

*Hektor RUCI**

HOW DOES THE PRINCIPLE OF MAJORITY RULE WITHIN DEMOCRACIES INTERACT, AND POTENTIALLY CONFLICT WITH, THE SAFEGUARDING OF MINORITY RIGHTS?

The rule of the majority is a very important principle of any democratic system. Nevertheless, if not properly regulated, it can threaten minority rights and the existence of minority groups. This article attempts to explore the correlation between democratic decision-making vis-à-vis the protection of minority rights from what is seen as the “tyranny of the majority.” It analyses international and European multilateral legal documents, important judicial decisions, as well as several mechanisms of political, social, and legal representation designed to protect minority rights. Furthermore, it analyses the Albanian primary and secondary legislation and the respective challenges in their implementation, by spotting possible limitations in representation, political inclusiveness, and practical applicability. The article opts that a well-founded democratic system, alongside the majority rule, should also incorporate effective remedies regarding the protection and due representation of minorities.

Keywords: minority rights, Albania, majority rule, representation.

1. INTRODUCTION

The concept of majority rule comes from the initial stages of democracy in ancient Athens and implies that the majority (in general terms – a numerical one) takes decisions on matters of public concern and also bears the responsibility for them. This is one of the forms of organizing governments, state institutions, decision-making bodies, etc. The impact of the majority’s decision concerns the whole society, but it becomes more delicate when placed vis-à-vis the exigencies of the minority that they have the responsibility to lead. While minorities can be different – such as political, racial, religious, national, or other – in this paper we shall especially treat the position of national minorities. Such a position will be initially evaluated from a global perspective, analyzing both international legal framework concerning their protection based on international treaties and court decisions etc. affecting minorities in different geographical areas of the world. Afterwards, a more regionally concentrated approach concerning Europe and the Western Balkans will be considered, as well as the reality of minorities in Albania.

* LLM, University of New York Tirana, Albania, ORCID: <https://orcid.org/0009-0004-6363-6011>, e-mail: hruci@unyt.edu.al

2. MAJORITY RULE AND ITS IMPACT ON THE PROTECTION OF MINORITY GROUPS

The concept of the majority rule can be compared to the decision of a group of friends as per where to go for the weekend, i.e., mountains or the seaside. In the case of discordances, without any written rule and by wanting to maintain the group cohesion, the majority votes for the seaside and the minority follows. Once at the seaside, they follow the same rule for choosing the restaurant. This looks democratic, practical, and fair. Nevertheless, the same rule cannot be applied when the same group of friends order their meals. It is logical that everyone has the right to choose, and no opinion or position, or even decision-making of the majority, plays any role when it comes to personal rights.

Meanwhile, in democratic societies, majorities have the responsibility to rule and be accountable for society's welfare under the already existing legal framework. The main goal of such a framework is the limitation of power of the majority, making sure that it does not abuse that power, keeping checks and balances between different actors of society and, last but not least, defending the rights and positions of the minorities as part of their human rights at both personal and group level (Ackerman, 1980, p. 393).

A democratic system is essentially a system of government in which power belongs to the people. The majority rule ensures that decisions are made by the majority of voters, with the aim of representing the most views, choices, and needs. Democratic processes, such as elections and referendums, embody this principle, offering the feeling that each vote counts and every citizen participates in decision-making by having an equal share in that process. However, though crucial to the functioning of democracy, this principle can be dangerous when applied without moral limits and safeguards (Novak, 2014).

In such democratic systems there is always a danger of the so-called "dictatorship of the majority." The term describes precisely the aforementioned situation, in which the will of the majority is imposed unchecked, ignoring or even crushing on the rights of minorities (De Tocqueville, 2003). In this context, democracy can degenerate into a system of oppression, where numerical superiority becomes a weapon rather than an instrument of justice. When the majority decides without taking into account the needs and concerns of the less powerful, it loses its moral dimension and becomes authoritarian, despite being presented as the "popular will" (Brighouse & Fleurbaey, 2010).

It is important to understand that democracy is not just a mathematical act of counting votes, regardless of whether it fulfills all democratic standards. The definition of minorities by Prof. Capotorti specifically mentions that "a minority is numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show if only implicitly a sense of solidarity, directed towards preserving their culture, traditions, religion or language" (Capotorti, 1991). Despite being a widely accepted definition and used extensively by the United Nations Centre for Human Rights (Roukounas, 2006), this description covers only certain kinds of minorities, leaving outside specific groups of people who may have common elements of belonging to the concept of minorities, such as minorities based on special needs, sexual orientation, cultural history, etc. Minorities, although numerically smaller, must have the right to openly declare their entitlement of belonging to the minority, express their opinions, and live without being oppressed. No disadvantage should

be created because of pertaining to a specific minority (Craig, 2016). These rights should be connected to the nature of their existence as a minority, i.e., ethnic, linguistic, cultural, etc. If the system does not protect these particularities, it risks becoming a system of government in which the many rules at the expense of the few, without taking into account the needs of the society as a whole, noting that all of the people are an integral part of it (Meka & Kalemaj, 2018).

3. PROTECTION OF INDIVIDUAL LIBERTIES BY FAIRNESS AND INCLUSIVENESS

Every majority has the right to lead, but, at the same time, it has the obligation to treat every minority fairly within its jurisdiction and give its members every possibility to be part of the system by safeguarding their identity, cultural heritage, language, religion, etc. Such inclusion is meant to secure the inclusiveness of the minority in decision-making, respect its rights, and offer it peaceful coexistence with the majority of the population. According to the UN Human Rights Commissioner, “[s]tates, through their commitments under treaty law, and minorities themselves or their representatives, can influence the human rights monitoring and implementation procedures and work toward securing effective participation and inclusion.” (UNHCR, n. d.).

The abovementioned reference means that states and the minorities who live in them have to cooperate in order to achieve the aforementioned inclusiveness and prepare the necessary legal framework for the protection of rights, and hence also achieve practical inclusiveness into state, political, cultural, and social affairs.

Democratic states have an obligation to protect minorities, and such protection comes from the legal framework those very democracies themselves have chosen to apply. When talking about the legal framework, we can distinguish between domestic and international legislation.

a. Domestic legislation. It is primarily composed of constitutional provisions which have the protection of human rights and minority rights as one of its core objects. The Bill of Rights, which appeared as part of the first ten amendments of the Constitution of the United States of America (1787), sanctioned the limitation of state power and extended the protection of all basic rights to everyone living in the United States of America (hereinafter: the US), without distinction as to whether the person is a resident or not. Those rights included all minorities as the only criterion in enjoying those rights (and liberties) was the fact of a person being human (UHR, n. d.). This set of documents constitutes a very wide concept of inclusivity and therefore belongs to the circle of the most significant legal provisions in the field of the protection of basic rights and freedoms.

Most democratic constitutions have included as part of their provisions a specific chapter on human rights, giving to those rights maximal legal protection as part of their basic laws (i.e., The Basic Law of [West] Germany specifically recognizes them as the basis of every community, by claiming that “[t]he German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world.” (FRG Basic Law, 1949, Art. 1)

b. Court decisions: in the landmark case of *Brown v. Board of Education* (1954), the United States Supreme Court practically decided to end the racially based segregation and to proclaim rights to every minority in the United States in their entirety (*Brown v. Board of Education*, 1954). This decision became one of the most important legal instruments in the effort against

segregation and minority rights in general, securing those rights by a very high standard as decisions and precedents of the US Supreme Court.

c. International conventions: The Universal Declaration of Human Rights (adopted in 1948 by the United Nations) provides in its Article 2 that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (UDHR, 1949, Art. 2). This provision forms a general framework of protection, which was enriched by subsequent multilateral conventions, the most important of which is perhaps the International Covenant on Civil and Political Rights (1966), specifically its Article 27, stating 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” (ICCPR, 1966, art. 27). The article refers *explicitly* to the rights that members of the minorities have as individuals, and not as groups (Achour, 1994, p. 321). This theory, which is generally accepted, has passed through the stages of time and history as a precaution measure from the States, in order for them to isolate the extent of the rights on the one hand and *play safe* on the other, with respect to non-violence and positive application to any minority rights (Bossuyt, 1987, p. 494).

Furthermore, despite being a non-binding document, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities represents an important part of the international legal framework of minority rights. It specifies that “persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination” (UN Declaration, 1992). According to Prof. Roukounas (2006, p. 293), the Framework Convention for the Protection of National Minorities, together with the European Convention on Human Rights, constitutes the most advanced mechanism of protection, drafted and applied among those member states of the Council of Europe that have ratified it, and granting extensive rights and guarantees to the minorities.

4. POLITICAL REPRESENTATION

The political representation of minorities constitutes an important aspect of the right of representation and inclusiveness of the minorities in the political and institutional life of a given country. Nevertheless, states may apply two distinctive approaches on this matter. The first one is the approach of non-discrimination containing no exceptions (including positive discrimination), in which political and institutional representation claims that persons belonging to minorities may compete, in the same manner as all other persons, for any public position, and no disadvantage can be created because of this belonging (Ruci, 2023). Despite the fact that such a right does not necessarily imply the obligation of a state to offer reserved places within public administration, due to specific historical and social conditions, certain states have very distinctive regulations when it comes to the political representation of minorities. In this regard, we can mention *inter alia* the examples of Romania,¹ Slovenia,² and

¹ The Constitution of the Republic of Romania, Art. 66/2.

² The Constitution of the Republic of Slovenia, Art. 64.

Croatia,³ which reserve for the ethnic minorities living in their territory a specific predesigned number of seats in the national parliament.

In this regard, the representatives of minority groups in the parliament can be (and often are) used as “kingmakers,” in the sense that they provide the indispensable support to create the governing majority. It is obvious that in such cases their role and importance increase dramatically, and minorities enjoy a prominent position, which enables them to push forward their specific demands and agendas (Culic, 2016, p. 198).

5. THE TYRANNY OF THE MAJORITY

Various distinguished scholars, such as John Rawls and Ronald Dworkin, have problematized the influence that majority rule might receive from other influence groups, such as trade unions. As minorities are usually not part of these groups, there is always the risk of cutting out minorities’ interests from the forms of future laws, administrative decisions, and their practical implementation (Dworkin, 1985).

Such reservations about the democratic process are not entirely unfounded. The fear of the “tyranny of the majority” is not simply a theoretical concept. The dominance of the will of the “many” has repeatedly proven to be abusive and detrimental to individual and collective freedoms. At this point, it is appropriate to distinguish two different levels regarding the meaning of the term ‘majority principle’ (Unger, 1996, p. 72). This is a distinction to which de Tocqueville aptly referred, analyzing the problem of democratic tyranny, by claiming: “I consider this principle to be impious and repulsive, that in matters of government the majority of a people has the right to do whatever it wants, and yet I place in the will of the majority the source of all powers” (Kendall, 2007, p. 24).

5.1. *Historical cases*

The Jim Crow laws, adopted in the US in the second part of the 20th century, constitute a flagrant deviation from the protection of minority rights by sanctioning the “white supremacy,” implementing segregation, and denying equal opportunities (American Experience, 2025). Theoretically, according to these laws, persons of African-American origin in the US enjoyed “equal but separate” rights. Taking a deeper look into the practical implementation of these documents, the facilities used by African-Americans were much inferior, and various discriminatory mechanisms were used against the members of the oppressed population, such as the test of literacy (when it came to voting rights). Therefore, the conferred rights were practically impossible to exercise and resulted in African-Americans having no rights guaranteed at all (American Experience, 2025).

5.2. *Modern examples*

Hindu nationalist policies against Muslim minorities, according to Human Rights Watch, constitute a severe threat to the human rights of the Muslim minority in India. Prejudices against this group have been expressed by various state institutions, including the police, courts, and public administration, giving grounds to Hindu nationalist elements to openly and without any fear of deterrence harass individuals of the Muslim minority. According

³ The Constitution of the Republic of Croatia, Art. 15

to Meenakshi Ganguly “the Bharatiya Janata Party’s embrace of the Hindu majority at the expense of minorities has seeped into government institutions, undermining equal protection of the law without discrimination” (Human Rights Watch, 2021). In addition, “the Indian government has not only failed to protect Muslims and other minorities from attacks but is providing political patronage and cover for bigotry” (Human Rights Watch, 2021). It is therefore evident that the majority discrimination against minorities can be performed either through legal coverage or at least institutional silence. Both options consist of a combination of state power and influence of the majority groups in a more social dimension enhanced by the non-actions of that very same majority. Therefore, what is indispensable to the protection of minorities is a combination of due legal protection and the good will of independent and capable institutions which can resist undue pressure from the majorities.

6. INSTITUTIONAL DISCRIMINATION AGAINST MINORITIES

State institutions and policies can find and apply different forms of discrimination as per the application of their policies and procedures. Such forms can be synthesized as below:

a. Legal barriers: Specific legislation can sometimes serve as a barrier to the enjoyment of well-sanctioned rights when it mainly concerns certain specific groups of society. An actual example of that is the voter ID laws in the US, which make it compulsory for the voter to have a government issued photo ID when they vote. For many people, primarily members of the minorities in the US, this can be seen as a real obstacle in performing one of the main rights, but at the same time it represents the main obligation of the citizens, that is, the right to elect and the right to be elected. According to the League of Women Voters, “[i]n combination with the ineffectiveness of voter photo ID laws at preventing the rare instances of voter fraud, the more likely results of voter photo ID laws are voter suppression and reduced turnout among vulnerable populations.” (Horine, 2023). Another form of discrimination is the “citizenship laws in Myanmar,” which give citizenship only to specific groups linked to a national race. Therefore, other groups which do not belong to prescribed races – such as the Rohingyas, South Asians, etc. – cannot enjoy the right to citizenship (ICJ, 2019).

b. Socio-economic inequality: According to the American Psychological Association, “socioeconomic status (SES) encompasses not just income but also educational attainment, financial security, and subjective perceptions of social status and social class. Socioeconomic status can encompass quality of life attributes as well as the opportunities and privileges afforded to people within society.” (APA, n. d.) This is a form of discrimination which deprives marginalized groups (which are principally minorities) from direct access to quality education, valuable resources, equal career opportunities, etc. (APA, n. d.).

c. Cultural assimilation policies: A recent debate in the French Senate and the general public has evolved regarding the use of the hijab and other religion-related clothing in sports competitions in France. New legislation is supposed to ban such use in all activities.

It can be evaluated that this law shall mainly affect women belonging to religious minorities and shall exclude them from participation in sports. According to Amnesty International, “under the guise of implementing the notion of ‘secularism’, these laws target and disproportionately impact the rights of Muslim women and girls who will be excluded from competing in all sports if they wear a hijab or any other religious clothing.” (Amnesty International, 2025)

7. MINORITIES IN THE ALBANIAN REALITY

The respect of human rights in Albania and, more specifically, minority rights, took a new course after the fall of the communist regime in Albania and the restoration of democracy in 1991. Since then, different legal and political safeguards have been added in order to protect minorities and keep them integrated into Albanian society.

7.1. Majorities' decisions regarding the respect for human rights

The first Albanian post-communist Constitution of 1998 in its Article 20 specifies that: "1. Persons who belong to national minorities exercise in full equality before the law the human rights and freedoms," as well as that "2. They have the right to freely express, without prohibition or compulsion, their ethnic, cultural, religious and linguistic belonging. They have the right to preserve and develop it, to study and to be taught in their mother tongue, as well as unite in organizations and associations for the protection of their interests and identity" (Constitution of the Republic of Albania, art. 20).

In addition, the Stability and Association Agreement between Albania and the European Union, which constitutes one of the most important legal documents in the process of Albanian European integration, specifies the importance of "considering the commitment of the Parties to increasing political and economic freedoms as the very basis of this Agreement, as well as their commitment to respect human rights and the rule of law, including the rights of persons belonging to national minorities, and democratic principles through a multi-party system with free and fair elections". (SAA, 2009)

Albania is a member-party of Council of Europe's Framework Convention for the Protection of National Minorities (hereinafter: FCPNM), in which extensive rights are given to minorities. The FCPNM also specifies the duties conferred upon any state to protect and safeguard their rights. In its Article 3, the FCPNM specifies that "every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice," and that "persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others." (FCPNM, art. 3)

Alongside these international obligations, Albania has adopted a law regarding national minorities and their protection. This law recognizes nine different national minorities, namely, the Greek, Macedonian, Aromanian, Roma, Egyptian, Montenegrin, Bosnian, Serbian, and Bulgarian. Among other provisions, the law, in its Article 6, provides that every person belonging to a national minority has the right of self-declaration if he/she believes that they belong to a certain national minority. Thus, in accordance with Paragraph 1 of Article 1 of the abovementioned law, "[e]very person belonging to a national minority has the right to freely choose to be treated as such, without any disadvantage from this choice or exercise of the rights that are related to this election," whereas Paragraph 2 claims that "persons belonging to national minorities exercise their rights and enjoy the freedoms guaranteed by this law, individually and in community with others, throughout the territory of the Republic of Albania" (Law 96/2017).

Of course, in making such a declaration effective, persons belonging to national minorities should fulfil several objective criteria (ethnicity of parents as reflected in official documents)

and subjective criteria (logical personal feeling connected to mother tongue, family heritage, inherited culture, etc.).

7.2. Political representation of minorities

Political representation of minorities in the Parliament of the Republic of Albania started with the first democratically elected parliament after the fall of communism in 1991 and continued over time (Debate parlamentare, 1991, p. 145). Actually, in the Albanian parliament there is at least one member who belongs to a political party that has as its main scope the protection of national minorities (*Partia Bashkimi per te Drejtat e njeriut*, or PBDNj) (Institute for Political Studies, 2011). Also, there are other members belonging to diverse minorities, but who are part of the other political parties. The leader of the PBDNj, Vangjel Dule, served for a certain period of time as the Vice Chairman of the Albanian Parliament, while also different governments of post-communist Albania have included in ministerial positions individuals and/or politicians belonging to national minorities (Telegraf, 2013).

7.3. Issues of minority representation

Despite the notable progress of minority rights in Albania, there are still problems and malfunctioning issues regarding the implementation of rights and their full respect within the Albanian legislation and social reality.

Albania has done many good steps forward when it comes to the protection of human rights in general and minority rights in particular. Albania's accession to the most important human rights treaties, including the United Nations Charter of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights and Basic Freedoms, the Framework Convention on the Protection of National Minorities, etc., has secured an ensuring level of protection. Participating in those international conventions entails precise guarantees for individuals belonging to national minorities, as well as other duties for the state and public administration in general versus the effective protection of basic rights and freedoms.

Nevertheless, we can still witness issues and problems, as well as standards which have not yet been met. For example, in the decision of the European Court of Human Rights brought in the case *X and others v. Albania*, 2022, the Court found that there is still a concrete and direct discrimination regarding the Roma minority in a school in the city of Korca (*X and others v. Albania*, 2022). Despite the fact that the Roma population composes approximately 5% of the total city population, pupils belonging to the Roma minority represent more than 95% of the total number of pupils in the "Naim Frasheri" school. In the view of the Court, this reality appeared as a direct form of segregation, therefore constituting a serious violation of human rights.

Despite passing the aforementioned Law on the Protection of National Minorities, the Albanian government has not yet proceeded with necessary bylaws regarding the use of the mother tongue in the areas where persons belonging to national minorities compose more than 20% of the total population (Law 96/2017, Art 15). This creates ground for non-application of specific and very important rights, such as the right to education in the mother tongue, including the opening of schools or classes where lectures take place in the minority language and the right to use that language in relation to public administration, bilingual road signs, etc.

Another problem is the enjoyment of property rights, especially for those individuals belonging to the Greek national minority living in the south of Albania. Despite the fact that Albania has for more than 30 years had severe problems when it comes to property titles for all of its population, these problems appear sharper when we talk of minorities. Namely, the opinion of the Permanent Court of International Justice in the case “Greek minority schools in Albania” (1935) sanctions that the position of minorities should not deteriorate and that they shall need a dual protection, despite the fact that such deterioration has affected the population as a whole (PCIJ, *Minority Schools in Albania*, 1935).

When it comes to the obligations of Albania regarding its integration process in the European Union, the progress reports since the signature of the Stability and Association Agreement have mentioned that there are still problems with the respect of minority rights.

The reports affirm that in general Albania is well developing its legal framework, mainly under the guidelines of the FCPNM, but there are three elements that do need further settlement and implementation. These elements are:

- Despite the aforementioned non-discriminatory legislation, issues of participation in the public sector seem to have practical problems as regards their implementation. The Progress Report specifies that “the Civil Service Law provides for the participation of minorities in public administration, the armed forces and the police (...) However, minority representation remains limited” (Albania Progress Report, 2023). The leader of the Union of Human Rights Party officially stated in an interview for the BBC that there is a specific need to employ persons belonging to the national Greek minority within the State Police Forces (Dule, 2010).
- The institutional/administrative support for the minorities relying on the State Committee on Minorities does not seem to be adjusted to the requested level. According to the Progress Report, “the institutional capacity of the State Committee on Minorities remains weak. Its role as intermediary between the government and minority representatives requires further strengthening in order to ensure effective participation of minorities in decision-making” (Albania Progress Report, 2023).

It is therefore imperative that Albania should provide for the necessary enrichment of its legal framework, combined with a genuine will and desire for the proper application of the existing provisions. The concepts of minority rights require the everlasting need for attention and adoption, in terms of legislation, practice, and institutional acceptance.

8. CONCLUSION

The rule of majority is associated with a great deal of responsibilities when it comes to decision-making and the impact which these decisions have on the life and social inclusion of the minorities. In general, there are plenty of legal safeguards securing respect for minorities worldwide in the form of international and domestic legislation, practices and court decisions. Despite all of these, in many areas of the world, minorities still lack basic human rights, representation rights, and their protection from majority rule is not full and secure. Most of the European countries, mainly due to their long democratic traditions and/or the existence of advanced European legislation, have a more solid ground for protecting minorities and taking into consideration their rights and needs; additionally, more representation is secured in both decision-making bodies and public administration. When it comes to

Albania, many mechanisms of protection are enabled by its Constitution, laws, as well as the country's international obligations. Nevertheless, there is still room for improvement both in passing new laws and making the existing ones functional.

The debate as per now remains open-ended, as different perspectives emphasize different priorities, and democratic legitimacy through majority rule is trying to strike a balance between itself and a stronger protection for minority groups.

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