



**UNIVERSITY OF TWENTE.**

**Faculty of Behavioural, Management and  
Social sciences (BMS)**

**A Minor Safeguard?  
The Protection of Minorities in the  
Context of EU Return Policies**

**Thomas Christoph Turban  
B.Sc. Thesis  
July 2017**

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**Supervisors:**

1<sup>st</sup>: Dr. Luisa Marin

2<sup>nd</sup>: Dr. Nthabiseng Mohlakoana, Postdoctoral

Faculty of BMS,  
European Public Administration  
University of Twente

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## **1. Abstract**

Rising numbers of asylum seekers and migrants trying to reach the European Union have put the implementation of an effective return policy on top of the agenda of the EU’s migration policies. In 2008, common EU-procedures for the return and removal of irregularly-staying migrants were defined in the so-called Return Directive. The return of migrants is bound to the adherence to fundamental human rights. Ethnic and national minorities comprise groups that are particularly vulnerable and often require peculiar protection. This study tries to assess to what degree minorities are protected by the EU in the context of return. By conducting case-studies on Tamil returnees to Sri Lanka and Roma returnees to Serbia using secondary data, this project tries to provide insight into this issue. Therefore, the cases are assessed with reference to EU human rights documents, primarily the Charter of Fundamental Rights of the European Union. The case studies indicated inconsistencies with the Charter in the return practices with both minorities. The analysis allows us to conclude that the broad wording in EU legislation and an insufficient inclusion of minority protection provides national authorities with a discretionary power that threatens the adherence to the Charter of Fundamental Rights.

## **2. Introduction**

### **2.1 EU Migration and Return**

While Europe has been a continent of emigration during the 19<sup>th</sup> century, this changed drastically due to economic factors after the Second World War. Economic improvements and an increasing labor demand reversed the situation. The European nation-states were subject to migration flows that were very different in their amount, origin and background. Depending on these factors, every country developed their own policies on migration. In the course of European integration, the subsequent members of the EU started to coordinate their policies on migration and asylum. Since the 1990s the then members of the European Community (EC) decided to increasingly cooperate intergovernmentally. A breakthrough was the negotiation of the Schengen agreement in 1990 in which the EC members agreed on the dismantling of borders and a common system of the supervision of migration flows (Schengen information system). The first European treaty that contained provisions explicitly dealing with migration policy was the Maastricht Treaty of 1992<sup>1</sup>. At that time however, merely one provision was included in pillar one, and was thus subject to community law, namely Art.100(c) of the Treaty Establishing the European Community (ECT). The Treaty of Amsterdam<sup>2</sup>, which entered into force in 1998, heralded a new stage in the history of the policy field migration and asylum in the EU. With the Treaty of Amsterdam (Amsterdam Treaty), the European Union (EU) inherited the shambles of the multiple different migration policies of its members, as the treaty settles the debate “whether community law or intergovernmentalism should govern immigration and asylum rules for third-country nationals”<sup>3</sup> in favor of the EU. Since then, the European Union is working on establishing migration and asylum as a communitarized policy field.

In the course of the communitization of the policy field Asylum and Migration, the 2008 “Return directive”<sup>4</sup> represented an important step on the way to foster supranationality in this field. Exemplary for the whole policy field of migration and asylum, the member states’ return policies prior to the return directive lacked a harmonized EU approach. In the course of the increasing cooperation of member states in their immigration policies from the

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<sup>1</sup>Council of the European Communities/Commission of the European Communities, 'Treaty on European Union,' 1992, available at: [https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty\\_on\\_european\\_union\\_en.pdf](https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_european_union_en.pdf)

<sup>2</sup>'Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts,' 1997, available at: <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf>

<sup>3</sup>S. Peers, 'Building Fortress Europe: The Development of Eu Migration Law,' 35 *Common Market L. Rev.* 1998, 1235.

<sup>4</sup>E. P. C. o. t. E. Union, 'Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals,' 2008, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF>

1990s on, the Dublin Convention and the Schengen Agreement (Art. 23)<sup>5 6</sup> represented the first approximations to a common approach on return policies. By obliging member states to expel illegally-staying immigrants or readmitting migrants who have entered a member state's territory, the course was set. Already in 1994, a European Commission (EC) "Communication on Immigration and Asylum Policies", recognized the effective return of irregularly-staying migrants as essential in order to combat illegal migration.

Another instrument enforcing the return of illegally-staying migrants used by the EU and its member-states (MS) is the conclusion of readmission agreements with third-states. Readmission agreements are not a phenomenon of the late 20<sup>th</sup> century, but can be traced back to the 19<sup>th</sup> century, e.g. the Treaty of Gotha from 1851<sup>7</sup>. Yet, the first exemplars of readmission agreements in Europe were rather a means of managing the migration flows between European countries or served the expulsion of individuals<sup>8</sup>. From the 1990s on, parallel to first EU-wide approaches to combat unwanted migration, the member-states increasingly began to conclude readmission agreements with third-countries, especially with Central and Eastern European Countries (CEECs), which were more and more used as transit-countries by migrants from Eastern Europe. Since then, the EU discovered the conclusion of readmission agreements increasingly as an effective way to control migration. Art. 79 (3) TFEU<sup>9</sup> established an express EU competence over readmission. Nevertheless, this competence remains a shared competence with the member states, which have the continuing ability to conclude bilateral readmission agreements with third-states. So far, the EU has concluded readmission agreements with 17 third-countries and alone 12 since 2008. At the same time, also member states concluded several bilateral readmission agreements with third-states.

The EU views the effective return of irregular staying migrants as a requirement for the guaranteeing of a more human management of legal migration. As to data presented by the European Commission, every year between 400.000 and 500.000 irregular staying third-state nationals are urged to leave the EU, although only 40% ultimately leave the EU<sup>10</sup>. The EU took an important step in tackling the subject by negotiating the return directive (RD) and enforcing it in 2010. Since then, the return-directive has been transposed into national law by all EU states (let alone UK and Ireland) and the Schengen countries. The compliance to human rights thus rests on the shoulders of the states bound by the directive. This implicates a complex system of 30 national laws and practices, which makes it difficult to supervise and to monitor possible human rights violations. The "Return Directive" is supposed to "provide for clear, transparent and fair common rules for the return and removal of the irregularly staying migrants,

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<sup>5</sup> 'Schengen Agreement,' 1985, available at: <https://www.consilium.europa.eu/uedocs/cmsUpload/SCH.ACQUIS-EN.pdf>

<sup>6</sup> 'Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy,' 1994, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52000DC0757>

<sup>7</sup> 'Treaty of Gotha,' 1851,

<sup>8</sup> D. L. Caglioti, 'Waging War on Civilians: The Expulsion of Aliens in the Franco-Prussian War,' *Past & Present* 2013, gtt007.

<sup>9</sup> 'Consolidated Version of the Treaty on the Functioning of the European Union,' 2007,

<sup>10</sup> European Commission, 'Return & Readmission,' (2017)., available at: [https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/return-readmission_en)

the use of coercive measures, detention and re-entry, while fully respecting the human rights and fundamental freedoms of the persons concerned”<sup>11</sup>

## **2.2 Minorities and the EU**

Except for tiny states as Monaco or Andorra<sup>12</sup>, which do not have considerable ethnic minorities, the minority problematic plays an important role for all European countries. Different factors have contributed to the high degree of ethnic diversity all over Europe, and in most member countries:

- Europe is populated by multiple different ethnicities and language groups of various dimensions. By historic reasons, states often do not coincide with ethnic and linguistic borderlines and state boundaries were often subject to changes.
- Other minority groups like e.g. the Roma never had their own state, but always lived in countries as a minority group.

Cross-border migration occurred at different times and for various reasons in European history. Political conflicts as well as economic and social problems inside and outside Europe have caused further cross-border migration in recent years. Members of different ethnic and political groups originating from countries inside and outside of Europe were seeking shelter and protection in EU member countries.

Census registrations from the early 2000s suggest that around 12 percent of European citizens are members of a national or ethnic minority group. Living as a member of a minority in a nation state dominated by a national or ethnic majority can imply a high degree of vulnerability for members of these minority groups. Persons belonging to minorities are often excluded from exercising political power and face discrimination, at times even violence or pressure via the *cultural hegemony* applied by a dominant group. Therefore, the implications of the particularly vulnerable position of minorities must be considered for the guaranteeing of a fair and humane implementation of the EU return practices.

The legal European framework for the protection of minority rights can be considered as a mosaic consisting of different tiles and originating from various sources:

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<sup>11</sup> Ibid.

<sup>12</sup> Note that minorities composed of third-country nationals that immigrated to Europe more recently are not included in this study.

- While the protection of minorities is incorporated in the EU treaties as a value (Art. 2 TEU<sup>13</sup>) and as a legal right (Art. 19 TFEU), important legal provisions primarily arise from the Charter of Fundamental Rights of the European Union (further only CFR)<sup>14</sup>, most notably Article 4 (the prohibition of torture and degrading treatment) and Article 19 (2) (the prohibition of expelling or removing someone to a state where he or she might be exposed to torture or degrading treatment).
- Other sources comprise the Council of Europe (CoE) or the OSCE. Even though the Council of Europe is not part of the institution-complex of the European Union, its treaties are still of importance as all 28 member states of the EU are members of the Council of Europe, too. Among the 47 member states are European states with considerable Roma minorities, e.g. Montenegro, the Former Yugoslav Republic of Macedonia or the Republic of Serbia (Serbia) which will serve as an example in the upcoming case study. The Council of Europe has produced two of the most important documents for the protection of minorities in Europe, namely the “European Charter for Regional or Minority Languages<sup>15</sup>” (Language Charter) of 1992 and the “Framework Convention for the Protection of National Minorities<sup>16</sup>”, which came into force in 1998.
- Other important documents originated in the context of the OSCE, for example the Copenhagen document from 1990<sup>17</sup>.

By analyzing the cases of Tamils from Sri Lanka and Roma from Serbia, with reference to the European Charter of Fundamental Rights, this project tries to examine the protection of the human rights of different minority migrant groups affected by the EU return directive.

- "At the present time, I believe that the Roma of Zámoly have no place among human beings. Just as in the animal world, parasites must be expelled<sup>18</sup>". This statement by a Hungarian mayor on national television in 2000 illustrates the racism and the disdainfulness Romani people are confronted with in many Central- and Eastern European countries, where they form significant minority populations. Also in Serbia, racial violence against Romani people is not an exemption. A great number of cases involving racially motivated violence or discrimination are never reported to the police, as they are often treated with inactivity and disregard while also violence against Roma by the authorities is documented<sup>19</sup>.

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<sup>13</sup> 'Consolidated Version of the Treaty on European Union,' 2007, available at: <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A12012M%2FTXT>

<sup>14</sup> 'Charter of Fundamental Rights of the European Union (2000/C 364/01),' 2000, available at: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>15</sup> 'European Charter for Regional or Minority Languages,' 1992, available at: <https://rm.coe.int/168007bf4b>

<sup>16</sup> 'Framework Convention for the Protection of National Minorities,' 1995, available at: <https://rm.coe.int/16800c10cf>

<sup>17</sup> Organization for Security and Co-Operation in Europe, 'Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Csce ' 1990, available at: <http://www.osce.org/odihr/elections/14304?download=true> Paragraph 35 states that “The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities”.

<sup>18</sup> European Roma Rights Center, 'Leading Hungarian Politician Denies Romani Problems,' (2000). <http://www.errc.org/article/leading-hungarian-politicians-deny-romani-problems/1030>

<sup>19</sup> 'Racist Violence against Roma in Serbia and Montenegro,' (2004). <http://www.errc.org/article/racist-violence-against-roma-in-serbia-and-montenegro/1881>

- As to the Tamils in Sri Lanka, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, stated that in their country of origin, “Severe forms of torture continue to be used, although probably less frequently, while both old and new cases of torture continue to be surrounded by total impunity<sup>20</sup>”. Continued forms of torture against Tamil people in Sri Lanka are also documented by the United Nations Committee against Torture<sup>21</sup>.

The history of minorities in Europe has been eventful and turbulent, and minorities were often subject to persecutions. This climaxed in the holocaust of the European Jews by the German Nazi Regime. The collapse of former Yugoslavia and the ethnic conflicts in its course increasingly brought the minority-problematic back on political agendas and underlined why the topic of the human rights of minorities continues to be important.

This project will examine the minorities’ human-rights situation with reference to the European Union’s most important human right framework, the European Charter of Fundamental Rights. Since the coming into force of the Treaty of Lisbon in 2009, the CFR is considered primary law. It is binding on member states when implementing EU-Law and all EU bodies and agencies.

## **2.3 Research Question**

After providing an overview of the legal framework of minority-protection and pointing out, why the preoccupation with the problems of minorities in general and of Roma and Tamils in specific is so important, this research will try to answer the following research question:

**What are the implications of the EU return policy with regard to the protection of minorities and their human rights, with reference to the European Charter of Fundamental Rights? Insights from case studies on Roma returnees in Serbia and Tamil returnees in Sri Lanka.**

The thesis is based on a descriptive research question in a law-in-context approach. This research tries to critically examine the legitimacy of EU return practices by analyzing data provided by scientific articles and other scientific sources. The general research question comprises the following sub-questions:

Sub-questions:

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<sup>20</sup> S. Mitra-Jha, 'Tamils Continue to Face Racial Discrimination in Sri Lanka, Says Un Committee Post Review,' 2016, available at: <http://www.firstpost.com/world/tamils-continue-to-face-racial-discrimination-in-sri-lanka-says-un-committee-post-review-2976326.html>

<sup>21</sup> United Nations, 'Un Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,' 1984, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-9&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en)



- 1. What role does the protection of minorities play in the EU legal framework for the return of asylum seekers and migrants, with regards to their human rights?**
- 2. Case study: What is the human-rights-situation of Tamils in Sri Lanka and of Roma in Serbia and what is the specific situation of returning migrants of the Tamil and Roma minorities to Sri Lanka and Serbia?**
- 3. Does the return of Tamils to Sri Lanka and of Roma to Serbia comply with the provisions of the European Charter of Fundamental Rights?**

## **2.4 Relevance**

This project will analyze how the protection of minorities is considered within the European legal framework. It will focus on the consequences of the return policies for ethnic minorities (exemplified by the Tamils in Sri Lanka and the Roma in Serbia) and examine if the repatriation of minorities policy is compatible with the legal framework and especially with the rights and provisions derived from the European Charter of Fundamental Rights.

Wars, poverty, famines, natural disasters and not least racial-based discrimination or violence were main causes for migration in recent years. With almost all legal ways to migrate to Europe blocked, more and more migrants try to cross the EU's borders illegally. Increasing streams of migrants to Europe, and a lowering acceptance of an open-door policy in different European States lead to political initiatives by the EU and singular countries aimed at levelling-down immigration pressure. Accordingly, the EU made it its business to combat illegal migration by pushing for more effective ways of removing and repatriating "illegal migrants". By negotiating and concluding a readmission agreement with Turkey, the European Union drastically reduced the numbers of migrants with the perspective of successfully applying for asylum in the EU

With return policies as the cornerstone of the EU's approach to reduce illegal migration, migration studies find themselves confronted with the essentially important task of analyzing and reflecting on EU return policies and operations. In doing so, additional importance must be attached to human rights concerns in the course of the EU's approach to combat illegal migration. A widely unexplored topic is the peculiar situation of ethnic and national minorities in the context of the EU return policies. Ethnic or national minorities' concerns are often disregarded when it comes to asylum in the EU. Yet, the problems related to the expulsion from the EU are often even more complex for members of ethnic or national minorities; as for instance, the removal of an ethnic Serbian to Serbia will have fundamentally different consequences for the migrant than the removal of an ethnic Rom to Serbia.

So far, no research has been published that combines the analysis of the human rights situation of minorities with an assessment of the European legal framework for return. Since there will be a part on the contemporary status of the literature on this topic, this issue will be touched but shortly in the introduction.

While EU return policies, as well as minority protection in the EU are researched thoroughly, the scholarly literature on both issues comes with several biases. In this regard, literature on minority protection in the EU primarily deals with minority protection in the EU accession approaches in the Central and Eastern European countries (CEECs) and the EU's foreign policy. In the same way, scholarly literature on, for instance, the return directive, primarily focuses on procedural issues (e.g. the detention of migrants). However, there is no literature available that assesses the consideration of minorities in the return directive. What the scientific literature lacks, is a comprehensive approach, analyzing human rights documents as well as legal documents of the European Union, in order to being able to assess the current status of legal protection for minorities in the return policies of the EU. Accordingly, this research attempts to offer a relevant contribution to migration research by analyzing the complex concurrence of the protection of minorities in the EU and the consequences of its removal practices. Furthermore, the combination of this specific socio-legal context with an ethnographic dimension is unique. Therefore, a key-aspect of this research will be a comparison of the specific cases of the Tamils and Roma. The Roma, as the largest ethnic minority group in Europe with their age-long social isolation and the case of the Tamils in the context of the civil war that led to displacements of big parts of the ethnic group serve as prominent examples for the particularly vulnerable situation of minorities.

## **2.5 Outlook**

In the next step, the most important concepts this research makes use of will be explained. Hereupon, the current state of literature on minorities in the EU and return policies will be assessed. Subsequently, this research will analyze the most important legal documents in the EU's approach on return (namely the return directive, readmission agreements) and their consideration of minorities. In this process, this research will also refer to Court of Justice of the European Union – (CJEU) and European Court of Justice (ECJ) - case-law. Hereupon, this project assesses the most important EU human rights frameworks and their consideration of minorities.

In the next section, the methodology of this project will be addressed. This chapter will describe the research design and reveal the methods of and motivation behind the case selection and the data collection of this project. In the next chapter, practices and policies of the EU's approach for return will be analyzed in the light of their respect of fundamental rights of minorities.

Further, a comparative case study of Roma returnees to Serbia and Tamil returnees to Sri Lanka will be conducted and will serve as an example for the situation of minorities in the EU return policies. Last but not least, the results of this project will be discussed, and conclusions will be drawn. The last chapter will also contain a section on limitations of this study and on where further research is needed.

## **3. Theory**

### **3.1 Concepts**

The definition of several notions is essential for this research.

- This research has already made and will further make a distinctive use of the terms “ethnic minorities” and “national minorities”. To prevent confusion, I want to define the two terms briefly. The term “national minority” does not embrace, as often supposed, all types of minorities that do not belong to the dominating community in a nation-state, since not all “ethnic minorities” show the characteristics of “national minorities”. A national minority is described as a community that shares the cultural characteristics of a group that constitutes a national majority in another country, as for example the Slovenians in Italy or the Ukrainians in Russia<sup>22</sup>. Ethnic minorities, on the other hand, describe those minorities which do not constitute the majority in any state, nor do they have their own nation-state. Ethnic minorities often deserve particular protection, as they in contrast to national minorities, do not enjoy the support of a sovereign “own” nation state. Thus, Tamils as well as Roma are ethnic minorities.
- The terms “return”, “removal”, and “expulsion” in this study are defined as describing all measures and practices conducted by member (and Schengen) states to remove and repatriate irregularly staying migrants. This includes migrants with a legal obligation to leave the country, as well as asylum seekers who applied for voluntary return due to their application having been refused<sup>23</sup>.
- The terms “torture”, “degrading and inhuman treatment” will play an important role in the examination of the legitimacy of return practices. The definitions of the subsequent analysis are based or are derived from the “EU guidelines on torture and other cruel treatment”<sup>24</sup>. The definition of “torture” (“...severe pain or suffering, whether physical or mental... intimidating or coercing... discrimination of any kind... with the consent or acquiescence of a public official or other person acting in an official capacity...”), which is adopted by the

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<sup>22</sup> C. Pan and B. S. Pfeil, *National Minorities in Europe: Handbook* (Braumüller 2003). Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/return-migration/4a\\_de\\_emn\\_ncp\\_return\\_country\\_study\\_final\\_may2007en\\_version\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/return-migration/4a_de_emn_ncp_return_country_study_final_may2007en_version_en.pdf)

<sup>23</sup> A. Kreienbrink, 'Voluntary and Forced Return of Third Country Nationals from Germany,' 2006, available at: [https://books.google.nl/books/about/National\\_Minorities\\_in\\_Europe.html?id=gRU\\_AQAAIAAJ&redir\\_esc=y](https://books.google.nl/books/about/National_Minorities_in_Europe.html?id=gRU_AQAAIAAJ&redir_esc=y)

<sup>24</sup> European Union, 'Guidelines to Eu Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment,' 2012, Available at: <http://www.consilium.europa.eu/uedocs/cmsUpload/TortureGuidelines.pdf>

United Nations (UN) <sup>25</sup> includes a clear notion limiting the term torture to actions conducted by government-related officials or bodies. Ill-treatment, however, is defined as “all forms of cruel, inhuman or degrading treatment or punishment, including corporal punishment, which deprives the individual of its physical and mental integrity” has a much wider applicability. This distinction will play an important role in the upcoming analysis, as discrimination against minorities is often performed by (dominant) parts of the civil society.

- Of importance will also be the question whether the discrimination and the degrading treatment against Tamil or Roma is performed systematically, which means whether it is an exception or rather rule. The study will therefore look at suchlike treatments to members of the minorities and especially to returnees from the European Union.
- In this context, the terms Roma and Romani will, in some instances, also comprise the Albanian-speaking ethnicities of “Ashkali” and “Balkan Egyptians”, which primarily live in the Kosovo and Albania, but due to the ethnical tensions during the Yugoslavia wars reside in great numbers in Serbia as Internal Displaced Persons (IDPs) or enjoy temporary protection in EU countries.

## **3.2 Literature**

The research literature on human rights of minorities appears to be rather unbalanced. So far, no research has been published that combines the analysis of the human rights situation of minorities with an assessment of the European legal framework for return. Yet, a considerable amount of research has been published in the different sub-topics of this project. The most notable author on the subject of minority protection in the EU is Ahmed<sup>26</sup>, who argues that the EU approach is characterized by “a careful balancing act between minority protection and (respect for) state sovereignty”, which complicates an effective EU minority-protection by avoiding to transcend the member states’ preferences<sup>27</sup>.

However ironically, more research has been published on how the EU-accession-process has transformed the protection of minorities in CEECs (in the first decade of the second millennium and more recently in Turkey), than on how the protection of minorities is considered in the EU legal framework. Several authors have dealt with this phenomenon in the last years, such as Hughes & Sasse and Cengiz & Hoffmann<sup>28</sup>. Hughes & Sasse<sup>29</sup> speculated already in 2003 about a “reverse-conditionality” that might emanate from acceding CEECs that have undergone the EU-accession process and implemented the Copenhagen Criteria which include requirements with

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<sup>25</sup> United Nations, *supra* note 21.

<sup>26</sup> T. Ahmed, 'The Treaty of Lisbon and Beyond: The Evolution of Eu Minority Protection?', 38 *European law review* 2013, 30-51.

<sup>27</sup> Ibid.

<sup>28</sup> F. Cengiz and L. Hoffmann, 'Rethinking Conditionality: Turkey's European Union Accession and the Kurdish Question,' 51 *JCMS: Journal of Common Market Studies* 2013, 416-432.

<sup>29</sup> J. Hughes and G. Sasse, 'Monitoring the Monitors: Eu Enlargement Conditionality and Minority Protection in the Ceecs,' *JEMIE* 2003, i.

regards to minority-protection that many MS do not (have to) fulfill. Cengiz and Hoffmann argue that the EU accession process in Turkey served as a fertile ground for democratic reform processes, especially with regard to the Kurdish minority.<sup>30</sup>

This ‘scientific disregard’ of EU-internal minority problems reflects a huge contradiction between the consideration of minority affairs in the EU’s foreign and interior policies. Johns<sup>31</sup> describes this “double standard” in his 2003 article with the figurative name “Do As I Say, Not As I Do”. The EU legal framework for minority protection has developed since 2003, yet still several EU countries did not sign all essentially important documents for minority protection in Europe (e.g. the Language Charter), while they are inevitable for the EU accession process. Contrary to the hopes of Hughes and Sasse, this double-standard led to the coming about of John’s concern from 2003, which assumes a deviation from implementing minority protection policies after the accession process is done. Kochenov and Agarin document exactly this phenomenon from the Baltic States.<sup>32</sup> The authors stated that, “after the accession in 2004 the interest pitted out and, following the meltdown of local economies, funding for integration of Russian-speakers was cut with dedicated governmental bodies disbanded by late 2008, albeit reinstated later with a much more limited mandate, largely focusing on assimilation of minorities into the national ‘culture’”. This implies, that the European Union can only affect EU-accession aspirants’ minority protection while they are particularly in the accession-process and that this influence decreases after accession.

Therefore it is of essential importance, that the ‘literature gap’ on minority protection in the EU is closed.

However, research analyzing the consideration of minority-protection in the EU and its legal framework is rather scarce and focuses either on one specific legal document (e.g. Määttä on the European Charter for Regional or Minority Languages)<sup>33</sup>, one specific minority (e.g. Kostadinova on European minority rights with regards to the Roma)<sup>34</sup>, minority protection in international law as a whole<sup>35</sup> or is not recent enough to include major developments (e.g. it does not include the Lisbon Treaty and entering into legal bindingness of the CfR). Nevertheless, several researchers have analyzed the status of minority protection in the EU-legal framework. Once again I want to revisit Ahmed<sup>36</sup>, who offered a substantial summary of the pre-Lisbon legal framework for minority-protection in the EU. He further included the impacts of the Treaty, arguing that the EU, despite of

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<sup>30</sup> Note that this was before Recep Tayip Erdogan’s about-turn in his Kurd-politics in 2014.

<sup>31</sup> M. Johns, “Do as I Say, Not as I Do”: The European Union, Eastern Europe and Minority Rights,’ 17 *East European Politics and Societies* 2003, 682-699.

<sup>32</sup> D. Kochenov and T. V. Agarin, ‘Expecting Too Much: European Union’s Minority Protection Hide-and-Seek,’ 2016,

<sup>33</sup> S. K. Määttä, ‘The European Charter for Regional or Minority Languages, French Language Laws, and National Identity,’ 4 *Language Policy* 2005, 167-186.

<sup>34</sup> G. Kostadinova, ‘Minority Rights as a Normative Framework for Addressing the Situation of Roma in Europe,’ 39 *Oxford Development Studies* 2011, 163-183.

<sup>35</sup> United Nations, ‘Minorities under International Law,’ (2017).

<sup>36</sup> Ahmed, T. *supra* note 26.

substantial improvements that the Lisbon Treaty brought, is in need of an autonomous EU minority protection policy<sup>37</sup>.

Scientific literature concerning the return directive is also limited. Major contributions in this field were made by Baldaccini<sup>38</sup>, who criticizes the existence of common standards for the return of migrants in spite of the non-existence of common standards for their admission; and Acosta Arcarazo<sup>39</sup>, who analyzed the document incorporating CJEU case law.

### **3.3 Minorities in the Return Directive**

The EU legal framework for irregularly staying migrants was subject to important changes. As the EU explores new ways to combat illegal immigration, raising efficiency in returning irregularly staying migrants has obtained particular attention. The central EU legal framework in return policy is the “common rules on return” (“Return Directive”) which entered into force in 2010<sup>40</sup>.

Being a directive, the common rules were transposed into national law by the member states and the Schengen states (except for UK and Ireland). The compliance to human rights thus rests on the shoulders of the states bound by the directive. The consequence is a complex co-existence of 30 national provisions, preferences, interpretations, definitions and opinions. The “Return Directive” is supposed to “provide for clear, transparent and fair common rules for the return and removal of the irregularly staying migrants, the use of coercive measures, detention<sup>41</sup> and re-entry, while fully respecting the human rights and fundamental freedoms of the persons concerned”<sup>42</sup>. The negotiation of the return directive became a power struggle between the Council and the European Parliament (EP), which was involved for the first time in the negotiation process of a document which is relevant for the area

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<sup>37</sup> Ibid.

<sup>38</sup> A. Baldaccini, 'The Eu Directive on Return: Principles and Protections,' 28 *Refugee Survey Quarterly* 2009, 114-138; 'The Return and Removal of Irregular Migrants under Eu Law: An Analysis of the Returns Directive,' 11 *European Journal of Migration and Law* 2009, 1-17.

<sup>39</sup> D. Acosta Arcarazo, 'The Returns Directive: Possible Limits and Interpretation,' Karin Zwaan (ed.), *The Returns Directive: Central Themes, Problem Issues, and Implementation in Selected Member States*, Nijmegen: Wolf Legal Publishers 2011, 7-24.

<sup>40</sup> European Union, 'Directive 2008/115/Ec of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals,' *Official Journal of the European Union* 2008,

<sup>41</sup> When analyzing the return directive in a human rights context, some light should be shed on the detention of migrants under the RD. The detention of irregular migrants was one of the topics, which got a lot of attention after the adoption of the RD. According to Art. 15 of the directive, these conditions need to be fulfilled for the detention of a migrant:

1. 15 (1): there are no other less coercive measures
2. Detention is not a measure of punishment, it only serves the objective of effectively removing illegally-staying third-country nationals.
3. According to the Kadzoev Case: the detention is only justified as long as a reasonable prospect of removal exists. If this is not the case, the detained person has to be removed immediately.

<sup>42</sup> European Commission, *supra* note 10.

of migration<sup>43</sup>. Criticism directed at the return directive did not only start after publishing it, but already during its negotiation it was criticized due to its lack of transparency<sup>44</sup>.

The document mentions the term “minority” merely one single time, namely in preamble recital (21) which states that member states should implement the directive without discrimination of minorities. By adding recital (21), a peculiar situation for minorities in the context of return policies is acknowledged. However, being a recital, (21) is supposed to “set out the reasons for the contents of the enacting terms (i.e. the articles) of an act”<sup>45</sup> and does not have a specific legal value. When the peculiar situation of minorities is interpreted as one of the reasons of the content of the RD, all the more the question should be posed, why the term “minority” furthermore does not play any role in the text. The consequence is that minorities will not find consideration in the national transpositions of the directive, even though, through the recital’s reference, minorities are acknowledged to play a particular role in the context of return. The influence of the member states on the composition of the directive becomes clear when considering that many human rights notions did not make it into the actual text of the directive but merely into the preamble recitals.

An example is preamble recital (6) which is the only reference to the case-by-case basis in the document. The case-by-case basis is of enormous importance for the protection of minorities as it prohibits mass-expulsions of migrants. The preamble also contains references to important human-rights documents, e.g. recital (23) (Geneva Convention) and recital (24) (CFR). According to Baldaccini (2009)<sup>46</sup>, the fact that the most important human rights provisions can merely be found in the recitals of the preamble and not in the articles of the directive, are a result of the influence of the member states and their worries, references to human rights could prove as obstacles in the implementation of the directive.

Nevertheless, some essential human rights provisions can be directly referred from the articles. Especially the frequent notion of respect to the non-refoulement can be interpreted as a success of the involvement of the EP (cf. Art. 4 (4) (b), 5 (c), 9 (1) (a)). However, the disregard of minorities is best demonstrated by Article 3 (9) which lists vulnerable persons, yet does not include members of minorities in the listing. Baldaccini further criticizes that the EU negotiated a “common policy on returns before putting in place a common policy governing admission and stay”<sup>47</sup>. In this regard, the most important part of the EU’s “deportation machine”<sup>48</sup>, namely assessing who and what is illegal, remains in the hand of the different policies and practices of the member states. Another weak point of the directive for the protection of minorities is Art. 2 (2) (a). It literally allows member states to desist from

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<sup>43</sup> A. Baldaccini, *supra* note 38

<sup>44</sup> D. Acosta, 'The Good, the Bad and the Ugly in Eu Migration Law: Is the European Parliament Becoming Bad and Ugly?(the Adoption of Directive 2008/15: The Returns Directive),' 11 *European Journal of Migration and Law* 2009, 19-39.

<sup>45</sup> European Union, 'Interinstitutional Style Guide,' *Official Journal of the European Union* last updated: 2015, available at: <http://publications.europa.eu/code/en/en-120200.htm>

<sup>46</sup> A. Baldaccini, *supra* note 38.

<sup>47</sup> A. Baldaccini, *supra* note 38.

<sup>48</sup> L. Fekete, 'The Deportation Machine: Europe, Asylum and Human Rights,' 47 *Race & Class* 2005, 64-78.

applying the directive in the case of migrants refused at the border or illegal crossing. Even though fundamental rights still apply in that case, it leaves the migrants without the appropriate legal guarantees of the directive.

Another important aspect for the protection of minorities under the return directive is the question, how member states are supposed to deal with illegal migrants who cannot be removed. This can amongst others apply to members of minorities, who were not granted an asylum status, have been issued to leave the EU, yet other reasons prevent a removal to a third-state. Art. 6 (4) of the RD provides the member states the opportunity to grant a residence permit for “compassionate, humanitarian or other reasons”. Thus, the return directive contains a provision which provides a possibility, however not an obligation for member states to protect members of minorities that are denied refugee status, yet would be exposed to discrimination or violence in their country of origin. Nevertheless, since it does not use the term minority, this non-institutionalized, non-obligatory provision is dependent on compassion and benevolence of the member states and thus does not contribute to the legal protection of minorities in the context of EU return policy.

In conclusion, the return directive disregards the particularly vulnerable situation of minorities almost completely. Even worse, the document leaves so much leeway to the member states, that its “added value”<sup>49</sup> as a common legal framework for the European Union is rather questionable. Despite the obvious shortcomings of the return directive, it can be said that it triggered off rulings of the Court of Justice of the European Union (CJEU) increasingly close the “rag rug” of national policies and practices. Thus, it is worthwhile to analyze the case law of the CJEU with regard to the return directive and its implications for the protection of minorities.

### **3.4 CJEU Case-Law: Complementing the Return Directive**

An example for the valuable contribution of the CJEU is Case C-357/09 PPU (Kadzoev Case)<sup>50</sup>. Kadzoev is a Chechen who crossed the Bulgarian-Turkish border in 2006 and thus was arrested. Kadzoev was not in possession of valid documents, which prevented his expulsion the next day. Accordingly, Kadzoev was placed in a detention center. Thereupon, Kadzoev identified himself. Though Bulgaria validated his identity, Russia did not acknowledge it as proven. While Kadzoev’s claims on asylum were denied, “several NGOs and the UNCHR found it credible that Kadzoev was a victim of torture”<sup>51</sup>. Since the Bulgarian law did not dispose of a maximum length of detention and in the meantime Bulgaria transposed the return directive, the CJEU was asked for ruling. In its decision, the CJEU adduced that “detention ceases to be justified and that the individual must be released when

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<sup>49</sup>A. Baldaccini, *supra* note 38

<sup>50</sup> CJEU, 'Case C-357/09 Ppu, Said Shamilovich Kadzoev (Huchbarov), [2009] Ecr I-11189 ' 2009, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=72526&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=501783>

<sup>51</sup> A. Crosby, 'The Political Potential of the Return Directive,' 3 *Laws* 2014, 117-140.



there is no reasonable prospect of removal due to legal or other considerations” and that “the Directive may not be used for detaining someone on grounds of public order or safety”<sup>52</sup>.

While this is not directly applicable to the situation of minorities, it shows on one hand, the important role of the CJEU in terms of complementing the return directive where it remains broad in its scope of interpretation. On the other hand its value for minorities is more than symbolical, as Crosby points out<sup>53</sup>, since it gives preference to fundamental rights over public order and safety. This is remarkable, as the protection of minorities in the European Union is highly dependent on the consideration of fundamental human rights, as there is no legally binding European minority rights treaty and, thus, minority-protection is primarily a consequence of the application of human rights.

Another example of CJEU case-law complementing the return directive where it remained unclear is *Affum vs Préfet du Pas-de-Calais* (Case C-47/15)<sup>54</sup>. *Affum*, a Ghanaian national was revealed to travel with false documents in 2013 when she was transiting France on her way from Belgium to the UK. *Affum* was placed into police custody, while the French authorities waited for a response by Belgian authorities concerning readmission. After *Affum*'s action at the regional court in Lille (drawing on the CJEU ruling on *Achughbabian*<sup>55</sup>), was rejected, the Court of Cassation decided to ask the consult the CJEU for preliminary ruling. Question 2 referred to the lawfulness of the detention of a third-country national, who entered a member state's territory illegally, under national legislation and where the third-country national may be taken back by another member state pursuant to an agreement that was concluded between the two member states before the transposition of the return directive.

The CJEU ruled that the return directive “must be interpreted as precluding legislation of a Member State which permits a third country national in respect of whom the return procedure established by that directive has not yet been completed to be imprisoned merely on account of illegal entry across an internal border, resulting in an illegal stay”<sup>56</sup>. “That interpretation also applies where the national concerned may be taken back by another member state pursuant to an agreement or arrangement within the meaning of Article 6(3) of the directive”<sup>57</sup>.

The CJEU's ruling further strengthens migrants' protection against criminalization of immigration, insofar as it prohibits the detention of migrants, whose return procedure has not been completed, merely because of crossing a border illegally. This is of significant importance for members of ethnic or national minorities. Often the persecution of minorities in their countries of origin is not recognized by the EU or its member states due to fear from large-scale migration in the case of its recognition as it is the case for the Roma from Serbia . Following this

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<sup>52</sup> CJEU, *supra* note 38

<sup>53</sup> *Ibid.*

<sup>54</sup> CJEU, 'Case C-47/15 *Sélina Affum V. Préfet Du Pas-De-Calais En Procureur Général De La Cour D'appel De Douai*,' 2015, available at: <http://curia.europa.eu/juris/liste.jsf?num=C-47/15>

<sup>55</sup> ' *Alexandre Achughbabian V. Préfet Du Val-De-Marne* (C-329/11); Luxembourg, 6 December 2011,' 2011, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=115941&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=724147>.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

argument, those migrants are viewed as migrating due to economic reasons merely although often they do not have any other option than crossing EU-borders illegally to apply for asylum within the European Union (note that this does not apply to the Serbian Roma, who, due to Visa liberalizations are allowed to enter the EU legally).

We can conclude, the protection of minorities is largely disregarded in the return directive. Even though, the case-law of the CJEU partially extends the rights of migrants (and minorities) where the return directive leaves large leeway for interpretation of national authorities, improvements for the protection of minorities are thus at the utmost indirect and not immediately directed to the protection of minorities.

### **3.5 The Protection of Minorities in Readmission agreements**

One of the most common instruments of European return practice and currently experiencing strong promotion by EU and member states is the conclusion of readmission agreements with third-states. Art. 79 (3) TFEU established an express EU competence over readmission. However this competence remains a shared competence with the member states which have the continuing ability to conclude bilateral readmission agreements with third-states.

So far, the EU has concluded readmission agreements with 17 third-countries and alone 12 of those since 2008, while also member states concluded several bilateral readmission agreements with third-states. The resulting return-regime, which results from this, is subject to criticism by law authorities and human rights activists.

- Rais<sup>58</sup> criticizes the concept of “illegal migration” in readmission agreements. According to Rais, readmission agreements illegalize irregularly migrating foreigners, which possibly deserve protection without consideration of their particular situations in their home countries.
- Adepojou, Van Noorloos and Zoomers<sup>59</sup> state that the externalization of the EU-border coming along with the establishment of the of readmission agreements has led to human rights problems with inadequate screening before repatriations on the one side and to lacking benefits for third countries on the other side. In specific, trade-offs for third-countries as for example development aid, often serve the legitimization of “the implementation of policy measures that constrain migration” instead of aiming at reducing poverty.
- Fekete<sup>60</sup> especially criticizes the “accelerated removal” practices which undermine a “fair and transparent procedure”.

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<sup>58</sup> M. Rais, 'European Union Readmission Agreements,' 51 *Forced Migration Review* 2016, 45-46.

<sup>59</sup> A. Adepojou, F. Van Noorloos, and A. Zoomers, 'Europe's Migration Agreements with Migrant-Sending Countries in the Global South: A Critical Review,' 48 *International Migration* 2010, 42-75.

<sup>60</sup> Fekete, *supra* note 48

In the EU legal framework for return of illegally-staying migrants, European Union readmission agreements (EURAs) play a role of growing importance. However, the extent of provisions for the protection of minorities in those, often tailor-made agreements, is small. Yet, comparing the EURA with the Republic of Sri Lanka from 2005<sup>61</sup> with the EURA with the Republic of Serbia from 2007<sup>62</sup>, a slight progress in the inclusion of human rights can be observed. While both do not mention the term “minority” a single time, the EURA with Serbia at least mentions human rights frameworks directly (e.g. Convention of 28 July 1951 on the Status of Refugees, European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms and the Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 17) (European Union, 2007). Contrariwise the 2005 EURA with Sri Lanka only contains a “Non-Affection Clause” (Art. 17), which states that the agreements “shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Sri Lanka arising from International Law and, in particular, from any applicable International Convention or agreement to which they are Parties”<sup>63</sup> (European Union, 2005).

### **3.6 Minority Protection in EU Human Rights Documents**

The most important EU human rights document for the analysis of European return practices is the Charter of Fundamental Rights of the European Union (CFR). The entry into legal bindingness of the Charter in 2009 with the treaty of Lisbon was an innovative moment in the process of consolidation of human rights in the European Union. In addition to traditional human rights (as the right to life, prohibition of torture) the charter contains social and political rights, as well as more modern rights, e.g. the right to a clean environment. Furthermore, the CFR advances the protection of minorities in the European Union. This does not only result from literal references to minorities of the charter, but also from general rights and principles, which it establishes. Art. 4, for instance, prohibits any torture, inhuman or degrading treatment. Art. 19 extends this provision to the specific case of “removals”. According to Art. 19 (2), removals are prohibited, if there is a risk that the removal exposes someone to torture, inhuman or degrading treatment. Art. 21 and Art. 22 constitute direct references to the protection of minorities. While Art. 21 prohibits, amongst others, any discrimination on grounds of ethnic origin, language or membership of a minority, Art. 22 provides for respect to “cultural, religious and linguistic diversity”.

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<sup>61</sup> 'Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the Readmission of Persons Residing without Authorisation,' 2005, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l14164>

<sup>62</sup> 'Agreement between the European Community and the Republic of Serbia on the Readmission of Persons Residing without Authorisation,' 2007, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32007D0819>

<sup>63</sup> European Union, 'Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the Readmission of Persons Residing without Authorisation - Declarations,' *Official Journal of the European Union* 2005,

While, on the first sight, the CFR appears to be a strong legal framework for the protection of minorities, it contains several severe limitations. First of all, this can be explained by the context of the formation of the CFR. According to Van Danwitz and Paraschas, the Charter has not been created to “establish a minimum standard generally applicable to member states like the European Convention on Human Rights does”, instead the intention was rather to satisfy a “genuine demand for a uniform application of EU law”<sup>64</sup>. Further, as the member states conduct the removals of migrants, it is important to note, that the CFR is not applicable to national measures just because they belong to an area where the EU has powers. As Article 51 (1) states, the CFR is only applicable to member states’ actions, when they implement Union law. Since the return directive created common rules and procedures on readmission practices, most removals fall under the definition of “implementation of Union law.”

However, a careful analysis is essential. For instance most Tamil returnees are removed from the UK, which is not bound by the return directive. Moreover, the discrimination between rights and principles of the CFR (deeming provisions defined as principles as not enforceable but as subject to observe only<sup>65</sup>) constitutes yet another limitation of the impact it has.

Further important documents for the European legal framework for the protection of minorities, but rather unimportant for the following analysis were the CoE Language Charter<sup>66</sup> and the Framework Convention for the Protection of National Minorities<sup>67</sup>.

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<sup>64</sup> T. Van Danwitz and K. Paraschas, 'A Fresh Start for the Charter: Fundamental Questions on the Application of the European Charter of Fundamental Rights,' 35 *Fordham Int'l LJ* 2011, 1396.

<sup>65</sup> *Ibid.*

<sup>66</sup> Council of Europe, 'European Charter for Regional or Minority Languages,' 1992, available at: [http://www.ifa.de/fileadmin/pdf/abk/inter/ec\\_ets\\_148.pdf](http://www.ifa.de/fileadmin/pdf/abk/inter/ec_ets_148.pdf)

The European Charter for Regional or Minority Languages is the only European legal framework dedicated to the protection of Europe’s cultural heritage and richness in the form of its less-used regional or minority languages. As Council of Europe treaties typically consist of principles rather than legally binding rules, its effectiveness depends on national implementation. The Language Charter entered into force in 1998. It has been signed by 25 European states so far, among them with Bosnia and Herzegovina, Czech Republic, Hungary, Montenegro, Romania, Serbia and the Slovak Republic several states with considerable Roma minorities. However, some European states, among them members of the EU as France and Greece have refused to sign the treaty.

Just like almost all legal documents, the Language Charter reflects the two-faceted interaction of individual rights and “real” minority rights of minority protection in Europe. By underlining the cultural heritage of minority languages instead of underlining the protection of minority groups and their autonomy in its narrative, the charter circumvents the delicate matter of state-sovereignty when dealing with the protection of minorities. In other words, the Language Charter is centered around the protection of rights of individuals rather than of groups. By this balancing act, the issuing institutions try to reduce the resistance of nationalistic and homogenous anxieties of European states.

The Charter comprises principles and objectives the contracting parties obligate themselves to. This comprises the encouragement and promotion of minority languages in Europe, as well as the determination of geographical areas of the protected languages. The Charter further contains specific measures for the protection of regional and minority languages. Yet, due to the non-binding nature of the Language Charter, contracting parties tend to use it as a ‘self-service shop’. In other words, contracting countries obligate themselves to different provisions for different minority languages, e.g. Finland declared that it will apply 65 of the provisions to the Swedish language (which is a co-official language in Finland), 59 to the Sami language (a minority language) and another different amount of provisions to other non-territorial languages. The benefits of the Charter in addition to its symbolical value for minorities are primarily to be found in the protection of minorities in states aspiring membership of the EU as they are bound to sign it.

<sup>67</sup> *Framework Convention for the Protection of National Minorities* (Strasbourg 1995).

### **3.7 Conclusion on EU Minority Protection:**

As already noted, due to Member States' concerns for national sovereignty, the EU legal framework on the protection of minorities lacks a clear direction and effective mechanisms to enforce and apply its provisions. Since a large part of this legal framework consists of principles rather than of rights, the legal scope of its provisions is severely limited. Often, the legal provisions avoid direct references to minorities to bypass the protest of the Member States, thus minority protection has to be referred from individual rights. A great improvement was introduced through the Lisbon treaty, which for instance incorporates the protection of minorities as an EU value in Art. 2 TEU. Yet, the legal protection of minorities in a European Union which is still dominated by nation-state interests is insufficient and it is improbable that the EU will produce an extensive legal document that directly binds the member states and their actions in the near future. Yet there is room for hope that a comprehensive legal protection for national minorities will be 'put together like a puzzle' and realized with time and by different actors. In the words of Toggenburg: "the Union will at some point establish a catalogue of minority rights—most probably not in the form of an EU Charter of Minority Rights, but rather resulting from a slow and rather incremental process of standard setting as part of the legislative discourse between Parliament and the Council and the case law of the Court of Justice."<sup>68</sup>

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The FCNM is of particular importance as it is the first multilateral treaty directly aimed at the protection of minorities with legal bindingness. The parties to the Framework Convention are obliged to ensure their legislation is in accordance with its principles. Thereby, the FCNM focuses on two different concepts: 1. Ensuring equality, and 2. Preservation of a minority's ability retain a distinct identity. Despite of the comprehensive principles and rights the FCNM grants to national minorities, it should be considered, that the FCNM does neither include a definition of the term national minority, nor does it, just as the Language Charter, bind its parties to any form of direct application of its provisions.

<sup>68</sup> G. N. Toggenburg, 'Minority Protection in a Supranational Context: Limits and Opportunities,' *Minority Protection and the Enlarged European Union: The Way Forward 2004*, 1-36.

## **4. Methods, Data, Cases**

### **4.1 Methods**

The descriptive research question will be answered by conducting a cross-sectional case study. A case study allows to simplify a complex setting by analyzing a limited number of cases. Compared to other methods, the strength of the case study method is its ability to examine, in-depth, a “case” within its “real-life” context<sup>69</sup>. More specific, a multiple-case study will be applied to describe and compare two different cases of protection of minority rights in the context of return. The multiple-case approach helps insofar, as it allows to analyze the problem in the context of two totally different countries, cultural environments and minorities. A cross sectional case study is appropriate to answer the research question, as the specific contexts are too complex to analyze them quantitatively. Further, a quantitative method would be improper, as the number of fitting cases with a sufficient number of returnees from the EU is low.

An obvious challenge of the case-study research design is the low degree of external validity. As the conclusions are drawn on specific cases with specific conditions, the extent to which the results can be generalized is low. Low generalizability is one of the main reasons, why case studies were traditionally disregarded as a useful research design. However, this is not necessarily the purpose of case study. Rather it can simplify a complex context in order to enable the researcher to identify omitted or intervening variables in individual cases to derive interferences, which were discovered in a broader study<sup>70</sup>. Similarly, in this study, the results are aimed at giving concrete insight on the problematic that is analyzed and are not meant for a generalization. However, if the case study produces results that suggest inconsistencies of EU or member state return practices with its fundamental rights, the findings can be seen to illustrate inattentive protection of minorities in the context of return practices, primarily on account of national authorities returning illegally-staying migrants. It can also, however, lead back to more fundamental underlying problems on EU-level, e.g. in the return directive. This study can also have additional value as it produces very specific knowledge that can provide approximations for further studies. However, threats to internal validity in this study can result from incomplete data sets available or data resulting from different sources which includes EU data, data published by member states, data provided by third-states and

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<sup>69</sup> R. Yin, 'Case Study Methods,' 3 *Complementary Methods for Research in Education* 2004,

<sup>70</sup> A. Bennett, 'Case Study Methods: Design, Use, and Comparative Advantages,' *Models, numbers, and cases: Methods for studying international relations* 2004, 19-55.

by human rights organizations. Particular attention needs to be put on possible different conceptualizations in the data sources.

## **4.2 Case-Selection**

The selection of specific cases in a case study usually roots in a specific personal interest in a case, or because this particular case is either characteristic or very representative for the subject of matter. In this study's case selection, also the applicability of the cases played an important role. As for Roma in Serbia, the reasons for choosing this case were multi-faceted. The Roma find themselves in a specific situation with an extensive degree of discrimination and exclusion in most of their native countries. Thus many European Roma try to reach countries where they expect a lower degree of discrimination. Since most of their native European countries however are labeled as safe countries, their chances to be granted asylum are very limited and many Roma are expelled and forced to return to their home countries. Serbia offers a good opportunity to study this, as Serbians are granted visa liberalizations to the EU, thus many Roma get the opportunity to request asylum. The examination of the Sri Lankan Tamil case is suitable as due to the Sri Lanka civil war considerable numbers of the Tamil minority sought asylum or refuge in different parts of the world. As the civil war ended but ethnic conflicts go on in the island state, still substantial numbers of Tamils flee to Europe, however their chances to obtain asylum are decreasing and already accepted asylum seekers face the expiration of their status.

## **4.3 Data**

The analysis will make use of qualitative data. Primarily, these are secondary data derived from scientific articles, newspaper articles and human rights activists and organizations. Data especially concern migrants returning from the EU but also the general human rights situations of the Roma and Tamils. Data result both from Sri Lankan, Serbian or other Central- and Eastern European sources and authors. Roma or Tamil activist sources introduce further the perspective of the minorities themselves, e.g. European Roma Rights Center<sup>71</sup>. Secondly, this study will make use of legislation documents published by the EU, e.g. the return directive and the EURAs with Serbia and Sri Lanka. Furthermore, the study will resort to European human rights documents (most notably the CFR), to connect the analysis of the social context with an analysis of the legal frameworks.

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<sup>71</sup> <http://www.errc.org/>

## **5. Return Procedure**

In the following, a case study of Roma returnees in Serbia and Tamil returnees in Sri Lanka will be conducted. The Roma and Tamil cases will exemplify the EU's exposure to national and ethnic minorities in the context of its return policies. Prior to this, a short summary of the return of minority members from the EU and a summary of the implementation of the return directive will be provided.

Since the RD established common standards and procedures for the return of illegally-staying migrants, the return procedure generally follows the same pattern in all EU MS.

- Usually the return procedure begins with a return decision, which is essential for the situation of minorities, as it includes the 'illegality of stay', and therefore the basis for returning a migrant. Migrants receiving a return decision can be amongst others rejected asylum seekers, holders of an expired visa, persons intercepted when crossing the border illegally or asylum seekers who have received a decision ending their status as such.
- The next step of the return procedure is the removal order, which is sometimes issued together with the return decision and sometimes separately. This step is even more important for the protection of minorities, as the non-refoulement principle obligates the MS to inform the migrant of the destination to which he or she is going to be removed. In other words, in this step, the migrant can provide or express arguments and reasons for why the removal to that country would be a violation of the non-refoulement principle or of a fundamental right.

The return of illegally-staying third-country nationals is usually executed according to two different concepts, voluntary return or forced return. Primarily, the MS issue forced return decisions, yet the concept of voluntary return becomes more and more popular as it is seen as more cost-effective, dignified and reputable and was thus also particularly promoted by the RD. The legal basis for voluntary return arises from Art. 7 of the RD. Yet the term voluntary return can be misleading, as a voluntary return is usually preceded by a return decision. Hence a voluntary return is certainly far from voluntary. In the contrary, by declaring these types of returns as "voluntary", a wrong impression is created which renders a return less controversial, as the migrant 'agreed'



to the return and thereby acknowledges the righteousness of his or her removal. This reduces the attention that is attached to a case, it takes pressure from decisions being taken by claiming the existence of an agreement between the migrant and the issuing country.

The misleading potential of the term “voluntary” once already aroused the attention of the mass media in the context of the protection of minorities, when the then French president Nicolas Sarkozy claimed that the mass deportations of Roma from France to Romania and Bulgaria were ‘voluntary’<sup>72</sup>. This example indicates that small nuances in terms play a major role in the protection of minorities and in the interpretation of the RD. Due to the fact that the RD is transposed into national law, it is subject to a large degree of discretion on account of the MS. In fact, voluntary return as a scheme “is instead offered as a less painful alternative to continued destitution followed by (inevitable) compulsory return, and it is generally impossible for the returnee to make an informed choice about the country to which they are returning”<sup>73</sup>. The Roma Rights Center even reported on some cases where Romani asylum seekers were ‘forced’ actively to voluntary return.<sup>74</sup> In another study, deported Roma acknowledge, that their voluntary returns on the one hand included “pressure and threats, and on the other hand financial incentives as an encouragement to leave”<sup>75</sup>.

Another problem for members of minorities resulting from voluntary return, is the fact that there is no central EU System documenting voluntary return<sup>76</sup>. That means, that voluntarily returning migrants often do not receive the support or resources needed for reintegrating into their countries of origin. The actual acts of removing migrants to their country via train or plain, accompanied or unaccompanied are diverse and not seldom violations of human rights are reported in their course, yet due to space restrictions and less importance for the context of minority protection, this project will not go into detail about it.

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<sup>72</sup> F. Webber, 'How Voluntary Are Voluntary Returns?,' 52 *Race & Class* 2011, 98-107.

<sup>73</sup> Ibid.

<sup>74</sup> European Roma Rights Center, 'Further Attempts by Denmark to Force Roma to "Voluntarily" Return to Kosovo,' 2003,

<sup>75</sup> Tatjana Perić, 'Violations of the Rights of Roma Returned to Serbia under Readmission Agreements,' *Ecumenical Humanitarian Organization* 2007,

<sup>76</sup> European Commission, 'Return Handbook,' 2015, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return\\_handbook\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/return_handbook_en.pdf)

## **6. Case studies**

### **6.1 Case study: The Return of Roma to Serbia**

#### **6.1.1 Migration from Serbia to the EU: An Overview**

According to Eurostat, in 2015 around 194.000 non EU citizens were successfully returned to their countries of origin. Among these, Albania, Kosovo, Ukraine, Serbia and India were the most frequent countries of the returnees. This listing confirms the importance of the consideration of minority protection in the context of return. While Albania, the Kosovo and Serbia are home to large Roma minorities, India is one of the ethnically most diverse states in the world and is furthermore inhabited by more than 60 Million Tamils<sup>77</sup>.

Since the Yugoslavia wars in the 1990s and until today, Serbia (FR Yugoslavia) is one of the European countries producing the highest number of asylum seekers. The reasons the numbers kept up after the end of the wars are ongoing poverty and ethnic conflicts.

According to the UNHCR, the number of asylum seekers from former Yugoslavia (FRY) skyrocketed to 877,366 in the 1990s. Most western-European countries provided temporary war-asylum for asylum seekers from FRY. Because Serbia legally succeeded Yugoslavia, Yugoslavian asylum seekers from the 1990s are usually returned to Serbia, even though a great share of them does not have their origins in present-day Serbia. In the 21<sup>st</sup> century asylum seekers from Serbia primarily were Albanians and Roma fleeing from discriminatory practices or due to economic reasons<sup>78</sup>.

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<sup>77</sup> Ministry of Home Affairs, 'Scheduled Languages in Descending Order of Speaker's Strength - 2001,' 2001, available at: [www.censusindia.gov.in/Census\\_Data\\_2001/Census.../Language/Statement4.aspx](http://www.censusindia.gov.in/Census_Data_2001/Census.../Language/Statement4.aspx)

<sup>78</sup> S. Š. Vujadinović, Dejan; Joksimović, Marko; Golić, Rajko; Živković, Ljiljana; Gatarićvi, Dragica, 'Asylum Seekers from Serbia and the Problems of Returnees: Why Serbia Is among the World's Leading Countries in Number of Asylum Seekers,'

Another increase in asylum procedures of Serbians in the EU occurred when in 2009 the obligatory Visa for Serbians visiting the EU. As expected, members of ethnic minorities from Serbia used this legal way to enter the EU to apply for asylum or to pursue an illegal stay due to bad prospect of asylum<sup>79</sup>. In 2010, Serbian (with Kosovo) was the nationality with the most asylum seekers in the world with 28,900 applicants<sup>80</sup>. Estimations go, that around 45% of the high numbers of asylum seekers from Serbia in 2010 were in fact Kosovars. Yet, even without the Kosovars, the number of asylum seekers from Serbia were the third highest in worldwide comparison<sup>81</sup>. Remarkable is that of the asylum applications of Serbian residents (without Kosovo) in the EU in 2010, only around two percent were granted. Since the EU MS do not recognize any form of ethnically-motivated persecution in Serbia, poverty and discrimination are no valid reasons for granting asylum and applications are dismissed in accelerated asylum procedures.

### **6.1.2 The Situation of the Roma in Serbia**

The situation of the Roma in Serbia is intrinsically tied to the Yugoslav Wars and the ethnic tensions in its course and aftermath. In 1945 troops of the half-Slovene half-Croat Communist Tito emerged victorious over a regime previously installed by Hitler's Nazis and Mussolini's Fascists<sup>82</sup>. Although closely related to the Soviets, Tito managed to realize a centuries-old ideal of Pan-Slavism: unifying the peoples of the South-Slavs in a common political entity. So the federal state of Yugoslavia with its six republics was created. With Tito's death in 1980, the illusion and the ideal of a Pan-Slavist nation state began to shatter. Ethnic and nationalist conflicts increased and Tito's successor Slobodan Milosevic proved incapable of dealing with the situation.

The old enemy-images reemerged and national politicians exploited them<sup>83</sup>. Since the Republics were multi-ethnic, soon geopolitical conflicts broke loose. Gradually, the constituent republics began to declare independence, which led to wars and ethnically-motivated massacres<sup>84</sup>. By 1992, Croatia, Slovenia and Bosnia-Herzegovina had been recognized by the United States as independent states, and Serbia and Montenegro formed

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*Inštitut za slovensko izseljenstvo in migracije ZRC SAZU Published by Slovenian Migration Institute at the ZRC SAZU 2013, 53.*

<sup>79</sup> S. Vujadinovic et al., *supra* note 78.

<sup>80</sup> UNHCR, 'Asylum Levels and Trends in Industrialized Countries 2010,' 2011,

<sup>81</sup> S. Vujadinovic et al., *supra* note 78

<sup>82</sup> T. Judah, 'Yugoslavia: 1918 - 2003,' 2011, available at:

[http://www.bbc.co.uk/history/worldwars/wwone/yugoslavia\\_01.shtml](http://www.bbc.co.uk/history/worldwars/wwone/yugoslavia_01.shtml)

<sup>83</sup> *Ibid.*

<sup>84</sup> A. Finlan, *The Collapse of Yugoslavia 1991–1999* (Bloomsbury Publishing 2014). Available at:

<https://xa.yimg.com/kq/groups/4625512/1818286689/name/21368982-Collapse-of-Yugoslavia-1991-99.pdf>

the new Federal Republic of Yugoslavia. Yet, when fighting and massacres in Bosnia-Herzegovina went on, and the massacre of Serbian militia in the UN protection zone of Srebrenica occurred, the NATO began to intervene militarily<sup>85</sup>. Peace negotiations under US-leadership led to the Dayton Agreement which in 1995 ended the Bosnian war. Three years later, the conflict between Kosovars and Serbs escalated and open fighting broke out<sup>86</sup>. When Serbian troops conducted widespread ethnical cleansing operations, NATO intervened again which forced the Serbian forces to retreat. Kosovo came under UN administration, but declared its independence from Serbia not before 2008. Yet, its status continues to be disputed as Serbia does not acknowledge its independence. The collapse of Former Yugoslavia was accompanied by severe war crimes on national and ethnic grounds. The recentness of the wars and insufficient rehabilitation continue to intoxicate the relationship between the different ethnic groups in the Balkan until today.

To assess the righteousness of returns of Roma to Serbia (or the Kosovo<sup>87</sup>), the general situation of Romani has to be taken into consideration. The Kosovo plays an important role in the readmission process of Roma in Serbia, as Serbia, contrary to most EU countries, does not recognize the Kosovo as an independent state, however in spite of that EU countries tend to return Kosovars to Serbia.<sup>88</sup>

According to the official valuation of the EU, there is no political or ethnic persecution in Serbia, which would justify for granting asylum. The term “persecution” however is of an ambiguous nature, as there is no definition in a legally-binding international refugee law document. Even though, traditionally only persecutory acts committed by a state actor qualified for persecution as a valid reason for asylum, European national case law extended the scope of the term gradually insofar that some countries also consider forms of persecution committed by non-state actors<sup>89</sup>. Case law also extended the scope as to what can be considered as persecution. Basically there are three persecutory methods: physical, psychological and economic persecution<sup>90</sup>.

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<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Due to data limitations, the analysis of Roma returnees will also comprise data on removals to the Republic of Kosovo. The Kosovo is currently recognized by 111 of 193 states. States that do not recognize the Kosovo are amongst others the Russian Federation, the People’s Republic of China and Serbia. The data from Kosovo that this project includes comes predominantly from northern Kosovo, which is predominantly inhabited by ethnic Serbs (e.g. Mitrovica). Until 2013, the northern Kosovan territories were still governed by Serbian municipal authorities. (Andric, 2013). Ethnically, culturally and traditionally, they are still closely associated with Serbia. Thus, due to data limitations of Roma returnees to Serbia, this project will make complementary use of removals of Roma to amongst others Mitrovica.

<sup>88</sup> Marija Ristic, 'Western Europe Sends Kosovo Roma to Serbia,' *Balkan Transitional Justice* 2012, available at: <http://www.balkaninsight.com/en/article/readmission-loop-over-roma-idps-causes-controversy>

<sup>89</sup> J. F. d. Andrade, 'On the Development of the Concept of ‘Persecution’ in International Refugee Law,' available at <http://www.corteidh.or.cr/tablas/r27152.pdf>

<sup>90</sup> Ibid.

The Roma are Europe's biggest ethnic minority with estimations of around 12 million people<sup>91</sup>. As the Roma arrived in vast numbers and spread over large parts of Europe, they never made state-building efforts and were marginalized in all their host countries. Likewise, the Roma were persecuted, discriminated and isolated systematically since the 15<sup>th</sup> century. Discrimination against Romani reduced remarkably in the communist regimes, where discrimination was forbidden, employment programs helped integrating the minorities, and a national ethos of "brotherhood and unity" soothed racist sentiments<sup>92</sup>.

According to estimations, the number of the Roma minority in Serbia amounts to approximately 600.000. Romani citizens in Serbia are badly integrated, exposed to economic isolation and racial discrimination. While in theory, Roma have equal rights, Romani citizens in Serbia are discriminated in all aspects of social life.

In order to visualize the hardship Romani citizens in Serbia are exposed to I will tell the story of the fictional Romani boy Djordji Bajic.

*Djordji Bajic is born in Belgrade, Serbia's capital, in the early 2000s. Maybe in one of Belgrade's endless slums, maybe in Belville's Roma settlement "Romville", which was cleared by the Serbian government in 2012. Romville is a miserable, illegal slum, with the visage Europeans usually only know from shanty towns in Africa. Djordji grows up in a 6m<sup>2</sup> metal-container with his parents and his three siblings, no water no electricity. His parents did not receive any education. Djordji and his parents live from the garbage a metropolitan city like Belgrade produces. Every day they comb through the city to collect cardboard or metal. A proper job is impossible, as many Roma Djordji's parents do not have identity documents. In actuality they are stateless, they do not even exist. Due to the lack of identity documents, it is impossible for Djordji and his siblings to visit a normal school. That saves himself the discrimination by the other kids at school, Djordji might think. Opportunities for advancement are non-existent. Government policies might earn Djordji and his family a water connection linked to a cleansing of Bellville and a relocation to one of Belgrade's outskirts, but it will not restore the Romas' human dignity. Djordji is used to discrimination and even violence. Racism is a day-to-day experience for the Serbian Roma and violence is not an exception. One month ago they came. Serbian teenagers, with baseball bats, screaming and shouting, Nazi symbols. Djordji and his family try to be still, try to disappear. Resistance is useless, one inconsiderate action could agitate the whole city against the settlement. The police would not help, Djordji and his family do not exist and racism is also common among public servants. Every night Djordji dreams of another life. He heard stories of Western countries, who are in need of young workers, of Angela Merkel who rewards every asylum seeker herself with a job. Djordji is sure, as soon as he is old enough he will try to reach the land of milk and honey. In the meantime, the return directive comes into force.*

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<sup>91</sup>N. Simeunović Bajić, 'Roma in Serbia after the Collapse of Yugoslavia: Political Implications and Media Silence on Racial Violence,' 2011,

<sup>92</sup> D. D. O. Bajic, 'Romi, Od Zaboravljene Do Manjine U Usponu,' *Romi, od zaboravljene do manjine u usponu*, Niš: Odbor za gradjansku inicijativu 2004,

The fictional outlook in the everyday life of Djordji is a realistic scenario for a Roma child in Serbia. Estimations go that between 35 and 60% of Roma children are not enrolled in school<sup>93</sup> and less than one percent of Serbian Roma completes higher education. There are almost no possibilities for Roma children to be instructed in Romani, which is a criterion for many Roma children that do not speak Serbian for exclusion from any education, even though Romani is recognized as an official language of a national minority, at least in some regions. It is further common to place Roma children into schools for individuals with intellectual disabilities, approximately 50-80% of students in those schools are of Romani heritage<sup>94</sup>.

Half of the Roma population lives under the poverty line<sup>95</sup>, which means that Serbian citizens with Roma heritage have a 7.5 times higher chance to be exposed to poverty. Unemployment among Roma is a lot higher than the national average across all educational levels. According to UNICEF, even Roma completing secondary and tertiary education have huge problems finding a job due to racial stigmata<sup>96</sup>.

The housing situation of Djordji is realistic with statistics claiming that between 60 and 80% of Serbian Roma live in isolated Roma settlements of which around 70% are illegal<sup>97</sup>. For different reasons, Roma often cannot exercise their access to public health. This is due to language barriers, lacking legal documentation and discriminatory practices on account of the Serb majority. Even though, Roma are allowed access to the public health system without legal documentation, due to lacking knowledge of health servants and discrimination Roma often cannot avail themselves of this service.<sup>98</sup>

Djordji's parents might be of Kosovan heritage, as there are approximately around 45.000 internally displaced persons from the Kosovo in Serbia, with only half of them registered in Serbia<sup>99</sup>. The lack of legal documentation of Roma in Serbia has different roots: "lack of civil registration, the lack of a registered residence due to the lack of a legally-recognized address, a lack of financial means to pay required fees, a lack of information on procedures, destroyed Registry Books from Kosovo, institutional discrimination against Roma, and lengthy and complicated administrative procedures"<sup>100</sup>.

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<sup>93</sup> T. Joksic, 'Discrimination of Roma in Serbia,' 2015, available at: [http://fluechtlingsrat-bw.de/files/Dateien/Dokumente/INFOS%20-%20Roma/2015-05%20Tijana\\_Joksic\\_Roma\\_Discrimantion-1%20\(2\).pdf](http://fluechtlingsrat-bw.de/files/Dateien/Dokumente/INFOS%20-%20Roma/2015-05%20Tijana_Joksic_Roma_Discrimantion-1%20(2).pdf)

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Roma Education Fund, 'Advancing Education of Roma in Serbia: Country Assessment and the Roma Education Fund's Strategic Directions,' 2007, [http://www.romaeducationfund.org/sites/default/files/publications/serbia\\_report.pdf](http://www.romaeducationfund.org/sites/default/files/publications/serbia_report.pdf)

<sup>97</sup> United Nations in Serbia, 'Realizing Roma Rights,' 2008,

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

A United Nations report on Roma rights from 2008 painted a very gloomy picture of the situation of Roma in Serbia. 30 percent of all identified victims of human trafficking in Serbia are Roma women and 72 percent of all minor victims of human trafficking in Serbia were identified to be Roma children<sup>101</sup>. Racist violence and attacks against Roma occur frequently and are not persecuted thoroughly<sup>102</sup>.

While all of these numbers are dramatic, it is interesting to see the view of the Serbian civil society on the situation of the Roma. According to an inquiry by the Center for Free Elections and Democracy (CeSID), 35 percent of the respondents believe that the Roma are solely to blame for their situation.<sup>103</sup>

The above analysis shows the miserable conditions most Roma in Serbia are exposed to. Serbia might be considered a “safe country”, for most of the Roma it is definitely not. While on the paper Roma in Serbia may be treated equally, in reality this is far from being true. Systematic discrimination is also committed on account of the state and public institutions, e.g. Roma women who are exposed to domestic violence are excluded from public safe houses<sup>104</sup>, hate crimes against Roma are not pursued adequately and the government does not give in to its duties for the successful integration of the Roma<sup>105</sup>.

### **6.1.3 Return of Roma to Serbia**

The Council of Europe estimates that around 100.000 migrants are supposed to be returned to Serbia, whereas ca. 60-75% of them will be Roma<sup>106</sup>. Likewise the International Organization for Migration (IOM) estimates that 60% of all assisted returnees from Western Europe are Roma<sup>107</sup>. The Strategy for Integration of Returnees is based on the EU-Serbia Readmission Agreement<sup>108</sup>.

As the Roma often face hardship in their countries of origin anyway, the situation for most returnees most probably even has worsened. If their social inclusion was not successful before, a sustainable repatriation is very doubtful. Schulze<sup>109</sup> gives a good estimation on what Roma returnees have to expect upon repatriation. According to Schulze, repatriated Roma often live in “abandoned buildings without running water, sanitation or heating; some

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<sup>101</sup>.ibid.

<sup>102</sup> N. S. BAJIĆ, 'Roma in Serbia after the Collapse of Yugoslavia: Political Implications and Media Silence on Racial Violence' 2001,

<sup>103</sup> CeSID, 'Istrazivanje Javnog Mnenja, Izveštaj Sa Istraživanja Javnog Mnenja, Odnos Gradjana Prema Romima U Republici Srbiji,' 2013,

<sup>104</sup> United Nations in Serbia, *supra* note 97.

<sup>105</sup> T. Joksic, *supra* note 93.

<sup>106</sup> L. Idzerda et al., 'Access to Primary Healthcare Services for the Roma Population in Serbia: A Secondary Data Analysis,' 11 *BMC international health and human rights* 2011, 10.

<sup>107</sup> United Nations in Serbia, *supra* note 97.

<sup>108</sup> Vujadinović et al, *supra* note 78.

<sup>109</sup> R. Schulze, 'Unheard Voices: Roma and the Kosovo War,' 4 *Kynmypa/Culture* 2014, 131-140.

of their make-shift settlements are next to rubbish dumps. A number of repatriated Roma even moved into lead-poisoned camps in northern Mitrovica<sup>110</sup> (Kosovo). They face discrimination even to the extent that they often are afraid to leave their homes.

According to Joksic, citing the “Zastitnik gradjana” (Protector of citizens<sup>111</sup>), there are no “appropriately developed mechanisms” coordinating the reintegration of returnees to Serbia, nor are there any funds for the delegation of competences to local governments in the area of return<sup>112</sup>. The lack of a reasonable database for the documentation of returnees further impedes the reintegration-process. That also gives rise to returnees, especially from the Roma minority, returning without legal documents and not being documented properly. The consequence is that these returnees are being left without the necessary support and that returnees experience major difficulties integrating into education and health care programs. According to the Protector of Citizens, the issuance of returnees’ documents is attended by lacking proficiency on account of Serbian authorities who often give contradictory and wrong information to returnees.<sup>113</sup>

Especially the reintegration of returnee children into the educational system confronts the authorities with unsolved problems. In particular Roma children, who are disadvantaged in the Serbian school system anyway, are affected by those shortages. For instance, returnees have to pay the translation and verification of documents and certificates themselves, which many simply cannot afford<sup>114</sup>. Especially returnees’ children who do not speak Serbian or Albanian, experience severe forms of educational exclusion. Returnees with lesser knowledge of the Serbian language often end up in schools for ‘underachievers’ with a lower quality of education and returnees who cannot verify their certificates from abroad struggle with continuing their education at all.<sup>115</sup> Moreover Serbia does not provide sufficient emergency accommodations for returnees, which drives returning Roma back to the informal Roma settlements<sup>116</sup>.

In general, there are two different types of returnees to Serbia. The first group consists of those who have been given temporary asylum which expired thereupon. The second group are those who used the Visa liberations more recently to apply for asylum in the EU.

The main reason why so many Roma asylum seekers or even their children are returned decades after arriving in their country of asylum are specific suspension of deportation status which they obtained. This status proves not

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<sup>110</sup> *Ibid.*

<sup>111</sup> The Protector of Citizens is a Serbian Ombudsman, elected by the Serbian parliament, and a political function that controls public authorities in Serbia.

<sup>112</sup> T. Joksic, *supra* note 93.

<sup>113</sup> Protector of Citizens, 'Report on the Implementation of the Strategy for Improving the Position of Roma with Recommendations,' 2014,

<sup>114</sup> *Ibid.*

<sup>115</sup> United Nations in Serbia, *supra* note 97.

<sup>116</sup> Protector of Citizens, 2014, *supra* note 113.



more than a temporary prohibition of expulsion<sup>117</sup>. These status are for instance issued by Germany, which was the country which returned the most asylum seekers to Serbia in 2011 (77.7 percent of them were Roma)<sup>118</sup>. Among them were also Roma migrants with temporary bans on expulsions who fled in the context of the Yugoslavian wars. There are indications that these so-called ‘Duldungen’ are issued to Roma more likely than a more extensive status compared to non-Roma asylum seekers<sup>119</sup>.

In conclusion, public authorities in Serbia do not appear to be prepared for a successful reintegration of returnees, nor seem local authorities to be sufficiently trained. Poverty is common among returnees, higher than the Serbian average and chances to successfully re-integrate are scarce. This is especially true for Roma returnees who are discriminated and badly integrated in Serbia. The problem of negative prospects of re-integration leads to the migration-cycle where returnees try to enter the EU again illegally.

Finally, improving the outcome of Serbia’s repatriation policies with the cooperation of civil as well as public organizations from the EU will provide only insufficient results. Further public programs are needed to address the general social situation of the Roma minority.

Serbia has stepped up its efforts to improve the inclusion of its Roma citizens clearly. In the context of the Decade of Roma Inclusion 2005-2015<sup>120</sup>, Serbia developed several National Action Plans since 2005 for the improvement of the situation of the Roma on Serbian territory. The National Action Plans included measures, institutions, deadlines, projects and sources of funding for reaching the objectives of the Roma Decade<sup>121</sup>. Yet, as Joksic points out: “The results achieved have not removed obstacles to socio-economic integration of Roma and have not created a complete normative basis for the implementation of long-term measures for reducing poverty and achieving substantive equality of Roma citizens”<sup>122</sup>

### **6.1.4 Does the Return of Roma to Serbia Comply with the Charter of Fundamental Rights?**

As already notified, in the following analysis, the CfR will be the most important legal document. Art. 19 (2) states: “No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment”<sup>123</sup>. Art. 19(2)

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<sup>117</sup> Council of Europe, 'European Governments Are Not Giving Roma Migrants the Same Treatment as Others Who Are in Similar Need of Protection,' 2010, available at: <https://tinyurl.com/y9kg28y7>

<sup>118</sup> Vujadinović et al, *supra* note 78.

<sup>119</sup> Council of Europe, 'European Convention on Human Rights,' 1950,

<sup>120</sup> Tatjana Perić, *supra* note 75.

<sup>121</sup> *Ibid.*

<sup>122</sup> Tijana Joksic, *supra* note 93.

<sup>123</sup> Charter of fundamental rights of the European Union (2000/c 364/01), *supra* note 14.

can be interpreted as the CfR's manifestation of the EU's non-refoulement-principle. This is important, as other EU human rights sources, as for example the ECHR, which was the main source for the drafting of the CfR, do not explicitly mention the principle of non-refoulement. In this instance, the European Court of Human Rights (ECtHR) plays an important role, as it acknowledged the principle of non-refoulement through its case-law, bearing on Art. 1 ECHR (to secure the rights and freedoms of everyone in their jurisdiction), deeming that the principle of non-refoulement shall "protect the fundamental values of democratic societies"<sup>124</sup>. The rights deriving from Art. 19(2), thus enjoy two-fold protection from Europe's highest fundamental rights-courts the European Court of Justice (ECJ), via the CfR and the ECtHR, via the ECHR. Yet, it should be noted that the EU is not bound by ECtHR jurisprudence. Then again, it plays an important role for the context at hand, as its rulings bind all member states of the EU, as well as all other countries being party to the Council of Europe, including Serbia.

The non-refoulement principle is derived from the 1951 Geneva Convention Relating to the Status of Refugees<sup>125</sup>, which already prohibit the extradition (of refugees) to a state where their life or their freedom would be at risk. While originally the persecution would necessarily emanate from a state-actor, the ECtHR made clear in its rulings that the non-refoulement principle also takes effect when the persecution comes from non-state actors (e.g. armed groups, family). It can also be applied, and this plays an important role for the cases at hand, when the receiving state cannot or does not protect the expelled persons<sup>126</sup>. The jurisprudence of the ECtHR is particularly important for the Roma or the Tamils, as the violence or degrading treatment does not necessarily have to be directed at the individual. Deportation is prevented, when the person concerned can demonstrate being member of a social, religious or ethnic group and thereby being exposed to violations of human rights in the case of removal<sup>127</sup>. The non-refoulement principle is also not limited to physical violence only. Art. 19 CfR and Art. 3 ECHR respectively provide for a prohibition of expulsion in the cases of inhumane or degrading treatment and fear, anguish and humiliation respectively<sup>128</sup>.

According to data from 2011, around 77% of returnees to Serbia are Roma<sup>129</sup> and at the same time asylum applications from Serbia in many EU countries have acceptance rates close to zero. This is based on the EU's assessment that there are no political reasons driving Serbians to flee. Refusals are often justified with this notion, even though in the case of national minorities there are indications that a political or ethnic exclusion does in fact exist. Not least, tries the European Commission to develop a list of safe countries including the Balkan States in its efforts to reduce the flow of migrants from that region<sup>130</sup>. This resulted in an outcry among Roma, claiming the EU is attempting to exclude Roma from their right to apply for asylum. That the EU assessment might be

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<sup>124</sup> Yannis Ktistakis, 'Protecting Migrants under the European Convention on Human Rights and the European Social Charter,' 2013, ; Council of Europe, 'European Convention on Human Rights,' at.

<sup>125</sup> United Nations General Assembly, 'Convention and Protocol Relating to the Status of Refugees,' 1951,

<sup>126</sup> Yannis Ktistakis, *supra* note 124.

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.*

<sup>129</sup> Vujadinović et al, *supra* note 78.

<sup>130</sup> Sinisa Jakov Marusic, 'Eu Ban on Balkan Asylum Seekers Alarms Roma,' *Balkaninsight* 2015, <http://www.balkaninsight.com/en/article/refugee-crisis-to-close-doors-for-balkan-asylum-seekers-09-10-2015>

questionable, is also indicated by the acceptance rates from for example Switzerland, which accepted around 37 percent of all asylum applicants from Serbia in 2014<sup>131</sup>. Could it be possible, that the EU's assessment that there is no political or ethnical persecution in Serbia might motivate the national MS authorities to set an adequate case-by-case (in the case of return as well as asylum procedures) procedure aside? An analysis of ECtHR and MS jurisprudence on suchlike cases might help finding an answer to that question.

The ECtHR has ruled on similar cases before. Persecution is a contested term and even though the UN disposes of an own definition of the term, national authorities seem to interpret it differently.

### **6.1.5 Case-Law**

This case<sup>132</sup> brought before the ECtHR deals with the violations of the human rights of Greek-Cypriots in the context of the ethnical tensions between Turkish-Cypriots and Greek-Cypriots on the island. The case might seem unrelated to the case of Roma from Serbia, yet it may support Roma claims to be treated unfairly by EU migration policies. The ECtHR ruled that in the aftermath of the occupation of Northern Cyprus several violations of human rights as codified in the ECHR occurred. The court ruled that there had been a “continuing violation”<sup>133</sup> of Article 2 of the ECHR on the aspect of failed investigation of Turkish authorities on the disappearance of Greek-Cypriots. According to Amnesty, 90 percent of the cases of people disappearing in the context of the Yugoslavia War, where scores of Roma were exterminated, were not clarified<sup>134</sup>. The court also ruled that the “silence of authorities” related to the concerns of families of the missing persons in Cyprus presented a violation of Art. 3, it literally constituted inhumane treatment. Activist sources from Serbia regularly report on cases where crimes and violence against Roma is not investigated and persecuted by the police, to the extent that many Roma lost the trust in Serbian criminal prosecution. According to the CfR, the removal of persons to a country where they expect inhumane treatment is not permissible (Art.19).

The case of the Roma is complicated, as their persecution is not a persecution in its traditional meaning, yet rules from an extensive social and economic discrimination and in cases even institutional exclusion. In another case<sup>135</sup>, on a Serbian Ashkali<sup>136</sup> who was to be removed to Serbia from Ireland, an Irish High Court decided that an

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<sup>131</sup> Peter Maxwill, 'Die Irrtümer in Der Debatte Über Balkan-Flüchtlinge,' *Spiegel Online* 2015, <http://www.spiegel.de/politik/ausland/fluechtlinge-vom-balkan-viele-irrtuemer-ueber-asylbewerber-a-1046504.html>

<sup>132</sup> ECtHR, 'Cyprus V. Turkey , Application No. 25781/94,' 2001, , available at: <http://www.asylumlawdatabase.eu/en/content/ecthr-cyprus-v-turkey-application-no-2578194-10-may-2001>

<sup>133</sup> Ibid.

<sup>134</sup> Amnesty International, "'Verschwindenlassen" Schicksale Von Zehntausenden in Europa "Verschwundenen" Ungeklärt ' 2001, <http://www.presseportal.de/pm/7122/278001>

<sup>135</sup> Supreme Court of Ireland, 'E.D. (Education) - V – Refugee Appeals Tribunal & Anon [2016] Iesc 77,' 2016, ,available at: <http://www.asylumlawdatabase.eu/en/case-law/ireland-ed-education-v-%E2%80%93-refugee-appeals-tribunal-anon-21-december-2016#content>

<sup>136</sup> The Ashkali, as well as the Balkan Egyptians are an ethnic minority that predominantly live in the Kosovo, but also increasingly in Serbia. They have a similar background as the Roma, yet gradually they adopted the Albanian language and

expulsion of the Ashkali would represent a violation of his human rights, as the Ashkali are exposed to racial discrimination in Serbia that there was a risk that “the applicant would not receive a basic education if deported to Serbia”<sup>137</sup>. The Irish High Court thereby confirmed the existence of “economic persecution” in Serbia. The Supreme Court, nevertheless allowed a state appeal that “the High Court was incorrect in finding that the extent of educational discrimination at issue in this case met the threshold of persecution required”<sup>138</sup>. The Supreme Court based its ruling on the fact that the persecution did not result from legal provisions, denying the applicant to access education, but rather from circumstantial reasons.

This ruling is questionable, as it is based on an old-fashioned interpretation of the term “persecution”, where only a state can come into question as an actor of persecution. The exclusion of Roma (as well as Ashkali) from the education system in Serbia however, is rooted besides racial discrimination, in insufficient efforts of Serbian authorities to equip all its citizens with legal documents, as well as the social situation of Roma and their incapability (and Ashkali) to assert their rights. The decision of the Supreme Court is in line with the EU’s assessment of Serbia being a country without political or ethnic persecution. This case also proves, that rulings on Roma cases primarily depend on the interpretation of the statement of affairs. In addition, the case confirms the complexity of the situation of the Roma and that the assessment of the non-existence of persecution is not as distinct as assumed.

Claims of Roma asylum seekers are mostly refused because economic poverty is considered not a sufficient reason to claim asylum in the EU. The remarkably higher economic poverty of Roma as compared to ethnic Serbs however is based on an economic and educational discrimination. The argument that economic poverty does not suffice to justify an asylum application, when this economic poverty is caused through “economic persecution” is questionable. The United Nations recognizes that the line between refugees and economic migrants tends to blur, especially when racial, religious, or political motivations cause economic exclusion<sup>139</sup>.

Even when the state is not the actor in cases of persecution, it is essential that the state takes appropriate measures to rule out the existing persecution.

In a case<sup>140</sup> from Hungary, refugee status was granted to a Roma family from Kosovo in Hungary on the grounds that “state protection was either unavailable or ineffective.” One could argue that there is a remarkable difference between Kosovan and Serbian legislation and projects to enable the inclusion of the Roma. Different sources (e.g. Joksic) lead to the conclusion that the Serbian authorities definitely have increased their efforts to improve the

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customs. The Ashkali distance themselves from the Roma due to cultural and linguistic differences. Ashkali generally assert a distinct origin (e.g. Egypt), while Roma claim Ashkali to be a subgroup of the Roma.

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*

<sup>139</sup> UNHCR, 'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status,' 51, *U.N. Doc. HCR/IP/4/Eng/REV.1* 1992,

<sup>140</sup> Metropolitan Court of Hungary, ' 6.K. 34.440/2010/20, K.H. V. Office of Immigration and Nationality,' 2010, <http://www.asylumlawdatabase.eu/en/case-law/hungary-%E2%80%93-metropolitan-court-5-october-2011-kh-v-office-immigration-and-nationality-6k>

situation of the Roma, yet the situation of the Roma is still precarious, since Serbian efforts proved to be “ineffective”. In legal terms, the situation of Serbian Roma is without doubt considerably better than the Kosovan Romas’. The implementation of the Serbian legislation in this field is however still deficient.

According to the EU assessment, Germany considers Serbia as a safe country of origin. Roma from the Balkan region are very unlikely to obtain asylum in Germany. Most cases are neglected and the authorities act according to the ‘no-persecution in Serbia’ narrative. In (1 B 318 und 319/15) before the administrative court<sup>141</sup> two Kosovan families’ applications were neglected on grounds of insufficient integration of the families. What, however was really remarkable about the cases, is the jurisprudence including the notion that a prohibition on removal would only be applicable if the third-country nationals would on grounds of the removal be exposed to death or grave health hazards. This, however is only true for general prohibitions of removals. According to the non-refoulement-principle, however the reasons to prohibit the removal of a person can also consist of other risks to which the persons in concern are exposed due to expulsion (e.g. mental suffering).

In another case (VG Stuttgart (12 K 2007/05)<sup>142</sup>, Roma from Serbia who were staying in Germany already for 15 years were granted asylum due to their efforts to integrate into German society. The jurisprudence was also based on the comment, that reintegration into Serbia or Kosovo would be accompanied by “serious challenges”<sup>143</sup> due to their affiliation to the Roma minority. Analyzing the different cases, it seems that these decisions do not provide the protection the persons concerned require, but rather ‘capitalize’ their situation to control the desired or undesired migration. This does not mean, that the aspect of how well a person in concern is integrated should not play a role when it comes to returning a migrant, but it is doubtful when administrative courts claim that there are no reasons prohibiting the extradition of Roma and another time argue with the complicated situation of the Roma as an argument against extradition.

### **6.1.6 Roma Case-Study: Conclusion**

In conclusion, the overall situation of the Roma is coined by a large degree of social, economic and educational neglect as well as systematic discrimination, recurrent violence and the lack of police protection. This vulnerable position worsens if the person in concern is in fact a returnee, who has an even higher need to integrate into a society which, in cases, is largely unknown to him or her. Returning Roma have minimal chances to integrate successfully into Serbian society and through their particularly vulnerable position they are more likely to become the victim of structural inhumane or degrading treatment as for example human trafficking, violence or

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<sup>141</sup> Verwaltungsgericht Göttingen, '1 B 318 and 319/15,' 2015, available at: <http://www.verwaltungsgericht-goettingen.niedersachsen.de/aktuelles/presseinformationen/verwaltungsgericht-lehnt-rechtsschutzantraege-zweier-roma-familien-gegen-ihre-geplante-abschiebung-ab-139344.html>

<sup>142</sup> Verwaltungsgericht Stuttgart, '12 K 2007/05,' 2007, available at: [http://www.asyl.net/index.php?id=114&tx\\_ttnews%5Btt\\_news%5D=24764&tx\\_ttnews%5BbackPid%5D=10&cHash=08423e524da1d38674d25e72cbdea2bf](http://www.asyl.net/index.php?id=114&tx_ttnews%5Btt_news%5D=24764&tx_ttnews%5BbackPid%5D=10&cHash=08423e524da1d38674d25e72cbdea2bf)

<sup>143</sup> Ibid.

traumatizing racism. According to Art. 19 (2) CfR, an individual should not be removed to suchlike conditions. As long as the Serbian state cannot improve the situation of the Roma substantially nor cannot improve the integration of returnees drastically, the extradition of Roma to Serbia or Kosovo is likely to constitute a violation of Art. 19 CfR and thereby of the non-refoulement principle. The EU and the MS should therefore refrain from claiming that there is no form of persecution in Serbia and the authorities should analyze every individual case of extradition to Serbia in detail and without prejudices and overhasty generalizations.

## **6.2 Case Study: The Return of Tamils to Sri Lanka**

### **6.2.1 Tamil Emigration and Return: An Overview**

The Tamils have a long history of settlement in Sri Lanka. Their presence on the island can be traced back to the 3<sup>rd</sup> century BCE<sup>144</sup>. Today Tamils make up for around 11 (other sources say 18) percent of the Sri Lankan population<sup>145</sup>. Ethnic tensions between the country's majority, the Sinhalese, and the Tamils increased in the early 1980s when the Sinhalese gradually began to discriminate the Tamils. Marginalization of the Tamils increased, while their language lost the status of an official language and Sinhalese became the sole official language of Sri Lanka. Militant Tamil groups claimed self-determination and an autonomous Tamil state ruled by Tamils, and reacted against repression by military resistance and terror. The racial tensions culminated in a 26-year civil war. In the course of the civil war, the Sri Lankan military committed substantial war-crimes, especially against members of the Tamil minority, which led to large numbers of Tamils seeking asylum all over the world. Today major Tamil Diasporas reside in Europe (especially UK), Canada, Australia, the USA, the Middle-East, and South-East Asia. The Civil War ended with the military victory of the Sri Lankan forces over the Liberation Tigers of Tamil Eelam (LTTE) in 2009. Great parts of the Tamil minority, which primarily inhabited the East and the North of Sri Lanka were displaced internally and continue to experience discrimination or left the country.

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<sup>144</sup> I. Mahadevan, ' "Aryan or Dravidian or Neither? – a Study of Recent Attempts to Decipher the Indus Script (1995–2000)",' 8 (1) *Electronic Journal of Vedic Studies* 2002, <http://crossasia-journals.ub.uni-heidelberg.de/index.php/ejvs/article/view/833>

<sup>145</sup> Department Of Census And Statistics Sri Lanka, ' Sri Lanka Census of Population and Housing, 2011,' 2012, available at: <http://www.statistics.gov.lk/pophousat/cph2011/>

While most Tamil emigrants migrated to Asian countries, it is estimated that more than 500.000 people with Tamil background are residing in Europe. Large Tamil Diasporas can be found especially in the UK, Germany, France, the Netherlands, Switzerland and Norway<sup>146</sup>.

While the number of Asylum seekers from Sri Lanka in the EU decreased after the end of the civil war, they still make up for a substantial percentage of asylum seekers in Europe. In 2011, two years after the end of the civil war, Sri Lanka was ranked the 12<sup>th</sup> country of origin with the highest number of asylum seekers in Europe numbering 7375<sup>147</sup>. With the end of the civil war, the probability for Sri Lankans to be granted protection in Europe decreased dramatically. In France, Sri Lanka is ranked the 5th country of origin with the highest number of rejected asylum seekers<sup>148</sup> (2016) and in the last seven years, France has returned 750 rejected asylum seekers back to Sri Lanka.

## **6.2.2 The Situation of Tamils in Sri Lanka**

The situation of the Tamil minority in Sri Lanka after the war is still complicated. According to Human Rights Watch<sup>149</sup>, especially the former government under Sinhalese President Mahinda Rajapaksa did not contribute to national reconciliation but rather continued a 'politic war against the Tamil minority'. This period of Sri Lanka's history was coined by ongoing racial tension and substantial human rights abuses against the Tamil community. Being suspected of having connections to the defeated LTTE, many Tamils, especially in the North of the country, which was the stronghold of the LTTE, were abducted, held in custody and tortured. A common experience for Tamils in the north were the infamous white vans, which were used by the government to abduct the suspected LTTE members<sup>150</sup>. Many abducted Tamils never surfaced again and the government has not contributed to the clarification of those cases<sup>151</sup>.

The discrimination against the Tamils in Sri Lanka is also of religious nature. Most Sinhalese Sri Lankans are Buddhist and "the extreme Sinhalese nationalist view regards Sri Lanka as an island sacred to Buddhism, in which non-Sinhalese have no place"<sup>152</sup>. As most Tamils are either Hindu or Muslims, besides from discrimination on ethnic grounds, they often experience discrimination on religious grounds.

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<sup>146</sup> V. Sivasupramaniam, 'History of the Tamil Diaspora,' n.d., available at: <http://murugan.org/research/sivasupramaniam.htm>

<sup>147</sup> European Union, 'Asylum in the Eu,' 2011, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/pdf/infographics\\_asylum\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-is-new/news/pdf/infographics_asylum_en.pdf)

<sup>148</sup> J. Alpes, Blondel, C., Preiss, N., Sayos Monras, M., 'Post-Deportation Risks for Failed Asylum Seekers ' 2017, available at: <http://www.fmreview.org/resettlement/alpes-blondel-preiss-sayosmonras.html>

<sup>149</sup> M. Ganguly, 'Sri Lanka after the Tigers,' *Foreign Affairs* 2016, available at: <https://www.hrw.org/news/2016/02/19/sri-lanka-after-tigers>

<sup>150</sup> Ibid.

<sup>151</sup> D. Feith, 'Why Tamils Flee Sri Lanka,' *Eureka Street* 2014, available at: <https://www.eurekastreet.com.au/article.aspx?aeid=41671#.WUe3OMZpyM9>

<sup>152</sup> Ibid.

According to Ganguly, the South Asia Director of HRW<sup>153</sup>, the situation for Tamils in Sri Lanka drastically improved from 2015 onwards, when Maithripala Sirisena won the presidential elections. Under Sirisena, Sri Lanka “has reversed a number of the most abusive practices, dismantling checkpoints, restricting the military to barracks, and otherwise calling off the spooks”<sup>154</sup>. Furthermore the government has taken efforts to investigate war-crimes and disappearances from the civil war.

However, in 2016 after resistance on the account of Sri Lankan authorities against the involvement of international parties, the “Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”, Juan E. Méndez, visited Sri Lanka and prepared a report<sup>155</sup> on human rights violations. Regarding the legal framework, Méndez criticized that Sri Lanka did not ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>156</sup>. It is also criticized that national legislation on torture does not comply fully with the definitions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, even though the differences are only slightly. Another substantial shortcoming of Sri Lankan legislation was the lifting of the ban of the Prevention of Terrorism Act No. 48 of 1979 in 2008<sup>157</sup> (PTA). The Act deals with “elements or groups of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change within Sri Lanka”<sup>158</sup>, conferring power to emergency regulations. Act No. 48 was originally applied during the civil war against the LTTE, yet still finds application in public security matters<sup>159</sup>. The PTA enables the Sri Lankan authorities to make use of torture in the name of combatting terror, which is primarily associated with Tamils in Sri Lanka.

Regarding the contemporary situation, Special Rapporteur Méndez, accompanied by a medical-forensic expert, analyzed a high quantity of cases of torture, most of them having occurred recently (2015-2016). Méndez concluded that “a culture of torture”<sup>160</sup> is still existing. Suspects and detainees were subject to physical and mental coercion in regular crime investigations as well as in Terrorism-related investigations under the Prevention of Terrorism Act. The Special Rapporteur referred to “credible reports”<sup>161</sup> that also in 2016, so after the government change from Rajapaksa to Sirisena, abductions in the infamous, unmarked white vans have occurred. According

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<sup>153</sup> M. Ganguly, *supra* note 149.

<sup>154</sup> *Ibid.*

<sup>155</sup> United Nations General Assembly, 'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on His Mission to Sri Lanka,' 2017, [http://www.ceylonews.com/wp-content/uploads/2017/01/Report\\_of\\_the\\_special\\_rapporteur\\_on\\_torture\\_2017.pdf](http://www.ceylonews.com/wp-content/uploads/2017/01/Report_of_the_special_rapporteur_on_torture_2017.pdf)

<sup>156</sup> UNHCR, 'Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' 2006, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

<sup>157</sup> Parliament Of The Democratic Socialist Republic Of Sri Lanka, 'Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979,' 1979,

<sup>158</sup> United Nations General Assembly, *supra* note 155.

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*



to the reports, the informal crime investigations initiated through the white van abductions, had the purpose of getting confessions before the official interrogation. It was also indicated that it is a common practice to detain suspects already hours, days or weeks before the official investigations<sup>162</sup>. These unofficial detentions enable the practice of torture and ill-treatment by circumventing the law. Suchlike violations of human rights are not only reported for more serious crime-investigations, e.g. terrorism, but also for investigations in trivial offences.

In investigations related to terror-accusations, particularly brutal inhumane practices were reported. This includes “burns; beatings with sticks or wires on the soles of the feet (falanga<sup>163</sup>); stress positions, including suspension for hours while handcuffed, asphyxiation using plastic bags drenched in kerosene hanging of the person upside down; application of chili powder to the face and eyes; and sexual torture, including rape and sexual molestation, and mutilation of the genital area and rubbing of chili paste or onions on the genital area. In some cases, these practices occurred over a period of days or even weeks, starting upon arrest and continuing throughout the investigation.”<sup>164</sup>

### **6.2.3 “A cure far worse than the disease<sup>165</sup>”- The Prevention of Terrorism Act (PTA)**

According to the Special Rapporteur, the Prevention of Terrorism Act constitutes a de-facto state of emergency. Suspects may be arrested without a warrant for a maximum period of 72 hours. The minister of defense can order a detention of a suspect up to 18 months without the detainee being able to challenge the legality of the act<sup>166</sup>. Following reports, almost all suspects detained under the accusation of terror-related acts experience severe forms of torture. Moreover, persons detained under the Prevention of Terrorism Act (PTA) are held in remand detention for years, in certain cases for up to ten years<sup>167</sup>. The Special Rapporteur also indicated cases of sexual violence against women during detention, e.g. a woman who was held in a state of sexual slavery for 3 and ½ years in military camps<sup>168</sup>.

The death penalty is still not abolished in Sri Lanka. During the visit of Méndez, 462 prisoners were in death row. Even though the death penalty is under a moratorium since 1977 and it is improbable that Sri Lanka will enforce any executions, the conditions the prisoners are held in and the uncertainty regarding their life are interpreted as another form of torture<sup>169</sup>.

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<sup>162</sup> Ibid.

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> Sri Lanka Campaign for Peace & Justice, ‘A Cure Far Worse Than the Disease’: Sri Lanka’s New Draft Counter Terrorism Law, 2016,

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

It is important to note that these human rights violations on account of government authorities, as for example the Criminal Investigations Department and the Terrorism Investigation Division, are not investigated nor prosecuted. While the PTA was not directed at the Tamils in specific, it was mostly used to repress opposition from the Tamils, especially from the North-East Regions and most of the persons arrested under the PTA are Tamils accused of former membership to the LTTE<sup>170171172</sup>. According to Méndez' report they are often forced to confess to crimes they have never conducted or to sign blank documents or in a language they do not understand<sup>173</sup>.

The PTA rightly so aroused criticism from Western countries and human rights organizations and expected soon to be replaced by the so-called "Counter-Terrorism Act" (CTA). It has already been approved by the cabinet yet still has to be introduced by parliament. According to experts, CTA "compared to PTA, is equally, if not more, problematic"<sup>174</sup>. The draft for CTA does not only not remedy the PTA's legal scope for human rights violations, it also widens the scope.

Observers criticize that the CTA and its broad definition of terror even more enable the criminalization of all actions directed against the 'unity' of Sri Lanka. The broad wording enables the government to override and penalize any form of critic on the account of human right activists or Tamils and continues to leave scope for severe human rights violations.

## **6.2.4 Tamil Returnees in Sri Lanka**

"Come back. All is forgiven. It's quite safe in Sri Lanka. We're just starting the Missing Persons Office. It's quite safe and some of them [asylum seekers] are from areas where the conflict never took place - some of them are not even Tamils.<sup>175</sup>" This was a statement of Sri Lankan Prime Minister Ranil Wickremesinghe on his visit to New Zealand directed primarily to Sri Lankan asylum seekers in Australia who are mostly detained in camps on Nauru

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<sup>170</sup> D. S. I. Keethaponcalan, 'Sri Lanka's Prevention of Terrorism Act and Revision – Oped,' *Eurasia Review* 2017, <http://www.eurasiareview.com/08052017-sri-lankas-prevention-of-terrorism-act-and-revision-oped/>

<sup>171</sup> S. Somachandran, Jayanth, S., 'Sri Lankan Police Arrest Scores of Tamil Youth,' *World Socialist Web Site* 2016, <https://www.wsws.org/en/articles/2016/05/11/sril-m11.html>

<sup>172</sup> Human Rights Watch, 'Sri Lanka: Rape of Tamil Detainees,' 2013, <https://www.hrw.org/news/2013/02/26/sri-lanka-rape-tamil-detainees>

<sup>173</sup> United Nations General Assembly, *supra* note 135.

<sup>174</sup> D. S. I. Keethaponcalan, *supra* note 149.

<sup>175</sup> Radio NZ, 'Sri Lankan Pm: Asylum Seekers 'Forgiven',' 2017, available at: <http://www.radionz.co.nz/international/pacific-news/324649/sri-lankan-pm-asylum-seekers-%27forgiven%27>

and the Manus Islands. At the same time criticism was voiced by human rights activists<sup>176</sup>, claiming it is still not safe to return to Sri Lanka. Since 2010 reconciliation between Tamils and Sinhalese in Sri Lanka progressed substantially. In 2010 unimaginable, in 2016 the Supreme Court of Sri Lanka dismissed a case challenging playing the national anthem of Sri Lanka in Tamil language<sup>177</sup>. Yet, still voices claim that Tamil returnees are not safe in Sri Lanka. A report by the Forced Migration Review<sup>178</sup> points out that it is still common practice that Tamil returnees are tortured with the objective of “forcing them to confess to alleged links with the Liberation Tigers of Tamil Eelam”<sup>179</sup> and that having spent time in Western Countries is still viewed as an indicator of links to the LTTE. This assumption is confirmed by the provisional draft on the CTA, which will preserve the de-facto state of emergency in Sri Lanka rendering far-reaching competences in criminal investigations in the disguise of means to combat terrorism to the authorities.

While the risk of torture is the main threat for Tamils returning to Sri Lanka, returnees definitely also experience various forms of societal discrimination and racism. A study from 2009<sup>180</sup> suggests that most Tamil and Muslim returnees resign from returning to their original residential areas in the North or East due to the unsafe situation. Most returnees returned to Colombo, where a large part of the population belongs to a minority group. “These concerns affected all aspects of their lives, prevented movement and affected their opportunities for finding work”<sup>181</sup>. While all Tamil returnees experienced problems obtaining their legal documents and severe suspicion and racism on account of the Sinhalese population, the Tamils who returned to unsafer regions in Sri Lanka, such as Jaffna in the North, faced more severe, existential problems. All Tamil returnees who participated in the study said they would only leave the house when it is really necessary, in one case a person was visited by armed men at his house and has not returned since<sup>182</sup>.

Even though evidence suggests that Tamils returned to Sri Lanka are still subjected to torture, in many European countries it is common practice to return rejected asylum seekers to Sri Lanka. The UK is one of the preferred countries of protection of Tamils due to the colonial background. However the UK has sped up the deportations of Tamils to Sri Lanka as a consequence of an updated Policy Guidance on Tamil asylum seekers by the Home Office<sup>183</sup>. Similar to the EU-intention to reduce illegal migration via an effective readmission of “illegally-staying”

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<sup>176</sup> Ibid.

<sup>177</sup> Lanka Business Online, 'Supreme Court Upholds Right to Sing National Anthem in Tamil,' 2016,

<sup>178</sup> Alpes et al, *supra* note 128.

<sup>179</sup> Ibid.

<sup>180</sup> M. Collyer et al., 'Return Migrants in Sri Lanka,' *Institute for Public Policy Research* 2009,

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Home Office, 'Country Policy and Information Note: Sri Lanka: Tamil Separatism,' 2017, available at: [http://www.ecoi.net/file\\_upload/1226\\_1491309394\\_sri-lanka-tamil-separatism-cpin-v4-0-march-2017.pdf](http://www.ecoi.net/file_upload/1226_1491309394_sri-lanka-tamil-separatism-cpin-v4-0-march-2017.pdf)

third-country nationals, returns from the UK have increased since 2004<sup>184</sup>. It is important to note that the UK opted out from the EU RD and thus did not transpose it into national law.

The number of asylum seekers from Sri Lanka to the UK increased recently. While in 2014 1,282<sup>185</sup> Sri Lankans applied for asylum in the UK, 1396<sup>186</sup> did so in 2015. This is contradiction to the efforts the newly-elected government of Sri Lanka made in conciliating the Tamils and the majority Sinhalese as well as an indicator for that discrimination and human rights violations continue to the 'post-change of government-period'. Migration Observatory states that in 2015 1128 Sri Lankans were either removed by force, or returned voluntarily<sup>187</sup>. In other EU countries, the numbers of returns to Sri Lanka vary vastly. From 2009 to 2016, France has returned 750 rejected asylum seekers from Sri Lanka<sup>188</sup>, while Germany returned only 83 persons to Sri Lanka in the same period of time (compare: Germany removed more than 200 UK-citizens to the British Isles from 2009 to 2016)<sup>189</sup>. Even though it is not bound by the RD, the UK is the most important EU country when it comes to the return of Tamil asylum seekers. Moreover, Art. 19 CfR is, as noted above, a more precise manifestation of the non-refoulement principle which also applies to the UK, thus the analysis can also be applied to returnees from the UK.

### **6.2.5 Tamil Returns from the UK**

The Guidance Policy<sup>190</sup> of Sri Lanka is primarily linked to signal cases of the UK Upper Tribunal. In GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)<sup>191</sup>, three Tamil appellants appealed against a decision prohibiting them to enter the UK and respectively against a decision to remove them to Sri Lanka. The ruling of the Tribunal represents the new country guidance on Sri Lanka for the UK and replaced a country guidance from 2014<sup>192</sup>. In its ruling the Tribunal acknowledged the great progress the Sirisena-Government has achieved in reconcile the Sri Lankan people after the civil war. Firstly, the tribunal noted that not all Tamils returning to Sri Lanka are at risk. According to the Tribunal, the government's policy is to "identify Tamil activists in the Diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in

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<sup>184</sup> The Migration Observatory, 'Deportations, Removals and Voluntary Departures from the Uk,' 2016, available at: <http://www.migrationobservatory.ox.ac.uk/resources/briefings/deportations-removals-and-voluntary-departures-from-the-uk/>

<sup>185</sup> T. Hart, 'Uk Asylum Seekers – by the Numbers,' *Geographical Week* 2015, available at: <http://geographical.co.uk/people/the-refugee-crisis/item/1184-uk-asylum-seekers-by-the-numbers>

<sup>186</sup> The Migration Observatory, 'Migration to the Uk: Asylum,' 2016, available at: <http://www.migrationobservatory.ox.ac.uk/resources/briefings/migration-to-the-uk-asylum/>

<sup>187</sup> The Migration Observatory, *supra* note 184.

<sup>188</sup> Alpes et al, *supra* note 128.

<sup>189</sup> Pro Asyl, 'Fakten, Zahlen Und Argumente,' n.d., available at: <https://www.proasyl.de/thema/fakten-zahlen-argumente/statistiken/>

<sup>190</sup> Home Office, *supra* note 183.

<sup>191</sup> UK Upper Tribunal (Immigration and Asylum Chamber), 'Gj and Others (Post-Civil War: Returnees) Sri Lanka Cg [2013] Ukut 00319 (Iac) ' 2013, available at: <http://www.refworld.org/pdfid/51da951c4.pdf>

<sup>192</sup> Home Office, 'Country Information and Guidance Sri Lanka: Tamil Separatism ' 2014, available at: [https://www.ecoi.net/file\\_upload/1930\\_1409221654\\_cig-sri-lanka-tamil-separatism-v1-0e.pdf](https://www.ecoi.net/file_upload/1930_1409221654_cig-sri-lanka-tamil-separatism-v1-0e.pdf)

Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the ‘violation of territorial integrity’ of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka”<sup>193</sup>. Thus, the only persons at risk when returning to Sri Lanka are either Tamils who were members or closely related to the LTTE (or are perceived so) or were involved in Diaspora activities against the integrity of a unitary Sri Lanka. At the same time, the tribunal notes that “the LTTE were involved in serious human rights abuses during the conflict and as such, there may be serious reasons for considering that the exclusion [from protection] clauses apply”<sup>194</sup>. That way, the Home Office is in a really comfortable position. The present subsumptions make it really hard for Tamils to be granted any form of protection, as most Tamils who fall under the category of being at severe risk in case of expulsion are excluded at the same time.

Furthermore, the country guidance includes the following notion: “Decision makers should also note that many human rights reports on Sri Lanka use the term ‘torture’ to cover a very wide range of treatment ranging from forceful questioning or threats, through to the most severe forms of ill-treatment”<sup>195</sup>. The human rights organization “Freedom from Torture” criticized the new country guidance<sup>196</sup>. According to the organization, the country guidance downplays human rights violations and jumps to conclusions that can affect the well-being of Tamil returnees. The Country guidance further contains a passage stating that police officers are not interested in the LTTE past of Tamils per se, but rather if they committed crimes during the Civil War. Reports from different human rights organizations find evidence that this is not exactly true. The Special Rapporteur states that anyone deemed to have had any link to the LTTE during the conflict and political and human rights activists remain subject to extensive surveillance and intimidation by the military, intelligence and police forces<sup>197</sup>” and concludes that “use of torture and ill-treatment to obtain a confession from detainees under the Prevention of Terrorism Act is a routine practice<sup>198</sup>”. Freedom of Torture claims that the Home Office has selectively quoted UN reports as well as Freedom of Torture reports “to produce an inaccurate picture of the human rights situation and the government of Sri Lanka’s willingness to address abuses including torture”<sup>199</sup>.

The ruling of the Tribunal further questions the credibility of the UN report as well as other reports claiming: “A medical report in support of an account of torture does not necessarily determine its credibility if other evidence provides good reason to reject the person’s account of when and how scars (for example) were caused”<sup>200</sup>.

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<sup>193</sup> Home Office, *supra* note 183.

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> Freedom from Torture, 'New Uk Home Office Guidance on Sri Lanka Significantly Downplays Ongoing Human Rights Violations ' 2017, available at: [https://www.freedomfromtorture.org/news-blogs/03\\_04\\_2017/new\\_uk\\_home\\_office\\_guidance\\_on\\_sri\\_lanka\\_significantly\\_downplays\\_ongoing\\_human](https://www.freedomfromtorture.org/news-blogs/03_04_2017/new_uk_home_office_guidance_on_sri_lanka_significantly_downplays_ongoing_human)

<sup>197</sup> United Nations General Assembly, *supra* note 135.

<sup>198</sup> *Ibid.*

<sup>199</sup> Freedom of Torture, *supra* note 196.

<sup>200</sup> UK Upper Tribunal (Immigration and Asylum Chamber), *supra* note 172.

It emanates from the Country Guidance, that the UK acknowledges that the PTA is primarily used for the detention of Tamils (“[T]he Prevention of Terrorism Act has a disproportionate impact on ethnic and ethno-religious minorities, such as Tamils, who have reportedly been targeted for arbitrary arrests and detentions under the Act”<sup>201</sup>) and that the drafts for the CTA were not fulfilling international standards, nor that they remedied the PTA’s shortcomings making human rights violations possible<sup>202</sup>. These and further violations of human rights from several reports are noted in the country guidance, yet downplayed and, as it seems, not further considered respectively the country guidance refrains from drawing conclusions from it. Since the country guidance case is from 2013 and the new-elected government has made progress, (yet has not created a safe environment for Tamil returnees), it is probable that (forced and voluntary) returns of Tamils to will further increase.

### **6.2.6 Does the Return of Tamils to Sri Lanka comply with the Charter of Fundamental Rights?**

Disputing the credibility of reports indicating a still-existing “culture of torture”<sup>203</sup> in Sri Lanka and limiting the numbers of persons applicable to protection to a minimum, the UK and other EU countries expose thousands of Tamils to risks of torture and ill-treatment every year. Indications that human rights violations such as torture or ill-treatments are used systematically in Sri Lanka, especially in the case of Tamil returnees are manifold and credible and the return of vulnerable persons to such an environment represents a clear breach of the non-refoulement principle. On the contrary to the Roma case, the case of Tamils is rather clear. At least until the Sri Lankan government replaces the PTA with a new act that meets international standards, the returning policy of UK and all other EU countries of Tamil asylum seekers to Sri Lanka is highly questionable on legal grounds.

A confirmation of this assessment comes directly from the ECtHR. In early 2017, the Court ruled that Switzerland has wrongly exposed a Tamil man, a former member of the LTTE, to torture by deporting him to Sri Lanka<sup>204</sup>. “The Court found [...] that the Swiss authorities should have been aware of the risk that Mr. X might be subjected to ill-treatment if deported, as there had been ample evidence of this at the time”<sup>205</sup>. In particular the Court held that Mr. X has been violated in his rights deriving from Art. 3 ECHR, which corresponds to Art. 19 CfR. Through the deportation, the appellant was exposed to severe ill-treatment and detention. Two years later, Mr. X was released and applied for protection on humanitarian grounds which was granted.

When removing Tamils to Sri Lanka, it is not at all guaranteed that the persons in concern will not be exposed to severe human rights violations ranging from various forms of ill-treatment to torture. In conclusion, under the

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<sup>201</sup> Home Office, *supra* note 164.

<sup>202</sup> *Ibid.*

<sup>203</sup> United Nations General Assembly, *supra* note 197.

<sup>204</sup> ECtHR, 'Swiss Authorities Failed to Adequately Consider Risk of Ill-Treatment before Deporting Sri Lankan Tamil National,' 2017, available at: <http://www.asylumlawdatabase.eu/en/content/ecthr-x-v-switzerland-no-1674414-article-3-26-january-2017>

<sup>205</sup> *Ibid.*

given circumstances, the return of Tamils (still) does not comply with the fundamental rights guaranteed by the CfR, in particular Art. 4, Art. 6 and Art. 19(2), nor with the non-refoulement principle. It remains to be seen, if the final versions of the CTA will reverse the shortcomings and comply with international standards. Considering the inability of the latest drafts to approach the PTA's problems, this seems very improbable. To be concrete, through its broad wording, the CTA as it was proposed so far, does not only present a source of risk for the Tamil community, but also for all human rights activists and dissidents criticizing the government.

## **7. Discussion and Limitations:**

### **7.1 Limitations:**

As every socio-scientific study, this study contains limitations. In the following I want to sum up the possible constraints of this research project and how it could be possibly improved.

In the first instance it must be underlined that this study completely relies on secondary data collected by scientists, human rights activists/organizations, journalists and governmental departments. Although I tried to assess their reliability carefully before the selection, I cannot warrant the full accurateness of the data and the entire elaborateness in their collection. As described above, especially the Home Office criticizes human rights organizations to use different, partially not correct definitions and methods to assess the cases at hand. Data limitations further complicated the selection of completely assured data. I also tried to rely primarily on data that was collected recently. Any case that deviates from that approach, is indicated it and the date of data collection is put into its socio-legal context.

As already indicated, the data on Roma also contains data about Roma, Ashkali and Egyptians from the northern regions of the Kosovo (Mitrovica). While the status of Kosovo in general is disputed and various countries do not recognize its independence (among them Serbia), the status of the region of Mitrovica is even more debated, since it is closely related to Serbia due to its majoritarian Serb-ethnic population and cultural legacy.

Another problem I want to highlight is the inclusion of the UK. As the UK to a large extent acts independently from EU legislation in migration questions, it also opted out from the return directive. Due to historical bonds however, the UK is the most applicable case to analyze the return of Tamils from the EU. In addition the UK

negotiated a protocol<sup>206</sup> ensuring that the CfR “does not extend the ability of the Court of Justice of the European Union, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or actions of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms”<sup>207</sup>.

At the same time, the protocol obligates UK courts to apply the CfR “strictly in accordance with the explanations referred to in” Art. 6 TEU (Art. 6 (1) 1. “The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.”)<sup>208</sup>. Moreover, in *NS v Home Secretary*<sup>209</sup> the CJEU ruled that the protocol “is not intended to exempt the Republic of Poland or the United Kingdom from the duty to comply with the provisions of the Charter, or to prevent a court of one of those Member States from ensuring compliance with those provisions”<sup>210</sup>. In the case of an exit of the UK from the EU, it remains to be seen, which results the negotiations between the two parties will bring. Moreover, as this project aims at assessing the legal rightfulness of the return of members of minorities, in any case the results from the returnees from the UK also have significance for Tamil returnees in general.

Finally, I want to acknowledge, that especially the Tamil Case Study, due to lack of scientific articles, was primarily conducted with the use of human rights organizations’ data. It is therefore possible that a corresponding bias will occur. I would like to confront this expected criticism by affirming that the protection of minorities is a core element of human rights and that human rights organizations are particularly suited for examining the situation of ethnic minorities. In order to stress how diverse the perceptions of the situation of a minority can be, I included the perspective of the UK Home Office.

## **7.2 Discussion**

As this study primarily consists of the conducted case studies on Tamil returnees in Sri Lanka and Roma returnees in Serbia, it cannot provide a complete assessment of the consequences of the EU return policy for the protection of minorities. While I managed to assess the legal state of minority protection in the EU’s return policy by analyzing the European legal framework, it would be overconfident to claim that this study provides a complete

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<sup>206</sup> European Union, 'Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom,' *Official Journal of the European Union* 2007, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:0156:0157:EN:PDF>

<sup>207</sup> Ibid.

<sup>208</sup> Consolidated Version of the Treaty of the European Union, *supra* note 13

<sup>209</sup> CJEU, 'Joined Cases C-411/10 and C-493/10 ,N. S. V Secretary of State for the Home Department and M. E. And Others V Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform,' 2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62010CJ0411:EN:HTML>

<sup>210</sup> Ibid.



analysis of its consequences. The return policy, while it is regulated by the EU, is exercised by the member states. An analysis comprising the national return policies of the member states would quite honestly go beyond the scope of this thesis. This study can only provide an overview and an assessment of the consequences for the cases examined in the case studies. In other words, the results and the conclusion of the case studies cannot be generalized as to the return policies of the EU member state or the EU in general, other minorities, or other countries of origin. The findings apply only in the scope – and constitute an assessment of the specific situation of Tamil returnees to Sri Lanka and Roma returnees to Serbia.

In the contrary, the conclusions emanating from the analysis of the consideration of minority protection in the EU legal framework (for return) did not exist before as such and closes a scientific literature gap in migration studies. These findings can therefore contribute to studies which examine similar topics.

Due to space, time and data restrictions, various noteworthy aspects had to be disregarded. Further research could analyze national return-policies of the member states in detail. In the case of the Roma, it is advisable to conduct case-studies for the return to other countries in the Balkan, e.g. FYROM, Montenegro, Bosnia-Herzegovina, Albania or the Kosovo in its entirety.

It is also important to acknowledge, that this study constitutes a cross-section of time, space and object. Thus, the conclusions on the issues that were examined are only valid for the moment. As a matter of course, the cases require updates and the inclusion of major developments. For instance, the situation of the Tamils needs to be re-assessed if the government of Sri Lanka replaces the PTA with a CTA that complies with international standards and is implemented thoroughly.

Furthermore, the study requires continuing research in order to be able to integrate the case-studies in a more comprehensive context. For instance, examining further cases (minorities and countries of origin) could provide the possibility to compare the cases on a large scale and might one day even lead to the possibility to realize a substantial assessment of the consequences of the EU's return policies for the protection of minorities.

## **8. Results & Conclusion:**

Minority protection is an ambivalent topic in the legal framework of the European Union. Every step towards a more intensive protection of minorities is weighed up against the MS' concerns for national sovereignty. This leads to a fragmented EU minority protection framework which is composed of provisions and rights, collective and individual rights, various legal documents, national and EU legislation, international human rights documents, bilateral and multilateral treaties, as well as jurisprudence and case law. Additionally, all of them provide the legal framework for minority protection with a different scope and different legal effects. Through all of these measures, protection for minorities is produced, yet protection is not invariably guaranteed in the name of and specifically for minorities, but as a side product of, for instance individual rights. One could argue, that what matters is that minorities in the EU are protected at last, no matter what the source of the protection is. This is certainly right, yet it is of the utmost importance, particularly of symbolical value, that minorities and their rights are considered, recognized, honored and protected. While the RD indeed mentions that the document should be transposed into national law without discriminating minorities, it refrains from referring to a particular requirement of protection of minorities. Minority protection plays a subordinate role in EU return policies and the literal consideration of minorities in the EU return policies is almost non-existent.

The EU legal framework on return fails to consider the frequently marginalized situation of minorities. The case study on Roma in Serbia stressed that, in spite of the efforts of the Serbian government, the situation of the Roma has not improved sufficiently in the last decade. The Roma are still discriminated in all layers of Serbian society. Due to their vulnerable social position, they are often exposed to racism, poverty, unemployment or even violence and human trafficking. These problems increase explicitly in the case of returning Roma. Roma returnees perceive severe difficulties in re-integrating in education and health care systems, some remain without legal status.

Roma that return to Serbia have minimal chances to integrate successfully into Serbian society. The particularly vulnerable social position also makes them more likely to become the victim of inhumane or degrading treatment. According to Art. 19 CfR, an individual should not be removed to suchlike conditions. Since a violation of Art. 19 (2) CfR and the non-refoulement principle cannot be ruled out for returning Roma, the case-by-case basis should be applied impartially. Since Serbia is not safe for everybody, assessing Serbia as a safe-country for all kinds of returnees is therefore misleading and can generate simplistic and superficial decisions with regards to asylum and return. As long as the Serbian state cannot improve the situation of the Roma substantially nor cannot improve the integration of returnees drastically, the extradition of Roma to Serbia or Kosovo can confront the persons in concern with existential threats. The EU and the MS should therefore refrain from claiming there is no form of persecution in Serbia and the authorities should analyze every individual case of extradition to Serbia in detail and without prejudices and overhasty generalizations.

Sri Lankan Tamils, on the other hand, are still confronted with societal racism and discrimination. A big problem is the Sri Lankan criminal- and terror prosecution, particularly the PTA in the course of which primarily Tamils and especially Tamil returnees are detained and exposed to violence, torture and other forms of inhumane and ill-treatment.

Disputing the credibility of reports indicating a still-existing “culture of torture” in Sri Lanka and limiting the numbers of persons applicable to protection to a minimum, the UK and other EU countries risk to expose Tamils to torture and ill-treatment every year. Indications that human rights violations such as torture or ill-treatments are used systematically in Sri Lanka, especially in the case of Tamil returnees are manifold and credible and the return of vulnerable persons to such an environment represents does not correspond with the non-refoulement principle. On the contrary to the Roma case, the case of Tamils is rather evident. At least before the Sri Lankan government does not replace the PTA with a new act that meets international standards, the UK and all other EU countries should desist from returning Tamil asylum seekers to Sri Lanka.

The outcomes of the case studies indicate that the inadequate protection of minorities in the EU return policy run the risk of exposing returned members of minorities to severe human rights violations. As in both cases shown, the abidance to Art. 19 (2) CfR and thereby abidance to the non-refoulement principle cannot be guaranteed when returning particularly vulnerable members of the minorities. The commitment to the protection of minorities, due to not being explicit enough and containing a broad wording, is therefore contested by unaccountable practices of national authorities.

We can also conclude, that the practices of return are affected by EU guidelines (cf. EU assessment of persecution in Serbia) as well as national preferences. Thanks to the broad wording of key documents of the EU legal framework for return (e.g. the RD), and the insufficient consideration of minority protection, national authorities and courts dispose of a wide discretion. Thus, acceptance rates for different minorities differ widely across European countries. (Switzerland accepted 37 percent of all asylum applicants from Serbia in 2014<sup>211</sup>, while for German authorities consider Serbia a safe country of origin. The underlying logic of national authorities is often strict and simplistic. The German “Bundesamt für Migration und Flüchtlinge” (BAMF), (Federal Agency for Migration and Refugees) justifies returning failed asylum seekers back to Afghanistan with a simple mathematical equation. Acting on the assumption that a real threat of being killed is existent at a probability of 50 percent, the BAMF concludes that there is “No existent threat in the course in an armed conflict in Afghanistan”<sup>212</sup>. In 2015, of 27 million inhabitants of Afghanistan, about 20.000 were killed by these incidents, which amounts to a probability of 0,074 percent<sup>213</sup>. In comparison, according to the same calculation, the probability of being killed

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<sup>211</sup> Peter Maxwell, *supra* note 131

<sup>212</sup> Zeit Online, 'Die Kalte Rechnung Des Innenministers,' *Zeit Online* Kai Biermann, Julian Jestadt, Nico Schmolke,, available at: <http://www.zeit.de/politik/deutschland/2016-11/afghanistan-bamf-asyl-abschiebung-gefahr-innenministerium>

<sup>213</sup> *ibid.*

during World War II in Europe averages at 0.3 percent<sup>214</sup>. This kind of argument by the BAMF shows the wide margin of discretion that is given to national authorities. More particularly, this affects minorities directly, insofar as it leads to a more superficial case-by-case basis. To conclude, I claim that minorities constitute a particularly vulnerable group in the context of return and that they deserve and require to be better protected in the European legal framework in order to reduce the risks of violating their human rights.

As a closing word, I would like to cite the conclusion of Adelman & Barzan, who conducted the probably most substantive study on minority returns, which was published in 2011 in their book “No Return, No Refuge: Rites and Rights in Minority Repatriation”<sup>215</sup>. The authors analyzed the factor of success of the return of numerous minority groups returning to Europe, Asia and Africa. “The main argument of the work is that the failure to return is the empirical norm, and that minority repatriation should therefore not be considered the preferred solution in situations of ethnic conflict”.<sup>216</sup> The results of Adelman & Barkan conform to the results of this study. The return of minorities misfits the logic of majority-returns and should therefore be approached with reluctance.

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<sup>214</sup> Ibid.

<sup>215</sup> H. Adelman and E. Barkan, *No Return, No Refuge: Rites and Rights in Minority Repatriation* (Columbia University Press 2011).

<sup>216</sup> Ibid.

## 9. Literature

- D. Acosta Arcarazo, 'The Returns Directive: Possible Limits and Interpretation,' *Karin Zwaan (ed.), The Returns Directive: Central Themes, Problem Issues, and Implementation in Selected Member States*, Nijmegen: Wolf Legal Publishers 2011 2011, 7-24.
- D. Acosta, 'The Good, the Bad and the Ugly in Eu Migration Law: Is the European Parliament Becoming Bad and Ugly?(the Adoption of Directive 2008/15: The Returns Directive),' 11 *European Journal of Migration and Law* 2009, 19-39.
- H. Adelman and E. Barkan, *No Return, No Refuge: Rites and Rights in Minority Repatriation* (Columbia University Press 2011).
- A. Adepoju, F. Van Noorloos, and A. Zoomers, 'Europe's Migration Agreements with Migrant-Sending Countries in the Global South: A Critical Review,' 48 *International Migration* 2010, 42-75.
- 'Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the Readmission of Persons Residing without Authorisation,' 2005,
- 'Agreement between the European Community and the Republic of Serbia on the Readmission of Persons Residing without Authorisation,' 2007,
- T. Ahmed, 'The Treaty of Lisbon and Beyond: The Evolution of Eu Minority Protection?,' 38 *European law review* 2013, 30-51.
- J. Alpes, Blondel, C., Preiss, N., Sayos Monras, M., 'Post-Deportation Risks for Failed Asylum Seekers ' 2017, Amnesty International, "'Verschwindenlassen" Schicksale Von Zehntausenden in Europa "Verschwundenen" Ungeklärt ' 2001,
- J. F. d. Andrade, ' On the Development of the Concept of 'Persecution' in International Refugee Law,'
- D. D. O. Bajic, 'Romji, Od Zaboravljene Do Manjine U Usponu,' *Romji, od zaboravljene do manjine u usponu, Niš: Odbor za gradjansku inicijativu* 2004,
- N. S. BAJIĆ, 'Roma in Serbia after the Collapse of Yugoslavia: Political Implications and Media Silence on Racial Violence ' 2001,
- A. Baldaccini, 'The Eu Directive on Return: Principles and Protests,' 28 *Refugee Survey Quarterly* 2009, 114-138.
- 'The Return and Removal of Irregular Migrants under Eu Law: An Analysis of the Returns Directive,' 11 *European Journal of Migration and Law* 2009, 1-17.
- A. Bennett, 'Case Study Methods: Design, Use, and Comparative Advantages,' *Models, numbers, and cases: Methods for studying international relations* 2004, 19-55.
- D. L. Caglioti, 'Waging War on Civilians: The Expulsion of Aliens in the Franco-Prussian War,' *Past & Present* 2013, gtt007.
- F. Cengiz and L. Hoffmann, 'Rethinking Conditionality: Turkey's European Union Accession and the Kurdish Question,' 51 *JCMS: Journal of Common Market Studies* 2013, 416-432.
- CeSID, 'Istrazivanje Javnog Mnenja, Izveštaj Sa Istrazivanja Javnog Mnenja, Odnos Gradjana Prema Romima U Republici Srbiji,' 2013,
- 'Charter of Fundamental Rights of the European Union (2000/C 364/01),' 2000,
- CJEU, ' Alexandre Achughbalian V. Préfet Du Val-De-Marne (C-329/11); Luxembourg, 6 December 2011,' 2011,
- 'Case C-47/15 Sélina Affum V. Préfet Du Pas-De-Calais En Procureur Général De La Cour D'appel De Douai,' 2015,
- 'Case C-357/09 Ppu, Said Shamilovich Kadzoev (Huchbarov), [2009] Ecr I-11189 ' 2009,
- 'Joined Cases C-411/10 and C-493/10 ,N. S. V Secretary of State for the Home Department and M. E. And Others V Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform,' 2011,
- M. Collyer et al., 'Return Migrants in Sri Lanka,' *Institute for Public Policy Research* 2009,

'Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy,' 1994,

'Consolidated Version of the Treaty on European Union,' 2007,

'Consolidated Version of the Treaty on the Functioning of the European Union,' 2007,

Council of Europe, 'European Charter for Regional or Minority Languages,' 1992,

'European Convention on Human Rights,' 1950,

'European Governments Are Not Giving Roma Migrants the Same Treatment as Others Who Are in Similar Need of Protection,' 2010,

*Framework Convention for the Protection of National Minorities* (Strasbourg 1995).

Council of the European Communities/Commission of the European Communities, 'Treaty on European Union,' 1992,

A. Crosby, 'The Political Potential of the Return Directive,' 3 *Laws* 2014, 117-140.

Department Of Census And Statistics Sri Lanka, '

Sri Lanka Census of Population and Housing, 2011,' 2012,

ECTHR, 'Cyprus V. Turkey , Application No. 25781/94,' 2001,

'Swiss Authorities Failed to Adequately Consider Risk of Ill-Treatment before Deporting Sri Lankan Tamil National,' 2017,

'European Charter for Regional or Minority Languages,' 1992,

European Commission, 'Return & Readmission,' (2017).

'Return Handbook,' 2015,

European Roma Rights Center, 'Further Attempts by Denmark to Force Roma to "Voluntarily" Return to Kosovo,' 2003,

'Leading Hungarian Politician Denies Romani Problems,' (2000).

'Racist Violence against Roma in Serbia and Montenegro,' (2004).

European Union, 'Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the Readmission of Persons Residing without Authorisation - Declarations,' *Official Journal of the European Union* 2005,

'Asylum in the Eu,' 2011,

'Directive 2008/115/Ec of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals,' *Official Journal of the European Union* 2008,

'Guidelines to Eu Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment,' 2012,

'Interinstitutional Style Guide,' *Official Journal of the European Union* last updated: 2015,

'Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom,' *Official Journal of the European Union* 2007,

D. Feith, 'Why Tamils Flee Sri Lanka,' *Eureka Street* 2014,

L. Fekete, 'The Deportation Machine: Europe, Asylum and Human Rights,' 47 *Race & Class* 2005, 64-78.

A. Finlan, *The Collapse of Yugoslavia 1991–1999* (Bloomsbury Publishing 2014).

'Framework Convention for the Protection of National Minorities,' 1995,

Freedom from Torture, 'New Uk Home Office Guidance on Sri Lanka Significantly Downplays Ongoing Human Rights Violations ' 2017,

M. Ganguly, 'Sri Lanka after the Tigers,' *Foreign Affairs* 2016,

N. M. Gelazis, 'The Effects of Eu Conditionality on Citizenship Policies and Protection of National Minorities in the Baltic States,' 2000,

T. Hart, 'Uk Asylum Seekers – by the Numbers,' *Geographical Week* 2015,

Home Office, 'Country Information and Guidance Sri Lanka: Tamil Separatism ' 2014,

'Country Policy and Information Note: Sri Lanka: Tamil Separatism,' 2017,

J. Hughes and G. Sasse, 'Monitoring the Monitors: Eu Enlargement Conditionality and Minority Protection in the Ceecs,' *JEMIE* 2003, i.

Human Rights Watch, 'Sri Lanka: Rape of Tamil Detainees,' 2013,

- L. Idzerda et al., 'Access to Primary Healthcare Services for the Roma Population in Serbia: A Secondary Data Analysis,' 11 *BMC international health and human rights* 2011, 10.
- M. Johns, "'Do as I Say, Not as I Do": The European Union, Eastern Europe and Minority Rights,' 17 *East European Politics and Societies* 2003, 682-699.
- T. Joksic, 'Discrimination of Roma in Serbia,' 2015,
- T. Judah, 'Yugoslavia: 1918 - 2003,' 2011,
- D. S. I. Keethaponcalan, 'Sri Lanka's Prevention of Terrorism Act and Revision – Oped,' *Eurasia Review* 2017,
- D. Kochenov and T. V. Agarin, 'Expecting Too Much: European Union's Minority Protection Hide-and-Seek,' 2016,
- G. Kostadinova, 'Minority Rights as a Normative Framework for Addressing the Situation of Roma in Europe,' 39 *Oxford Development Studies* 2011, 163-183.
- A. Kreienbrink, 'Voluntary and Forced Return of Third Country Nationals from Germany,' 2006,
- D. Kugelmann, *The Protection of Minorities and Indigenous Peoples Respecting Cultural Diversity* (Nijhoff 2007).
- Lanka Business Online, 'Supreme Court Upholds Right to Sing National Anthem in Tamil,' 2016,
- S. K. Määttä, 'The European Charter for Regional or Minority Languages, French Language Laws, and National Identity,' 4 *Language Policy* 2005, 167-186.
- I. Mahadevan, "'Aryan or Dravidian or Neither? – a Study of Recent Attempts to Decipher the Indus Script (1995–2000)"', 8 (1) *Electronic Journal of Vedic Studies* 2002,
- Marija Ristic, 'Western Europe Sends Kosovo Roma to Serbia,' *Balkan Transitional Justice* 2012,
- Metropolitan Court of Hungary, '6.K. 34.440/2010/20, K.H. V. Office of Immigration and Nationality,' 2010,
- Ministry of Home Affairs, 'Scheduled Languages in Descending Order of Speaker's Strength - 2001,' 2001,
- S. Mitra-Jha, 'Tamils Continue to Face Racial Discrimination in Sri Lanka, Says UN Committee Post Review,' 2016,
- Organization for Security and Co-Operation in Europe, 'Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Csce ' 1990,
- C. Pan and B. S. Pfeil, *National Minorities in Europe: Handbook* (Braumüller 2003).
- Parliament Of The Democratic Socialist Republic Of Sri Lanka, 'Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979,' 1979,
- S. Peers, 'Building Fortress Europe: The Development of EU Migration Law,' 35 *Common Market L. Rev.* 1998, 1235.
- G. Pentassuglia, 'The EU and the Protection of Minorities: The Case of Eastern Europe,' 12 *European Journal of International Law* 2001, 3-38.
- Peter Maxwill, 'Die Irrtümer in Der Debatte Über Balkan-Flüchtlinge,' *Spiegel Online* 2015,
- Pro Asyl, 'Fakten, Zahlen Und Argumente,' n.d.,
- Protector of Citizens, 'Report on the Implementation of the Strategy for Improving the Position of Roma with Recommendations,' 2014,
- Radio NZ, 'Sri Lankan PM: Asylum Seekers 'Forgiven',' 2017,
- M. Rais, 'European Union Readmission Agreements,' 51 *Forced Migration Review* 2016, 45-46.
- Roma Education Fund, 'Advancing Education of Roma in Serbia: Country Assessment and the Roma Education Fund's Strategic Directions,' 2007,
- 'Schengen Agreement,' 1985,
- R. Schulze, 'Unheard Voices: Roma and the Kosovo War,' 4 *Kynmyra/Culture* 2014, 131-140.
- N. Simeunović Bajić, 'Roma in Serbia after the Collapse of Yugoslavia: Political Implications and Media Silence on Racial Violence,' 2011,
- Sinisa Jakov Marusic, 'EU Ban on Balkan Asylum Seekers Alarms Roma,' *Balkaninsight* 2015,
- V. Sivasupramaniam, 'History of the Tamil Diaspora,' n.d.,
- S. Somachandran, Jayanth, S., 'Sri Lankan Police Arrest Scores of Tamil Youth,' *World Socialist Web Site* 2016,
- Sri Lanka Campaign for Peace & Justice, "'A Cure Far Worse Than the Disease': Sri Lanka's New Draft Counter Terrorism Law,' 2016,
- Supreme Court of Ireland, 'E.D. (Education) - V – Refugee Appeals Tribunal & Anon [2016] IESC 77,' 2016,
- Tatjana Perić, 'Violations of the Rights of Roma Returned to Serbia under Readmission Agreements,' *Ecumenical Humanitarian Organization* 2007,

The Migration Observatory, 'Deportations, Removals and Voluntary Departures from the UK,' 2016,

'Migration to the UK: Asylum,' 2016,

G. N. Toggenburg, 'Minority Protection in a Supranational Context: Limits and Opportunities,' *Minority Protection and the Enlarged European Union: The Way Forward* 2004, 1-36.

'Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts,' 1997,

'Treaty of Gotha,' 1851,

UK Upper Tribunal (Immigration and Asylum Chamber), 'Gj and Others (Post-Civil War: Returnees) Sri Lanka Cg [2013] Ukut 00319 (Iac) ' 2013,

UNHCR, 'Asylum Levels and Trends in Industrialized Countries 2010,' 2011,

'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status,' 51, *U.N. Doc. HCR/IP/4/Eng/REV.1* 1992,

'Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ' 2006,

E. P. C. o. t. E. Union, 'Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals,' 2008,

United Nations, 'Minorities under International Law,' (2017).

'Un Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,' 1984,

United Nations General Assembly, 'Convention and Protocol Relating to the Status of Refugees,' 1951,

'Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on His Mission to Sri Lanka,' 2017,

United Nations in Serbia, 'Realizing Roma Rights,' 2008,

T. Van Danwitz and K. Paraschas, 'A Fresh Start for the Charter: Fundamental Questions on the Application of the European Charter of Fundamental Rights,' 35 *Fordham Int'l LJ* 2011, 1396.

Verwaltungsgericht Göttingen, '1 B 318 and 319/15,' 2015,

Verwaltungsgericht Stuttgart, '12 K 2007/05,' 2007,

S. Š. Vujadinović, Dejan; Joksimović, Marko; Golić, Rajko; Živković, Ljiljana; Gatarićvi, Dragica, 'Asylum Seekers from Serbia and the Problems of Returnees: Why Serbia Is among the World's Leading Countries in Number of Asylum Seekers,' *Inštitut za slovensko izseljenstvo in migracije ZRC SAZU Published by Slovenian Migration Institute at the ZRC SAZU* 2013, 53.

F. Webber, 'How Voluntary Are Voluntary Returns?,' 52 *Race & Class* 2011, 98-107.

Yannis Ktistakis, 'Protecting Migrants under the European Convention on Human Rights and the European Social Charter,' 2013,

R. Yin, 'Case Study Methods,' 3 *Complementary Methods for Research in Education* 2004,

Zeit Online, 'Die Kalte Rechnung Des Innenministers,' *Zeit Online* Kai Biermann, Julian Jestadt, Nico Schmolke,,