culture of the above minority groups require the State to make more substantial efforts to address their needs (ACFC 2002, paras. 44–45; 2005, paras. 9–10, 19, 26). It has repeatedly called on Slovenia to adopt a more inclusive approach to the scope of application of the Framework Convention and to consider extending protection to persons belonging to other groups, possibly on an article-by-article basis, including non-citizens where appropriate. Dialogue and close consultation with representatives of the groups concerned are key in this context (ACFC 2002, paras. 25; 84; 2005, paras. 13, 39–40, 188; 2011, paras. 33–34; 2017, para. 18; 2022, paras. 31–32). In two particularly insightful comments, the ACFC identified the main problem as an excessive focus on matters of principle (i.e. formal recognition as national minorities) at the

29 The building of the mosque was eventually authorized and completed in 2020. See, MKC Ljubljana.

30 The monitoring bodies did not delve into conceptual issues concerning Muslims, despite the partly overlapping categories of Muslims, Bosnians, and Bosniaks used in the 2002 census. By contrast, the CERD devoted considerable attention to this issue during the Yugoslav times. Specifically, it questioned why Muslims were classified as a national group rather than a religious one, and why Turks were classified separately. The State representative explained, somewhat confusingly, that the term “Moslem” referred to a nation/nationality/ethnic group/national group (all four terms were used in the relevant two reports) of Slavic origin and not to a religious group. These persons lived mostly in Bosnia and Herzegovina and parts of Serbia, whereas persons practicing Islam in Yugoslavia could be Serbs or Albanians. Moslems generally belonged to the Moslem religion but were distinct from Turks. Those who declared themselves as Turks, although they might be practicing Moslems, were not considered to be part of the Moslem nation but to be members of a separate nationality. CERD 1983, para. 150, 156; CERD 1985, para. 542, 552.

expense of ensuring actual (progressive) access to minority rights “based on facts rather than status” (ACFC 2017, paras. 5, 15).<sup>31</sup> This is in line with the general recommendations of the ACFC set out in its latest thematic commentary (ACFC 2016, 3).

The UN treaty bodies have also noted the differentiated protection of minority groups, and specifically that the Roma and the “new communities” do not enjoy the same level of protection as Italians and Hungarians, and that prejudice and discrimination against the former remain widespread in the country. The CCPR in particular has been very specific about disapproving Slovenia’s approach to “single out” Italians and Hungarians for special protection, reiterating that all minorities are entitled to the protection of their rights under Article 27 of the ICCPR, including immigrant communities that qualify as minorities within the meaning of the same provision (CCPR 1994, paras. 12, 19). Somewhat less severely, the CERD (2001, para. 8) called on Slovenia to ensure that persons belonging to other minority groups are not subjected to discrimination. It further recommended that Slovenia adopt measures to protect persons belonging to minorities not explicitly recognized in the Constitution in the exercise of their political rights without discrimination and take measures to ensure that *all* minority groups are represented in Parliament and in regional elected bodies (CERD 2010, para. 12). In a similar vein, the main concern of the CRC (2004, paras. 66–67) was that children belonging to certain ethnic groups, such as Bosniaks, Croats, Serbs, and Albanians, did not fully enjoy some of their cultural rights, whereas children from all ethnic groups should do so.

### 4.3 The “Erased”

The legal status of non-Slovenians from the former Yugoslavia who were removed from the register of permanent residents in 1992 and thus “found themselves foreigners in the country they were living in” (ACFC 2005, para. 11) has been a persistent concern of monitoring bodies. The ACFC and the UN treaty bodies have consistently called on the Slovenian authorities to take urgent measures to resolve the precarious situation of these individuals (ACFC 2002, paras. 31–32; 2005, paras. 21, 60–61; 2011, para. 66; 2017, para. 61; CAT 2011, para. 18; 2023, para. 35; CCPR 2005, para. 10; 2016, paras. 21–22; 2024, para. 9; CEDAW 2015, paras. 25–26; CERD 2003, paras. 13–14; 2010, para. 13; 2015, paras. 12–13; CESCR 2005, para. 16; 2014, para. 13; CRC 2013, paras. 34–36), even though many of them have since managed to gain permanent

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31 In its latest opinion delivered in 2022 (para. 31), the ACFC specifically named the German-speaking ethnic group and the new national communities which should be granted full protection under the Constitution as well as the Framework Convention.

residence status retroactively under a law adopted in 2010.<sup>32</sup> In this context, the CERD (2010, 13) also recommended that Slovenia conduct an outreach campaign to inform those currently living outside the country of the existence of the new legislative measures and the possibility of compensation.

Gaining permanent residence and, eventually, citizenship would place these individuals on an equal footing with persons belonging either to the “new communities” or to the autochthonous Roma, thereby substantially increasing the level of protection afforded to them.

#### 4.4 Minority Membership Criteria

While monitoring bodies have devoted considerable attention to advising Slovenia on the concept of minorities (and especially the recognition of certain ethnic groups), they have been far less scrupulous when it comes to the nuances (or operationalization) of the minority concept, namely the question of who belongs to a minority.

The ACFC addressed this issue only once, when the Italian minority expressed concerns about the 2013 Voting Rights Register Act, specifically with respect to the definition of membership criteria. Its representatives feared that the introduction of such criteria could potentially have a negative impact on the right to free self-identification. Without offering any specific remarks on the statutory criteria, let alone how these were implemented in practice by the self-governing national communities, the ACFC merely reiterated the “importance it attaches to the principle of free self-identification” (ACFC 2017, paras. 16, 85).<sup>33</sup>

UN treaty bodies have not mentioned the issue of minority affiliation in the context of Slovenia, but their general practice is built upon the principle of individual self-identification (Nagy 2025). As early as 1990, the CERD stated that establishing affiliation with a particular racial or ethnic group “shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned” (CERD 1991). Several concluding observations adopted in the Central and Eastern European region leave no doubt that UN treaty bodies consider that membership of ethnic/minority/racial groups should be established on a voluntary basis, through self-identification by the individuals concerned.<sup>34</sup> Had the treaty bodies addressed this issue in Slovenia, they would likely have been critical of the imposed objective membership criteria.

32 Act Amending the Act Regulating the Legal Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia, adopted on 8 March 2010.

33 This is in fact clear from the overall of practice of the ACFC. See, Craig 2016.

34 For instance, in its 2010 report on Hungary, where the law requires minorities to register themselves in a special electoral roll (similar to Slovenia, albeit without the need to comply with specified objective criteria), the CCPR expressed its concern that this

## 5 Summary and Final Conclusions

Slovenia is generally perceived as a role model in Europe when it comes to protecting its minority populations. Notwithstanding the State's strong international reputation, shortcomings persist, stemming from the "monist-identitarian" approach associated with the "nation-cum-state" paradigm (Craig 2021, 3; Marko et al. 2019, 33–40). Within this interpretative framework, and despite Slovenia's multi-ethnic composition, the Constitution recognizes only two groups as "autochthonous national communities": the Hungarians and the Italians. While the Roma also enjoy some constitutional protection, the most numerous ex-Yugoslav ethnic groups, also known as the "new communities" (Albanians, Bosniaks, Montenegrins, Croats, Macedonians, and Serbs), received legal recognition only recently. Neither the "new communities" nor the German-speaking population (including the Kočevje Germans or Gottscheer), however, benefit from the protection of the FCNM, although their historical presence on the territory of the State is recognized by the authorities themselves.

The author's in-depth analysis of 29 reports adopted by the ACFC and UN treaty bodies reveals that the Slovenian system is not in full conformity with the international obligations of the State, at least from a conceptual point of view. Throughout the monitoring cycles, Slovenia has been adamantly and repeatedly criticized for retaining the undefined and confusing concept of "autochthony"; for adopting a restrictive approach to the recognition and provision of special protection for different ethnic groups; for making unjustified and arbitrary distinctions between "autochthonous" and "non-autochthonous"/"new" Roma communities; and for the shameful fact that it has still not managed to definitively resolve the issue of the "erased".

Instead, monitoring bodies offer an inclusive and pragmatic approach.<sup>35</sup> In the context of the FCNM, this means that Slovenia should consider extending protection to persons belonging to other groups, possibly on an article-by-article basis, and including non-citizens where appropriate. This is in line with the standard, generally inclusive approach of the ACFC to the Framework Convention's personal scope of application (Roter 2014, 74), which is based on finding practical solutions in close consultations with the groups concerned, taking full consideration of the principle of free self-identification (Craig 2016, 21). Similarly, UN treaty bodies have expressed dissatisfaction

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system "renders it obligatory for minorities to register their ethnic identity, and therefore deters those who do not wish their ethnic identity to be known, or who have multiple ethnic identities, from registering in particular elections" (CCPR 2010, para. 21).

35 Marko et al. (2019) and Craig (2021) refer to this as a "cosmopolitan-pluralist approach".

with the differentiated protection of minority groups in Slovenia, noting in particular that the Roma and the “new communities” do not enjoy the same level of protection as the “autochthonous” Italians and Hungarians, and that prejudice and discrimination against the former remain widespread in the country. The treaty bodies’ main message is that all minorities in Slovenia, regardless of their formal recognition, should be entitled to protection of their rights, which also suggests a pragmatic approach.

In conclusion, the findings of the paper present a rather complex picture of the recognition and conceptualization of minorities in Slovenia. It is, of course, impossible to fully understand the nuances of the system without taking into account its historical evolution and the broader context of minority protection in the East-Central European region, and especially in the other States of the former Yugoslavia. Nevertheless, international monitoring bodies have clearly articulated a way forward, and it would be wise for Slovenia to consider these guidelines if it is to manage its increasing diversity successfully in the 21<sup>st</sup> century.

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## Priznati ali ne priznati? Opredelitev in priznanje manjšin v Sloveniji v luči mednarodnih nadzornih mehanizmov

### Izvleček

Kljub etnično heterogeni sestavi prebivalstva slovenska ustava kot »avtohtoni narodni skupnosti« priznava le Madžare in Italijane. Ustavno varstvo je v določeni meri zagotovljeno tudi Romom, medtem ko so bile najštevilčnejše etnične skupine z območja nekdanje Jugoslavije, tako imenovane nove skupnosti (Albanci, Bošnjaki, Hrvati, Makedonci, Črnogorci in Srbi), pravno priznane šele v zadnjih letih. Niti nove skupnosti niti nemško govoreče prebivalstvo pa ne uživajo varstva skladno z Okvirno konvencijo Sveta Evrope za varstvo narodnih manjšin – ne glede na številčnost prvih in zgodovinsko prisotnost drugih na ozemlju države.

Članek uvodoma podaja podroben pregled slovenske zakonodaje, povezane z vprašanjem manjšin, ki jo nato ovrednoti v luči gradiv Svetovalnega odbora o Okvirni konvenciji ter organov Združenih narodov za nadzor nad izvajanjem mednarodnih pogodb. Namen prispevka je ugotoviti, ali je slovenski sistem vsaj na konceptualni ravni skladen z mednarodnimi obveznostmi države. Poglobljena analiza približno tridesetih dokumentov, ki so jih sprejeli mednarodni nadzorni organi, kaže, da temu ni tako, kar je presenetljivo glede na visok mednarodni ugled slovenskega sistema zaščite manjšin. Avtorica ugotavlja, da je bila Slovenija večkrat kritizirana zaradi ohranjanja nedoločnega in nejasnega koncepta avtohtonosti, restriktivnega pristopa k priznavanju in zagotavljanju posebnega varstva različnim skupinam, neutemeljenega in arbitrarnega razlikovanja med avtohtonimi in neavtohtonimi romskimi skupnostmi ter zaradi dejstva, da še vedno ni dokončno razrešila vprašanja izbranih.

**Ključne besede:** etnične skupnosti v Sloveniji, pravno priznanje, avtohtonost, organi Združenih narodov za nadzor nad izvajanjem mednarodnih pogodb, Svetovalni odbor o Okvirni konvenciji za varstvo narodnih manjšin

