

Screening Chapter 23 – Judiciary and fundamental rights

Croatia & Turkey

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Minority Rights



I. Introduction

- Welcome
- Importance of the subject matter: minority rights as bone of political contention and progress in this field under special observation by the EU
- Order of presentation



II. Legal basis

■ Article 6 (1) EU

■ Text: “Respect for human rights”

- Human rights include minority rights (*see* Article 1 Framework Convention)

■ EU practice

- 1993 Copenhagen criteria: “respect for and protection of minority rights”
- Regular Reports, Accession Partnerships, EP resolutions

■ Article I-2 Constitutional Treaty 2004: “respect for human rights, including the rights of persons belonging to minorities”



II. Legal basis

- Article 21 EU Fundamental Rights Charter
(= II-81 Constitutionan Treaty)

“Any discrimination based on any ground such as (...) race, colour, ethnic or social origin, genetic features, language, religion or belief (...), membership of a national minority (...) shall be prohibited.”



II. Legal basis

- European Convention on Human Rights
 - No specific standards on minority rights
 - European Court of Human Rights case law



II. Legal basis

- European Framework Convention on the Protection of National Minorities
 - Substantial standards
 - Views of the Advisory Committee
 - European Charter for Regional or Minority Languages
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III. Definition of a minority

- International definitions
- « National » minority
- Individuals belonging to a minority

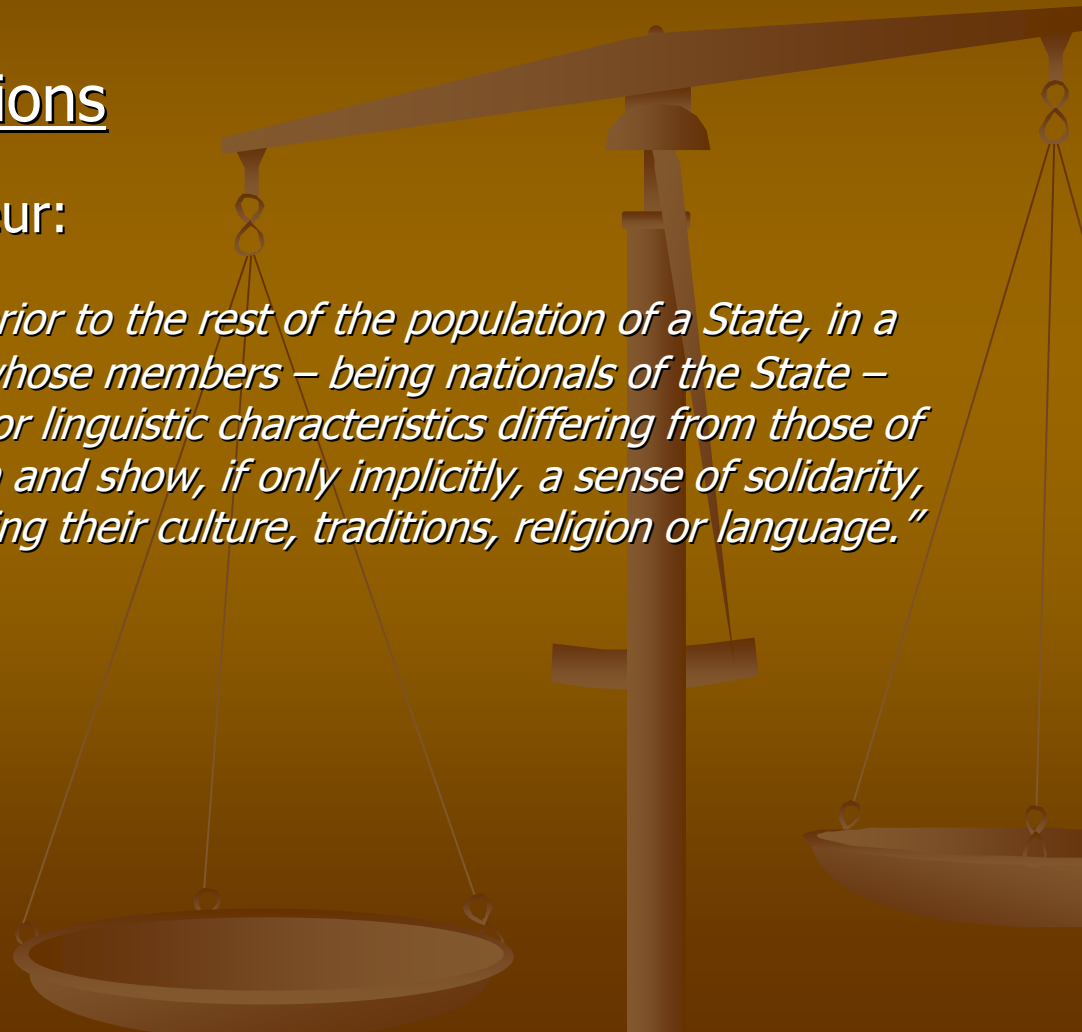


III. Definition of a minority

■ International definitions

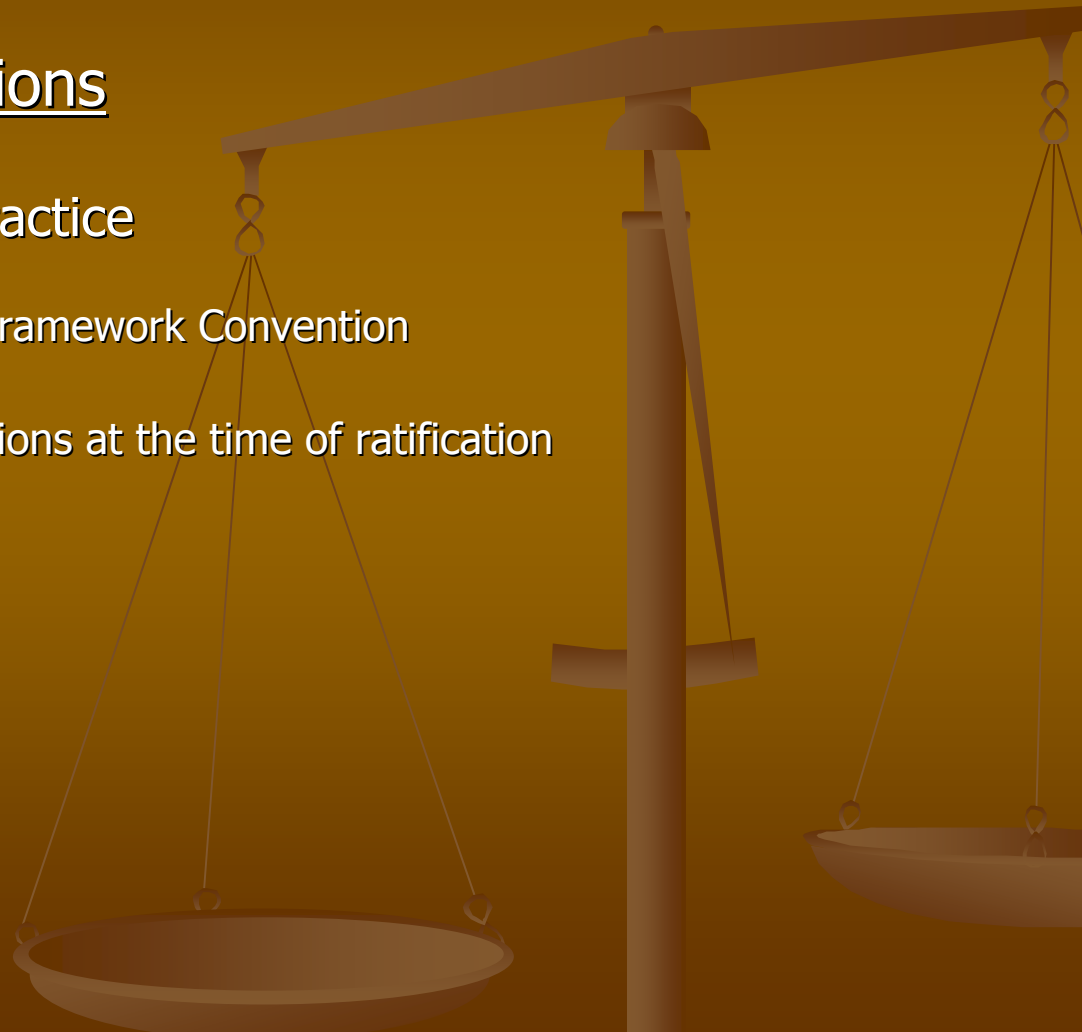
■ UN Special Rapporteur:

"A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language."



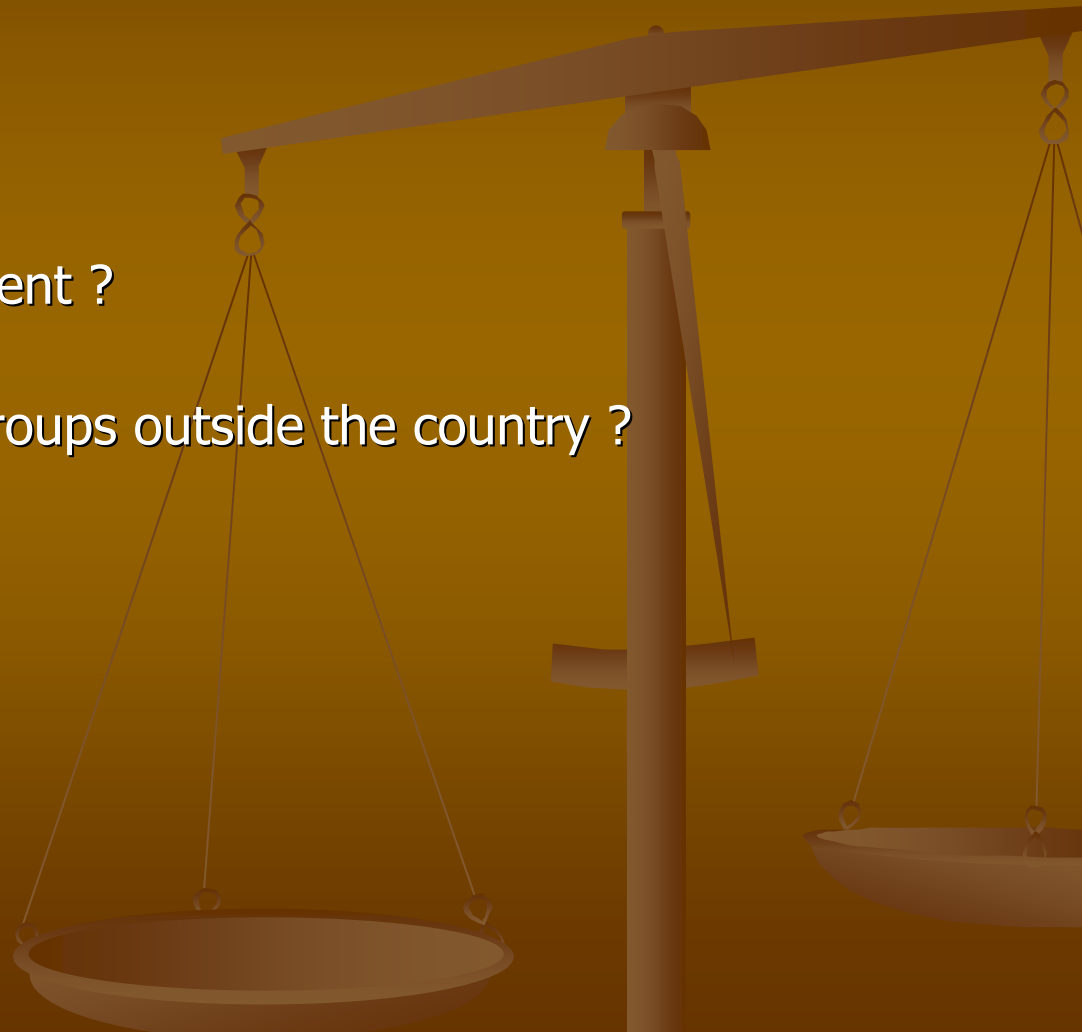
III. Definition of a minority

- International definitions
 - Council of Europe practice
 - No definition in the Framework Convention
 - Government declarations at the time of ratification



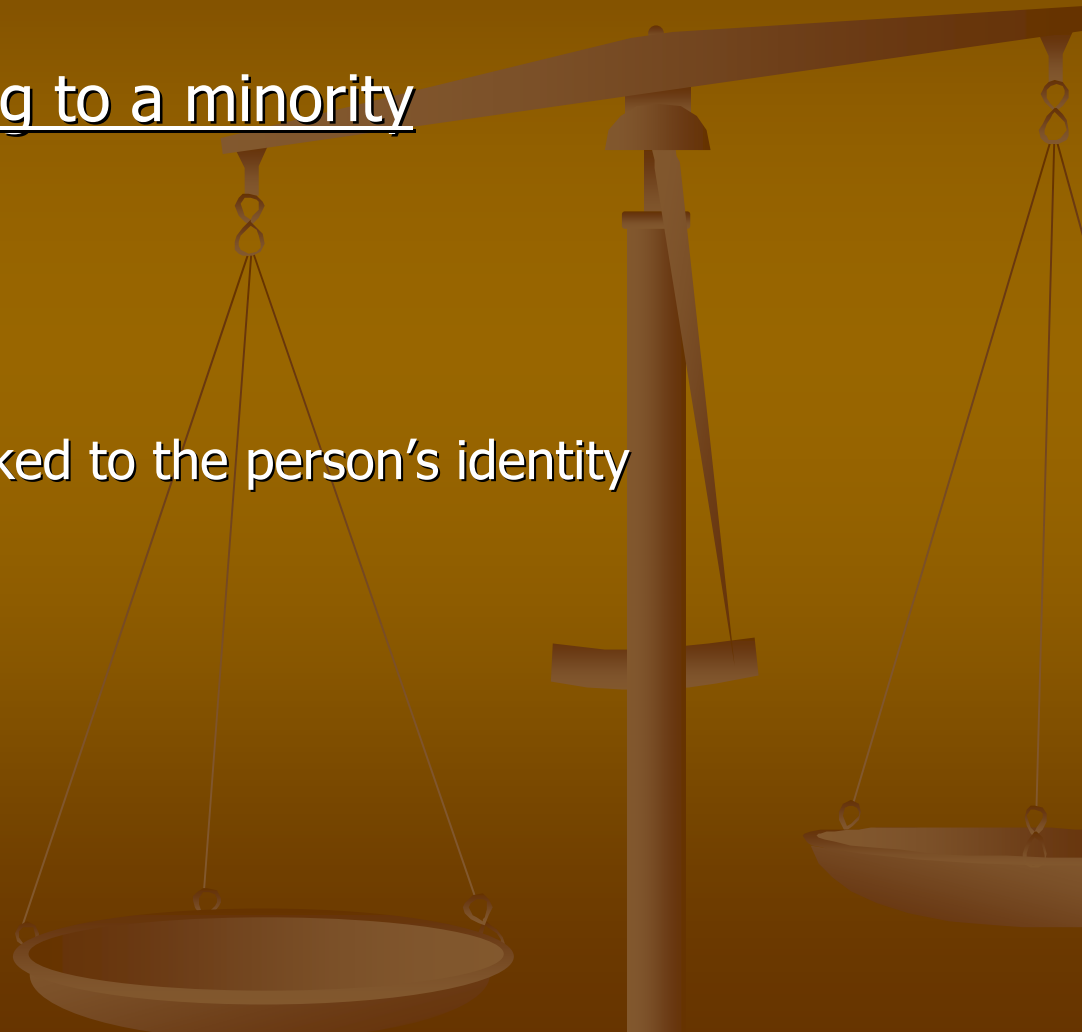
III. Definition of a minority

- “National” minority
 - Nationality requirement ?
 - Link with majority groups outside the country ?



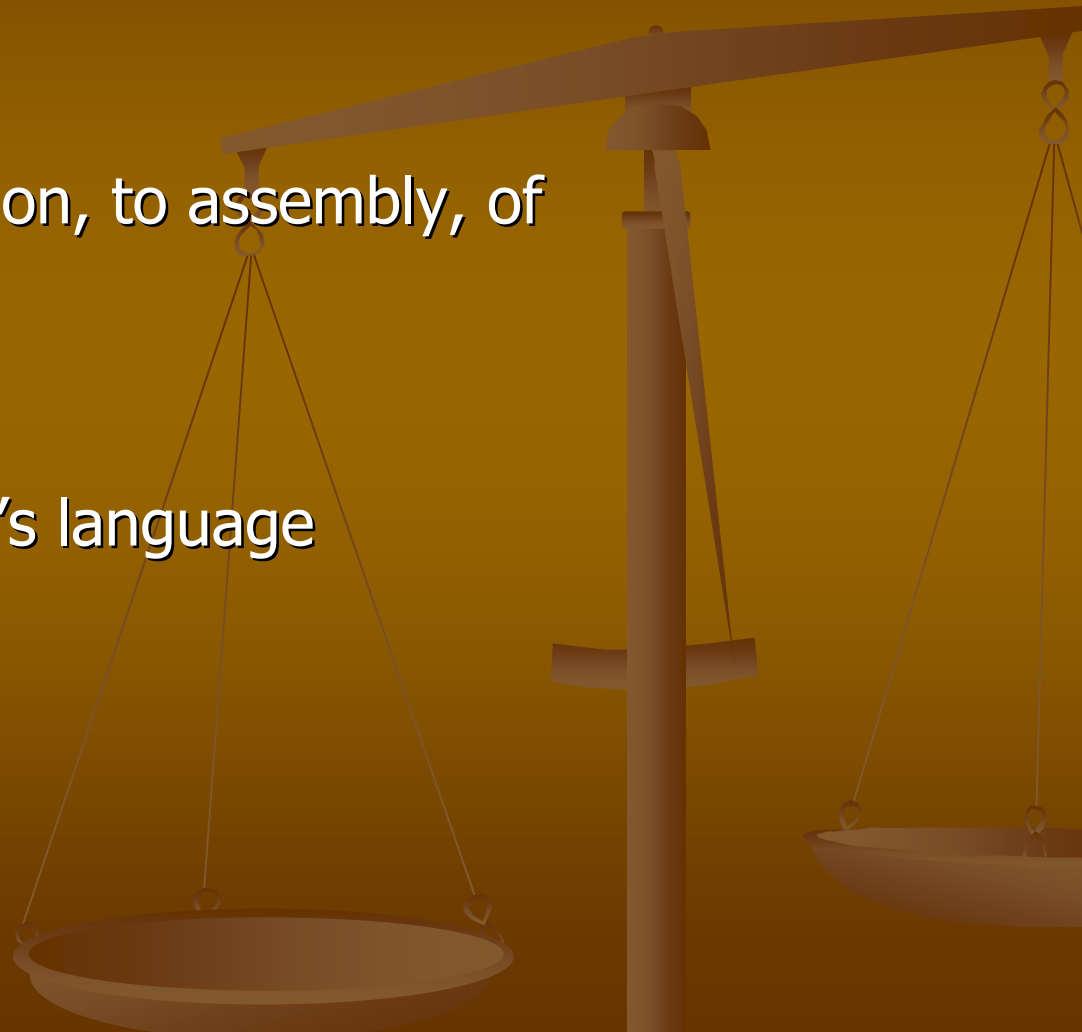
III. Definition of a minority

- Individuals belonging to a minority
 - Individual choice
 - Objective criteria linked to the person's identity



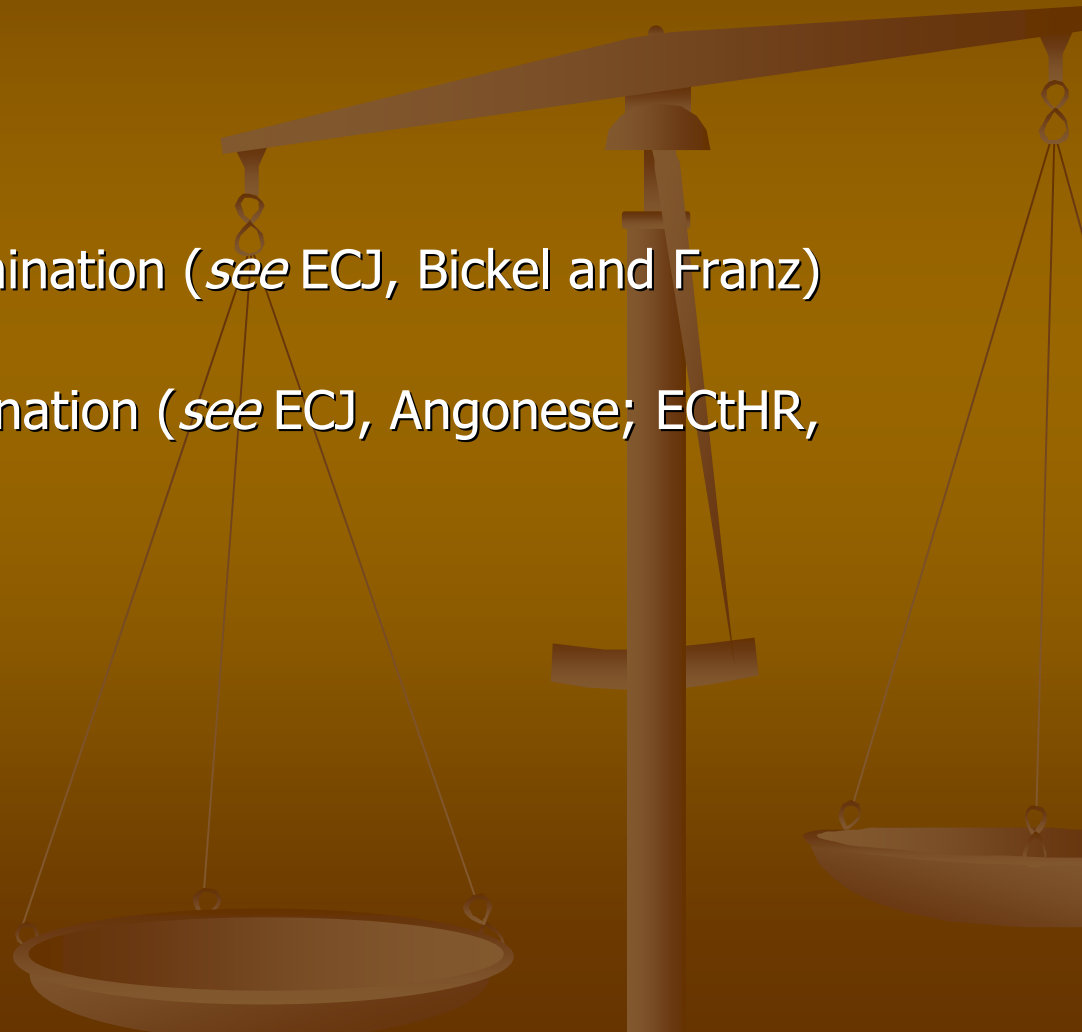
IV. Content

- Non-discrimination
- Freedom of association, to assembly, of expression
- Freedom of religion
- The right to use one's language
- Political participation

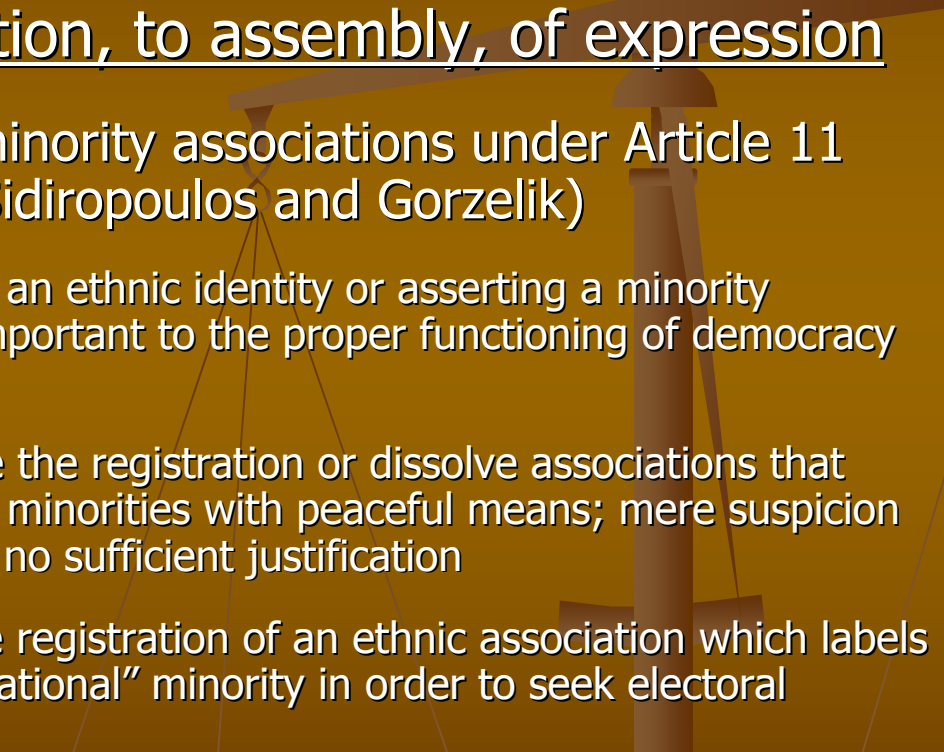


IV. Content

- Non-discrimination
 - Negative discrimination (*see* ECJ, Bickel and Franz)
 - Positive discrimination (*see* ECJ, Angonese; ECtHR, Chapman)

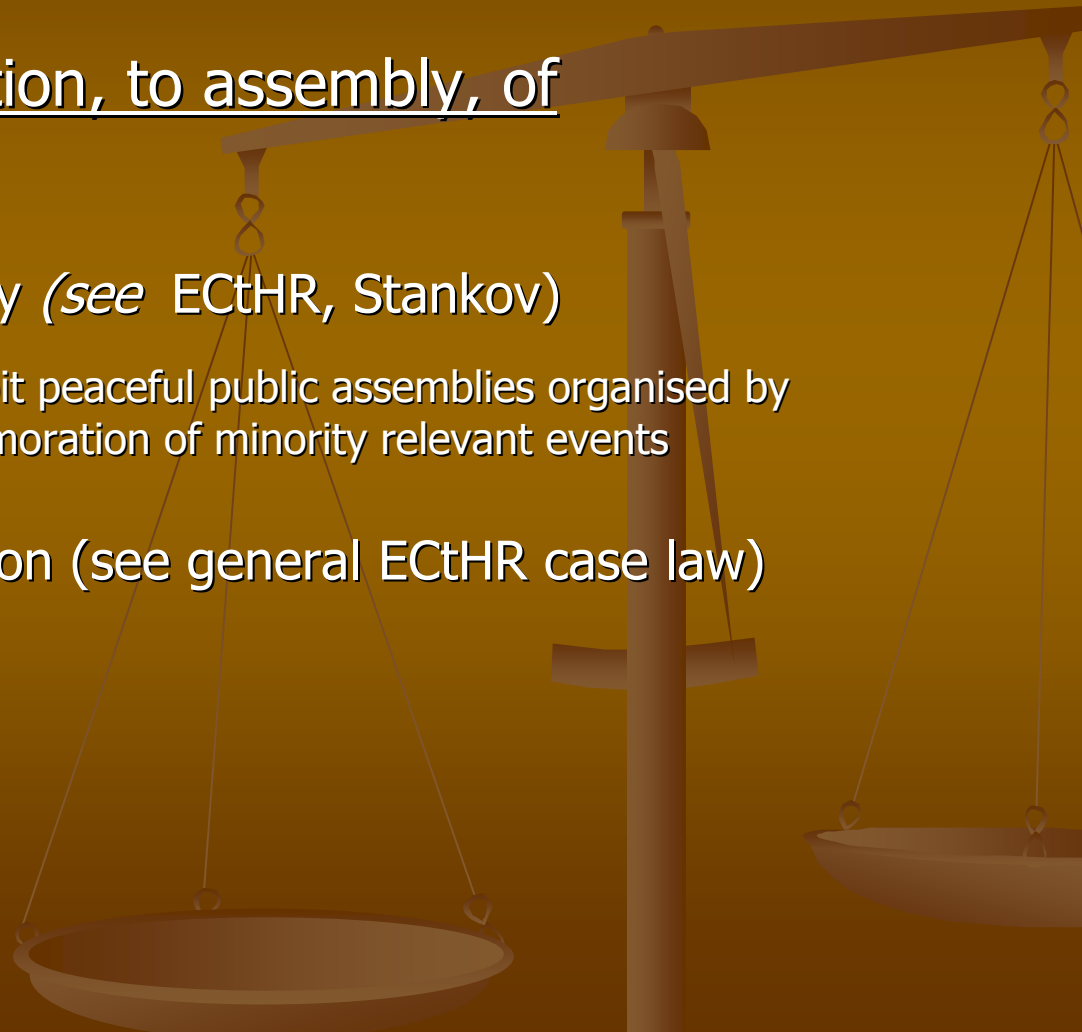


IV. Content

- Freedom of association, to assembly, of expression
 - Freedom to found minority associations under Article 11 ECHR (*see* ECtHR, Sidiropoulos and Gorzelik)
 - Associations seeking an ethnic identity or asserting a minority consciousness are important to the proper functioning of democracy and pluralism
 - State may not refuse the registration or dissolve associations that foster the identity of minorities with peaceful means; mere suspicion of future activities is no sufficient justification
 - State may refuse the registration of an ethnic association which labels itself incorrectly a “national” minority in order to seek electoral privileges
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IV. Content

- Freedom of association, to assembly, of expression
 - Freedom to assembly (*see* ECtHR, Stankov)
 - State may not prohibit peaceful public assemblies organised by minorities in commemoration of minority relevant events
 - Freedom of expression (*see* general ECtHR case law)

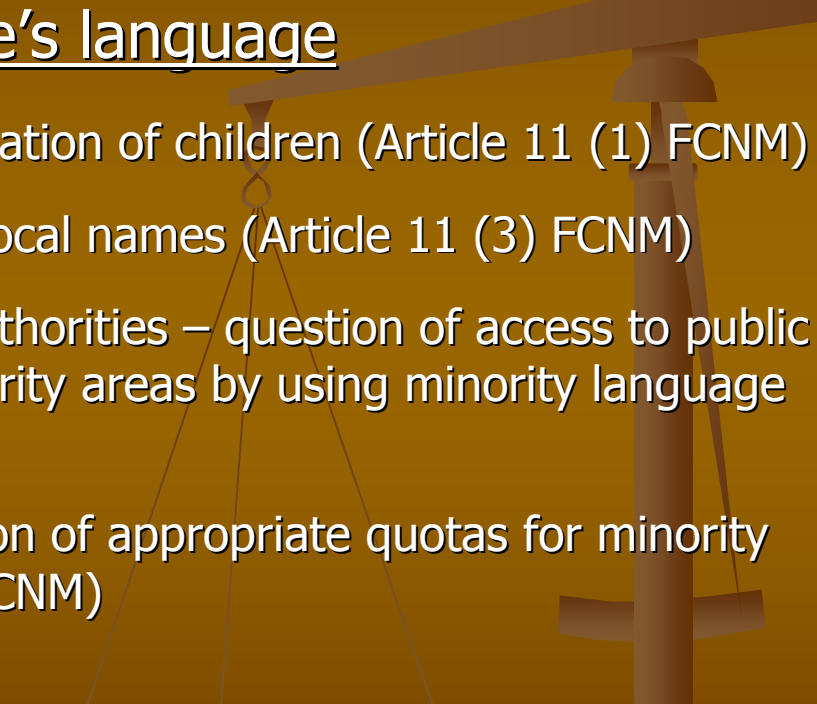


IV. Content

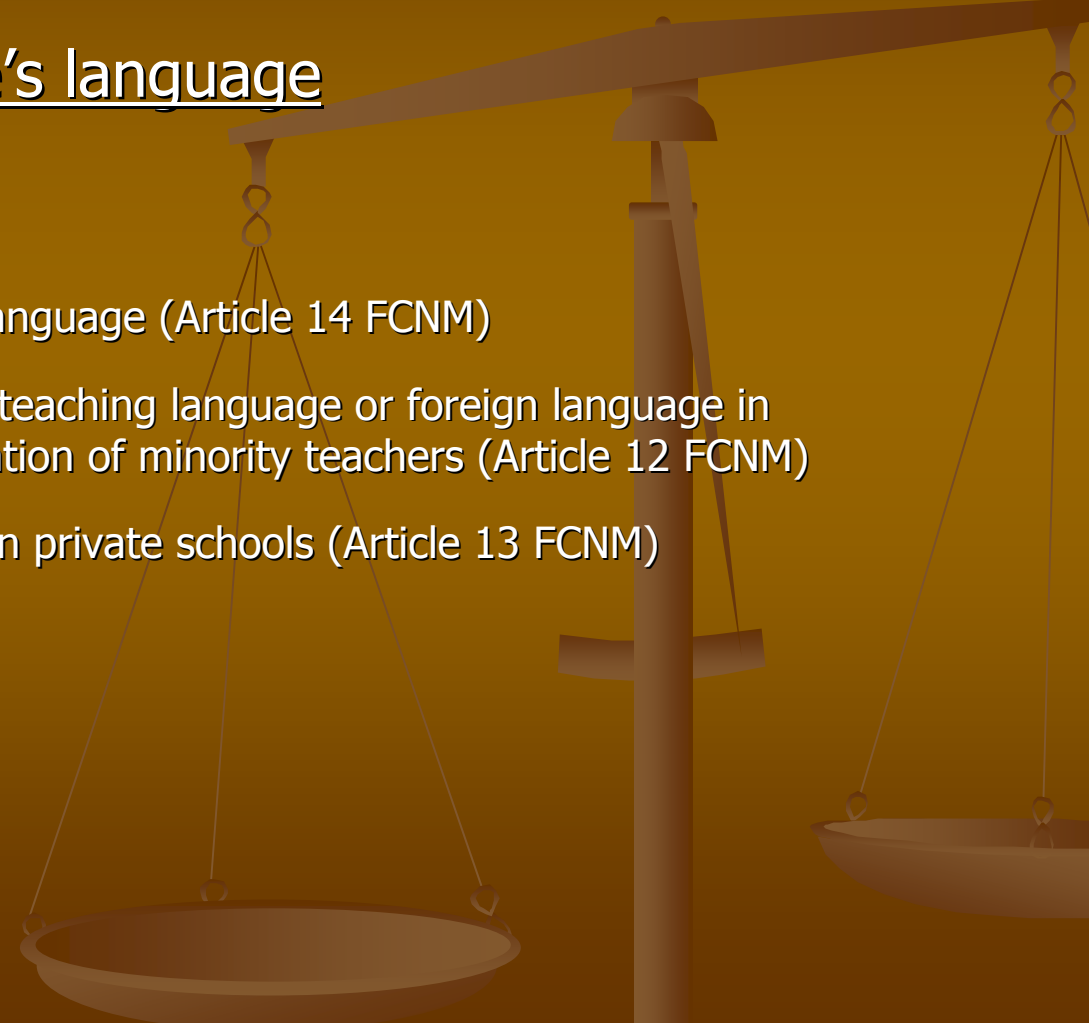
- Freedom of religion
 - Establishment of religious entities (Article 8 FCNM)
 - Exercise of religious worship



IV. Content

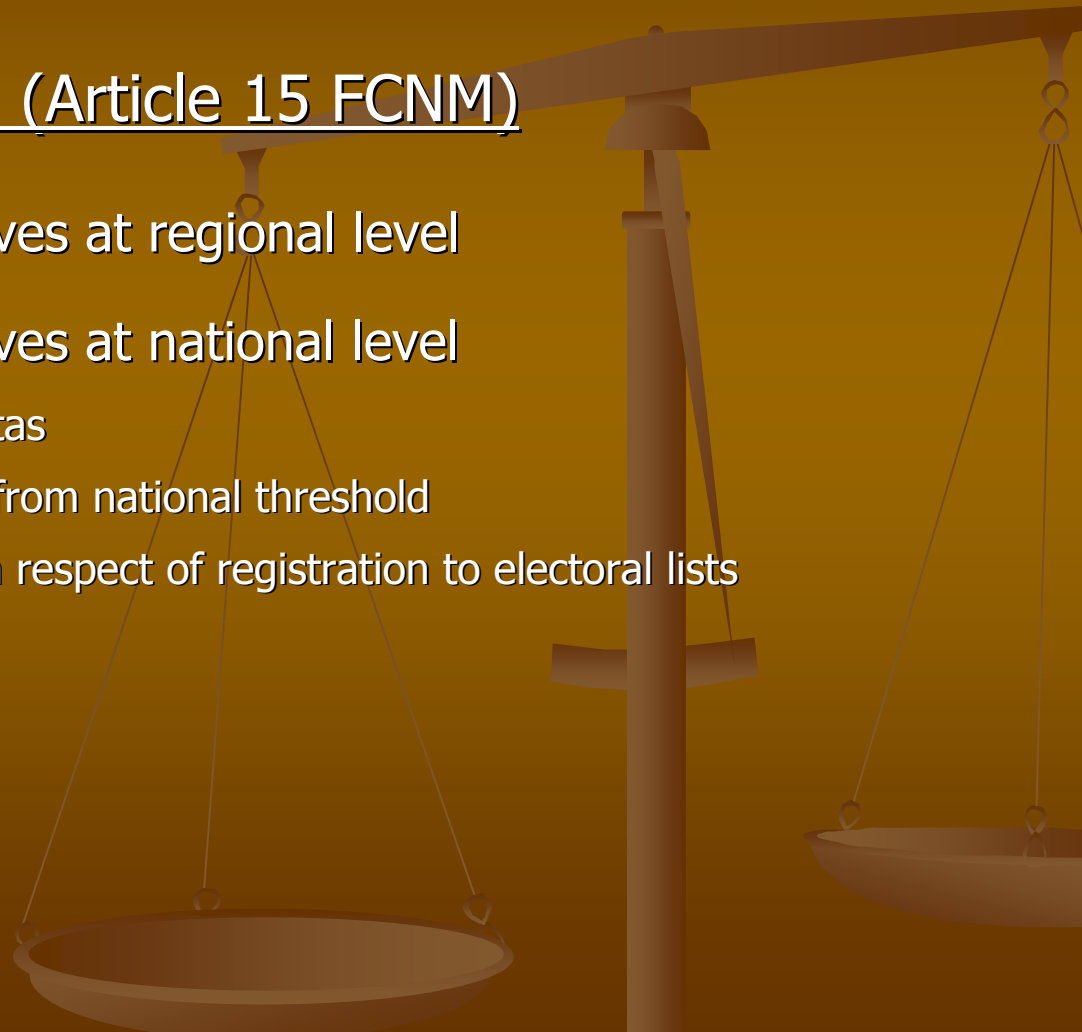
- The right to use one's language
 - Private use – denomination of children (Article 11 (1) FCNM)
 - Display of traditional local names (Article 11 (3) FCNM)
 - Use vis-à-vis public authorities – question of access to public administration in minority areas by using minority language (Article 10 (2) FCNM)
 - Use in media – question of appropriate quotas for minority languages (Article 9 FCNM)
 - Use in schools
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IV. Content

- The right to use one's language
 - Use in schools
 - Right to learn one's language (Article 14 FCNM)
 - Minority language as teaching language or foreign language in public schools; Formation of minority teachers (Article 12 FCNM)
 - Language education in private schools (Article 13 FCNM)
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IV. Content

- Political participation (Article 15 FCNM)
 - Minority representatives at regional level
 - Minority representatives at national level
 - special quotas
 - Exemption from national threshold
 - Privileges in respect of registration to electoral lists



V. Conclusion

From an EU perspective, minority rights

- Serve to protect the identity of individuals
 - Reflect a right of non-discrimination
 - Foster special support in the area of language education
 - Secure freedom from excessive State interference (right to association, to assembly and freedom of expression)
 - Legitimize adequate political participation
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V. Conclusion

Minority rights do not

- Entail group rights
- Call for territorial autonomy
- Threaten the nation State

Rather, persons belonging to minorities should be respected in their distinct identity as members of a special group and as co-citizens and fellow-Europeans

