5 Article 27 of the ICCPR in Practice, with Special Regard to the Protection of the Roma Minority

Anikó Szalai[*]

Article 27 of the International Covenant on Civil and Political Rights is the first and only universal, treaty-based protection for ethnic, religious or linguistic minorities. It stipulates that:

> 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 practise their own religion, or to use their own language.[1]

Notwithstanding this simple phrasing many issues of interpretation lie behind. This study aims at shedding light on the subjects of this right; on what is protected by Article 27; on the difference between this right to practice one's own religion and the freedom of religion prescribed by Article 18 of the ICCPR; and on whether Article 27 provides protection for a specific minority group, namely the Roma. This study is largely based upon the practice of the Human Rights Committee (CCPR), represented both through the reports of states and individual complaints. It is concluded that Article 27 in itself is insufficient for the protection of the Roma minority, but Article 27 taken together with all the other provisions of the ICCPR ensure the appropriate level of protection.

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* Anikó Szalai (PhD) is a senior lecturer of International Law at the University of Szeged, Hungary. This article is part of a bigger research. See A. Szalai, *Protection of the Roma Minority under International and European Law*, Eleven International Publishing, the Hague 2015.

1 International Covenant on Civil and Political Rights, New York, 16 December 1966, UNTS Reg. No. 14668. As of May, 2015 the Covenant has 168 member states. However, three states have expressed reservations and declarations, relating to Art. 27: France, Turkey and the United States of America. See United Nations Treaty Collection. <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en>.

5.1 Subject of the Right – Who Are Protected?

This provision protects ethnic, religious and linguistic minorities and prescribes both community- and individual-level protection for members of a minority. This right protects those who are members of a group which can be differentiated from the majority population of the state based on their ethnicity, religion or language.[2] Thus differences based on sexual orientation (i.e. homosexuality, trans-gender, etc.), gender, age, income, profession, class etc. are not included in this category, and whenever this study uses the expression 'minority', it refers only to ethnic, religious and linguistic minorities.

A problematic expression seems to be the beginning of the sentence: 'In those states in which […] minorities exist.' This suggests, that the definition whether a minority exists or not in the state depends upon the (subjective) decision of the state. The Human Rights Committee declared that

> [t]he existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria.[3]

When a state party required the condition that a minority group should be able to demonstrate that it has lived in the territory of the state for at least a century in order to be recognized as a national or ethnic minority, CCPR expressed that it is in contravention of Article 27 and General Comment No. 23.[4] The Committee also found it problematic when a state recognized some minorities, and not others. For example in the case of Croatia the Committee was concerned that the Roma community was not accorded legally recognized minority status and declared that the state should ensure that all members of ethnic, religious and linguistic minorities enjoy effective protection against discrimination and are able to enjoy all the rights guaranteed in Article 27.[5] A minority group is even entitled to minority rights if, as in the words of the representative of Morocco – referring to the Jewish community –, 'it lived in symbiosis with the rest of the society.'[6]

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2 For a more detailed analysis on the definition of minority See, e.g. J. Pejic, Minority Rights in International Law', *Human Rights Quarterly*, Vol. 19, No. 3, 1997, pp. 666-685; P. Kovács, *International Law and Minority Protection: Rights of Minorities or Law of Minorities?*, Budapest, Akadémiai Kiadó, 2000; F. Capotorti, 'Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities', UN Doc. E/CN.4/Sub.2/384c, 1979.

3 Human Rights Committee, General Comment No. 23, on the Rights of Minorities, Art. 27 of the International Covenant on Civil and Political Rights, UN Doc. No. CCPR/C/21/Rev.1/Add.5., 26 April 1994. p. 3.

4 This was and still is the situation in Hungary, prescribed both by the former and the present act on minorities (previous one adopted in 1993, the present one in 2011). Report of the Human Rights Committee, Vol. I, 2010-2011, UN Doc. No. A/65/40, p. 44.

5 Report of the Human Rights Committee, Vol. I, 2000-2001, UN Doc. No. A/56/40, p. 69.

6 Report of the Human Rights Committee, 1991-1992, UN Doc. No. A/47/40, p. 17.

It is evident from General Comment No. 23 that this article is aimed at protecting all groups of ethnic, religious and linguistic minorities, thus including indigenous persons and communities. When the Human Rights Committee deals with a complaint, the national legislation about non-recognition of certain people as a minority does not prevent the Committee from considering the complaint as belonging to the minority concerned and for them to benefit from the protection of Article 27 of the Covenant.[7]

A state party may not restrict the rights under Article 27 to its citizens alone, but also to everyone visiting that country (e.g. migrant workers, visitors, non-permanent residents).[8]

The case law of the Human Rights Committee also clarified the issue of which part of the population is the majority and which is the minority in the concerned state, with respect to Article 27. The numbers and percentage of the different population groups, for example based on ethnicity, should be compared at a state level and not at a smaller unit of the state. Accordingly, the minorities referred to in Article 27 are minorities within the state, and not minorities within any province or region or town. A group may constitute a majority in a province but still be a minority in a state and thus be entitled to the benefits of Article 27.[9]

5.2 Subject Matter – What Is Protected?

Article 27 expresses three subject matters: culture, religion and language. While the profession and practice of religion is also guaranteed in ICCPR's Article 18 (freedom of thought, conscience and religion), the other two (enjoying one's own culture and using one's own language) are novel.

Since the same factual grounds can establish the violation of several rights of the Covenant, it is still possible to refer to both Article 18 and 27 in a complaint. The Human Rights Committee regularly relies upon the articles in an alternative way: if one is not substantiated, it does not mean, that the other would also be inadmissible. Article 27 is cited as an alternative right in a wide range of cases, such as family name,[10] housing,[11]

7 *Sandra Lovelace v. Canada*, CCPR, Communication No. 24/1977, 30 July 1981, UN Doc. No. CCPR/C/13/D/24/1977.

8 Human Rights Committee, General Comment No. 23, on the Rights of Minorities, Art. 27 of the International Covenant on Civil and Political Rights, UN Doc. No. CCPR/C/21/Rev.1/Add.5, 26 April 1994, pp. 2-3.

9 *John Ballantyne and Elizabeth Davidson, and Gordon McIntyre v. Canada*, Communications Nos. 359/1989 and 385/1989, Report of the CCPR, Vol. II, 1992-1993, UN Doc. No. A/48/40. pp. 91-103.

10 *Bulgakov v. Ukraine*, Communication No. 1803/2008, Report of the CCPR, Vol. II (Part One), 2012-2013, UN Doc. No. A/68/40, pp. 187-193; *Raihman v. Latvia*, Communication No. 1621/2007, Report of the CCPR, Vol. II (Part One), 2010-2011, UN Doc. No. A/66/40, pp. 352-361.

11 *Naidenova et al. v. Bulgaria*, Communication No. 2073/2011, Report of the CCPR, Vol. II (Part One), 2012-2013, UN Doc. No. A/68/40, pp. 442-455; *Georgopoulos et al. v. Greece*, Communication No. 1799/2008, Report of the CCPR, Vol. II, 2009-2010, UN Doc. No. A/65/40, pp. 377-389.

freedom of religion,[12] natural water usage,[13] torture and inhumane treatment,[14] hate speech,[15] freedom of expression[16] etc. It even happened in the practice of the Committee that when it could not establish a violation under Article 27 owing to the state's reservation to that article, it stated that the same facts could invoke the breach of other rights guaranteed in the Covenant. In the *Francis Hopu and Tepoaitu Bessert v. France*[17] case, the ethnic Polynesian complainants alleged that a French state-owned company intended to destroy their ancient burial ground by construction works in Tahiti (overseas French territory). Owing to the reservation maintained by France, the Committee was precluded from examining the issue under Article 27.[18] Nevertheless, it declared that the state's actions constituted arbitrary interference with the complainants' family and privacy. Several members of the Committee expressed dissenting opinions to the decision, mainly emphasizing that either the reservation of France was not applicable to French overseas territories (and thus Art. 27 could have been examined), or that visiting a publicly owned burial site cannot be understood as being part of one's right to privacy.[19]

According to the Human Rights Committee, states in their reports regularly confuse the right ensured in Article 27 with the right to self-determination or the duty to guarantee equality before the law and non-discrimination.[20] While people are entitled to self-determination under the International Covenants, Article 27 of the ICCPR guarantees rights to the individual and the community. Article 27 does not require the guarantee of outer or inner self-determination (that is secession, or autonomy or self-government), it only

12 *Prince v. South Africa*, Communication No. 1474/2006, Report of the CCPR, Vol. II, 2007-2008, UN Doc. No. A/63/40, pp. 261-273.

13 *Poma v. Peru*, Communication No. 1457/2006, Report of the CCPR, Vol. II, 2008-2009, UN Doc. No. A/64/40, pp. 216-222.

14 *Titiahonjo v. Cameroon*, Communication No. 1186/2003, Report of the CCPR, Vol. II, 2007-2008, UN Doc. No. A/63/40, pp. 20-26.

15 *Andersen v. Denmark*, Communication No. 1868/2009, Report of the CCPR, Vol. II, 2009-2010, UN Doc. No. A/65/40, pp. 509-518; *Vassilari et al. v. Greece*, Communication No. 1570/2007, Report of the CCPR, Vol. II, 2008-2009, UN Doc. No. A/64/40, pp. 395-405.

16 *Said Ahmad and Abdol Hamid v. Denmark*, Communication No. 1487/2006, Report of the CCPR, Vol. II, 2007-2008, UN Doc. No. A/63/40, pp. 390-403.

17 *Francis Hopu and Tepoaitu Bessert v. France*, Communication No. 549/1993, Report of the CCPR, Vol. II, 1996-1997, UN Doc. No. A/52/40, pp. 70-80.

18 France completely excludes the application of Art. 27, stating that France has a unified nation, where everyone is French, and everyone is equal, thus none should have different rights than the others. See United Nations Treaty Collection. <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en>.

19 See the partly dissenting opinions of Elizabeth Evatt, Cecilia Medina Quiroga, Fausto Pocar, Martin Scheinin and Maxwell Yalden, and the dissenting opinion of David Kretzmer, Thomas Buergenthal, Nisuke Ando and Lord Colville. *Francis Hopu and Tepoaitu Bessert v. France*, Communication No. 549/1993, Report of the CCPR, Vol. II, 1996-1997, UN Doc. No. A/52/40, pp. 81-83.

20 Human Rights Committee, General Comment No. 23, on the Rights of Minorities, Art. 27 of the International Covenant on Civil and Political Rights, UN Doc. No. CCPR/C/21/Rev.1/Add.5, 26 April 1994. p. 1.

prescribes the protection of culture, religion and language. Article 27 cannot be understood as a violation of the requirement of equality before the law or non-discrimination.

Although the sentence is phrased in negative terms, positive measures of protection are required from the state.[21] Such positive measures, among others, are the legislative, judicial and administrative acts which protect the identity of a minority and the enjoyment of the guaranteed rights. The state authorities are also required to protect the members of a minority from the detrimental actions of other persons within the state. Furthermore, positive legal measure of protection should be ensuring the effective participation of members of minority communities in the making of decisions which affect them.[22]

Article 27 guarantees rights distinct from and additional to all the other rights which individuals are entitled to enjoy under the Covenant. The protection of the minority rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned.[23]

While the category of religion and language is quite clear, culture has a wider and sometimes blurred meaning. The interpretation of these definitions can best be demonstrated through the case law of the Human Rights Committee.

5.2.1 Protection of Religion

In the last 20 years, the Human Rights Committee has dealt with numerous cases touching upon religious rights. The freedom to manifest one's religion or beliefs is not absolute and may be subject to limitations which are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others. However, Article 27 guarantees an even wider margin: it only prohibits the full denial of the right.

The main issue in the *Prince v. South Africa*[24] case was, whether the restriction imposed on the practice of religion is acceptable under the human rights standards or not, and whether it leads to the denial of the right altogether. The complainant is a follower of the Rastafari religion, which originated in Jamaica and later in Ethiopia, as a black consciousness movement seeking to overthrow colonialism, oppression and domination. There are about 12,000 Rastafarians in South Africa. The use of *cannabis sativa* (marihuana or cannabis)

21 Id., p. 3.

22 Id.; Besides the explanation provided in General Comment No. 23, clarification of the required positive measures is also assisted by the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. See General Assembly Res. 47/135, 18 December 1992.

23 P. V. Ramaga, 'The Bases of Minority Identity', *Human Rights Quarterly*, Vol. 14, No. 3, 1992, pp. 409-428.

24 *Prince v. South Africa*, Communication No. 1474/2006, Report of the CCPR, Vol. II, 2007-2008, UN Doc. No. A/63/40, pp. 261-273.

is central to the Rastafari religion. It is used at religious gatherings and in the privacy of one's home. It is an offence in South Africa to possess or use cannabis. The complainant fulfilled all academic requirements for becoming an attorney, but before being allowed to practise, prospective attorneys must perform a period of community service. Owing to his criminal record of two convictions for possessing cannabis the claimant was asked whether he intended to use drugs in the future. Since he replied yes, he was denied the right to be registered for community service. He was thus placed in a position where he must choose between his faith and his legal career and he alleged that it meant the breach of Article 18 (freedom of religion) and 27 (right of minority to practice their own religion). The Committee recalled that the freedom to manifest one's religion or beliefs is not absolute and may be subject to limitations, which are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others. According to the Committee, the regulation of the state not allowing the use of cannabis for religious aims was proportionate and necessary (thus no violation of Art. 18 occurred). On the issue of Article 27 the Committee expressed that the state's legislation constituted interference with the complainant's right, as a member of a religious minority, to practise his own religion, in community with the other members of his group. The Committee, however, recalled that not every interference could be regarded as a denial of rights within the meaning of Article 27. Certain limitations on the right to practise one's religion through the use of drugs are compatible with the exercise of the right under Article 27 of the Covenant. The Committee regarded the general prohibition of possession and use of cannabis as a reasonable justification for the interference with the rights under this article (thus no violation of Art. 27 was found).

In the *Waldman v. Canada*[25] case the Committee demonstrated that the same facts can serve as the basis of the breach of several of the rights in the Covenant. The claimant was a Canadian citizen of Jewish faith. He enrolled his children in a private Jewish school, which had a high tuition fee. He claimed that discrimination occurred in the province of Ontario, since the only non-secular schools receiving full and direct public funding were the Roman Catholic schools. Other religious schools must find funding through private sources, including the charging of tuition fees. In addition, the claimant was required to pay local property taxes to fund a public school system he did not use. The complainant stated that Article 27 recognizes that separate school systems are crucial to the practice of religion, that these schools form an essential link in preserving community identity and the survival of minority religious groups and that positive action may be required to ensure that the rights of religious minorities are protected. Since Roman Catholics are the only religious minority to receive full and direct funding for religious education from the gov-

25 *Waldman v. Canada*, Communication No. 694/1996, Report of the CCPR, Vol. II, 1999-2000, UN Doc. No. A/55/40, pp. 86-101.

ernment of Ontario, Article 27 has not been applied, as required by Article 2, without distinction on the basis of religion. In its decision the Committee considered that the differences in treatment between Roman Catholic religious schools, which are publicly funded as a distinct part of the public education system, and schools of the complainant's religion, which are private by necessity, cannot be considered reasonable and objective. The Committee observed that the Covenant does not oblige state parties to fund schools which are established on a religious basis. However, if a state party chooses to provide public funding to religious schools, it should make this funding available without discrimination. This means that providing funding for the schools of one religious group and not for another must be based on reasonable and objective criteria. The Committee declared that the same facts constitute violation of three articles of the Covenant (Arts. 18, 26 and 27).

The following two cases demonstrate that even when the case seems to be explicitly about the right to practice a minority religion, the Human Rights Committee does not always rely upon Article 27. In the *Immaculate Joseph, et al. v. Sri Lanka*[26] case Sister Immaculate Joseph, a Sri Lankan citizen and Roman Catholic nun served as Provincial Superior of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Sri Lanka ('the Order'). She submitted a complaint on her own and the Order's behalf, alleging that among other issues, their right to freedom of religion (Art. 18) and practice of their religious minority rights (Art. 27) had been violated. The Order, established in 1900, is engaged, among other things, in teaching, charity and community work, which it provides to the community at large, irrespective of race or religion. In July 2003, the Order filed an application for incorporation, but after several court proceedings, the Supreme Court declared that registration of the Order would be unconstitutional, since the Sri Lankan Constitution protects Buddhism. According to the Supreme Court the Order spreads Christianity, thus endangers Buddhism. In the decision the Committee recalled that permissible restrictions on the freedom of religion must be interpreted narrowly and with careful scrutiny of the reasons advanced by way of justification. The Committee expressed that proselytization is a part of the freedom of religion, thus the state violated that right of the complainants. After stating the breach of Article 18 the Committee found it needless to separately consider Article 27.

In the *A. R. and M. A. R. Coeriel v. the Netherlands*[27] case the complainants, two Dutch citizens, adopted the Hindu religion and they wanted to change both their first names and family names into Hindu names, while being nationals of and living in the Netherlands. The Dutch authorities allowed the change of their first names, but refused it with respect to their surnames. The state cited that certain principles had been formulated for the change

26 *Immaculate Joseph, et al. v. Sri Lanka*, Communication No. 1249/2004, Report of the CCPR, Vol. II, 2005-2006, UN Doc. No. A/61/40, pp. 347-356.

27 *A. R. and M. A. R. Coeriel v. the Netherlands*, Communication No. 453/1991, Report of the CCPR, Vol. II, 1994-1995, UN Doc. No. A/50/40, pp. 21-28.

of names of persons belonging to cultural or religious minority groups. One of these principles stated that a surname should not be changed if the requested new name had cultural, religious or social connotations. Thus their request for the name-change was refused owing to it having religious connotations. The authors contended that their name change is essential for becoming a Hindu priest, and the rejection hinders that aim. According to the complaint this state action violates their right to religion as well as their right to enjoy their culture and religion as a minority. The Committee refused to deal with the issue under Article 18 or 27, since it found that the complaint was not well-substantiated with respect to these rights. Notwithstanding, it found violation of Article 17 for unreasonable and arbitrary interference with privacy.

The following conclusions can be drawn with respect to the protection of religion under Article 27: the article is violated if the limitation imposed by the state on the practice of one's own religion amounts to the denial of that right. When considering whether the limitation effectively denies that right, the Human Rights Committee takes into account its practice, which has evolved in relation to Article 18. The freedom to manifest one's religion or beliefs is not absolute and may be subject to limitations, which are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others. Not every interference could be regarded as a denial of rights within the meaning of Article 27; reasonable justifications can exist (such as the protection of health and society through the prohibition of the use of drugs). Permissible restrictions on the freedom of religion must be interpreted narrowly and with careful scrutiny of the reasons advanced by way of justification. If a state limits the practice of some religions, but not others, objective and reasonable criteria are needed in order to evade violation of Article 18 or 27. Although in General Comment No. 23 the Committee stated that positive measures of protection are required from the state,[28] it expressed in its case law that the Covenant does not oblige state parties to fund activities on a religious basis. Adding that, if a state party chooses to provide public funding to religious activities, or for example religious schools, it should make this funding available without discrimination. This means that providing funding to one religious group and not for another must be based on reasonable and objective criteria.

5.2.2 Language Rights

As in the case of religious rights, the Committee examines whether the state's interference with that right, through legislation, regulation or any other means, amounts to the *de facto* denial of the enjoyment of that right.

28 Human Rights Committee, General Comment No. 23, on the Rights of Minorities, Art. 27 of the International Covenant on Civil and Political Rights, UN Doc. No. CCPR/C/21/Rev.1/Add.5, 26 April 1994, p. 3.

Article 27 protects the use of one's own language in community with other members of the minority group, however, in reality this poses difficult questions, starting from the issues of the spelling of one's own name, publishing a newspaper in a minority language, providing education in that language, or the right to have an interpreter in legal proceedings or to have the right to proceedings in one's own language etc. Language is even more intertwined with culture than religion, thus in the following cases one might wonder if they could also be included in the category of enjoying minority culture.

In the *Mavlonov and Sa'di v. Uzbekistan*[29] case the subject matter concerned the denial of re-registration of a newspaper in a minority language (Tajik) by the Uzbek authorities and thus restricting the right to enjoy minority culture (Art. 27) as well as the freedom of expression (Art. 19). The newspaper published educational and youth-oriented articles between 1999 and 2001. In 2001 the newspaper was considered by the relevant authority to have published articles inciting inter-ethnic hostility and thus rejected the newspaper's request to be registered again. Several court proceedings occurred, but they upheld the decision of the authorities. The Committee found a violation of the freedom of expression owing to, among others, the extensive bureaucratic impediments to be able to register a newspaper. The Committee made it clear that the question of whether Article 27 has been violated depends upon whether the challenged restriction has an impact so substantial that it does effectively deny the complainants the right to enjoy their cultural rights. The Committee considered that education in a minority language is a fundamental part of minority culture and thus in the present case the denial of a publication dealing with education meant the denial of the right to enjoy minority Tajik culture (i.e. the violation of Art. 27).[30]

However, examination of the case law of the Human Rights Committee over the last twenty years indicates that the Committee rather invokes the breach of other rights of the Covenant – if possible – than the language rights guaranteed in Article 27. The *Bulgakov v. Ukraine*[31] case concerned a Ukrainian citizen of Russian origin, who complained that the Ukrainian state unilaterally, against his will, changed his name from the Russian spelling to the Ukrainian. The claimant maintained, with regard to Article 27 of the Covenant, that since the original name of a person is an essential element of his or her ethnic, cultural

29 *Mavlonov and Sa'di v. Uzbekistan*, Communication No. 1334/2004, Report of the CCPR, Vol. II, 2008-2009, UN Doc. No. A/64/40, pp. 96-105.

30 This also includes the right of the minority to quality education in its own language. The quality of education for members of the Roma community has been a hot topic recently in Europe. See S. Szemesi, 'From Hajdúhadház to Strasbourg: Art. 14 of the European Convention on Human Rights in the jurisprudence of the European Court of Human Rights, with special regard to Roma educational cases', *Miskolc Journal of International Law*, Vol. 5, 2008, No. 2, pp. 64-72; I. Ulasiuk, 'To Segregate or not to Segregate? Educational Rights of the Roma Children in the Case Law of the European Court of Human Rights', European University Institute Working Paper RSCAS 2014/29.

31 *Bulgakov v. Ukraine*, Communication No. 1803/2008, Report of the CCPR, Vol. II (Part One), 2012-2013, UN Doc. No. A/68/40, pp. 187-193.

and linguistic identity, Ukrainian authorities violated his right to enjoy his own culture and use his own language. Since the Committee found a violation of Article 17 (arbitrary interference with one's right to privacy), it decided not to examine separately the claims under Article 27.

The *Raihman v. Latvia*[32] case also demonstrates that the members of the Committee sometimes have a difficult time in deciding which article was breached, when the complainant relies upon several of them. Mr. Raihman, a Latvian national of Jewish and Russian origin complained that the Latvian state unilaterally and against his will changed his name in 1998. The former Russian spelling was changed to the Latvian spelling ('Raihmans'). The claimant alleged that the name 'Raihman' is a Jewish surname, which has been used by several generations of his predecessors. He sought unsuccessfully to have his name officially recorded in accordance with its original Russian and Jewish origins, instead of its Latvian form. The claimant relied upon Articles 17, 26 and 27 of the Covenant. The Committee expressed the view that a person's surname constitutes an important component of one's identity, and that the protection against arbitrary or unlawful interference with one's privacy includes the protection against arbitrary or unlawful interference with the right to choose and change one's own name. The Committee considered that the state party's unilateral modification of the claimant's name on official documents was not reasonable, and thus amounted to arbitrary interference with his privacy, in violation of Article 17 of the Covenant. As the Committee found a violation of Article 17 it decided not to examine separately the claims under Articles 26 and 27.

In a dissenting individual opinion two members of the Committee stated that state parties to the Covenant may regulate activities that constitute an essential element in the culture of a minority, provided that the regulation does not amount to a *de facto* denial of this right. According to the dissenting members, based upon the circumstances of the case, the Committee should have stated that the imposition of a declinable termination on the name and surname of the claimant did not adversely affect his right, in community with the other members of the Jewish and Russian speaking minorities of Latvia, to enjoy his own culture, to profess and practice the Jewish religion, or to use the Russian language.[33]

In other cases with similar subject matter[34] relating to the spelling of one's name, states regularly cite that public authorities would be justified in using the script of the official language or languages of the state to record the names of persons belonging to national minorities in their phonetic form. They allege that Article 27 only guarantees the use of the minority language among the members of the minority, and the claimant is not pre-

32 *Raihman v. Latvia*, Communication No. 1621/2007, Report of the CCPR, Vol. II (Part One), 2010-2011, UN Doc. No. A/66/40, pp. 352-361.

33 Id., p. 363.

34 E.g. *Klečkovski v. Lithuania*, Communication No. 1285/2004, Report of the CCPR, Vol. II, 2006-2007, UN Doc. No. A/62/40, pp. 498-504.

cluded from using his language in community with other members of the minority group. The complainants usually emphasize that a personal name, including the way it is spelt, constitutes an essential element in the culture of any ethnic, religious or linguistic community. It can be concluded that language rights can closely be interlinked with cultural rights.[35]

The *John Ballantyne and Elizabeth Davidson, and Gordon McIntyre v. Canada*[36] case sheds light on two important issues of Article 27. One is related to the definition of minority, namely, how it can be defined which group of people represents the minority population. The other aspect concerns the connection between the language rights of Article 27 and the right to freedom of expression under Article 19. In the Province of Quebec, Canada, local law ordered that all outdoor advertising, commercial signs and names of firms shall only be in French. The complainants stated that they are members of the English-speaking minority in the town, which represented about one-third of the population of the town in question. All of the complainants had to take down the signs of their businesses, since those were in English, even though their clientèle interacted in English. According to the complainants, this rule seriously violates their right to use their own language as a minority. The Committee observed that the provision in Article 27 refers to minorities in states, thus this reference, as others in the ICCPR, to 'State' or to 'States', means ratifying states. The Committee further added that,

> Article 50 of the Covenant provides that its provisions extend to all parts of Federal States without any limitations or exceptions. Accordingly, the minorities referred to in Article 27 are minorities within such a State, and not minorities within any province. A group may constitute a majority in a province but still be a minority in a State and thus be entitled to the benefits of Article 27. English speaking citizens of Canada cannot be considered a linguistic minority. The authors therefore have no claim under Article 27 of the Covenant.[37]

Nevertheless, the Committee declared that the concerned legislation of the province breached the complainants' right to freedom of expression (Art. 19) and recommended the use of bilingual advertising.

The *J.G.A. Diergaardt et al. v. Namibia*[38] case also demonstrates more than one of the issues of Article 27. The case deals with two aspects of Article 27, the first being the rela-

35 For more detail, see, e.g. R. Satkauskas, 'Use of Diacritics: Towards a New Standard of Minority Protection?', *Lithuanian Foreign Policy Review*, No. 21, 2008, pp. 112-135.

36 *John Ballantyne and Elizabeth Davidson, and Gordon McIntyre v. Canada*, Communications Nos. 359/1989 and 385/1989, Report of the CCPR, vol. II, 1992-1993, UN Doc. No. A/48/40, pp. 91-103.

37 Id., Para. 11.2.

38 *J.G.A. Diergaardt et al. v. Namibia*, Communication No. 760/1997, Report of the CCPR, Vol. II, 1999-2000, UN Doc. No. A/55/40, pp. 140-148.

tionship of Article 27 to the right to a fair trial (Art. 14). The second aspect is the clarification of the meaning of culture within the context of Article 27. The complainants were descendants of indigenous Afrikaans settlers in Namibia. Certain of their self-government rights were ensured during the occupation of the territory by South Africa. However, since the independence of Namibia, no such rights were provided. Furthermore, all their communal lands and some assets were expropriated by the state. The complainant alleged that the confiscation of all property collectively owned by the community robbed the community of the basis of its economic livelihood, which in turn was the basis of its cultural, social and ethnic identity. The complainant contended that Article 27 is further violated by the fact that all court proceedings are in English in Namibia, since it is the only official language of the country. As a consequence, the complainants had considerable translation and interpretation costs at all court proceedings related to their case.

In its decision the Committee referred to its earlier case law, which illustrated that the right of members of a minority to enjoy their culture under Article 27 includes protection to a particular way of life associated with the use of land resources through economic activities, such as hunting and fishing, especially in the case of indigenous peoples. However, in the present case the Committee was unable to find that the complainants' could rely on Article 27 to support their claim for exclusive use of the pastoral lands in question. This conclusion was based on the Committee's assessment of the relationship between their way of life and the lands covered by their claims. Although their community had owned the land for about 125 years, this had not given rise to a distinctive culture or a distinctive way of raising cattle. Thus the Committee found no violation of Article 27. The Committee also declared that the required use of the English language in court proceedings was not an issue of Article 27, but Article 14, the right to a fair trial. However, it did not find a breach, since the complainants did not demonstrate how the use of English at court had affected their right to a fair hearing. Nevertheless, with respect to some official language issues, the Committee declared a violation of Article 26 (equality before the law, non-discrimination).

Traditionally, the sphere of minority language rights only included the communication within the community, for example the right to have religious services, publications or education on their mother tongue. However, nowadays language rights seem to have widened, and even though the breach does not occur in the sphere of minority rights (i.e. Art. 27), but other rights of the Covenant (e.g. Art. 17), it directly influences the possibility of the use of the minority language. A specific example of this is the condemnation of such laws, which require the compulsory change of a name into the spelling of the official language (as seen in the *Bulgakov v. Ukraine* and *Raihman v. Latvia* cases). Article 27 serves as the protection of the existence of language, thus the requirement by the state to use the official language of the state in court proceedings does not violate Article 27. Naturally, it might be difficult for a person with a minority language to understand legal procedures

in another language, but – usually – the burden of the extra costs brought about by the use of translators and interpreters shall be borne by the individual and not the state. Nevertheless, it can occur that the individual can successfully claim that his or her right to a fair trial (Art. 14 of ICCPR) was violated due to the language barriers.[39]

5.2.3 *Enjoyment of One's Own Culture*

Culture is a very wide concept. According to Webster's Dictionary – among others – it means 'the integrated pattern of human knowledge, belief, and behaviour that depends upon the capacity for learning and transmitting knowledge to succeeding generations', as well as 'the customary beliefs, social forms, and material traits of a racial, religious, or social group' and 'the characteristic features of everyday existence (as diversions or a way of life) shared by people in a place or time.' Alternatively it can also mean 'a way of thinking, behaving, or working that exists in a place or organization (such as a business).'[40]

In the context of Article 27, the following are all considered to be part of culture: the way of life, thinking, belief, behaviour, attitude toward nature, relationship to land, ways of healing and used medicine, shared history and legends, ceremonies and customs. Additionally, culture also includes certain economic rights, for example the right to work, the right to property[41] etc. Article 27 imposes an obligation on the state parties, not only to protect immaterial aspects of the minority culture, but also to offer legal protection for the material foundation of such culture. The Committee articulated in the *Länsman* cases a test of whether the impact is so substantial that it does effectively deny Article 27 rights. All three *Länsman* cases[42] dealt with the effect of certain economic activities (logging, stone extraction and transportation) on reindeer husbandry, and as such on the enjoyment of the Sami minority's right to enjoy their own culture in Finland. In the third case, titled

39 See e.g. Human Rights Committee, General Comment No. 32, Art. 14: Right to equality before courts and to a fair trial, UN Doc. CCPR/C/GC/32 (2007); Human Rights Committee, General Comment No. 18, Non-discrimination, Thirty-seventh session, 10 Nov. 1989; *Domukovsky and Others v. Georgia*, HRC Communications 623/1995, 624/1995, 626/1995, 627/1995, CCPR/C/62/D/623/1995 (1998), CCPR/C/62/D/624/1995 (1998), CCPR/C/62/D/626/1995 (1998), CCPR/C/62/D/627/1995 (1998), Para. 18.7; *Guesdon v. France*, HRC Communication 219/1986, CCPR/C/39/D/219/1986 (1990), Para. 10.2; *Harward v. Norway*, HRC Communication 451/1991, CCPR/C/51/D/451/1991 (1994), Para. 9.5; *Sobhraj v. Nepal*, HRC Communication 1870/2009, CCPR/C/99/D/1870/2009 (2010), Para. 7.2; *Singarasa v. Sri Lanka*, HRC Communication 1033/2001, CCPR/C/81/D/1033/2001 (2004), Para. 7.2.

40 Merriam-Webster's website, www.merriam-webster.com/dictionary/culture.

41 E.g. *Brok v. The Czech Republic*, Communication No. 774/1997, Report of the CCPR, Vol. II, 2001-2002, UN Doc. No. A/57/40, pp. 110-116.

42 *I. Länsman v. Finland*, Communication No. 511/1992, Report of the CCPR, Vol. II, 1994-1995, UN Doc. No. A/50/40, pp. 66-76; *Jouni E. Länsman et al. v. Finland*, Communication No. 671/1995, Report of the CCPR, Vol. II, 1996-1997, UN Doc. No. A/52/40, pp. 191-204; *Länsman III v. Finland*, Communication No. 1023/2001, Report of the CCPR, Vol. II, 2004-2005, UN Doc. No. A/60/40, pp. 90-102.

Länsman III v. Finland[43] the substantive issue was the extent to which logging may be carried out by the state authorities before it will be considered as violating the rights of reindeer herders. The complainant alleged that the state's forestry authorities allowed logging in areas which were essential for reindeer husbandry and herding. Furthermore, the Ministry of Agriculture and Forestry several times reduced (due to the diminishing herding and feeding areas) the maximum number of reindeers which the claimants were permitted to keep. The Committee expressed that economic activities may come within the ambit of Article 27, if they are an essential element of the culture of an ethnic community. The Committee noted that the infringement of a minority's right to enjoy their own culture, as provided for in Article 27, may result from the combined effects of a series of actions or measures taken by a state party over a period of time and in more than one area of the state occupied by that minority. Thus, the Committee considered the overall effects of such measures on the ability of the minority concerned to continue to enjoy their culture. The Committee decided that despite the difficulties and some economic losses, the overall number of reindeers still remained relatively high and reindeer herding was still possible (thus no violation of Art. 27 occurred).

The same subject matter appeared in the *O. Sara et al v. Finland*[44] and the *Äärelä and Näkkäläjärvi v. Finland*[45] cases (although in both cases the Article 27 claims were inadmissible). Similar problem occurred in the *Jonassen v. Norway*[46] case, where the indigenous Sami people's reindeer herding rights on certain territories were restricted or hindered. The complainants alleged violations of their Covenant rights because the state party had failed to recognize and protect their right to let their herds graze on their traditional grazing grounds (thus not ensuring their right to enjoy their own culture), in violation of Article 27. In that case the Committee found the communication inadmissible owing to the non-exhaustion of domestic remedies.

The Human Rights Committee, unlike in the above-mentioned cases, declared the breach of Article 27 in the *Poma v. Peru*[47] case. The complainant was a farmer living in the high Andes in Peru, her family raised alpacas, llamas and other animals as their only means of subsistence. In the 1950s the government and authorities of Peru started to divert the natural watercourses of the area in order to provide water for other areas. The farmer

43 *Länsman III v. Finland*, Communication No. 1023/2001, Report of the CCPR, Vol. II, 2004-2005, UN Doc. No. A/60/40, pp. 90-102.

44 *O. Sara et al v. Finland*, Communication No. 431/1990, Report of the CCPR, Vol. II, 1993-1994, UN Doc. No. A/49/40, pp. 257-268.

45 *Äärelä and Näkkäläjärvi v. Finland*, Communication No. 779/1997, Report of the CCPR, Vol. II, 2001-2002, UN Doc. No. A/57/40, pp. 117-130.

46 *Jonassen v. Norway*, Communication No. 942/2000, Report of the CCPR, Vol. II, 2002-2003, UN Doc. No. A/58/40, pp. 456-470.

47 *Poma v. Peru*, Communication No. 1457/2006, Report of the CCPR, Vol. II, 2008-2009, UN Doc. No. A/64/40, pp. 216-222.

was a member of the Aymara indigenous community, which have populated that area and lived from the same farming activity for hundreds of years. Since the 1990s the claimant tried to stop the further diversion of natural waters through court proceeding, although the proceedings never ended in a final judgement. The lack of water destroyed the family business and severely interfered with their private life and the practice of their ancient culture and traditions. Although the claimant cited both Article 17 (interference with private life) and Article 27 as the violated rights, the Committee refused to examine Article 17 and declared that the issues raised are related to Article 27. When declaring the violation of Article 27, the reasoning of the Committee stated that the right to enjoy a minority culture may also include a way of life, economic and social activities, which are closely associated with territory and the use of its resources. The protection of these rights is aimed at the insurance of the survival and continued development of cultural identity, thus enriching the fabric of society as a whole. The Committee recognized that a state may legitimately take steps to promote its economic development. Nevertheless, it recalled that economic development may not undermine the rights protected by Article 27. The Committee pointed out that measures whose impact amounts to a denial of the right of a community to enjoy its own culture are incompatible with Article 27, while measures with only limited impact on the way of life and livelihood would not necessarily amount to a denial of the rights under Article 27. Thus case-by-case analysis is necessary and proportionality should also be examined.

When citing Article 27, the individual has to demonstrate that the restricted activity truly forms part of the minority culture and that the restriction based upon that activity makes it impossible for them to practice that aspect of the culture. In the *Howard v. Canada*[48] case the Human Rights Committee clarified both of these requirements. The case is about the limitation of the complainant's right to fish and its impact on his right to enjoy his own culture, in community with other members of his group. The complainant is the member of an aboriginal people of Canada, which concluded treaties with the British Crown, dealing, *inter alia*, with indigenous hunting and fishing rights. According to a treaty concluded in 1923 the indigenous people surrendered all their fishing and hunting rights outside of the reserve. In 1985 the claimant was caught and fined for fishing outside of the reserve. He took the case to court, and finally the Supreme Court of Canada declared that, by force of the 1923 treaty, the indigenous people had lost their rights and had no legal basis to claim it back. After a joint request from the indigenous people, the Ontario Government signed an agreement with them allowing for the exercise of certain hunting and fishing rights outside the reserves. This agreement, however, was terminated by the newly elected Ontario government half a year later. The claimant complained generally

48 *Howard v. Canada*, Communication No. 879/1998, Report of the CCPR, Vol. II, 2004-2005, UN Doc. No. A/60/40, pp. 12-28.

that he and all other members of his First Nation were being deprived of the ability to exercise their aboriginal fishing rights individually and in community with each other and that this threatened their cultural, spiritual and social survival. He contended that hunting, fishing, gathering and trapping were essential components of his culture, and that denial of the ability to exercise this right imperilled transmission of the culture to other persons and to later generations. Specifically, the claimant alleged that the Supreme Court judgement in his case was incompatible with Article 27 of the Covenant, as well as the unilateral termination of the 1995 agreement by the Ontario Government. Furthermore, he stated that the fishing licence required by the state for fishing outside the reserve also violates Article 27. Although both the complainant and the state emphasized the 1923 treaty frequently in their submissions, the Committee expressed that it is not a matter for it to interpret or examine. It declared that it is undisputed that the complainant was a member of a minority enjoying the protection of Article 27 of the Covenant and thus he was entitled to the right to enjoy his culture. Thus it simplified the issue to the question

> whether Ontario's Fishing Regulations as applied to the author by the Canadian courts have deprived him, in violation of Article 27 of the Covenant, of the ability to exercise, individually and in community with other members of his group, his aboriginal fishing rights which are an integral part of his culture.[49]

The Committee rejected the argument that the requirement of obtaining a fishing licence would in itself violate his rights under Article 27. Ultimately, the Committee decided that the information before it was not sufficient to justify the finding of a violation of the Covenant.

Most of the cases invoking the violation of the right to culture in the practice of the Human Rights Committee are related to issues with clear financial aspects. Economic activities may come within the ambit of Article 27, if they are an essential element of the culture of an ethnic community. To enjoy a minority culture may mean a way of life, economic and social activities, which are closely associated with territory and the use of its resources. The protection of these rights is aimed at ensuring the survival and continued development of cultural identity, thus enriching the fabric of society as a whole. In relation to this, the Committee observed that Article 27 does not only protect traditional means of livelihood of national minorities. Even if the members of the minority have adapted their working methods over the years and practice it with the help of modern technology, this does not prevent them from invoking Article 27 of the Covenant. The right to enjoy one's culture cannot be determined *in abstracto* but has to be placed in context.

49 Id., p. 26.

The Committee noted that the infringement of a minority's right to enjoy their own culture, as provided for in Article 27, may result from the combined effects of a series of actions or measures taken by a state party over a period of time and in more than one area of the state occupied by that minority. Thus, the Committee considers the overall effects of such measures on the ability of the minority concerned to continue to enjoy their culture. This means that despite certain difficulties and economic losses caused by the state measures, if the community is still capable of enjoying their culture, then no violation occurs. As it can be derived from the Committee's practice, States parties may understandably wish to encourage economic development and allow economic activity and measures which have a limited impact on the way of life of persons belonging to a minority will not necessarily amount to a violation of Article 27. Article 27 requires that a member of a minority shall not be denied the right to enjoy his culture. Measures whose impact amounts to a denial of the right are incompatible with the obligations under Article 27. However, measures that have a certain limited impact on the way of life and the livelihood of persons belonging to a minority will not necessarily amount to a denial of the rights under Article 27.

Restrictions on the right must have both a reasonable and objective justification and be consistent with the other provisions of the Covenant. Thus in order to determine whether the restriction is acceptable we need to consider: firstly, is it reasonable; secondly, is it objective and finally, does the restriction violate other articles of the Covenant. The question that has to be asked in relation to restrictions is whether the impact of the legislation or state-authorized activity is so substantial that it does effectively deny the concerned persons the right to enjoy their religious, linguistic and/or cultural rights.

The rights guaranteed in Article 27 are directed at ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned. States enjoy a certain degree of discretion in the application of Article 27, which is normal in all regulation of economic activities. Nevertheless, when a state plans an economic activity affecting the life and rights of minorities, it should contact the concerned group and involve them in the planning and decision-making.[50] During the decision-making process it has to be accepted, that the state cannot ignore the economic and social rights of that part of the population (usually coming from the majority) whose subsistence depends upon certain aspects of the state-authorized economic activities (e.g. logging, stone

50 See General Comment No. 23, Para. 7; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly Res. 47/135, 18 December 1992. Arts. 2.3, 5; ILO Convention No. 169, Convention concerning Indigenous and Tribal Peoples in Independent Countries, Geneva, 27 June 1989, Arts. 5-7, 20 (1), 22 (3), 25 (2), 27 (1), 33 (2).

extraction, forestry etc.). In a democratic society compromises are necessary, even if they fail to fully satisfy all the parties concerned.[51]

5.3 Roma Issues at the Human Rights Committee

The Human Rights Committee addresses the protection of minorities from two different perspectives: 1) when considering the periodic reports of states; 2) when considering the individual complaints.

5.3.1 Roma Issues in Periodic Reports of States under the ICCPR

Periodic reports of states generally include the situation of minorities in the country when reporting about the implementation of Article 27. Nevertheless, many of them inform the Committee about the issues of Roma not only under Article 27 but also under other articles of ICCPR.[52] Albania, for example, in its report summarized its National Strategy for Roma as part of the fight against discrimination and a wider guarantee of human rights.[53] While appreciating the legislative and other acts of the state, the Committee expressed its concern over the ill-treatment of Roma detainees,[54] and the lack of cooperation of the state with Greek authorities with respect to more than five hundred Albanian Roma street children who went missing.[55] The Committee declared that Albania should take immediate steps for a more effective implementation of the National Strategy for Roma, especially to provide all Roma with identity cards to enable them to participate in voting, to include them in decision-making, to refrain from blocking access to their existing livelihoods and allocate adequate earmarked resources for the development programs.[56] Similar statements and suggestions can be found in relation to other states' reports as well.[57]

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51 See, e.g. A. Yupsanis, 'Article 27 of the ICCPR Revisited – The Right to Culture as a Normative Source for Minority/Indigenous Participatory Claims in the Case Law of Human Rights Committee', *Hague Yearbook of International Law*, Vol. 26, 2013, pp. 359-411.

52 E.g. Report of the Human Rights Committee, Vol. I, 2013-2014, UN Doc. No. A/69/40, (hereinafter: CCPR Report 2013-2014/I.); Report of the Human Rights Committee, Vol. I, 2012-2013, UN Doc. No. A/68/40, (hereinafter: CCPR Report 2012-2013/I.); Report of the Human Rights Committee, Vol. I, 2011-2012, UN Doc. No. A/67/40, (hereinafter: CCPR Report 2011-2012/I.); Report of the Human Rights Committee, Vol. I, 2010-2011, UN Doc. No. A/66/40, (hereinafter: CCPR Report 2010-2011/I).

53 CCPR Report 2013-2014/I, p. 33.

54 Id., p. 35, referring to Arts. 2, 7, 10.

55 Id., p. 37, referring to Art. 24.

56 Id., p. 38, referring to Arts. 2, 25, 26 and 27.

57 E.g. Czech Republic, CCPR Report 2013-2014/I, pp. 45-47; Ukraine, CCPR Report 2013-2014/I, pp. 57-58; Latvia CCPR Report 2013-2014/I, pp. 127-128; Lithuania, CCPR Report 2012-2013/I, p. 40; Germany, CCPR Report 2012-2013/I, p. 58; Portugal, CCPR Report 2012-2013/I, pp. 64-65.

The concerned states increasingly take a comprehensive approach in protecting the Roma.[58] The different challenges and improvements of their protection appear in the periodic reports at the relevant articles. The discussed Roma-related issues in the periodic reports of states often involved several articles of the ICCPR, but expressly with respect to Article 27, the Committee declared its concern in the following cases:

- discriminatory remarks against the Roma by politicians and in the media and at extremist demonstrations;[59]
- having a pig farm on a World War II Roma concentration camp in Lety, the Czech Republic;[60]
- territorial segregation of Roma from other members of the society (e.g. non-allowance of movement, segregated settlements);[61]
- segregation in education (e.g. Roma-only classes, over-representation of Roma children in schools for pupils with mild mental disabilities, placement of Roma children in special needs classes);[62]
- hate speech against minorities;[63]
- lack of specific law prohibiting the establishment of associations that instigate hatred and racist propaganda;[64]
- acts of vandalism and arson committed against the settlements of Roma;[65]
- involuntary sterilization of Roma women, lack of information about voluntary sterilization in minority language;[66]
- limited possibilities to participate in decision-making and political life, especially at a national level;[67]
- the right of a linguistic minority to choose and change one's own name in the minority language;[68]

58 But see, e.g. I. Uzunova, 'Roma Integration in Europe: Why Minority Rights Are Failing?', *Arizona Journal of International & Comparative Law*, Vol. 27, No. 1, 2010, pp. 283-324.

59 CCPR Report 2013-2014/I, p. 46; CCPR Report 2012-2013/I, p. 270; CCPR Report 2010-2011/I, p. 43.

60 CCPR Report 2013-2014/I, p. 47. See also Human rights of Roma and Travellers in Europe, Council of Europe, Strasbourg, February 2012, pp. 60-61.

61 CCPR Report 2013-2014/I, p. 47.

62 CCPR Report 2013-2014/I, pp. 47, 55, 128; CCPR Report 2012-2013/I, pp. 53, 273; CCPR Report 2010-2011/I, p. 53.

63 CCPR Report 2013-2014/I, p. 58; CCPR Report 2012-2013/I, pp. 53, 58.

64 CCPR Report 2012-2013/I, p. 53.

65 CCPR Report 2013-2014/I, p. 58.

66 CCPR Report 2013-2014/I, p. 242; CCPR Report 2012-2013/I, p. 252.

67 CCPR Report 2013-2014/I, p. 44; CCPR Report 2010-2011/I, p. 84.

68 CCPR Report 2013-2014/I, p. 123; CCPR Report 2012-2013/I, p. 177.

- decrease of measures in support of teaching minority languages and cultures in minority schools (lack of textbooks, production of low quality materials for them etc.),[69] and complete lack of education and media on minority language;[70]
- desecration, contamination and destruction of sacred areas;[71]
- insufficient consultation with the minority on matters of interest to their community;[72]
- forced evictions, interference and dispossessions of land;[73]
- state interference with culturally significant economic activities of minorities without free, prior and informed consent of the community;[74]
- denial of access to state services, government benefits;[75]
- lack of protection of foreign nationals who belong to a minority living in the state party.[76]

Although the reports do not expressly state this, it can be seen from the arguments of the Committee that, when discussing minority issues, they take into consideration the Declarations of the UN General Assembly on Minorities (1992)[77] and on Indigenous Peoples (2007).[78] This is especially so when examining the positive actions a state should take for the protection of a minority. Although General Comment No. 23 provides an explanation of the positive actions expected from the state party to Article 27, it can be supplemented by the requirements of the Declaration on Minorities. These include the facilitation of participation by the members of the minority in the economic life and development, in the life of the society, in legislation concerning them as well as the whole society; the entitlement to maintaining relationships and contact with other individuals belonging to the same minority group (whether they are living in the same country or abroad); the planning of national policies and programs to ensure the rights; and the cooperation of states in the interest of protection.[79]

69 CCPR Report 2013-2014/I, p. 128; CCPR Report 2012-2013/I, p. 53.
70 CCPR Report 2011-2012/I, p. 43.
71 CCPR Report 2013-2014/I, p. 138.
72 Id., p. 138.
73 CCPR Report 2012-2013/I, p. 38; CCPR Report 2010-2011/I, pp. 77, 139.
74 CCPR Report 2012-2013/I, p. 102.
75 CCPR Report 2011-2012/I, p. 41.
76 Id., p. 33.
77 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly Res. 47/135, 18 December 1992.
78 United Nations Declaration on the Rights of Indigenous Peoples, General Assembly Res. 61/295, 13 September 2007.
79 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly Res. 47/135, 18 December 1992. See, e.g. Arts. 2, 4, 5-7.

5.3.2 Roma Issues in the Individual Complaints under the ICCPR

The CCPR usually receives two or three individual complaints annually which concern Article 27. The practice of the Human Rights Committee indicates, that Article 27 is not always cited, even if at first glance the case looks like a minority issue. This can be demonstrated through some typical cases which concern the Roma.

The subject matter of the *Katsaris v. Greece* case[80] was the alleged failure to thoroughly investigate police violence and ill-treatment against an ethnic Roma person. Mr. Nikolaos Katsaris claimed that he was kicked, punched, verbally abused and insulted by police officers because of his ethnicity. The claimant – with others – was taken into custody, but was not informed about any of his rights. After his release, the claimant filed a criminal complaint to the prosecutor against the police officers. Based on the complaint hearings were held, but several of the relevant procedural rules were breached (e.g. unreasonably prolonged procedure, no notification to the claimant of the hearing, no order for forensic medical examination). The Committee found that the acts of the state amounted to a violation of Article 2 (3), read in conjunction with Article 7, and Article 2 (1), as well as Article 26, namely the right to effective remedy, prohibition of torture or cruel, degrading treatment, non-discrimination and equality before the law.

As can be seen, Article 27 was not considered as a relevant right in the case. Thus proper assessment of the events is necessary in order to decide which rights are relevant in the case. In this instance the violation occurred against an individual and not the community, and did fit into other articles of the Convention.

Similar conclusions can be drawn with respect to the *Naidenova et al. v. Bulgaria* case[81] the subject matter of which was the impending eviction and demolition of housing of a long-standing Roma community. The concerned impoverished Roma community had lived in a settlement in Sofia for over seventy years. During this time, the housing had been *de facto* recognized by public authorities, through providing such services as mail, electricity, registration of address. In 2006 the community was informed that they were unlawfully living on municipal land. Since they did not leave the settlement voluntarily an eviction order was issued. Court proceedings started and the final judgement was delivered by the Supreme Administrative Court of Bulgaria in 2009, which ordered the imminent execution of the eviction order. Most of the community had left the area by that time, however 34 persons still lived there, including 15 children. According to the claimant, none of those to be forcibly evicted were offered alternative housing and no meaningful consultation had taken place with the community. The complaint stated that a persistent pattern of

80 *Katsaris v. Greece*, Communication No. 1558/2007, Report of the CCPR, Vol. II (Part One), 2012-2013, UN Doc. No. A/68/40, pp. 35-51.

81 *Naidenova et al. v. Bulgaria*, Communication No. 2073/2011, Report of the CCPR, Vol. II (Part One), 2012-2013, UN Doc. No. A/68/40, pp. 442-455.

racial discrimination against the Roma was visible, including the lack of education and employment, which would be necessary to afford housing at market rates. The claimant submitted that the forced eviction was arbitrary because it was undertaken in a racially discriminative manner, thus the evictions amounted to a violation of Article 17 (right to protection against arbitrary and unlawful interference with one's privacy, home, family etc.), Article 2 (non-discrimination) and Article 26 (equal protection). The Committee found in its decision that

> In the light of the long history of the authors' undisturbed presence in the Dobri Jeliazkov community, the Committee considers that, by not giving due consideration to the consequences of the authors' eviction from the Dobri Jeliazkov, such as the risk of their becoming homeless, in a situation in which satisfactory replacement housing is not immediately available to them, the State party would interfere arbitrarily with the authors' homes, and thereby violate the authors' rights under Article 17 of the Covenant, if it enforced the eviction order of 24 July 2006.[82]

The Committee established the violation of Article 17, but found that the claims under Art. 2 and 26 were insufficiently substantiated for the purposes of admissibility, thus the Committee was hindered from examining the racial or discriminatory nature of the case. Even though ethnic origin or being a member of a minority played a role in these cases, the narrow subject matter was not the practice of culture, religion or language, but other articles of the Covenant.

The same subject matter as in the above-mentioned *Naidenova et al. v. Bulgaria*, appeared in the *Georgopoulos et al. v. Greece*[83] case, although the conclusion is slightly different. In this instance the Committee concluded that the arbitrary and unlawful eviction and demolition of the home of several Roma families had significant impact on their family life and infringement of their rights to enjoy their way of life as a minority. Since the Committee declared a breach of Article 27, it was deemed unnecessary to examine the other cited Articles, namely Articles 17, 23 and 26.

Although Article 27 was not cited in the following case, it addresses hate speech and discrimination against people of Roma origin. In the *Vassilari et al. v. Greece* case, members of a Roma settlement in Greece complained that a Greek court failed to appreciate the racist nature of an open letter published in a newspaper. The open letter, signed by 1,200 non-Roma residents of the area, demanded eviction of the Roma from the illegal settlement

82 Id., p. 455, Para. 14.7.

83 *Georgopoulos et al. v. Greece*, Communication No. 1799/2008, Report of the CCPR, Vol. II, 2009-2010, UN Doc. No. A/65/40, pp. 377-389.

on a land owned by a university and accused the Roma community of specific crimes, including physical assault, battery and arson. In the event of inaction by the university or the authorities, the letter threatened militant action. The case was brought before the national court, which declared that the open letter published in the newspaper did not violate the Greek laws against discrimination. The claimants alleged violations of equal treatment under the law (Art. 26) and fair trial (Art. 14). The latter claim was inadmissible, and the Committee was of the view that the facts before it did not disclose a violation of any of the articles.

5.4 Concluding Remarks

The practice of the Human Rights Committee indicates, that Article 27 is not always cited, even if at first glance the case looks like a minority issue. Examination of the case law of the Committee over the last twenty years indicates that it rather invokes the breach of other rights of the Covenant – if possible – than the rights guaranteed in Article 27. Notwithstanding, even a reservation to Article 27 cannot detain the Committee from condemning a violation of rights. This is highlighted by the example of Turkey: Turkey reserves the right to interpret Article 27 in accordance with its Constitution and the Treaty of Lausanne. This means in general that the Turkish state does not guarantee minority rights to certain ethnic groups (e.g. Kurds) and it has also excluded the right of Turkish nationals to refer to Article 27 in an individual complaint[84] to the Human Rights Committee. Turkey's reservation was objected to by several European states (e.g. Finland, Germany and Sweden). Despite the reservation, the Human Rights Committee expressed concerns for the restrictions and discrimination faced by the Kurds and Roma and called on the Turkish Government to consider the withdrawal of the reservation.[85]

The rights guaranteed in Article 27 can be restricted, they are not absolute rights. Thus in order to determine whether the restriction is acceptable we need to consider: firstly, is it reasonable; secondly, is it objective and finally, does the restriction violate other articles of the Covenant. The question that has to be asked in relation to restrictions is whether the impact of the state-authorized economic activity is so substantial that it does effectively deny the concerned persons the right.

The general protection of minority rights should cover the following: protecting a minority's existence, including their physical integrity; protecting and promoting cultural

84 Individual complaints can be submitted to the Human Rights Committee in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights, New York, 16 December 1966, UNTS Reg. No. 14668. It has significantly fewer parties than the ICCPR: 115 states have become parties, as of May 2015.

85 Report of the Human Rights Committee, Vol. I, 105-107th sessions, 2012-2013, UN Doc. No. A/68/40. p. 69.

and social identity; ensuring non-discrimination and equality, including ending structural or systemic discrimination; and ensuring effective participation of minorities in public life, especially in decisions that affect them.[86] This complex expectation cannot be met by Article 27. It provides for only a minimum standard and only in certain aspects of minority life.

Thus other articles of the ICCPR seem to be equally important in providing protection for the Roma minority. Article 2 on the prohibition of discrimination is an important 'supplement' to Article 27. 'The question of what is or is not discriminatory boils down to a question of justification of differences in treatment.'[87] Traditionally the concept of anti-discrimination policy included assimilation, which partly worked in most countries in relation to Roma. While the majority of Roma people are settled down and have lost their traditional culture and language, they have not become really integrated into the majority society. This phenomenon results in the new face of minority needs: mostly the Roma minority's right to practice religion, language and culture is guaranteed, but they experience discrimination in other fields (e.g. housing, labour, education) and are greatly burdened by poverty.[88] This reality of Roma life has an effect on the application of ICCPR, Roma cases either address discrimination (Art. 2) or a specific right (e.g. the right to life, fair trial, privacy, prohibition of torture, equal protection), and only additionally refer to Article 27.

86 G. McDougall, Addendum to the Report of the Independent Expert on Minority Issues, Achieving the Millennium Development Goals (MDG) for Minorities, a Review of MDG Country Reports and Poverty Reduction Strategies by the UN Human Rights Council, 2 March 2007, A/HRC/4/9/Add.1, pp. 2-3.

87 P. Thornberry, M. A. M. Estébanez, *Minority rights in Europe*, 2nd ed., Council of Europe Publishing, 2006, p. 148.

88 See, e.g. Living together: Combining diversity and freedom in 21st-century Europe, Report of the Group of Eminent Persons of the Council of Europe, Strasbourg 2011. <http://hub.coe.int/event-files/our-events/the-group-of-eminent-persons>; D. M. Crowe, *A History of the Gypsies of Eastern Europe and Russia*, New York, St. Martin's Griffin, 1996; D. Farget, 'Defining Roma Identity in the European Court of Human Rights', *International Journal on Minority and Group Rights*, Vol. 19, 2012, pp. 291-316; I. Klimova-Alexander, *The Romani voice in world politics: the United Nations and non-state actors*, Ashgate, 2005; I. Pogány, 'Minority Rights and the Roma of Central and Eastern Europe', *Human Rights Law Review*, Vol. 6, Issue 1, 2006, pp. 1-26; A. Simoni, 'Roma and Legal Culture: Roots and Old and New Faces of a Complex Equality Issue', *European Anti-Discrimination Law Review*, Issue 13, December 2011, pp. 11-19.