

3 National minority as a right-holder and an actor

Why minority protection is in decline in Europe

Boriss Cilevičs

Introduction

Integration of minorities is an essential prerequisite for social cohesion, reducing inequality and tensions, and, hence, beneficial for entire societies. Have social movements been instrumental in promoting minority rights standards? If not, why?

We are aware of a number of examples when social movements successfully changed national and international political agenda, notably in the field of gender equality, anti-racism, LGBTI rights, etc. Adoption of the EU Race directive,¹ where well-coordinated civil advocacy played a crucial role,² is particularly relevant to minority protection. However, we can hardly mention other relevant cases. Why are national minorities less successful?

This contribution is a reflection on these questions by a practitioner who has, for three decades, been involved in the area, predominantly in Central and Eastern Europe, in different capacities, including a grassroots activist, politician, MP, expert, and rapporteur of the Council of Europe. I will mention several factors which, in my view, are essential in this regard.

Minority as a subject: the problem of a definition

“The international community has declared ‘rights’ and even established procedures through which to pursue respect for these rights without fully or clearly delimiting either the subjects/beneficiaries of the rights or the content of the rights.”³ Within years since the preceding point had been made, both the definition and content of *minority rights* are clarified to a considerable extent

1 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0043>.

2 See e.g. Paul Lappalainen, ‘The Role of Civil Society Advocacy in Equality Law – Lessons for the Nordics’, in Laura Carlson and Lydia Lundstedt (eds.), *Equality: Vol. 68 Scandinavian Studies in Law*, Stockholm University Law Faculty: Stockholm, 2022, 451–490.

3 John Packer, ‘On the Content of Minority Rights’, in J. Rääkkä (ed.), *Do We Need Minority Rights?* Hague, Boston, MA and London: Kluwer Law International, 1996, 121–178.

in international legal debate. However, beyond the narrow legalistic sphere, in public discourse and political decision-making, this consensus remains, at best, nascent and is often ignored.

There is still no formally accepted definition of a *national minority*. Several key elements (enumerated, in particular, in the Capotorti Report in 1977⁴) are universally agreed by virtually all actors, such as residence in a given state or locality, distinct race, ethnicity, religion, language, or traditions, as well as common identity and solidarity, willingness to preserve this distinct identity, numerical inferiority, and sufficient number of persons belonging to a minority. Some other criteria suggested by different actors cause disagreements, in particular, non-dominant position, loyalty to the state, the goal to achieve legal and factual equality, and the citizenship criterion as an evidence for “long-standing and lasting ties” with the state in question. The latter aspect is of particular importance. The UN Human Rights Committee considers that the scope of application of Article 27 of ICCPR cannot be limited on the basis of citizenship.⁵ This position is reiterated by the UN Special Rapporteur on minority issues, who uses and promotes the following definition:

An ethnic, religious or linguistic minority is any group of persons which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these. A person can freely belong to an ethnic, religious or linguistic minority without any requirement of citizenship, residence, official recognition or any other status.⁶

A similar position with regard to the provisions of the Framework Convention for the Protection of National Minorities, although in a less explicit form, is shared by the Advisory Committee to the Convention.⁷ In several opinions adopted in the course of country-specific monitoring, the Committee recognized that certain rights can be legitimately limited exclusively to citizens (e.g. political rights), but the general exclusion of non-citizens from the scope of application is contrary to the letter and spirit of the Convention. This approach is also supported by the Venice Commission: “Citizenship should . . . not be

4 Francesco Capotorti. Study on the rights of persons belonging to ethnic, religious, and linguistic minorities. UN, 1979, <https://digitallibrary.un.org/record/10387?ln=en>.

5 UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5, www.refworld.org/docid/453883fc0.html.

6 UN, Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Note by the Secretary-General. UN General Assembly, A/74/160, 15 July 2019, https://ap.ohchr.org/documents/E/GA/report/A_74_160.pdf.

7 Thematic commentary No. 4. The scope of application of the Framework Convention for the Protection of National Minorities. Council of Europe (2016), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a8fe8>.

regarded as an element of the definition of the term ‘minority’, but it is more appropriate for the States to regard it as a condition of access to certain minority rights.”⁸ Nevertheless, a number of states explicitly declare citizenship as a necessary precondition for claiming minority protection in general, in particular, in the declarations made upon ratification of the Framework Convention.⁹

Moreover, non-recognition of national minorities by states may be based on other considerations than citizenship requirement – for example, interpretations of history or “founding myths” – and, in many cases, may appear simply arbitrary. Activities of the groups not officially recognized by authorities are predictably perceived by the majorities (and also other minorities) with suspicion and can hardly cause solidarity and willingness to support.

In turn, different minority associations and NGOs also have different views on this crucial issue, that is, which groups “deserve” to be treated as national minorities. These views may be determined by different factors, including perceived or real competition for limited resources (such as the state’s support for minority cultures). As a result, social initiatives by and mobilization of minority groups are often perceived by the society at large as challenges to stability, peace, and security, rather than developments aiming at progress and improvement of their societies, and have little chance for support and effective coalition-building.

Minority as a right-holder: the content of minority rights and minority claims in practice

While formal recognition is not directly related to the possibility of effective mobilization, the legal status of minority groups is essential as, to a considerable extent, it may define a legal “frame” for mobilization and social activities. Generally speaking, a national minority can hardly claim recognition as a right-holder under international law, just like any other group. International law simply does not recognize group rights (with a single exception for indigenous peoples). Both the Framework Convention, Article 27 of ICCPR, and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities speak about the “rights of persons belonging to minorities”, not the rights of groups.¹⁰

8 Venice Commission. CDL-AD(2007)001, Report on non-citizen and minority rights, §§12–13 and 144. [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)001-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)001-e).

9 Council of Europe. Reservations and Declarations for Treaty No. 157 – Framework Convention for the Protection of National Minorities (ETS No. 157), www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=157&codeNature=0.

10 See, for example, Explanatory Report to the FCNM: “13 . . . It does not imply the recognition of collective rights. The emphasis is placed on the protection of persons belonging to national minorities, who may exercise their rights individually and in community with others (see Article 3, paragraph 2). In this respect, the framework Convention follows the approach of texts adopted by other international organisations”, <https://rm.coe.int/16800cb5eb>.

In practice, as a rule, minorities are not homogenous and consist of persons with different interests, views, and motivations. Therefore, in reality, some NGOs, associations, informal groups, or leaders speak on behalf of minorities, with varying level of representativeness and legitimacy. In particular, the concept of “*ethnic entrepreneurship*” offered by V. Tishkov refers to “mobilization of the members of ethnic group for collective action by leaders who pursue political goals rather than express cultural values of the group or the ‘people’s will’”.¹¹ This phenomenon emerges when certain active people or groups, in particular those with considerable resources, present themselves as genuine leaders of a certain minority without using any democratic procedures for legitimation, thus raising their own visibility and social status.

Unlike in the case of definition, the content of minority rights has been more clearly defined. Modern interpretation of minority rights was first clarified in the 1990 CSCE Copenhagen document, and later, the main principles of this political declaration have been transformed into a legally binding instrument, namely, the Framework Convention for the Protection of National Minorities (FCNM), and reflected in a number of other relevant international documents. However, also with regard to the content, the understanding of minority rights in political and public discourse often substantially differs from the codified legal standards.

In particular, while FCNM and other modern instruments clearly stipulate that minority rights cannot be anyhow related to separatist or irredentist aspirations and acceptance of territorial integrity and inviolability of borders is a major presumption for claiming protection under these provisions, in practice, representatives of minorities often disregard these basic prerequisites, thus paying lip service to the course they claim to defend.

Another example is the concept of territorial (or non-territorial) autonomy as a tool for minority protection. The very word “autonomy” is not mentioned in the text of the FCNM. While a modern approach does not rule out autonomy as a practical solution, modern instruments imply granting autonomy as merely one of the methods to implement basic principles enshrined in the FCNM, possible but not at all mandatory. Nevertheless, in many cases, autonomy remains the main demand of national minority activists.¹² It should be borne in mind that the 1990 CSCE Copenhagen document reflected the

11 Тишков В.А. Этничность как форма социальной организации, 2018, website of Valery Tishkov, <http://www.valerytishkov.ru/cntnt/publikacii3/lekcii2/lekcii/etnichnost.html>. See also Тишков, В. А. and Шабаев, Ю. П. Этнополитология: политические функции этничности. Москва: МГУ, 2011, 416 с, https://static.ica.ras.ru/books/Tishkov_etnopolotologiya.pdf, pp. 59 and 115 (in Russian).

12 For more analysis on autonomy, see Athanasios Yupsanis. ‘Autonomy for Minorities: Definitions, Types and Status in International Law’. *Finnish Yearbook of International Law*, 2014–2015, 25, 3–46; Tove H. Malloy and Levente Salat (eds.), *Non-Territorial Autonomy and Decentralization. Ethno-Cultural Diversity Governance*, Routledge: London and New York, 2020, 288 p.; David J. Smith, Ivan Dodovski and Flavia Ghencea (eds.), *Realising Linguistic, Cultural and Educational Rights through Non-Territorial Autonomy*, Cham: Springer Nature, 2023, 194 p.

concept of minority rights as a preventive tool to secure peace and stability. It was based on the idea of “a good minority is a satisfied minority”. This security aspect was somehow downplayed in the following developments, where emphasis was made on such aspects as social cohesion. Moreover, FCNM primarily declares minority rights an “integral part of fundamental human rights”. In this context, the potential significance of autonomy is rather ambiguous – in reality, most, if not all, successful separatist attempts were implemented on the basis of more or less broad autonomy.

This “extended interpretation” of the content of minority rights became an important, even if not the only, cause of the trend of “re-securitization of minority issues”. Minority rights in the CEE area are again understood primarily and predominantly in the context of security rather than fundamental human rights. Needless to say, this is detrimental, first of all, for minorities themselves, as it causes increased politicization and makes consideration of minority claims within the “general” human rights context more difficult, as well as weakens solidarity and possible support on the part of other groups in the society.

Kin-states

The very concept of minority protection emerged in a form of bilateral treaties at the times when a person’s identity was defined by religious affiliation. Therefore, these treaties envisaged certain rights of religious communities residing in neighbouring countries with different dominant confessions.¹³ Despite the development of a set of multilateral instruments aiming at ensuring universal mechanisms of minority protection, bilateralism still constitutes a substantial part of minority rights framework, and kin-states still play a significant role.¹⁴ The role of kin-states in minority protection has become a subject for both academic¹⁵ and political debate, notably in the Parliamentary Assembly of the Council of Europe.¹⁶

The issue of the definition of a minority mentioned earlier played an important role in this debate. While the FCNM and other international instruments, acknowledging a legitimate interest of a kin-state in the relevant minority

13 For example, Treaty of Vienna (1606), Peace of Westphalia Treaty (1648), Treaty of Peace of Oliva (1660), Treaty of Paris (1763).

14 Kinga Gál. Bilateral Agreements in Central and Eastern Europe: A New Inter-State Framework for Minority Protection? ECMI WORKING PAPER #4, May 1999, www.ecmi.de/fileadmin/redakteure/publications/pdf/working_paper_4.pdf; The protection of national minorities by their kin-state. European Commission for Democracy through Law. Council of Europe Publishing, Science and technique of democracy No. 32, 2003.

15 Kin-State Involvement in Minority Protection. Lessons Learned. The works of the seminar held in Bucharest on 12 February 2004, Bogdan Aurescu (ed.), ADIRI, Bucharest, 2004.

16 Erik Jurgens. Preferential treatment of national minorities by the kin-state: the case of the Hungarian law of 19 June 2001 on Hungarians living in neighbouring countries (“Magyars”). Report, 2001, <https://pace.coe.int/en/files/10094>; György Frunda, The concept of “nation”. Report, 2005, <https://pace.coe.int/en/files/11332>.

situations, nevertheless consider national minority an integral part of a political nation of the state of residence, an alternative view insists that minority is primarily a part of a “cultural nation” of its kin-state (this position was defended, in particular, by Hungary in the debates in the Parliamentary Assembly of the Council of Europe mentioned later; see footnote 13). This disagreement gives rise to a “dual loyalty” problem that often represents a serious challenge for minorities and provokes even further “securitization” of minority issues. In practice, in a number of cases, kin-states take full control over “their” minorities, thus turning them into hostages or mere proxies of the states’ foreign policies.¹⁷

Moreover, in recent years, we witnessed new attempts to instrumentalize and manipulate the need to protect minorities. In extreme cases, this rhetoric is used to justify military aggression and occupation of the territories of neighbouring states, as we saw in the case of Russia’s military invasion in Ukraine, where “protection of Russians” was among the key propaganda slogans to justify the aggression. Under these circumstances, mobilization of minority groups is inevitably perceived as supporting the external actor. Besides other adverse consequences, this blatant abuse undermines the very concept of minority protection – in a similar way as it happened before the World War II, when the Nazi invaded Czechoslovakia under the pretext of the “need to protect Sudeten Germans”. As a result, the very idea of minority protection had been discredited, and the adoption of any instruments for minority protection under the UN auspices was delayed for many years. The Russian invasion in Ukraine has similar disastrous consequences for the existing system of minority protection.

From globalization back to “nationalization”?

Not accidentally, the major breakthrough in minority protection was achieved at the time of the fall of the Iron Curtain and “reunification” of Europe. These developments were perceived by all actors involved as global and irreversible changes leading to the better, richer, and more just world. Transborder unity, recognition of universal standards of justice, and human rights affected also perception of minority rights. For the countries of the former Communist Bloc, political conditionality played a crucial role and external influence has become a key factor shaping minority policies. Advice and recommendations received in the process of accession to international organizations such as the Council of Europe, EU, and NATO determined adoption of many legislative

17 For in-depth analysis of the problem, see, inter alia: Rogers Brubaker, ‘National Minorities, Nationalizing States, and External National Homelands in the New Europe’, *Daedalus*, Spring, 1995, 124(2), 107–132; Walter Kemp, *The Triadic Nexus: Lessons Learned from the Status Law*, https://src-h.slav.hokudai.ac.jp/coe21/publish/no9_ses/07_kemp.pdf; Kristina Kallas, *Revisiting the triadic nexus: An analysis of the ethnopolitical interplay between Estonia, Russia and Estonian Russians*, https://dspace.ut.ee/bitstream/handle/10062/53242/kallas_kristina.pdf.

amendments and introduction of new policies which would hardly be feasible on the basis of purely internal political debate (and in some cases met with strong resistance in the national societies and political class).¹⁸

However, this political conditionality ended with the accession of newly democratic CEE states to all major international organizations. In the meantime, it became clear that international integration and globalization did not produce immediate effects in terms of reaching the economic level of the “old democracies”. Disappointment affected also attitudes towards minority protection. Nationalist and traditionalist trends in the “new democracies” became stronger, and this influenced also their readiness to diligently implement commitments undertaken upon accession. In general, certain backsliding in minority protection after accession to EU is observed in most, if not all, post-Communist states.

Simultaneously, the fading of “globalization euphoria” and growing nationalist and conservative moods emerged also in the “old democracies”. This trend predetermined a return to more restrictive diversity policies, more sceptical attitude towards multiculturalism, and return to assimilationist approaches.¹⁹ “Analysts believe that this trend is fed by the intensification of enhanced migration flows, the ongoing economic crisis and rising political instability, leading to anti-immigrant rhetoric, particularly by extremist parties, with a spillover to settled minorities.”²⁰ The secretary general of the Council of Europe, in his 2017 report on the state of democracy, human rights, and the rule of law,

18 In particular, a number of publications analyze the impact of the EU enlargement process on minority protection, inter alia: K. Henrard, ‘The Impact of the Enlargement Process on the Development of a Minority Protection Policy within the EU: Another Aspect of Responsibility/Burden-sharing?’, *Maastricht Journal of European and Comparative Law*, 2002, 9/4, 357–392; The Framework Convention for the Protection of National Minorities and the European Union. Report prepared by Christophe Hillion, <https://rm.coe.int/16806bd62c>; Carter Johnson, ‘The Use and Abuse of Minority Rights: Assessing Past and Future EU Policies towards Accession Countries of Central, Eastern and South-Eastern Europe’, *International Journal on Minority and Group Rights*, 2006, 13, 27–51; Dimitry Kochenov, EU’s Numerous Contradictory Approaches to Minority Protection: Internal-External Paradox and Mutually Exclusive Pre-accession Standards, 2006, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=931189; Petra Roter, ‘Minority Rights in the Context of the EU Enlargement: A Decade Later’, *Journal of Ethnic Studies*, 2014, 73, 5–27, https://rig-td.si/wp-content/uploads/2018/11/73_4.pdf; Gwendolyn Sasse, Gone with the Wind? Minority Rights in Central and Eastern Europe before and after EU Enlargement, 2006, www.researchgate.net/publication/228461902_Gone_with_the_Wind_Minority_Rights_in_Central_and_Eastern_Europe_before_and_after_EU_enlargement; Vadim Poleshchuk and Boris Tsilevich, ‘The Baltic States before EU Accession: Recent Developments in Minority Protection’, *European Yearbook of Minority Issues*, 2004, 2, 2002/3, pp. 283–305.

19 Rogers Brubaker, ‘The Return of Assimilation? Changing Perspectives on Immigration and Its Sequels in France, Germany, and the United States’, *Ethnic and Racial Studies*, July 2001, 24(4), 531–548.

20 Advisory Committee on the Framework Convention for the Protection of National Minorities. Tenth Activity report covering the period from 1 June 2014 to 31 May 2016, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a9ac5>.

mentions populism and nationalism as two main worrying trends,²¹ both of which are particularly detrimental to minority protection. The recent biannual activity reports of AC FCNM highlight different backsliding trends observed in different regions, including tightening legislation, flaws in implementation of existing legal framework, and hostile political discourse.²² Analysis of the factors behind these trends would apparently be beyond the scope of this chapter. Therefore, I confine myself to the statement that these global trends also contributed into weakening of minority protection in the first decades of the 21st century.

Solidarity, cooperation, and synergy at national level

Can different national minorities cooperate and develop synergy to advocate social changes in their common interest? In practice, this does not happen often, even at the national level, in the European context. One notable example of a success story is Georgia with its umbrella NGO “Multinational Georgia” (PMMG), which is not only engaged with cultural activities but also effectively lobbies legislators and actively participates in democratic process in general, for example, via election observation in minority-populated regions.²³ However, more often, unions of minority cultural associations are rather government-controlled bodies which receive modest budgetary subsidies and are not rarely used by the governments for external PR purposes. One frustrated minority activist called this body in his country “the puppet international”.

Another potential approach to shaping advocacy and lobbying for change at national level is related to consultative bodies.²⁴ In the mid-90s, the idea of such bodies was considered promising. In particular, it was actively promoted by the OSCE High Commissioner on National Minorities,²⁵ as well as the Council of Europe.²⁶ However, today one may conclude that, as a rule, these hopes have not come true, as most of these bodies have been granted limited

21 <https://edoc.coe.int/en/an-overview/7345-pdf-state-of-democracy-human-rights-and-the-rule-of-law.html>.

22 See recent reports, in particular, 12th Activity Report covering the period 1 June 2018–31 May 2020 and 13th Activity Report covering the period 1 June 2020–31 May 2022 at www.coe.int/en/web/minorities/meeting-reports-activity-reports.

23 PMMG includes 18 minority associations and 56 grassroots NGOs working in different fields relevant to the protection of ethnic, religious, and linguistic groups residing in Georgia. For more on PMMG activities, see www.pmmg.org.ge/.

24 Marc Weller, DH-MIN Handbook on minority consultative mechanisms. Committee of Experts on Issues Relating to the Protection of National Minorities, Council of Europe, DH-MIN(2006)012, 2006, <https://rm.coe.int/1680097f51>; Balázs Dobos, ‘Consultative and Advisory Bodies for Minorities: A European Overview’, in Alexander Osipov and Hanna Vasilevich (eds.), *Compilation of the Lectures on the Topic ‘Participation of Minorities in Public Life’*. ECMI, 2017.

25 See, for example, The Lund Recommendations on the Effective Participation of National Minorities in Public Life, 1999, www.osce.org/hcnm/lund-recommendations.

26 For example, Handbook on Minority Consultative Mechanisms, 2006, <https://rm.coe.int/1680097f51>.

functions, lack genuine leverage to affect the government's decisions or policy, and are even used for only decorative or PR purposes. One prominent expert, after his visit to one of the "new democracies", recalled that the minister in charge, when asked what corresponding minority consultative council said about some proposal, replied: "[T]hey will say what I will advise them to say".

Cooperation and coordination attempts at the international level

Several attempts to establish formal and informal international networks to facilitate cooperation and synergy and strengthen minority rights advocacy can be mentioned. Minority Rights Group International (MRGI) regularly organized trainings for minority representatives from different countries and continents before the sessions of the UN working group on minorities.²⁷ As a result, some activists got engaged in informal networks and continued coordination and cooperation also beyond these sessions. This was not an easy task, particularly given a broad variety of problems faced by minorities and their different priorities. After the UN working group was replaced by the Forum on Minority Issues in 2007, MRGI remains actively involved,²⁸ in particular, helping minority NGOs present their cases before the UN. However, it would be overly optimistic to claim that these efforts entail real cooperation for common goals. Another example of commendable activities of MRGI is the organization, in the late 1990s, of trainings and publications for European minority NGOs with the aim to help them in preparation of alternative ("shadow") reports under the FCNM monitoring mechanisms.²⁹ A series of trainings resulted in establishing closer contacts between minority NGOs; however, effective cooperation happened only in some isolated cases.

Several endeavours to promote networking, coordination, and synergy were based on the possibilities of online communication, which became available to many NGOs in the 90s. The first project of the kind, that is, internet resource on minorities in Central Eastern Europe, was implemented by the author in 1997–2010.³⁰ The project appeared effective in respect of dissemination of relevant information, facilitating contacts, and capacity-building of minority NGOs; however, it did not result in coordinated efforts to achieve social change.

Unlike other vulnerable groups, national minorities appeared reluctant to establish international umbrella bodies. A single exception is Federal Union of European Nationalities (FUEN).³¹ FUEN explicitly defines itself as "the largest

27 United Nations, *Minorities and the United Nations*. Pamphlet No. 2 of the UN Guide for Minorities, 2001 www.ohchr.org/sites/default/files/Documents/Publications/GuideMinorities2en.pdf.

28 <https://minorityrights.org/2022/11/30/unfmi-explainer/>.

29 <https://minorityrights.org/publications/framework-convention-for-the-protection-of-national-minorities-opportunities-for-ngos-and-minorities-april-2006/>.

30 www.minelres.lv/.

31 <https://fuen.org/en>.

European umbrella organization of the autochthonous, national minorities in Europe”, with clear emphasis on “autochthonous”. This undoubtedly serious and influential organization with strong ties with some national and regional governments confines itself to representing only a part of the groups recognized as national minorities by the FCNM and focuses on the issues essential for traditional or historical minorities. Representation of different minorities in the FUEN reflects this approach and narrow interpretation of the concept of minority protection.

The situation with the only pan-European political party is equally revealing. The European Free Alliance (EFA)³² is often called “political representation of minorities”. However, EFA defines itself as “an umbrella organisation that gathers 47 nationalist, regionalist and autonomist parties throughout the European Union, representing stateless nations, emerging new States, regions and traditional minorities in Europe”. Apparently, this mission is much broader than defined, even by the most generous interpretation of the concept of minority rights enshrined in the FCNM. The very idea of the EFA is based on the presumption that minorities must pursue their interests through their “own” ethnic political parties, and the ultimate goal of these parties must be achieving self-determination – which, apparently, means that “stateless nations” will acquire their “own” states. Not surprisingly, such goals inevitably provoke some suspicion on the part of existing states. Ambitious goals are more effective to achieve mobilization of corresponding minorities but, in the meantime, much less instrumental in terms of possible coalition-building with majorities and other minority groups. In any case, this way the debate is shifted away from implementation of minority right standards as recognized by modern instruments (notably the FCNM) and, therefore, are hardly instrumental in facilitation of implementation of these standards.

An important initiative aimed at improving the situation of the most deprived and discriminated Roma minority should be mentioned, that is, the Decade of Roma inclusion.³³ This became a rare example of mainstreaming minority protection based on concerted efforts of governments and inter-governmental and non-governmental organizations. Although the outcome of the Decade was critically evaluated by some experts,³⁴ it nevertheless demonstrated that strategic approach based on cooperation of key actors is not only possible under certain circumstances but also can pave the way to the gradual resolution of most acute problems.

32 <https://e-f-a.org/>.

33 I. Kirova, *The Decade of Roma Inclusion: Addressing Racial Discrimination Through Development*, UN Chronicle, UN: New York, 2008, www.un.org/en/chronicle/article/decade-roma-inclusion-addressing-racial-discrimination-through-development.

34 www.opensocietyfoundations.org/voices/why-europe-s-roma-decade-didn-t-lead-inclusion; J. Sándor, Z. Kósa, K. Boruzs, J. Boros, I. Tokaji, M. McKee and R. Ádány, ‘The Decade of Roma Inclusion: Did It Make a Difference to Health and Use of Health Care Services?’, *International Journal of Public Health*, 2017, 62(7), 803–815, www.ncbi.nlm.nih.gov/pmc/articles/PMC5585300/.

Conclusions

One cannot but admit that social movements were much less successful in promoting minority rights than in many other areas. Despite enormous progress in the early 90s through the adoption of a number of political and legal instruments at universal and European level and the introduction of a detailed monitoring mechanisms, the last decades witnessed apparent backsliding in minority protection. The inability to mainstream minority issues (with very few exceptions, like the Decade of Roma inclusion) has become a crucial factor of this failure.

In turn, differing understanding of both nature and scope of application of minority rights both by the governments and actors who claim to represent minorities effectively prevented recruitment of allies, effective advocacy, as well as hindered coordination, cooperation, and synergy even between actors who speak on behalf of minorities both at the national and international level. Internationally accepted content of minority rights was not sufficiently “appropriated” by minorities themselves, and most of the significant actors relied on autonomist, regionalist, separatist, and nationalist ideas. On the other hand, these internationally accepted norms (e.g. provisions of the FCNM) aimed at achieving equality through respect to diversity, interpretation of non-discrimination as different treatment when persons are in substantially different situations, etc. have low potential for mobilization – unlike separatism, autonomy, and other types of appeal based on “self-determination”. The strong presence of the security dimension is another essential factor. Minority issues often imply substantial inter-state aspects due to involvement of kin-states. The growing instrumentalization and manipulation of minority rights and interests impede open dialogue and empowering minorities. The Russian invasion in Ukraine has had disastrous consequences, inter alia, for minority policies and elevated “re-securitization” of minority issues to a new level. It remains to be seen to what extent minority protection system based on the letter and spirit of the FCNM can be preserved and prove its effectiveness in the long run. The closer integration of minority rights with concepts such as non-discrimination or social cohesion may help revive these ideas in a foreseeable future.

References

- Aurescu, B. (ed.). *Kin-State Involvement in Minority Protection. Lessons Learned*. Bucharest: Romanian Association for International Law and International Relations (ADIRI) and Venice Commission, 2004.
- Brubaker, R. National Minorities, Nationalizing States, and External National Homelands in the New Europe. *Daedalus*, Vol. 124, No. 2 (Spring, 1995), pp. 107–132.
- Brubaker, R. The Return of Assimilation? Changing Perspectives on Immigration and Its Sequels in France, Germany, and the United States. *Ethnic and Racial Studies*, Vol. 24, No. 4 (July 2001), pp. 531–548.
- Capotorti, F. *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. New York: UN, 1979.

- Council of Europe. The protection of national minorities by their kin-state. European Commission for Democracy through Law. Council of Europe Publishing, Science and Technique of Democracy No. 32, 2003.
- Council of Europe. DH-MIN Handbook on minority consultative mechanisms, 2006.
- Council of Europe. Advisory Committee on the Framework Convention for the Protection of National Minorities: 10th Activity Report covering the period 1 June 2014–31 May 2016a.
- Council of Europe. Thematic commentary No. 4. The scope of application of the Framework Convention for the Protection of National Minorities. Council of Europe, 2016b.
- Council of Europe. Advisory Committee on the Framework Convention for the Protection of National Minorities: 11th Activity Report covering the period 1 June 2016–31 May 2018.
- Council of Europe. State of democracy, human rights and the rule of law. Report by the Secretary General of the Council of Europe, 2017, Ref. 043917GBR.
- Council of Europe. Advisory Committee on the Framework Convention for the Protection of National Minorities: 12th Activity Report covering the period 1 June 2018–31 May 2020.
- Council of Europe. Advisory Committee on the Framework Convention for the Protection of National Minorities: 13th Activity Report covering the period 1 June 2020–31 May 2022.
- Council of Europe. Reservations and Declarations for Treaty No. 157 – Framework Convention for the Protection of National Minorities (ETS No. 157), status as of 19/07/2023.
- Council of Europe Venice Commission. Report on non-citizen and minority rights, CDL-AD(2007)001, 2007.
- Dobos, B. Consultative and Advisory Bodies for Minorities: A European Overview, in Alexander Osipov, Hanna Vasilevich (eds.): *Compilation of the Lectures on the Topic ‘Participation of Minorities in Public Life’*. Flensburg: ECMI, 2017, pp. 56–73.
- European Union, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Official Journal L 180, 19/07/2000, pp. 0022–0026.
- Frunda, G. The concept of “nation”. PACE report, 13 December 2005, <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11332&lang=EN>.
- Gál, K. *Bilateral Agreements in Central and Eastern Europe: A New Inter-State Framework for Minority Protection?* ECMI Working Paper #4, ECMI, Flensburg, May 1999.
- Henrard, K. The Impact of the Enlargement Process on the Development of a Minority Protection Policy within the EU: Another Aspect of Responsibility/Burden-Sharing?, *Maastricht Journal of European and Comparative Law*, Vol. 9/4 (2002), pp. 357–392.
- Hillion, C. The Framework Convention for the Protection of National Minorities and the European Union. Report DH-MIN, <https://rm.coe.int/16806bd62c>.
- Johnson, C. The Use and Abuse of Minority Rights: Assessing Past and Future EU Policies towards Accession Countries of Central, Eastern and South-Eastern Europe. *International Journal on Minority and Group Rights*, Vol. 13 (2006), pp. 27–51.
- Jurgens, E. Preferential treatment of national minorities by the kin-state: The case of the Hungarian law of 19 June 2001 on Hungarians living in neighbouring countries (“Magyars”). PACE report, 13 May 2003, <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10094&lang=EN>.
- Kallas, K. Revisiting the Triadic Nexus: An Analysis of the Ethnopolitical Interplay between Estonia, Russia and Estonian Russians, https://dspace.ut.ee/bitstream/handle/10062/53242/kallas_kristina.pdf.

- Kemp, W. The Triadic Nexus: Lessons Learned from the Status Law, https://src-h.slav.hokudai.ac.jp/coe21/publish/no9_ses/07_kemp.pdf.
- Kirova, I. The Decade of Roma Inclusion: Addressing Racial Discrimination Through Development. UN Chronicle, UN, New York, 2008, <https://www.un.org/en/chronicle/article/decade-roma-inclusion-addressing-racial-discrimination-through-development>.
- Kochenov, D. EU's Numerous Contradictory Approaches to Minority Protection: Internal-External Paradox and Mutually Exclusive Pre-accession Standards, 2006, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=931189.
- Lappalainen, P. The Role of Civil Society Advocacy in Equality Law – Lessons for the Nordics, in Laura Carlson, Lydia Lundstedt (ed.): *Equality: Vol. 68 Scandinavian Studies in Law*. Stockholm: Stockholm University Law Faculty, 2022, pp. 451–490.
- Malloy, T. H. and Salat, L. (eds.). *Non-Territorial Autonomy and Decentralization. Ethno-Cultural Diversity Governance*. London and New York: Routledge, 2020, 288 p.
- Mirima Lawson. EXPLAINER: Why Are Minorities Gathering in Geneva This Week? Minority Rights Group. London: News and Blogs, 30 November 2022.
- OSCE. The Lund Recommendations on the Effective Participation of National Minorities in Public Life. The Hague: OSCE, 1999, <https://www.osce.org/hcnm/lund-recommendations>.
- Packer, J. On the Content of Minority Rights, in J. Räikkä (ed.): *Do We Need Minority Rights?* Leiden: Brill, 1996, pp. 121–178, <https://brill.com/edcollbook/title/10333>.
- Poleshchuk, V. and Tsilevich, P. The Baltic States before EU Accession: Recent Developments in Minority Protection. *European Yearbook of Minority Issues*, Vol. 2, No. 2002/3 (2004), pp. 283–305.
- Roter, P. Minority Rights in the Context of the EU Enlargement: A Decade Later. *Journal of Ethnic Studies*, Vol. 73 (2014), pp. 5–27.
- Sándor, J., Kósa, Z., Boruzs, K., Boros, J., Tokaji, I., McKee, M. and Ádány, R. The Decade of Roma Inclusion: Did It Make a Difference to Health and Use of Health Care Services? *International Journal of Public Health*, Vol. 62, No. 7 (2017), pp. 803–815.
- Sasse, S. Gone with the Wind? Minority Rights in Central and Eastern Europe before and after EU Enlargement. 2006, www.researchgate.net/publication/228461902_Gone_with_the_Wind_Minority_Rights_in_Central_and_Eastern_Europe_before_and_after_EU_enlargement.
- Smith, D. J., Dodovski, I. and Ghencea, F. (eds.). *Realising Linguistic, Cultural and Educational Rights Through Non-Territorial Autonomy*. New York: Springer Nature, 2023, 194 p.
- Syposz, M. *Framework Convention for the Protection of National Minorities: Opportunities for NGOs and Minorities*. London: Minority Rights Group International, 2006.
- Тишков, В. А. and Шабает, Ю. П. *Этнополитология: политические функции этничности*. Москва: МГУ, 2011, 416 с, <https://asu.edu.ru/images/File/Tishkov-Shabaev-Etnopolitologiya-Politicheskie-funksii-etnichnosti.pdf>.
- Тишков В.А. Этничность как форма социальной организации, 2018, website of Valery Tishkov, <http://www.valerytishkov.ru/cntnt/publikacii3/lekcii2/lekcii/etnichnost.html>.
- UN, *Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. Note by the Secretary-General. UN General Assembly, A/74/160, 15 July 2019.

- UN Human Rights Committee (HRC), CCPR General Comment No. 23: Article 27 (Rights of Minorities), 8 April 1994, CCPR/C/21/Rev.1/Add.5.
- United Nations, *Minorities and the United Nations*. Pamphlet No. 2 of the UN Guide for Minorities, 2001.
- Weller, M. DH-MIN Handbook on minority consultative mechanisms. Committee of Experts on Issues Relating to the Protection of National Minorities, Council of Europe, DH-MIN(2006)012, 2006.
- Yupsanis, A. Autonomy for Minorities: Definitions, Types and Status in International Law. *Finnish Yearbook of International Law*, Vol. 25 (2014–2015), pp. 3–46.