

**Minority Right to Effective Public Participation: a comparative case study of the Russian-speaking minority in independent Estonia and Latvia**

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**Lilija Alijeva, School of Advanced Study, University of London**

**Abstract:** The right to effective public participation for minorities is an important element of minority rights protection, minority politics, and conflict-prevention. This is a relatively new normative development ensured in legally binding and politically binding international and regional agreements. However, in the context of post-Soviet Estonia and Latvia a challenging picture is revealed, where the large Russian-speaking minority's opportunities to participate in public affairs are faced with a number of obstacles. However, differences and similarities exist in how this norm is realised in the two Baltic States. By adopting a social constructivist approach from the discipline of International Relations, this research aims to test theories on 'socialisation' or norm implementation and determine how the right to effective public participation has been promoted by international organisations (IOs), who are key actors in the socialisation process. This paper is based on a larger doctoral research project in law, which uses qualitative research method. This paper aims to draw attention to the normative framework of the right, the trends of representation of the Russian-speaking minority in public institutions and share some findings on the role and actions of IOs in the process of socialisation.

## **1. Introduction**

There have been rapid developments of minority rights norms and their implementation since the early 1990s. This research examines a specific minority rights norm relating to participation of persons belonging to minorities in the political and public spheres of the state they live in, the right to effective public participation. While this minority right is relatively new, it already forms an important element of minority rights protection. This is normative development ensured in legally binding and politically binding international and regional agreements.

Although the specifics of the discussed norm have been widely documented, there are still important gaps in scholarship. For example, researchers focus on the interpretation of the right to effective public participation for minorities.<sup>1</sup> However, questions of implementation and a comprehensive explanation of particularly challenging cases are largely absent from current academic discussion.

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<sup>1</sup> Marc Weller, 'Article 15' in Marc Weller (ed), *The Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford University Press 2005); Marc Weller and Katherine Nobbs (eds), *Political Participation of Minorities. A Commentary on International Standards and Practice* (OUP 2010); Stefan Wolff and Marc Weller, 'Self-Determination and Autonomy: A Conceptual Introduction' in Marc Weller and Stefan Wolff (eds), *Self-governance and Conflict Resolution: Innovative approaches to institutional design in divided societies* (Routledge 2005).

The context of post-Soviet Estonia and Latvia has been selected for this study because the cases reveal a challenging picture. While the Russian-speaking minority forms a large part of the population in both states, the opportunities to participate in public affairs are faced with a number of obstacles. The current academic consensus limits the obstacles to the current citizenship and language policies in the two states.<sup>2</sup> However, there have been very limited number of contributions examining wider processes that are taking place, such as pressure from International Organisations (IOs).<sup>3</sup>

This paper relies on social constructivist theories of International Relations (IR) to examine the way in which IOs promoted the rights to effective public participation in Estonia and Latvia. In particular, the emerging theories on ‘socialisation’ processes and its effects. Constructivists interpret the process of norm socialisation as a process by which states and other actors “internalise norms and act in accordance with them because they understand them to be correct or appropriate.”<sup>4</sup> In the human rights norm socialisation process, human rights norms have a special status because they both prescribe rules for appropriate behaviour and help define identities of liberal states.<sup>5</sup>

This paper is based on a wider empirical study, which uses process-tracing method and qualitative data in the form of legal documents and interviews with the Russian-speaking minority representatives. This paper will first explore the normative framework of the right to effective public participation and the trends of participation of Russian-speakers in public affairs, before turning to the theoretical approach and findings on the role of IOs in the process of socialisation.

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<sup>2</sup> Rogers Brubaker, ‘Citizenship Struggles in Soviet Successor States’ (1992) 26 *International Migration Review* 269 <<http://www.jstor.org/stable/2547057>>; Aadne Aasland and Tone Fløtten, ‘Ethnicity and Social Exclusion in Estonia and Latvia’; Anton Steen, ‘Ethnic Relations, Elites and Democracy in the Baltic States’ (2000) 16 *Journal of Communist Studies and Transition Politics*; Licia Cianetti, ‘Granting Local Voting Rights to Non-Citizens in Estonia and Latvia: The Conundrum of Minority Representation in Two Divided Democracies’ (2014) 13 *Journal of Ethnopolitics and Minority Issues in Europe* 86; Kristina Kallas, ‘Political Participation of National Minorities in Decision-Making Process: Cases of Estonia and Latvia’, *International Workshop Focusing on Effective Political, Economic & Social Participation of Minorities* (2008); Carmen Thiele, ‘The Criterion of Citizenship for Minorities: The Example of Estonia’ (1999) 12; Peter Van Elsuwege, ‘Russian-Speaking Minorities in Estonia and Latvia: Problems of Integration at the Threshold of the European Union’ (2004) 20 *ECMI Working Paper*.

<sup>3</sup> David Galbreath, ‘The Politics of European Integration and Minority Rights in Estonia and Latvia’ (2003) 4 *Perspectives on European Politics & Society* 19; David J Galbreath and Joanne McEvoy, *The European Minority Rights Regime: Towards a Theory of Regime Effectiveness* (Palgrave Macmillan 2012); David Galbreath, ‘The Baltic States from the Soviet Union to the European Union: Identity, Discourse and Power in the Post-Communist Transition of Estonia, Latvia and Lithuania’ (2014) 45 *Journal of Baltic Studies*; Peter Van Elsuwege, *From Soviet Republics to EU Member States: A Legal and Political Assessment of the Baltic States’ Accession to the EU* (Martinus Nijhoff 2008).

<sup>4</sup> Martin V Totaro, ‘Legal Positivism, Constructivism, and International Human Rights Law: The Case of Participatory Development’ (2007) 21 *Virginia Journal of International Law* 719, 728.

<sup>5</sup> Thomas Risse and Kathryn Sikkink, ‘The Socialization of International Human Rights Norms into Domestic Practices: Introduction’ in Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 2009) 8.

## 2. Minority right to effective public participation

An individual's right to participate in political and public affairs, whether directly or through elected representatives, has been regarded as one of the fundamental aspects of a liberal democratic society governed by rule of law, principles of social inclusion and economic development, as well as in advancement of all human rights.<sup>6</sup> However, many obstacles exist in realising equality of opportunity for each individual to participate in public affairs, which may include direct and indirect discrimination on grounds such as race, colour, religion, descent, sex, disability, language and many more.<sup>7</sup>

Therefore, it comes as no surprise to find that the right to participate in public affairs has been enshrined into the existing minority rights protection regime. Currently there are four key pillars of minority rights protection: (1) the protection of a minority's existence, including combating violence and preventing genocide; (2) the protection and promotion of minority groups identity and to reject forced assimilation; (3) the guarantee of the right to non-discrimination and equality, including the ending systemic discrimination and the promotion of affirmative action; and (4) the right to effective participation in public life and decision that affect them.<sup>8</sup> IOs and regional bodies have increasingly emphasised on the need to improve and facilitate the right to public participation of ethnic, linguistic, religious, and national minorities.<sup>9</sup>

The right itself is not set out or defined in one legal document, but it is spread out in a vast body of norms, practices, principles, comments, and recommendations. Most of the explicit emphasis comes from organisations focused on conflict-prevention and security. The first explicit reference to the right can be found in paragraph 35 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension (the Copenhagen Document) of the Conference on Security and Co-operation in Europe (CSCE, currently is known as the Organisation for Security and Co-operation or OSCE) that took place on 29 June 1990. Two years later, the CSCE reaffirmed

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<sup>6</sup> 'Equal Participation in Political and Public Affairs' (*Office of the High Commissioner on Human Rights*) <<https://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx>> accessed 4 April 2019.

<sup>7</sup> *ibid.*

<sup>8</sup> 'Report of the Special Rapporteur on Minority Issues, Comprehensive study of the human rights situation of Roma worldwide, with a particular focus on the phenomenon of anti-Gypsyism' (United Nations, 11 May 2015) A/HRC/29/24, para. 17; and 'Guidance Note of the Secretary-General on Racial Discrimination and Protection of Minorities' (2013) para. 41 <<http://www.ohchr.org/Documents/Issues/Minorities/GuidanceNoteRacialDiscriminationMinorities.pdf>> accessed on 20 July 2017.

<sup>9</sup> Yash Ghai, *Public Participation of Minorities* (Minority Rights Group International 2003) 3.

commitments of ensuring effective public participation for minorities in the Helsinki Document titled ‘the Challenges of Change.’<sup>10</sup> This document also emphasised state responsibilities to:

[...] ensure the free exercise by persons belonging to national minorities, individually or in community with others, of their human rights and fundamental freedoms, including the right to participate fully, in accordance with the democratic decision-making procedures of each State, in the political, economic, social and cultural life of their countries including through democratic participation in **decision-making** and **consultative bodies** at the **national, regional** and **local level**, inter alia, through political parties and associations.<sup>11</sup>

Here, the right to effective public participation for minorities started to take shape and developed comprehensive aspects of what it actually entails. From the wording in the Helsinki Document it is clear that there are some aspects relating to decision-making and consultation processes on national and local levels.

Later on, the right to effective public participation of minorities appeared in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) in 18 December 1992. This signalled that the right is not only important to Europe and Western states, but also to the wider international community.

However, the described documents are of political nature and do not impose legally binding obligations on states. This changed in February 1995, when the Council of Europe (CoE) adopted the Framework Convention for the Protection of National Minorities (FCNM). Here, for the first time a legally binding provision for the promotion and protection of the right to effective public participation for minorities was set forth. In the Explanatory Report the CoE stated that the aim of this right is to “encourage real equality between persons belonging to national minorities and those forming part of the majority” that included measures of creating consultation bodies, involvement of these people in national and regional development plans, undertaking studies in conjunction with these people, participation in decision-making on national and local levels, and decentralised or local forms of government.<sup>12</sup> The aspect of decentralisation or self-governance was a novel element of the right not stated in previous documents. The implementation of Article 15 is monitored by the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) on a basis of review cycles.

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<sup>10</sup> Conference on Security and Cooperation in Europe (CSCE) Helsinki Document 1992 The Challenges of Change (9-10 July 1992) sec 4 para 23.

<sup>11</sup> *ibid* para 24.

<sup>12</sup> Council of Europe (CoE) Framework Convention for the Protection of National Minorities and Explanatory Report (February 1995) H(95)10 para 80.

While the politically and legally binding legislation has significantly developed, there was an absence of clear boundaries of what the right applied to and in what circumstances. On 1 September 1999, the OSCE with the initiative of the High Commissioner on National Minorities (HCNM) developed a set of recommendations – The Lund Recommendations on Effective Participation of National Minorities in Public Life (Lund Recommendations), to set out a comprehensive understanding of effective public participation for minorities, which synthesised the elements of documents outlining the norm to effective public participation and divided it mainly into two spheres: decision-making and self-governance.

Recommendations for decision-making set out special arrangements at a national and local level, such as:

- special and equal elections procedures (lower numerical thresholds and careful consideration of drawing the boundaries of electoral districts);
- advisory bodies (or special purpose committees);
- special representation of minorities through reserved number of seats;
- provision of public services in the language of the national minority.

Self-governance arrangements are realised in the form of territorial and non-territorial arrangements, which could divide functions between central authorities and decentralised bodies. Functions generally controlled by the central government include defence, foreign affairs, immigration and customs; while other functions like minority language, education, culture could be regulated by territorial and/or non-territorial autonomous bodies.

These are the main normative considerations that guide the analysis of the content of communication documents between IOs and the selected case studies. The cases used in this research are the two Baltic republics – Estonia and Latvia. The next section will examine the specific case of the Russian-speaking minority public participation.<sup>13</sup>

### **3. The case of post-Soviet Estonia and Latvia and the Russian-speaking minority**

Since the dissolution of the Soviet Union, Estonia and Latvia have adopted official state continuity based on their first period of independence during the interwar years. As a result of decades of Soviet

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<sup>13</sup> Although there are three Baltics States, Lithuania is not going to be used in this comparative case study. This is due to the fact that the situation is very different from the other two Baltic republics: firstly, only eight per cent of the population belongs to the Russian-speaking minority and the Polish minority constitutes the biggest minority in the country; secondly, citizenship policies towards the Soviet migrants were more liberal and do not hold similarities with Estonia and Latvia; hence, it is not necessary to include Lithuania into this analysis.

rule and later its demise, millions of former Soviet citizens coming from various ethnic backgrounds scattered around the political map of Eurasia.

The present-day populations in Estonia and Latvia are diverse in terms of ethnicity. There are approximately 180 ethnicities represented in Estonia and 170 in Latvia.<sup>14</sup> The available data demonstrates that in Estonia and Latvia the *ethnic Russian* minority constitutes the biggest minority group, reaching approximately 27 per cent of the population in Latvia,<sup>15</sup> and 25.1 per cent in Estonia.<sup>16</sup> However, when examining population's linguistic characteristics rather than ethnic ones, it shows that the proportion of *linguistically Russian* population is even higher. When analysing the data for most spoken languages at home and mother-tongue, it appears that the second most spoken language in Latvia is Russian. It amounts to 37.2 per cent of the total population in Latvia;<sup>17</sup> and in Estonia, the Russian-speaking population reaches approximately 29.6 per cent.<sup>18</sup>

Table 1. Proportion of ethnic Russian and Russophone population in Estonia and Latvia<sup>19</sup>

Criteria:	Estonia	Latvia
Total population	1,315,635	2,070,371
Proportion of ethnic Russian population	25.10%	27%
Proportion of Russian-speaking population based on statistic of language spoken at home	29.6%	37.20%

The wider identification with Russian language than the share of the population identifying with the Russian ethnicity, at least in Latvia, is not new.<sup>20</sup> This could also be observed during the

<sup>14</sup> Any Tonurist, 'Ethnic Structure of Population in Estonia. Small Ethnic Groups' in *Census Snapshots* (Statistics Estonia) 61; 'Latvia's population by ethnicity and country of belonging' (Office of Citizenship and Migration Affairs 2019) <[https://www.pmlp.gov.lv/lv/assets/backup/ISVN\\_Latvija\\_pec\\_TTB\\_VPD.pdf](https://www.pmlp.gov.lv/lv/assets/backup/ISVN_Latvija_pec_TTB_VPD.pdf)> accessed 8 April 2019.

<sup>15</sup> 'Latvia's Population and Housing Census 2011: Resident Population on March 1, 2011 by Ethnicity, Sex and Age Group' (*Central Statistical Authority Databases*, 2011) 108 <[http://www.csb.gov.lv/sites/default/files/nr\\_12\\_latvijas\\_2011.gada\\_tautas\\_skaitisanas\\_rezultati\\_results\\_of\\_the\\_2011\\_population\\_and\\_housing\\_census\\_in\\_latvia\\_15\\_00\\_lv\\_en\\_0.pdf](http://www.csb.gov.lv/sites/default/files/nr_12_latvijas_2011.gada_tautas_skaitisanas_rezultati_results_of_the_2011_population_and_housing_census_in_latvia_15_00_lv_en_0.pdf)> accessed 20 June 2017.

<sup>16</sup> 'Statistical Yearbook of Estonia 2016' (*Eesti Statistika*, 2016) 58 <[https://www.stat.ee/publication-2016\\_statistical-yearbook-of-estonia-2016](https://www.stat.ee/publication-2016_statistical-yearbook-of-estonia-2016)> accessed 20 June 2017.

<sup>17</sup> 'Latvia's Population and Housing Census 2011: Resident Population on March 1, 2011 by Ethnicity, Sex and Age Group' (n 15) 97.

<sup>18</sup> 'Population and Housing Census' (*Stat.ee*, 2012) <<http://www.stat.ee/64629>> accessed 20 June 2017.

<sup>19</sup> 'Statistical Yearbook of Estonia 2016' (n 16) 58; 'Latvia's Population and Housing Census 2011: Resident Population on March 1, 2011 by Ethnicity, Sex and Age Group' (n 15).

interwar period, when the Baltic States gained their independence for the first time. The term ‘Russian-speaking minority’ is used to describe the linguistically Russian population in the two Baltic States. It has been claimed to be analogous to ‘Hispanics’ in the United States of America.<sup>21</sup> Some scholars question the sense of community among Russian-speakers.<sup>22</sup> But it is beyond the scope of this research to analyse the communal identity of this group. Nonetheless, it is the term that is frequently evoked in academic research and communication documents, for example, Estonia’s statement in the 1<sup>st</sup> state report to the ACFC. More recently this term has been used by political actors and political parties.<sup>23</sup> Which means that this identity category is becoming more of a reality rather than a simple academic term. This linguistic minority category is comprised significantly by the ethnic Russian population; but it also includes Ukrainians, Poles, Belarusians, Azeri, Armenians, Georgians and a number of other communities.<sup>24</sup>

The levels of public participation of the Russian-speaking minority are low when considering the linguistic proportions of the population in both countries. Additionally, despite the high numbers of the Russian-speaking minority residing in the two states, the minority’s language is assigned a ‘foreign language’ status under the current language laws in both republics.<sup>25</sup>

Another area that affects decision-making of minorities is reflected in the amendments to the Latvian Law on the Status of a City Council or a Regional Council Deputy which stipulates that as of 2013 regional courts can terminate the mandate of Elected Council members if they are not able to provide official language knowledge C1 level or in other words if his or her command of the state language does not correspond to the level determined by the Cabinet of Ministers. Unlike with the national parliament, this provision was invoked in early 2015 when the State Language Centre initiated a procedure against a Russian-speaking councillor of Balvi.<sup>26</sup>

In Estonia there are similarities with Latvia’s approach to state language proficiency requirements for public officials at local level decision-making in Article 14 and Article 15 of the

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<sup>20</sup> no available data exists on Estonia’s linguistic composition during the interwar period this assumption is based on the census data conducted by M Skujenieks, ‘The Second Population Census of Latvia. 1925 10 February’ (1925) 374.

<sup>21</sup> David D Laitin, *Identity in Formation: The Russian-Speaking Populations in the New Abroad* (CUP 1998) 12.

<sup>22</sup> Timofey Agarin, *A Cat’s Lick: Democratisation and Minority Communities in the Post-Soviet Baltic* (Rodopi 2010) 7–10; Graham Smith, ‘Ethnic Democracy Thesis and the Citizenship Question in Estonia and Latvia’ (1996) 24 Nationalities Papers 199, 199–216.

<sup>23</sup> Social Democratic Party ‘Concord’, ‘About Latvia’s Russian-speakers and about myths’ (Facebook, 20 September 2018) <<https://www.facebook.com/sdpsLV/videos/294995131229198/>> accessed 25 September 2018.

<sup>24</sup> Agnia Grigas, ‘The New Generation of Baltic Russian Speakers’ (*EurActiv*, 2014) <<http://www.euractiv.com/sections/europes-east/new-generation-baltic-russian-speakers-310405>> accessed 18 February 2017.

<sup>25</sup> Official Language Law of Latvia (adopted 9 September 1999, entered into force 1 September 2000) 428/433 art 5; Language Act of Estonia (adopted 23 February 2011, entered into force 1 July 2011) art 5.

<sup>26</sup> Boriss Cilevics, ‘Language Policies in Latvia: Lessons for Minority Protection’ in Elzbieta Kuzborska (ed) *Integration and Exclusion: Linguistic Rights of National Minorities in Europe* (Conference book, Vilnius, November 2015) 106.

Public Service Act and in Article 117 which states that an official may be released due to inadequate language and communication skills.<sup>27</sup> However, in the language legislation enforced Estonia there is a provision in Article 9 that ensures the use of minority language specifically in local governments where at least half of the permanent residents belong to a national minority. This provision does not exist in Latvia, despite the considerably higher proportion of the population speaking Russian as their first language. Herein, lies the first difference between the two States in the realisation of the norm to effective public participation for minorities.

Policies developed in the early years of re-gained independence resulted in the restrictive accessibility to citizenship, which left to this day roughly six per cent of the Estonian population and 12 per cent of the Latvian population with an undetermined citizenship status, which is also referred to as ‘alien’ or ‘non-citizen’ status.<sup>28</sup> These individuals are usually of Russian linguistic origin, who migrated to the Baltic region during the Soviet era or whose descendants were/are excluded from automatic citizenship, and hence various aspects of the right to vote and be elected, in independent Estonia and Latvia. The proportion of the Baltic population without a determined citizenship status has dramatically decreased from the initial one third of the overall population in both Estonia and Latvia.<sup>29</sup> However, in Latvia, children born to non-citizen parents are not given automatic citizenship of their home country. On the other hand, Estonia recently implemented changes under which the allocation of the ‘non-citizen’ status to children was discontinued. This is another crucial difference between the two States, as Estonia now ensures that future generation will be able to participate in public affairs fully.

In terms of public participation opportunities the Russian-speaking minority in Estonia and Latvia can be categorised into three different groups based on their political rights: first, are citizens of Estonia and Latvia who are entitled to full common rights of political participation; second, the citizens of third countries, most notably Russia, who have a higher presence in Estonia than in Latvia, and have different rights; and third, non-citizens whose rights are almost equal to the third country nationals.<sup>30</sup> In Latvia, the last two categories have no right to public participation.<sup>31</sup> On the other hand, the last two categories in Estonia, that make up half of all Russian-speakers, have no right to vote in national elections, neither to form or participate in political parties or take up posts in

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<sup>27</sup> Estonian Public Service Act 1995.

<sup>28</sup> ‘Amnesty International Report 2014/2015: State of the World’s Human Rights’ (Amnesty International 2015) 147.

<sup>29</sup> ‘Naturalisation’ (*MFA*, 2016) <<http://www.mfa.gov.lv/en/policy/society-integration/citizenship/naturalisation>> accessed 16 March 2017; Vadim Poleshchuk, ‘Non-Citizens in Estonia Report’ (Legal Information Centre 2004) 7.

<sup>30</sup> Kallas (n 2) 2.

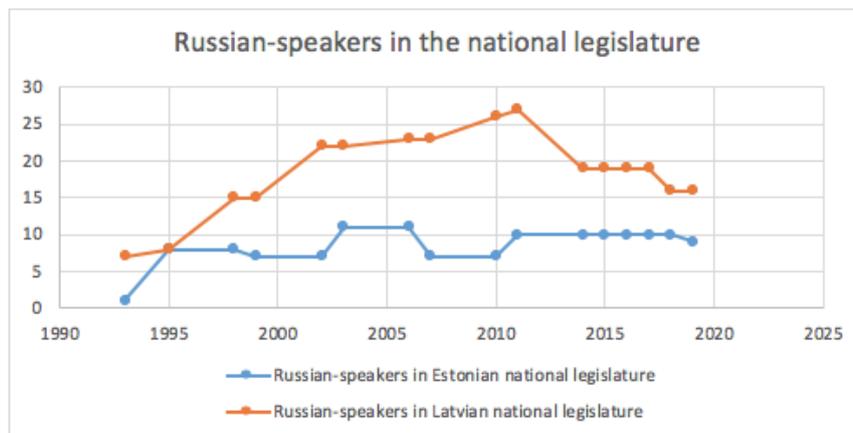
<sup>31</sup> *ibid.*

state administration, but they do have the right to vote in local elections without the right of being elected into office. Herein lies another crucial difference between the two states.

Moving away from the two very prominent areas of concern in the two Baltic republics to Russian-speaking minority participation in public affairs. The minority's interests are primarily realised through mainstream parties, like the Estonian Centre Party and 'Concord' Social Democratic Party in Latvia and are elected into the national legislature mainly (but not exclusively) through these parties.<sup>32</sup>

Since the re-gained Baltic independence in 1991, there have been usually no more than 10 Russian-speaking minority members out of 101 in the Estonian parliament.<sup>33</sup> The representation of the Russian-speaking minority in Latvia is better in terms resembling the country's share of the population. The centre-left political party that focuses on raising the Russian-speaking minority's issues in Latvia, the Concord Party, has been gradually increasing the number of seats in the Latvian Parliament, however, after the 2018 national election the number fell down from 19 to 16 representatives.

*Chart 1. Trends of participation of Russian-speakers in Estonian and Latvian parliaments from 1991-2019*



In terms of government formation, Estonia had governing coalitions that included parties popular among the Russian-speaking minority. The Centre Party was included in coalitions agreements in 1995, 2002 and 2005, however only for a short period of time. In 2016, the part was included into the governing coalition for a much longer period of time after the leading coalition of

<sup>32</sup> Kallas (n 2).

<sup>33</sup> Ada-Charlotte Regelmann, 'Introduction – Minority Political Participation in Estonia and Latvia' (2014) 13 *Journal of Ethnopolitics and Minority Issues in Europe* 1, 11.

Estonian Social Democrats, Estonian Reform Party and Pro Partia and Res Publica Union failed to hold on to power. The Estonian Centre Party replaced the Reform Party in the governing coalition. This is despite the fact that Pro Partia and Res Publica Union has had more assimilationist views towards to the Russian-speaking minority.<sup>34</sup> With the 2019 elections, Centre Party signed a coalition agreement with two right-wing parties Fatherland and the Conservative Party of Estonia.<sup>35</sup> In Latvia, the Concord Party had not been included in a coalition agreement since the start of the re-gained period of independence.

Additionally, in Estonia and several ministerial posts in Estonia were given to Russian-speakers. Most notably, Jevgeni Ossinovski from the Estonian Social Democrats continues to serve as Minister of Social Affairs after serving as a Minister of Education and Research from 25 March 2014 to 9 April 2015. Other notable Russian-speakers who acquired ministerial posts were Martin Repinski (Centre Party) and Marina Kaljurand (independent). Despite the high proportion of the population in Latvia, Russian-speakers do not tend to acquire ministerial positions.<sup>36</sup> There was only one instance of a Russian-speaker acquiring a ministerial post. Vjaceslavs Dombrovskis (Reform Party) served as a Minister of Education from 2 May 2013 to 22 January 2014, and then as a Minister of Economics from 22 January 2014 to 5 November 2014. Dombrovskis joined the Concord Party since.

In regard to advisory bodies, the two states have different degrees of consultation opportunities in decision-making for minorities. In Latvia, to date there are five national level advisory bodies<sup>37</sup> and several local level advisory mechanisms established in Rīga, Jelgava, Jūrmala, Liepāja, Ventspils.<sup>38</sup> In the case of Estonia, there is no consultative body that represents a platform for dialogue between minority and majority communities on a national level, however local bodies exist.<sup>39</sup> Finally,

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<sup>34</sup> Mari-liis Jakobson, 'Intergation Policy Instruments in Estonia' (INTERACT Research Report 2014) 9.

<sup>35</sup> 'Estonia: Far Right Set to Enter Government for First Time' *Deutsche Welle* (7 April 2019) <<https://www.dw.com/en/estonia-far-right-set-to-enter-government-for-first-time/a-48240943>> accessed 10 April 2019.

<sup>36</sup> Regelmann (n 33) 11–12.

<sup>37</sup> (i) the Minorities Consulting Council of the President of Latvia; (ii) the Advisory Council to the Ministry of Education and Science on the National Minority Education Matters; (iii) the Advisory Committee of Representatives from Minority Non-governmental Organisation; (iv) the Advisory Council on Roma Integration Policy; (v) the Advisory Council for Integration of Third Country Nationals

<sup>38</sup> Latvian Centre for Human Rights, 'Consultative/ Advisory Bodies For Immigrants. National Policy Brief' (*Cilvektiesibas.org.lv*, 2014) <<http://cilvektiesibas.org.lv/en/publications/consultative-advisory-bodies-for-immigrants-nation-338/>> accessed 10 May 2017.

<sup>39</sup> Roundtable of National Cultural Societies organised by the Ida-Viru County Governor, Tallinn home Peace Forum organised by Tallinn City Government, the Roundtable of National Minority Organisations organised by Parnu City Government, the Co-ordination Council of National Minorities in Narva. ACFC, 'Fourth Opinion on Estonia adopted on 19 March 2015' (ACFC/OP/IV(2015)002) para 96.

regarding self-governance opportunities both states have cultural autonomy laws however they have never been implemented for the Russian-speaking minority.<sup>40</sup>

The situation of the Russian-speaking minority in Estonia and Latvia in terms of public participation opportunities and trends is complex. The key differences between the two states are: 1) language policies on official language use in public sphere in Estonia are not as strict as in Latvia; 2) recent citizenship legislation has eliminated the non-citizen status allocation for children in Estonia; 3) non-citizens are allowed to at least vote on a local level in Estonia; 4) governing coalitions included parties representing minority views in Estonia; 5) in Estonia, more ministerial positions were allocated to Russian-speakers. Knowing that the two republics have become part of a number of regional and international entities that promote minority rights and that the right to effective public participation has attracted a great deal of support on a European level and worldwide; how have various actors promoted the norm and can these differences in realisation of effective public participation opportunities be attributed to them?

#### **4. Theoretical approach and method**

The current state of academic research is still unclear how human rights norms are integrated into the domestic legal practices, political bodies and social policies.<sup>41</sup> As part of the growing body of legal studies relying on an inter-disciplinary view, this research project relies on the social constructivist theories of IR.

Social constructivist scholars in IR understand implementation of norms as a wilful process, in which states “internalise norms and act in accordance with them because they understand them to be correct or appropriate.”<sup>42</sup> However, different states react differently international norms and mechanisms by which norms are internalised within states differ as well.<sup>43</sup> Recent constructivist

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<sup>40</sup> The Republic of Latvia Law on Latvian National and Ethnic Group Free Development and Rights to Cultural Autonomy 1991; The Law on Cultural Autonomy of National Minorities of 1993 provides for the establishment of Cultural Autonomy Bodies to be elected by citizens who have registered as belonging to the relevant minority group, provided that the population of that minority is over 3,000 persons. The law further specifies that such national minority cultural autonomy may be established by persons belonging to German, Russian, Swedish and Jewish minorities, and most recently it extended to the Ingrian-Finnish minority. Only the Swedish and the Ingar-Finnish groups established such Cultural Councils and receive some funding from the Ministry of Culture.

<sup>41</sup> Genevieve Souillac, ‘From Global Norms to Local Change: Theoretical Perspectives on the Promotion of Human Rights in Societies in Transition’ in Shale Horowitz and Albrecht Schnabel (eds), *Human Rights: Politics and Practice* (Oxford University Press 2004) 78.

<sup>42</sup> Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, (2005) 72 *University of Chicago Law Review* 469, 481 cited in Totaro (n 4) 728.

<sup>43</sup> Jeffrey T. Checkel, ‘International norms and domestic politics: bridging the rationalist-constructivist divide’ (1997) 3 *European Journal on International Relations* 473 cited in Martha Finnemore and Kathryn Sikkink, ‘Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics’ (2001) 4 *Annual Review of Political Science* 391, 397.

contributions put forward an argument, that the process of socialisation mechanism and its effects are not uniform.<sup>44</sup> Norm consistent behaviour is the last and most ambitious stage of socialisation. Checkel argues that there is a step before rule-consistent behaviour, where a state may take time learning a new role. This step includes a state adopting a new role because it is appropriate in a certain setting, like joining a particular organisation of states, but no real internalisation of a norm is taking place.<sup>45</sup> This may explain the difficulties and inconsistencies that exist when a state joins a particular treaty or an organisation but still exercises violations of the rules it subscribed to.

In the two country cases selected for this paper, it has been argued that IOs had a strong influence over reinforcement of arguments on minority rights protection and in relation to creation of appropriate legal and political environments to accommodate inter-ethnic stability and improvement of minority rights protection.<sup>46</sup>

Vizi writes that IOs, like the European Union (EU), CoE, OSCE and to lesser extent NATO, played disparate roles and used different methods of pressure to both support democratic transition and development of minority rights policies.<sup>47</sup> Research done by Judith Kelley proposed that there was a form of coordinated pressure put on the Baltic States in order to realise protection of minorities in the form of membership conditionality and socialisation.<sup>48</sup> The first mechanism links admission directly to behaviour of states and uses actions like IO incentives or sanctions. It is usually defined as “a basic strategy through which international institutions promote compliance by national governments” and “a mutual arrangement by which a government takes, or promises to take, certain policy actions.”<sup>49</sup> The second mechanism includes a broader set of measures like social change and persuasion relying solely on the use of norms to influence a change in policies. Her second hypothesis was that domestic opposition posed grater obstacles to socialisation-based efforts than it did to membership conditionality or in other words when European institutions used only socialisation-based efforts, governments rarely changed their behaviour. Thirdly, as domestic opposition grew, membership conditionality was necessary and effective in changing state

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<sup>44</sup> Jeffrey T Checkel, ‘International Institutions and Socialization in Europe’ (2005) 59 *International Organization* 801, 804.

<sup>45</sup> *ibid.*

<sup>46</sup> Balázs Vizi, ‘European Integration and Minority Rights Conditionality Policy’ in Balázs Vizi, Norbert Tóth and Edgár Dobos (eds), *Beyond International Conditionality: Local Variations of Minority Representation in Central and South-Eastern Europe* (2017) 51.

<sup>47</sup> *ibid.* 52.

<sup>48</sup> Judith Kelley, ‘International Actors in the Domestic Scenes: Membership Conditionality and Socialization by International Institutions’ (2004) 58 *International Organization* 425, 428.

<sup>49</sup> Jeffrey T. Checkel, “Compliance and Conditionality” (Working Paper 00/18, ARENA Center for European Studies, 2000) cited in Vizi (n 46) 53.

behaviour.<sup>50</sup> However, Kelley's theories do not explain the changes that took place after the two republics were accepted into various key IOs. It is still not clear why the two states adopted cultural autonomy laws as early as 1991, why consultative channels like the President's Roundtable in 1993 was created without international pressure in Estonia? Or why Estonia changed its citizenship laws in January 2015 to provide Estonian citizenship to children of 0-14 years of age who were born to parents with undetermined citizenship status?

Hence, the current study investigates the implementation of the norm to effective public participation for the Russian-speaking minority in Estonia and Latvia; and it is expected to find evidence of coordinated action by IOs to change state preferences in minority policies, which Kelley proposed in her work. If there is consistent coordinated response of uniform character put on both Estonia and Latvia, then two states are in different stages of norm implementation, as Checkel proposes.

However, alternative explanations should be highlighted in this section. The reason for choosing social constructivist IR theory and not other key theories, such as liberalism and realism, lies in several arguments. First, liberals recognise that human rights are an extension of natural and inalienable rights, where the state has the responsibility to implement and protect the right norms. But in order to have this compliance, the state must transform into a liberal mode of government and international institutions need to exert pressure on states. This would not explain the circumstances in the two Baltic States that made a transition from communism to a liberal democracy and joined several powerful IOs. Secondly, realists argue that the state is only interested in self-preservation and human rights are not on the state's list of priorities, even international institutions are powerless as they are created by states. But this would not explain, why minority rights are complied with at all if, as realists argued, norms only matter on paper. Constructivists are not denying the realist claims or liberal theories, but they add an argument that human rights are implemented in the process of socialisation, where norms, identities of actors and various other circumstances matter, which cannot be explained through liberal or realist interpretations.

The following section of the paper will share some preliminary findings based on the work conducted to date using primary legal sources such as communication between the two Baltic Republics and IOs. Qualitative data analysis software, NVivo 12, was used to interpret the data and provide the reader with several key arguments. The major task in the selected method has been coding the communication documents and interviews. These sources have been coded by issue

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<sup>50</sup>Kelley (n 48).

characteristics (see Annex 1) focused on the groups, the aspects of the effective public participation norm, and other interests raised in the sources.

## 5. Analysis

This section analyses of three key European bodies: the EU, CoE, and OSCE. These bodies have had the most influence on the two Baltic States through membership conditionality and socialisation in terms of transforming their policies and implementing new norms. The EU utilised membership conditionality, the OSCE only utilised socialisation methods and the CoE utilised both membership conditionality and socialisation-based efforts. This section will use the available data sources to analyse whether the right to effective public participation for the Russian-speaking minority was discussed in the documents. In order to ensure simplicity of the analysis it is important to first address the instances where Russian-speaking minority was mentioned and where direct or indirect references of the right to effective public participation can be identified.

### *A. Council of Europe*

Estonia became a member in May 1993 of CoE, while Latvia's membership started in February 1995 after complying with reforming its controversial citizenship policy, which was much more restrictive in the early years of independence than Estonia's legislation. After the 1993 Latvian national elections, CoE repeatedly criticised the so-called quota system created during Latvia's weak minority coalition government, that limited applications to a 1 per cent of the total number of citizens or 2,000 individuals per year who could apply for naturalisation in a given year.<sup>51</sup> The CoE warned if the amendments are not loosened the door to CoE membership will be closed.<sup>52</sup> The quota system was replaced with the slightly less controversial 'windows system'<sup>53</sup> in July 1994, which was devised by the OSCE HCNM, Latvia joined CoE.

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<sup>51</sup> *ibid* 444.

<sup>52</sup> *ibid*.

<sup>53</sup> Which meant that immediate members of a citizen's family could apply for citizenship in 1995 when naturalisation was first introduced, while non-citizens depending on their age had to wait for an appropriate "window" to apply for citizenship. The next "window" was from the 1<sup>st</sup> January 1996 only allowed individuals to acquire citizenship who were born in Latvia and were 16 to 20 years of age; from 1 January 1997 naturalisation could only happen for individuals who were born in Latvia and were not older than 25 years; from 1 January 1998 the ones who were not older than 30 years could apply for naturalisation if they were born in the territory of Latvia; and from 1 January 1999 people born in Latvia who were not older than 40 could apply for naturalisation. All other individuals who were born in Latvia but did not fall into the other categories could apply from 1 January 2000. Those born outside of Latvia needed to wait until 2001 in order to apply for citizenship under the initial law, but the priority would be given to individuals who arrived in Latvia before reaching adulthood. The ones who arrived in Latvia before they turned 30 could start applying on 1 January 2002. And everyone else could start applying from January 2003.

The CoE's ACFC is the only body that explicitly references the right to effective public participation as part of its FCNM monitoring procedure, that continues to date. This section is based on four ACFC Opinions on Estonia and three Opinions on Latvia. In all four opinions on Estonia the ACFC frequently noted elements contributing to the right to effective public participation, specifically opportunities for consultative bodies, albeit to varying degrees. In its first opinion of 2001, the Advisory Committee concluded that the language proficiency requirements for candidates in local and parliamentary elections are not compatible with Article 15 of the Framework Convention and urged Estonia to pursue the abolishment of these requirements as a matter priority. This resulted, with further pressures from organisations like the OSCE and NATO, in amendment to the Elections Act and to the Local Government Council Election Act on 21 November 2001 that removed language proficiency requirements for candidates.<sup>54</sup> This also took place in Latvia at the same time, but without ACFC involvement as it had no authority to monitor implementation of the FCNM until 2005.<sup>55</sup> This highlights that in certain instances of minority rights improvement there were different IOs involved and to varying degrees, most notably the ACFC was not involved in the 2002 amendments to the election legislation.

Later on, in the second opinion on Estonia in 2005, more focus was devoted to consultative bodies. This is particularly interesting, as the situation on consultative opportunities in Estonia has been getting worse, which raises questions as to why ACFC's recommendations were not adhered to. Other aspects of the norm, like non-territorial autonomy opportunities were only mentioned in the most recent opinion on Estonia of 2015, even though that cultural autonomy legislation was in force since 1993.

In terms of which groups were discussed in the opinions, the Russian-speaking minority was not always explicitly linked to ACFC's recommendations on Estonia, as the recommendations were focused on the overall situation of national minorities. In majority of the instances when ACFC referred groups such as 'non-citizens', 'non-citizens belonging to national minorities', 'stateless persons' or 'stateless children' were used.

The same can be said in the case of Latvia, when reviewing the existing three ACFC Opinions. The first opinion of 2008 put pressure on Latvia's conditions for effective public participation of minorities in areas of consultation, language use during elections campaigns, and civil service representation of minorities. In the second opinion of 2013, more pressure started to focus on non-citizens' opportunities to participate in local and other elections additionally to the issues of

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<sup>54</sup> Boriss Cilevics, 'Language Legislation in the Baltic States' in Matthias Koenig and Paul de Guchteneire (eds), *Democracy and Human Rights in Multicultural Societies* (UNESCO Publishing 2007) 173.

<sup>55</sup> *ibid.*

consultative opportunities. The latest 2018 opinion added to the consultative body focus and voting rights of non-citizens the issues of language requirements and citizenship in order to acquire public posts. There was no discussion on cultural autonomy legislation that Latvia had implemented in 1991. This signals that ACFC is more focused on decision-making part of effective public participation rather than self-governance opportunities.

In terms of which groups were discussed, as in the case of Estonia, the Russian-speaking minority was not explicitly mentioned in these recommendations. In majority of the instances referring to the right to effective public participation, the minority is replaced with definitions like ‘non-citizens’, ‘non-citizens belonging to national minorities’, and ‘national minorities’ and only recently ‘Russian minority’.

To summarise, it is clear that ACFC raises the right to effective public participation as part of its monitoring cycles, but the overwhelming focus is on the decision-making aspect of the norm rather than cultural self-government opportunities. It is particularly interesting because both states have non-territorial autonomy legislation in force since the early 1990s. A second important finding is that the overwhelming focus is dedicated not to the large Russian-speaking minority in both states, but to other categories such as ‘non-citizens’. This is particularly interesting because, as stated previously, both Estonia and Latvia do not include non-citizens in the definition of ‘national minority.’ However, ACFC’s persistence of including non-citizens in its opinions, instead of the Russian-speaking minority is problematic as this leads to a perception that the rights of the latter group are in no need of improvement even though this minority constitutes the overwhelming share of non-citizens (see Table 2 and Table 3 below).

*Table 2. Composition of population in Estonia by nationality (ethnicity) and citizenship as of 2017<sup>56</sup>*

	Population	% from the overall population	Citizens	% from the ethnic group’s population	Non-citizens	% from the ethnic group’s population
Estonian	904 639	68.76	901 726	99.68	1 918	0.21
Russian	330 206	25.1	189 202	57.3	62 627	18.97

<sup>56</sup> Email from the Estonian Office of Statistics to author (7 November 2017).

Ukrainian	23 183	1.76	8 707	37.56	5 345	23.06
Other	44 841	3.4	17 763	39.61	7 920	17.66
Unknown	12 766	0.98	1 748	13.69	116	0.91
<b>Total</b>	<b>1 315 635</b>	<b>100</b>	<b>1 119 146</b>	<b>85.07</b>	<b>77 926</b>	<b>5.92</b>

Table 3. Composition of population in Latvia by nationality (ethnicity) and citizenship as of 1 July 2016<sup>57</sup>

	Population	% from the overall population	Citizens	% from the ethnic group's population	Non-citizens	% from the ethnic group's population
Latvian	1 281 315	60	1 279 654	99.87	590	0.05
Russian	561 854	26.31	352 863	62.8	162 102	28.85
Belarusian	69 960	3.28	29 682	42.43	33 934	48.5
Ukrainian	51 372	2.41	18 451	35.92	24 058	46.83
Polish	45 964	2.15	35 618	77.5	8 667	18.86
Lithuanian	26 745	1.25	17 507	65.46	6 188	23.14
Jewish	8 659	0.41	5952	68.74	2 075	23.96
Roma	7 545	0.35	7 124	94.42	360	4.77
German	5 171	0.24	2 149	41.59	1012	19.57
Other	77 182	3.61	50 803	65.82	8 118	10.52
<b>Total</b>	<b>2 135 767</b>	<b>100</b>	<b>1 799 803</b>	<b>84.27</b>	<b>247 104</b>	<b>11.57</b>

<sup>57</sup> Council of Europe, 'Third Report submitted by Latvia pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities (Received on 6 December 2016)' (ACFC/SR/III(2016)001) 62.

### *B. European Union*

Arguably at one point the EU was the most influential of all European organisations, specifically during the transition years of the Baltic republics, because of its economic and political attractiveness. However, the EU adopted membership criteria during the EU Copenhagen Summit in 1993, which included human rights norms, more specifically candidate countries were requested to have stable institutions guaranteeing democracy, the rule of law, human rights and respect and protection of minorities.<sup>58</sup> Additionally, both Estonia and Latvia had to comply with a ‘first generation’ treaties of Trade and Co-operation Agreements (TCAs).<sup>59</sup> This agreement required the Baltic States to become members of international organisations and conventions although the emphasis was more on economic integration. Despite the overwhelming economic focus of the treaty, the Preamble of the agreement with each of the Baltic States emphasised on the recognition of “the importance of guaranteeing the rights of ethnic and national groups and minorities, in accordance with the undertakings made within the context of the CSCE.”<sup>60</sup> It is important to note that other Central European states wishing to join the EU had a different approach, which took the path of moving on straight away to sign Association Agreements, which did not mention minority rights anywhere in the text of the document.<sup>61</sup> Edwige Tuczny argued that the European Commission included these provisions in the light of the situation of the Russian-speaking minority in Estonia and Latvia.<sup>62</sup> But Elsuwege argues that this was not due to the specific situation in the two republics as other states like Albania and Slovenia were also required to comply with the clause, and the clause itself is more likely a result of the violence in Yugoslavia and Haiti as the EU was trying to suspend its agreements with the two states in 1991.<sup>63</sup> Whether Elsuwege is correct or not, the clause specifically highlighted the context of CSCE and its members, hence the view of this research is that these clauses specifically resulted from and were addressed to the geopolitical changes in Europe.

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<sup>58</sup> Council of the European Union, Copenhagen European Council Presidency Conclusions, 21-22 June 1993, SN 180/1/93 REV 1.

<sup>59</sup> Van Elsuwege (n 3) 102.

<sup>60</sup> Council Decision of 21st December 1992 concerning the conclusion of an Agreement between the European Economic Community and the Republic of Estonia on trade and commercial and economic cooperation (92/601/CEE). OJ L 403 of 31st December 1992; Council Decision of 21st December 1992 concerning the conclusion of an Agreement between the European Economic Community and the Republic of Latvia on trade and commercial and economic cooperation (92/602/CEE). OJ L 403 of 31st December 1992; Council Decision of 21 December 1992 concerning the conclusion of an Agreement between the European Economic Community and the European Atomic Energy Community and the Republic of Lithuania on trade and commercial and economic cooperation (62/603/CEE- EURATOM). OJ L 403 of 31st December 1992.

<sup>61</sup> Communication from the Commission on the development of the European Community’s relations with the countries of central and Eastern Europe (Brussels, 18 April 1990) <[https://www.cvce.eu/content/publication/2005/2/16/75687d1b-956c-4843-8bd2-1d20191582f2/publishable\\_en.pdf](https://www.cvce.eu/content/publication/2005/2/16/75687d1b-956c-4843-8bd2-1d20191582f2/publishable_en.pdf)> accessed 11 April 2019.

<sup>62</sup> Edwige Tuczny, *L’Elargissement de l’Union Europeene aux pays d’Europe centrale et orientale. La conditionalite politique* (L’Harmattan 2000) 104-105 cited in Van Elsuwege (n 3) 102.

<sup>63</sup> *ibid.*

During the preparation for the final step of the Baltic States' EU integration, Agenda 2000 of 1997 introduced detailed country-specific expectations. The main policy of this strategy were Accession Partnerships, which were negotiated between the European Commission and each candidate State.<sup>64</sup> For each candidate country, the Partnership laid down priority of areas for further progress toward accession, which were identified by the Commission's Opinions and later by its progress reports.<sup>65</sup> The Commission reports served as a basis for Council decisions on the extension of accession negotiations. The European Commission's reports had a dedicated section titled 'Human Rights and Protection of Minorities' and within that section a specific part was dedicated to 'Minority Rights and the Protection of Minorities'. The European Commission was of crucial influence from 1998 to 2004 in the two Baltic States, have some success in amending citizenship legislation in both states in 1998, so that it would have more accommodating conditions for children born to non-citizen parents.

After conducting a thorough analysis of the available documents from the European Commission, the 14 Regular Reports on the Process Towards Accession of both Estonia and Latvia, several important things were apparent regarding the right to effective public participation.

Firstly, it is apparent that the European Commission was more likely to use the term 'Russian-speaking minority' or 'Russian-speakers' in the communication with Estonia rather than with Latvia. The European Commission used the term within the reports from 1998 until 2002. In total, 'Russian-speakers' and the 'Russian-speaking minority' was used 24 times in the reports with Estonia. On the contrary, in the communication with Latvia it was used only in the Regular Reports of 1998, 1999 and 2002, and in total of only 6 times. This finding is interesting, because it reveals the differences in the Commission's tactics with to other organisations, like the ACFC.

However, the European Commission, as the case with the ACFC of CoE, tended to use 'non-citizen' group more frequently throughout their reports on both States from 1998 to 2002. Within the communication with Estonia, the European Commission used 'non-citizens' 52 times and with Latvia 79 times in total. The next one after the non-citizen group, was the group of 'non-Estonians or non-Latvians' used in total 43 times in Estonia and 8 times in Latvia. This finding is important that these groups serve as a substitute to the Russian-speaking minority and separated the issues into different categories. Another reason why this is important, is that the European Commission raised issues associated with the Russian-speaking minority and non-citizens in different ways. For example, the 1998 Regular Report on Estonia stated:

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<sup>64</sup> *ibid* 255.

<sup>65</sup> *ibid*.

The rights of the Russian-speaking minority (with or without Estonian nationality) continue to be observed and safeguarded. Russian continues to be widely used in courts and in the administration in those areas where Russian speakers represent a majority of the local population. However, non-citizens are still subject to some restrictions such as the right to sit on the boards of state-owned companies, to belong to a political party and to be employed in certain areas of the public administration.

This is also apparent in the Regular report on Latvia in 1998:

In general, the rights of the Russian-speaking minority in Latvia (regardless of whether a person possesses Latvian citizenship or not) continue to be respected and protected. However, a number of areas were underlined in the Commission's Opinion in which non-citizens were treated differently from citizens.

This finding is interesting because it demonstrates that the European Commission tended to recognise Russian-speakers but claimed that their rights are guaranteed, even though that an overwhelming part of the non-citizen population, which the Commission was concerned about, is formed by Russian-speakers.

Most of the discussion in the Regular Reports cover issues were language training, integration, and citizenship issues, none of which can be categorized as a specified human or a minority right. But it must be noted that certain elements that contribute to the right of effective public participation, such as minority language use in local and national decision-making processes, were highlighted by the Commission. The Commission made references to these elements in 37 instances regarding Estonia and 22 regarding Latvia.

In Estonia, throughout 1998 to 2002, the issues discussed that can be linked to effective public participation were mostly about the debated amendments to the Language Law that required Estonian language knowledge for public sector, non-citizen restrictions on belonging to a political party, use of minority language in municipalities and voting rights for non-citizens in local elections. After the 2002 Regular Report, the Commission did not raise any issues related to public participation.

In comparison to Estonia, Latvia did not receive the same attention to aspects of public participation for minorities. Most notably it was absent from 1998 report and there was no focus on granting non-citizens the right to vote in local elections. From 1999 to 2002 the Commission noted aspects in the Election Law that prescribed language requirements for Members of Parliament and

candidates for local and national elections, submission of documents to the state in Latvian language, language use in local councils.

This is not to say that the Commission had no interest in meaningful realisation of minority rights as part of Accession Agreements with all candidate states. For example, Slovakia was required to adopt legislative provisions on minority language use and related implementing measures. The Commission Opinion on Slovakia focused more on the implementation of constitutional provisions granting minorities “the right to develop their own culture, to receive information and education in their own language and to participate in taking decisions which concern them.”<sup>66</sup> This is a stark difference with the approach on Estonia and Latvia, where promotion of official state language was encouraged.

Additionally, the European Commission during the accession negotiations with Croatia after 2006, prescribed implementation of the Law on Minority Rights as a priority through improvement of minority rights, in particular ensuring that equitable representation of minorities in local and regional self-government units is achieved as well as in the state administration and judicial bodies and in the bodies of public administration.<sup>67</sup> Hence, it is apparent that the Commission had used different approaches to different states, but from a legal point of view “this hardly justifies EU’s flexible approach vis-à-vis the interpretation of the pre-accession condition on ‘respect for and protection of minorities.’”<sup>68</sup>

In sum, the EU had a different approach to Estonia and Latvia and acknowledged the necessity to focus on minorities. The European Commission focused on some core elements of the norm of the effective public participation for minorities, like proportional representation and participation in decisions affecting them, in other states from the very beginning of the accession process. This did not take place in the cases of Estonia and Latvia, which received majority of recommendations on language knowledge for public sector. There was no discussion of consultative opportunities, that would help decision-making processes, nor there were mentions of cultural autonomy opportunities. Instead the focus was on anti-discrimination, language training, citizenship and integration. Russian-speakers were mentioned throughout the report, but more often in communication with Estonia than Latvia. However, most of the time the minority was referred to using substitute words, such as ‘non-Estonians/non-Latvians’, ‘non-citizens’ and ‘stateless children’.

### *C. Organisation for Security and Co-operation in Europe*

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<sup>66</sup> Council Decision 98/262/EC of 30 March 1998 Slovak Republic OJ 1998 L121/16.

<sup>67</sup> Tatjana Petrusevska, ‘A Guide to Minorities and Political Participation in South-East Europe’ in Tatjana Petrusevska (ed) (King Baudouin Foundation 2009).

<sup>68</sup> Van Elsuwege (n 3) 256.

This section will analyse the activities of the OSCE HCNM and the promotion of the norm to effective public participation for minorities in Estonia and Latvia.

The data consists of communication between the HCNM office and the two Baltic States and the HCNM reports to the OSCE Permanent Council. In total, the number of documents analysed is 34. Unfortunately, there is no data available on communication between Estonia and the HCNM from 1997 until the reports to the OSCE Permanent Council were released in 2002. In the case of Latvia, there are no documents available from May 1998 until 2002. From 2002, the communication documents were replaced by HCNM's reports to the OSCE Permanent Council on the mandate's activities.

The most discussed group is 'non-citizens' mentioned in total of 50 times in communication and reports with both Estonia and Latvia. The HCNM uses the term 'non-Estonians' or 'non-Latvians' in total of 42 times. The issue of describing the population of Russian-speakers in this way is arguably reinforcing the separation from the overall population and limits their entitlement to certain rights. The 'Russian-speaking' minority group was used only 7 times in total by the HCNM and only in discussion with Estonia. The 7 references made by the HCNM to Russian-speakers were placed in the overall discussion on citizenship and naturalisation issues.

That being said, it is apparent that the overall norm was promoted. There were 29 references made to effective public participation in 18 documents. However, only aspects of the norm applicable to the decision-making sphere appeared in the reports, specifically: consultative bodies, creation of special commissions, and participation in elections. HCNM has firmly supported granting voting rights to Latvian non-citizens in local elections.<sup>69</sup> The group that was primarily the target of this discussion were 'Non-Estonian/non-Latvians' and on the second-place, non-citizens. In 2018, the HCNM highlighted some aspects relating to effective public participation in Estonia but in vague terms:

While efforts of the Estonian government to reach out to minority communities residing compactly in the northeast of the country are commendable, additional steps are required to address these divisions and bring majority and minority communities closer together in all

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<sup>69</sup> Statement by Rolf Ekéus OSCE High Commissioner on National Minorities to the 502nd Plenary Meeting of the OSCE Permanent Council, Vienna, 30 March 2004, 6; Statement by Knut Vollebaek OSCE High Commissioner on National Minorities to the 718th Plenary Meeting of the OSCE Permanent Council, Vienna, 26 June 2008, 8; Statement by Knut Vollebaek OSCE High Commissioner on National Minorities to the 837rd Plenary Meeting of the OSCE Permanent Council, Vienna, 18 November 2010, 8; Statement by Astrid Thors OSCE High Commissioner on National Minorities to the 1026th Plenary Meeting of the OSCE Permanent Council, Vienna, 20 November 2014, 7.

areas of public life.<sup>70</sup>

What is interesting that these recommendations are addressed to non-citizens and non-Estonians or non-Latvians rather than Russian-speakers as a minority. The HCNM does not mention any recommendations to other areas such self-governance, which Estonia and Latvia have even from the period of first independence in the sphere of non-territorial autonomy. The more discussed issues were citizenship issues, language training, and education.

## **6. Results**

The results from the preliminary analysis conduct reveal that there were similarities and differences between the tactics used by the three IOs. Among the three IOs there was an overwhelming focus on non-citizens instead of Russian-speakers as a whole; and there was a significant focus on the decision-making opportunities for minorities.

However, the different IOs had different methods when socialising new norms to the two Baltic States. Moreover, these organisations did not conduct their activities at the same time, which poses another set of questions to existing hypotheses (see Table 4).

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<sup>70</sup> Statement by Lamberto Zannier OSCE High Commissioner on National Minorities to the 1188rd Plenary Meeting of the OSCE Permanent Council, Vienna, 7 June 2018, 10.

*Table 4. Differences and similarities in socialisation tactics of Estonia and Latvia by the three IOs.*

IO name or mandate	Period of influence	Differences	Similarities
ACFC	Estonia from 1998 to date  Latvia from 2005 to date	Recently started to focus on self-governance issues in Estonia.  Recent focus on voting rights in local elections of Latvia's non-citizens.	Most of the focus is on non-citizens.  When the right to effective public participation is discussed, focus is mainly on the decision-making sphere, specifically consultation and election procedures.
EC	1998 to 2004	Russian-speaking minority was discussed more with Estonia than Latvia.  Elements of effective public participation were discussed more with Estonia.  Less attention given to non-citizen right to vote in local elections in Latvia.	Most of the focus was on non-citizens.  Main topics are anti-discrimination, language, citizenship and integration.  Focus on the decision-making sphere, such as elections procedures and language in public sector.  Russian-speaking minority's rights are safeguarded.  No discussion of self-governance opportunities.
HCNM	1993 to date	Russian-speakers exclusively used in communication with Estonia.  Focus from 2004 to 2014 on granting Latvian non-citizens voting rights in local elections.	Focus on Non-Estonians/Non-Latvians and non-citizens.  Main topics are citizenship, language, education.  Focus on decision-making sphere, specifically consultative bodies, special commissions, and elections.  No discussion of self-governance opportunities.

While this may explain the relatively better developments taking place in Estonia and the lack of developments on self-governance opportunities in both Estonia and Latvia; it is still inconclusive why non-citizens in Estonia were given the right to vote in local elections in 1993 when there was relatively less international pressure, why in Estonia parties representing Russian-speaking minority's interests managed to be part of the governing coalitions, or why both states adopted autonomy laws in the early 1990s at all? This paper assumes, that by supplementing this research with interview data from state and non-state actors representing Russian-speaking minority views in the two Baltic republics, these research questions can be answered.

## **7. Conclusion**

The preliminary review of the communication documents dataset has given insight into the socialisation processes employed by the three key European organisations in promoting minority rights. More interrogation of data is needed but several trends can be observed.

First, the most discussed group in the three organisations' communication documents is the non-citizen group, which largely consists of Russian-speakers. It was also found that the Russian-speaking minority was not brought up in the documents as frequently as the non-citizen group. This raises questions, why dividing the Russian-speaking minority is necessary in the communication and why not much progress has been achieved in the frequently mentioned non-citizen group's rights.

A review of the issue of characteristics raised by IOs show more priority on the areas of language, citizenship and integration. However, the right to effective public participation was not as frequently discussed, moreover it was discussed in separate aspects like elections, special commissions and consultative bodies, which signals an overwhelming focus on the decision-making part of the norm. Thus, the socialisation processes enforced by IOs do not highlight consistent pressure that leads to the adoption of policy changes. This is important because existing research links the gap in compliance with international norms to unwillingness of the state to implement such rights. This paper argues that it is important to note that there are inconsistencies within tactics of international pressure to secure implementation of minority rights, for example pressure used by different IOs at different times, raising different issues in regard to different groups.

Nevertheless, it is clear that the socialisation is taking place however, it possibly needs to be investigated in conjunction with other actors. It is anticipated that by supplementing this research with interview data from state and non-state actors in the two Baltic republics, this research can contribute in the future to reflecting on how to orchestrate better outcomes for minority rights promotion.

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**Annex 1. Coding Frame: Nodes and sub-nodes on the right to effective public participation and other normative issues in documents**

**Groups:**

Russian-speakers

Ethnic Russians

Non-Citizens

Non-Estonians/Non-Latvians

Stateless adults

Stateless children

**Right to effective public participation:**

Participation in Decision-making – special cabinet positions; consultative bodies; elections;

Self-governance – non-territorial arrangements ; territorial arrangements

**Other Normative Issues:**

Citizenship

Language

Integration

Education

Anti-discrimination