



EUROPE, DIVERSITY AND MINORITIES

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Minorities can be found everywhere in Europe. There is no country with a homogenous population. Diversity is the rule – also in the ‘Nation State’. However, the relations within a State are matter of that very State, including the relations between a majority and minorities in the population. Public international law is about the relations between States and is traditionally based on the respect of borders and the principle of non-interference with internal matters of other States.

But security issues made it necessary to deal with minorities also in the relations between States. From being an internal matter, they became a matter of international concern and, by consequence, of international treaties. In the 19th century treaties on the prohibition of slavery and slave trade have been concluded. The division of Poland and its annexation by the neighbours as well as the Balkan conference in Berlin, 1878, are examples for treaties on territories and populations who became minorities through the movement of borders (these treaties contained e.g. the respect of religious rights of concerned populations).

New ‘Nation States’ were established after WW I. The principle of self-determination, declared by U.S. President Woodrow Wilson, 1918 (in his famous 14 points Declaration during WW I), became the basis for the Paris Treaty systems, 1919. Nationalism was a consequence, too, and it became clear that it was not possible (or politically desirable) to grant self-determination everywhere (e.g. Czechoslovakia, Kingdom of Yugoslavia, the annexation of South Tyrol by Italy ...). International Treaties under the League of Nations, the predecessor of the United Nations, should guarantee vulnerable populations and territories (e.g. the Swedish-speaking population on the Åland Islands as part of Finland). But the system based upon collective rights and security was not sufficiently enforced and could not prevent violations of rights, new conflicts and the outbreak of WW II.

After WW II an important shift in approach occurred: now the bases in international and constitutional law were the fundamental rights of the individual, not of groups (Universal Declaration of Human Rights, 1948; the bills of rights in all post-war Constitutions). This was due to the massive violations of rights by the totalitarian systems, during the war, and the Shoah. As a consequence of WW II, 17 million people in Europe were displaced or refugees. But with the Cold War, Europe was divided by

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the 'iron curtain' and borders – and conflicts – were 'frozen'. However, there are some important minority-treaties: on South Tyrol between Austria and Italy (Gruber-De Gasperi-Agreement, 1946), between Italy and Yugoslavia regarding Trieste (Memorandum of Understanding, London 1954, with UK and USA), between Denmark and Germany (Bonn-Copenhagen Declarations, 1955), the Austrian State Treaty (Vienna, 1955), and the agreements on Northern Ireland (Anglo-Irish Agreement, 1985, and Good-Friday or St. Andrews Agreement, 1998).

In parallel, in Western Europe, European integration, based upon cooperation, shared sovereignty and common constitutional values, created an environment in which security is no longer guaranteed by borders. This is best illustrated by the Schengen agreement and by cross-border cooperation of municipalities, provinces and regions. Diversity among Member States (and their populations) was no longer an obstacle but became a positive value (as expressed by the EU's motto 'United in Diversity'). However, there is no (specific) EU legislation on minorities, due to the different constitutional approaches in the single Member States (liberal, promotional or multinational).

But 1989 did not mean 'The End of History' ([Fukuyama](#), 1992). Ethnic conflicts or tensions arose in Central and South Eastern Europe in the early 1990ies, as a consequence of the independence and democratic transformation of the formerly socialist States. The breakup of Yugoslavia saw mass-scale 'ethnic cleansing' and war, another crisis developed in the Baltic Republics, where the Russian population was emarginated and partly excluded from citizenship. Security was an issue again and the emphasis on 'one Nation' plus sovereignty in a context with a high degree of diversity in the population was a dangerous combination.

The promise of EU enlargement was a means for limiting the tyranny of majorities in the Central and Eastern European countries as the EU included the guarantee of minority rights among the political criteria a candidate country had to fulfil in order to show its preparedness for EU accession (the so-called Copenhagen criteria). The issue of minorities, often residing in border areas, was transformed from a security issue (for the neighbours and regional stability) into a proof of internal stability and sustainable democratic transformation of the country. Also, (border) conflicts were to be settled before accession (with the exception of Cyprus whose division was not overcome when the island – de facto the Greek controlled part – was admitted into the EU).

From a legal (and practical) point of view, the question was which standards would apply in order to evaluate whether the EU's condition of guarantees for minorities and their rights was respected, as the EU itself does not have a fully developed legislation on the matter. In the 1990s, a European system of minority protection developed through the cooperation of the three international organizations in Europe, which differ in scope, members, degree of integration and in their capacity to set binding standards and rules.

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The European Union, with 27 Member States, is the most integrated organization with a shared legal system of binding rules. The Council of Europe, with 47 Member States, is based upon a system of international treaties in the field of democracy and human rights. The OSCE (Organization of Security and Cooperation in Europe), with 57 Member States in Europe, North America and Asia, was a forum for dialogue between NATO and Warsaw Pact during the Cold War but was preserved as an organization on democracy and security issues adopting mostly political declarations ('soft' law, i.e. not binding legal obligations).

In fact, the democratic transformation of Central and Eastern Europe in the 1990ies was based upon common values in a European frame and made possible by a division of labour between Europe's main international organizations. The creation of a European Minority Rights System is one formidable example.

At its centre, there are two binding treaties on minorities adopted by the Council of Europe: the European Charter for Regional or Minority-Languages (ECRML) and the Framework Convention for the protection of National Minorities (FCNM). Both are legally binding, i.e. mandatory, but they are neither self-executive nor directly applicable, by contrast with most fundamental rights in the Constitutions. Therefore, it depends on the States how they fulfil their obligation to implement these Treaties within their legal systems and in practice.

In order to prevent ethnic conflict or to intervene at an early stage, the High Commissioner on National Minorities of the OSCE (HCNM) was created. This Commissioner monitors the situation and shall act as mediator in tensions or conflicts between governments and minority groups. Over time, his small office has issued non-binding guidelines elaborated by experts which fill in the Treaty obligations with detail containing suggestions, options and examples of good practice: the OSCE HCNM Recommendations. This marks a different approach: a 'set of ideas', rather than binding standards. The most important expert recommendations cover school-education, language and public life (including institutions) as areas of potential conflict but also of opportunity for the integration of minorities into the wider society.

This framework of European standards and principles needs to be implemented by the States, but implementation is monitored and there is transparency as well as dialogue on implementation. It is a multilevel system which involves many different actors (international organizations, national and subnational governments, majorities and minority groups, associations) and does not impose uniform rules. This approach reflects that in order to be sustainable, the implementation needs to be based upon inclusion and persuasion: the aim is a dialogue between majority and minorities for giving the latter a voice in all issues which are of their concern. Thus, general standards need to be adapted to the specific situation through the adoption of specific legislation on minority rights (a national law on minority-protection or a regional statute of autonomy which for instance contains specific provisions for the representation of groups and/or language rights) and specific safeguards in general legislation (e.g. smaller classes for lessons in minority language or exemption from thresholds in elected assemblies).

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The result is the gradual creation of a European system, in which cultural diversity is considered mutual enrichment – between the different States and within the States and their different populations. Such a system is not imposed but elaborated together on different levels and by different actors, and therefore generally accepted. It consists of an essential, binding core of Treaties and of additional, complementary and non-binding instruments which shall facilitate the implementation of the obligations through guidelines and more detailed options. While States have to respect diversity, such a system makes flexibility in the adaptation to the local situation possible. This is important as the situation of minorities on the ground is very different in terms of numbers, concentrated or dispersed settlement, social prestige and/or discrimination or assimilation experience in the past and related fears.

The objectives of minority-protection are the (respect of) human dignity and fundamental rights, the prevention of conflicts (i.e. security), the preservation of a distinct group-identity and of diversity, but also the living together in an inclusive society. In pluralistic and democratic societies conflicts and controversies are natural and normal, but inclusive procedures for dialogue and decision-making are necessary, so that also those who are structurally in a minority-position can make their voice heard.

In a Europe 'United in Diversity', there can be no 'one-size-fits-all' solution.

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EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES – ECRML (1992)

<https://www.coe.int/en/web/european-charter-regional-or-minority-languages/about-the-charter>

The European Charter for Regional or Minority Languages (ECRML) is a treaty adopted in 1992 by the Council of Europe to protect and promote historical regional and minority languages in Europe. It only applies to languages traditionally used by citizens of the Member States and shall create a positive social status for these languages (languages used by recent immigrants from other states are excluded). Regional or minority languages differ significantly from the majority or official language (thus excluding mere local dialects of the official or majority language) and that either have a territorial basis (and are therefore traditionally spoken in regions or areas within the State) or are used by linguistic minorities within the State as a whole (thereby including such languages as Yiddish and Romani).

The Charter suggests many actions States can take to protect and promote historical regional and minority languages. There are two levels of protection: all States must apply the lower level of protection (i.e. eight main principles and objectives upon which States must base their policies and legislation), but they can declare that a language will benefit from the higher level of protection (a list of actions from which States must choose at least 35). The areas in which specific measures must be adopted are: education; judicial authorities; administrative authorities and public services; media; cultural activities and facilities; economic and social life; cross-border exchanges. Despite these binding obligations, it is left to the States to implement the measures. The Charter does not contain directly applicable rights for the speakers of the languages. This is why monitoring of the implementation is important and guaranteed by a reporting procedure through a Committee of Experts.

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES – FCNM (1997)

<https://www.coe.int/en/web/minorities/at-a-glance>

The Framework Convention for the Protection of National Minorities (FCNM) is a multilateral treaty of the Council of Europe which came into effect in 1998 and by 2009 it had been ratified by 39 member states. As minority situations differ greatly

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from country to country and consequently require different approaches, the drafters of the Convention opted for 'programmatic' provisions that establish principles and objectives that should guide States in protecting their minority populations. For this reason, the Convention is largely constructed as a series of States' obligations rather than as a detailed list of rights of persons belonging to national minorities (thus, there are no directly applicable rights for minority members). Realization of these principles and objectives must take place in the domestic sphere, notably through the adoption of legislation and policies. States can, to some extent, use their discretion in designing legislation and policies that are appropriate to their own circumstances. This is why the Convention is called a 'Framework' Convention.

Two of the key principles contained in the Convention are Article 1, which states that the protection of national minorities is an integral part of the protection of human rights, and Article 22, which specifies that the Convention may not be used to reduce existing standards of protection. Since the Convention was intended as an addition to existing human and minority rights protections, it must be read in relation to other human rights instruments, such as the European Convention on Human Rights.

The key principles are that minority members are guaranteed the free and individual choice of whether they want to be treated as. Minority members or not (art. 3); discrimination on grounds of criteria which determine membership in a minority is prohibited (art. 4). Specific provisions on minority-protection (art. 5 ff.) follow with a view to participation in cultural, social, economic (articles 7 to 14) in public affairs (art. 15). The implementation of the FCNM is to be applied on a territorial basis, to 'areas' inhabited by minorities (which are determined by the States). The provisions of the FCNM often contain vague formulations, e.g. 'reside traditionally or in substantial numbers'; 'where such a request corresponds to a real need'; 'In the framework of their legal systems, ...'; 'Parties shall endeavour to ensure, as far as possible, ...'. While this leaves room for flexibility which is necessary to adapt to concrete situations, it may also weaken the impact of the provisions as governments may not go far enough in their implementation. This is why the originally weak monitoring system has been further development over time and in practice through a regular reporting by an advisory committee of experts which guarantees transparency in the dialogue between States and their minorities.

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THE MOST IMPORTANT OSCE HCNM RECOMMENDATIONS

<https://www.osce.org/hcnm/thematic-recommendations-and-guidelines>

- The Hague Recommendations on Education Rights of National Minorities (October 1996)
- Oslo Recommendations on Linguistic Rights of National Minorities (February 1998)
- Lund Recommendations on the Effective Participation of National Minorities in Public Life (September 1999)
- Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (June 2008)
- Ljubljana Guidelines on Integration of Diverse Societies (November 2012)
- Graz Recommendations on Access to Justice and National Minorities (November 2017)

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