European Human Rights Regime:
Cultural Rights and the case of national minorities

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1. European Human Rights Regime

The European Human Rights (HR) regimes, when assessing cultural rights, looks at the way states and governments apply decisions and protect issues relevant to specific groups, such as language, ethnicity, religion, traditions, etc. Hence, cultural human rights are part of domestic politics and human rights protection mechanisms. They are most often applied to (national) minority groups, which again are determined by governments and vary from country to country due to the fact that a group that a minority in one country is not necessarily a minority in another. The only exception to this is the Roma minority, which has been determined by all EU member states to be a minority across.

Cultural human rights also refer to political rights, e.g. the right of national minorities to assemble, organize and participate (lobby) or protest for rights (e.g. Catalans, Slavic groups, Roma).

All three main inter- and supra-national organizations in Europe protect cultural human rights. Different mechanisms apply to each organization and are seen as complementary not only to each other, but also to the different policies of the member states.

Council of Europe (CoE) - 47 member states
- European Convention for Human Rights (ECHR)
- European Charter for Regional or Minority Languages ("Language Charter", 1992)
- Framework Convention for the Protection of National Minorities, 1995 (FCNM) No regional/international protection (Except, Art 14 ECHR)

Organization for Security and Cooperation in Europe (OSCE) - 56 member states
- High Commissioner for National Minorities (HCNM), 1993

European Union (EU) - 27 member states
- Copenhagen Criteria 1992

*The EU refrains from taking up powers regarding ethnic or linguistic minorities, these are domestic affairs*
2. Cultural Human Rights

There is no clear definition of cultural human rights. In general the notion is related to the general and international accepted definition of Culture in three areas which ought to be protected through legal and political measures and frameworks: in (1) the arts and other manifestations of human intellectual achievement (e.g. intellectual property); in (2) the ideas, customs, and social behaviour of a particular people or society (e.g. music, religious practises etc) and in (3) the attitudes and behaviour characteristic of a particular social group (e.g. language, ethnicity, music etc) (Oxford Dictionary).

In international human rights documents the human right to science and culture is an economic, social, and cultural human right claimed, for example in the Universal Declaration of Human Rights and related documents which says that everyone has a right to participate in culture, to benefit from scientific progress, and to have a stake in their own contributions to science and culture (Article 27, UDHR)

“(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

Similar language appears in Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), a treaty that many nations have signed:

“The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

Every human being has the right to culture, including the right to enjoy and develop cultural life and identity. Cultural rights, however, are not without limit. The right to culture is limited at the point at which it infringes on another human right. No right can be used at the expense or destruction of another, in accordance with international law.

This means that cultural rights cannot be invoked or interpreted in such a way as to justify any act leading to the denial or violation of other human rights and fundamental
freedoms. As such, claiming cultural relativism as an excuse to violate or deny human rights is an abuse of the right to culture.

There are legitimate, substantive limitations on cultural practices, even on well-entrenched traditions. For example, no culture today can legitimately claim a right to practise slavery. Despite its practice in many cultures throughout history, slavery today cannot be considered legitimate, legal, or part of a cultural legacy entitled to protection in any way. To the contrary, all forms of slavery (e.g. working conditions in factory), including contemporary slavery-like practices (e.g. human trafficking), are a gross violation of human rights under international law.

Similarly, cultural rights do not justify torture, murder, genocide, discrimination on grounds of sex, race, language or religion, or violation of any of the other universal human rights and fundamental freedoms established in international law. Any attempts to justify such violations on the basis of culture have no validity under international law (UN http://www.un.org/rights/dpi1627e.htm).

Yet cultural rights are the least understood and developed of the rights that have been guaranteed under international and domestic law. This seeming paradox is due to the complexity of the area and the fact that attention has been given only recently to ESC rights as a whole.

One source of this complexity is the varying understandings by governments and in particular by the respective groups of the notion on “culture” and what needs to be protected. There is no clear definition when discrimination or violation of cultural human rights begin and when they end. The various definitions include, for example:

• Acquaintance with and taste in fine arts, humanities, and broad aspects of science as distinguished from vocational and technical skills
• The integrated pattern of human behavior that includes thought, speech, action, and artifacts and depends upon man’s capacity for learning and transmitting knowledge to succeeding generations
• The customary beliefs, social forms, and material traits of a racial, religious, or social group

In November 2001, the UNESCO tried to find a common denominator among its member states and passed a declaration on Identity, Diversity, and Pluralism. The declaration states:

Article 1 – Cultural diversity: the common heritage of humanity
Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations.

Article 2 – From cultural diversity to cultural pluralism

In our increasingly diverse societies, it is essential to ensure harmonious interaction among people and groups with plural, varied and dynamic cultural identities as well as their willingness to live together. Policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace. Thus defined, cultural pluralism gives policy expression to the reality of cultural diversity. Indissociable from a democratic framework, cultural pluralism is conducive to cultural exchange and to the flourishing of creative capacities that sustain public life.

Article 3 – Cultural diversity as a factor in development

Cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence.

Cultural Diversity and Human Rights

Article 4 – Human rights as guarantees of cultural diversity

The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.

Article 5 – Cultural rights as an enabling environment for cultural diversity

Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.
Article 6 – Towards access for all to cultural diversity

While ensuring the free flow of ideas by word and image care should be exercised so that all cultures can express themselves and make themselves known. Freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity.

Cultural Diversity and Creativity

Article 7 – Cultural heritage as the wellspring of creativity

Creation draws on the roots of cultural tradition, but flourishes in contact with other cultures. For this reason, heritage in all its forms must be preserved, enhanced and handed on to future generations as a record of human experience and aspirations, so as to foster creativity in all its diversity and to inspire genuine dialogue among cultures.

Article 8 – Cultural goods and services: commodities of a unique kind

In the face of present-day economic and technological change, opening up vast prospects for creation and innovation, particular attention must be paid to the diversity of the supply of creative work, to due recognition of the rights of authors and artists and to the specificity of cultural goods and services which, as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods.

Article 9 – Cultural policies as catalysts of creativity

While ensuring the free circulation of ideas and works, cultural policies must create conditions conducive to the production and dissemination of diversified cultural goods and services through cultural industries that have the means to assert themselves at the local and global level. It is for each State, with due regard to its international obligations, to define its cultural policy and to implement it through the means it considers fit, whether by operational support or appropriate regulations.

3. National Minority Rights

Governments/ states define who belongs to “its” national minority. Once it is defined, specific human rights can be granted to them. In most cases these rights are linguistic rights under the notion of cultural human rights. In Europe, most often they are granted to (1) Ethnic groups, e.g. Routhanians, Roma (2) Language community groups, e.g. Catalan, Slavic speakers, Russians, Hungarians) (3) Religious groups e.g. Jews or Muslims. The largest group of all national minorities in Europe are the Roma. There are 12-18 Mio Roma (Gypsy)
in Europe, most settling in South East Europe. They enjoy particular protection of their rights by the law of their member states and the
– Council of Europe *(see case law of EChHR)*
– European Union
– OSCE

Similarly, The Council of Europe has the Framework Convention for National Minorities 1995/1998. The Framework Convention for the Protection of National Minorities (FCNM) was signed on February 1995 by 22 member States of the CoE. Culture and Human Rights of National Minorities are defined in the FCPNM as: “Persons belonging to a national minority shall not be denied the right, in community with the other members of their group, and as far as compatible with public order, to enjoy their own culture, to use their own language, to establish their schools and receive teaching in the language of their choice or to profess and practise their own religion.” More specifically, their protection is stated in:

 ARTICLE 5: The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

 ARTICLE 12: The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

The Council of Europe first discussed according specific protection for national minorities in 1949, but it was not until 1990 that the Council of Europe made a firm commitment to protect these minority groups. Recommendation 1134 (1990) contained a list of principles which the Assembly considered necessary for this purpose. In the beginning, the Parliamentary Assembly did call for adoption of a protocol to the European Convention of Human Rights 1949.

The Framework was to become active in 1998. The broad aims of the Convention are to ensure that the signatory states respect the rights of national minorities, undertaking to combat discrimination, promote equality, preserve and develop the culture and identity of national minorities, guarantee certain freedoms in relation to access to the media, minority languages and education and encourage the participation of national minorities in public life. Article 25 of the Framework Convention binds the member states to submit a report to the Council of Europe containing "full information on the legislative and other measures taken to give effect to the principles set out in this framework Convention" (Council of Europe, 1994,
7). The Framework Convention for the Protection of National Minorities defines a national minority implicitly to include minorities possessing a territorial identity and a distinct cultural heritage.

By 2009, 43 member states have signed and 39 ratified this convention, but it has come under some criticism. First of all, not all member states of the Council of Europe have signed and ratified it. France and Turkey have done neither. Iceland, Belgium, Luxembourg and Greece have signed and have yet to ratify. Also, the provisions offer little new on already existing international treaties. Furthermore, they are hedged around with many phrases including 'as far as possible'.

Overall however, Phillips (2002) has argued that because the FCNM is flexible it has allowed a great number of states to ratify it quickly. Therefore it should not be considered a failure, but a start. Many authors agree with this, arguing that it needs to be implemented in 'good faith' with the political will to support commitment to minority rights.

### The European Union (Copenhagen Criteria, 1992)

<table>
<thead>
<tr>
<th>European Union 2003</th>
<th>Inhabitants in 1000s</th>
<th>Majority nation members</th>
<th>Number of minorities</th>
<th>Members of minorities in 1000</th>
<th>Share of minorities in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Austria</td>
<td>8.033</td>
<td>89,0</td>
<td>6</td>
<td>172</td>
<td>2,1</td>
</tr>
<tr>
<td>2. Belgium</td>
<td>10.310</td>
<td>91.3</td>
<td>1</td>
<td>22</td>
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<td>2. Denmark</td>
<td>5.330</td>
<td>95,1</td>
<td>4</td>
<td>123</td>
<td>2,3</td>
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<td>3. Germany</td>
<td>82.260</td>
<td>91,0</td>
<td>4</td>
<td>172</td>
<td>0,2</td>
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<tr>
<td>4. Finland</td>
<td>5.181</td>
<td>92,1</td>
<td>6</td>
<td>332</td>
<td>6,5</td>
</tr>
<tr>
<td>5. France</td>
<td>58.519</td>
<td>86,1</td>
<td>7</td>
<td>8.133</td>
<td>13,9</td>
</tr>
<tr>
<td>6. Greece</td>
<td>10.260</td>
<td>97,4</td>
<td>7</td>
<td>229</td>
<td>2,1</td>
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<tr>
<td>Member states 2004</td>
<td>Inhabitants in 1000s</td>
<td>Majority members in %</td>
<td>Number of minorities</td>
<td>Members minorities in 1000</td>
<td>Share of minorities in %</td>
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</tr>
<tr>
<td>Estonia</td>
<td>1.454</td>
<td>65.1</td>
<td>12</td>
<td>497</td>
<td>34.2</td>
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<tr>
<td>Latvia</td>
<td>2.340</td>
<td>58.3</td>
<td>11</td>
<td>955</td>
<td>40.8</td>
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<tr>
<td>Lithuania</td>
<td>3.653</td>
<td>82.1</td>
<td>10</td>
<td>653</td>
<td>17.9</td>
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<tr>
<td>Malta</td>
<td>377</td>
<td>100</td>
<td>0</td>
<td>0</td>
<td>0</td>
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</tbody>
</table>

After 2004

The EU after the 2004 and 2007 enlargement and its ethnic minorities

<table>
<thead>
<tr>
<th>European Union 2004</th>
<th>Inhabitants in 1000s</th>
<th>Majority members in %</th>
<th>Number of minorities</th>
<th>Members minorities in 1000</th>
<th>Share of minorities in %</th>
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</thead>
<tbody>
<tr>
<td>EU-15</td>
<td>375.418</td>
<td>-</td>
<td>70</td>
<td>23.047</td>
<td>-</td>
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Member states 2004

Estonia

Latvia

Lithuania

Malta
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<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Poland</td>
<td>38.644</td>
<td>96.7</td>
<td>14</td>
<td>1.657</td>
</tr>
<tr>
<td>6. Slovakia</td>
<td>5.380</td>
<td>85.8</td>
<td>10</td>
<td>703</td>
</tr>
<tr>
<td>7. Slovenia</td>
<td>1.948</td>
<td>88.7</td>
<td>4</td>
<td>15</td>
</tr>
<tr>
<td>8. Czech Republic</td>
<td>10.293</td>
<td>93.8</td>
<td>8</td>
<td>323</td>
</tr>
<tr>
<td>9. Hungary</td>
<td>10.162</td>
<td>89.2</td>
<td>13</td>
<td>1.096</td>
</tr>
<tr>
<td>10. Cyprus</td>
<td>890</td>
<td>65.9</td>
<td>1</td>
<td>137</td>
</tr>
<tr>
<td>Total</td>
<td>75.141</td>
<td>-</td>
<td>83</td>
<td>6.036</td>
</tr>
<tr>
<td>EU-25 (2004 or later)</td>
<td>450.559</td>
<td>-</td>
<td>156</td>
<td>38.174</td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td>Enlargement</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>2007</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Bulgaria</td>
<td>7.933</td>
<td>78.8</td>
<td>12</td>
<td>1.620</td>
</tr>
<tr>
<td>2. Romania</td>
<td>21.698</td>
<td>88.3</td>
<td>19</td>
<td>2.512</td>
</tr>
<tr>
<td>Total</td>
<td>29.631</td>
<td>-</td>
<td>31</td>
<td>4.132</td>
</tr>
<tr>
<td>EU-27 (2007 or later)</td>
<td>480.190</td>
<td>-</td>
<td>187</td>
<td>42.306</td>
</tr>
</tbody>
</table>

4. Comparison China-Europe

In the Chinese context, contributing to the public good is seen as an important channel to establish a sound interaction between the individual and the state, and a harmonious society. Based on emphasizing interdependence between individuals and the society as a whole, it focuses on the role individuals can play in the public interest. Individuals may serve the common especially through contribution in the cultural field in an open manner such as private library, museum and culture center etc., which would improve cultural quality of the people and enrich public cultural life. In China, there is an increasing interest in the way citizens can discharge their “civic duty” to contribute to the public good, in particular through participating in public bodies to make them more responsive to their needs. Through this, a balance can be reached between individuals and the society.

In Europe the cultural human rights context is different. It is rather that those enjoying particular cultural human rights ought to be protected from the violation of their culture
through governments. This is due to history, in which particular ethnic and linguistic minorities have suffered severe discrimination, persecution and mass killings throughout Europe’s history (e.g. Jews and Roma during WWII in Germany; Catalans, Basques under Fascists dictatorship in Spain; Armenians in Turkey during WWI etc). The current cultural human rights protection mechanisms in Europe are seen in the context of the recent history. The position of citizens and those considered “national minorities” when enjoying cultural rights, is seen in protecting cultural heritage, language, traditions as well as religion. Cultural rights and cultural life is seen as part of citizen’s identity in a diverse and plural European society ranging from Russia to Portugal, from Norway to Turkey. However, the extension of enjoyment of cultural rights is not clearly defined by the European Convention for Human Rights and Fundamental Freedoms (ECHR) nor by the Treaty to the EU or Lisbon Treaty nor in various domestic laws and constitutions. It ranges different from country to country.

Whereas in Europe, cultural human rights are often connected to the enjoyment of traditions, language and religion of minorities by the Council of Europe or in domestic legislations, the protection of cultural rights of the minority is stipulated in Chinese nationality’s regional autonomy legislation. In the larger Europe, we see 47 states with different ways of protecting and promoting these rights, the common denominators are few and based on general terms such as language and tradition. By learning from international experiences in the cultural rights protection and putting cultural rights into comparative research with cultural tradition, language, religious belief and intangible culture heritage of ethnic minority, we could put forward the legislative safeguard of cultural rights, by strengthening the legal protection of cultural rights, at the same time, establishing judicial remedy for cultural rights.

5. Conclusion & Further Direction

A thorough comparison between Europe and China would be a fruitful endeavor to better understand the notion and avenues of cultural human rights and what role they play and can play on the overall protection of human rights. The different traditions, human rights approach and historical contexts have to be taken into consideration. Nevertheless, both regions refer to the importance of protection cultural human rights and include those who enjoy them in the overall societal development.

In both regimes the importance of the Rule of Law as a way and means to protect and promote these rights are non-disputed. However, also in this care different legal traditions, case law, constitutional laws and the fact that the European human rights regime is steered through has a multi-level governance mechanism, leads to possible different outcomes. To
find common denominators, similarities as well as difference and ways for further developments of these rights, would be an interesting collaborative endeavor for Chinese and European scholars.