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MINORITY POLICIES IN EUROPE

Reflections on developments between 1990 and 2018

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List of abbreviations

CoE	Council of Europe
EBLUL	European Bureau of Lesser Used Languages
ECHR	European Court of Human Rights
ECHR	European Convention on Human Rights, formally the Convention for the Protection of Human Rights and Fundamental Freedoms
ECRML	European Charter for Regional and Minority Languages (here also: the Charter)
EEA	European Economic Area
EU	European Union
FCNM	Framework Convention on National Minorities of Council of Europe (here also: the Framework Convention)
FRA	European Union Agency for Fundamental Rights
FUEN	Federal Union of European Nationalities
HCNM	High Commissioner on National Minorities
ICCPR	International Convention on Civil and Political Rights
ILO	International Labour Organisation
LGBTI	Lesbian, Gay, Bisexual, Transgender/Transsexual, Intersexed
MIDIS	EU Minorities and Discrimination Survey
NGO	Non-Governmental Organisation
ODHIR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
R2P	Responsibility to Protect (commitment by UN member states to prevent genocide, ethnic cleansing i.a.)
SDG	UN Sustainable Development Goals
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous People
UPR	UN Universal Periodic Review

1. Introduction

This text is based on my experiences of working on minority issues at both a national and international level. The aim is to describe, from my personal point of view, how European policies on minorities have changed over the years and why this might be a detrimental development for Europe as a whole. My points of view are that of a practitioner, and the views I express in this text are based on my personal experience rather than research. However, I am also restricted by the confidentiality of the mandate of the HCNM, so in this text I can only refer to publicly disclosed sources and statements. It is first and foremost directed at people with an interest in minority policy, and/or people who are in a position to shape national and European policies on minority rights and integration.

During the years that I have followed minority issues in Europe there has been a big shift. The 1990s were the so-called “Golden Years” when several new international instruments for safeguarding minority rights were adopted. Today, however, some tensions and suspicion can be noted: Minorities appear to be either ignored or seen more as a problem than adding positive contribution to society. Kin-State activism, i.e. ‘motherlands’ protecting the interest of their ethnic or linguistic kin in neighbouring countries, is growing and even taking violent forms. A certain return to bilateralisation of minority questions is taking place. At the same time experts on minority questions are feeling somewhat frustrated, as states seem less keen to follow the advice given by international organisations. The effectiveness of the systems for minority protection is sometimes called into question.

Simultaneously, minorities cannot escape the rise of populism and right-wing extremism in Europe, including increased expressions of xenophobia and hate-speech. Increased migration into Europe puts the situation of new minorities under the spotlight. Will there be coop-

eration or competition between the new and so-called old minorities?

It is time to reflect upon future options for a successful minority policy in Europe. I hope that with my experience from different decades and areas I could contribute to such a discussion.

After an introduction to my own background in the field I will present the kind of minorities discussed here and explain why the definition of a minority is such a difficult task. After this, kin-state relations are discussed. In the second part I look at the 'Golden Years' of minority policies in Europe, and how this development has taken a turn for the worse in the past decades. The text ends with a few words on where the developments might be taking us next.

My personal experience of minority issues

In 2013–2016 I worked as the High Commissioner on National Minorities (henceforth HCNM) of the Organisation for Security and Cooperation in Europe (henceforth OSCE). During this period I came in contact with many minority situations in the Balkans, Central and Eastern Europe and Central Asia. This widened and deepened my knowledge of minority issues.

My previous contact with European minority questions was as a Member of the European Parliament during 1996–2004, a period when a substantial enlargement of the European Union was being prepared. In those days, I worked on the Joint Parliamentary Committees of the European Parliament with Slovakia, Romania and Latvia respectively. This gave me insight into the implementation of the Copenhagen Criteria,[1] i.e. the list of criteria that need to be met before a country can enter into negotiations on membership in the EU. As a member of the European Parliament I was also engaged in the so-called Intergroup for minority questions. It was not easy to get the group established in my second term. The interest in minority questions had decreased and the rules for establishing such a group had been tightened.

In the early 1990s I followed the development at a distance as active in the international work of liberal parties in Europe, and as a member and later as the President of the Swedish Assembly in Finland *(Svenska Finlands Folkting*). In this capacity, I was invited to Slovakia and Croatia to inform about the Finnish legislation.

In December 1992 I assisted as Finland's representative at the European Congress on the rights of Minorities and the Peoples in Athens. At this time, the HCNM had just been established and the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities would be adopted a week later. The debate in Athens focused primarily on the upcoming Council of Europe documents. Some advocated for a Council of Europe mediator on minority issues. In my report back to Finland I related that the mandate of the HCNM was considered so weak that other more robust tools needed to be adopted in the Council of Europe.

As minister for Migration and European Affairs in Finland (2007–2011) I was integrally involved in national discussions on integration of migrants. Clearly there are similarities between questions of integration of newcomers and the integration or cohesion of societies that include minorities. In my years as a minister, however, integration was not a priority on the international agenda. At a European level, more emphasis was given to the situation of the Roma minority in Central and Eastern Europe.

Role of the OSCE High Commissioner on National Minorities

The dramatic events unfolding in former Yugoslavia, leading to deadly conflicts and war, revealed to the international community that it did not have the necessary tools to deal with conflicts where minority issues were at the forefront. This seems to be the primary reason why the Dutch government took the initiative to establish the HCNM.[2]

The HCNM is neither a human rights monitoring body, nor is it an

ombudsman for national minorities. Rather, it is a conflict prevention instrument established at the OSCE Summit 1992 in Helsinki.[3] Notably, the Commissioner is the Commissioner *on*, not *for* national minorities. This was the deliberate result of negotiations. Another result of the compromises was that the Commissioner is not to deal with situations labelled terroristic, which excluded engagement with some Western European countries such as the UK (i.e. not to touch Northern Ireland) or Spain (the Basque question). As there is no definition of terrorism, this has also become a way for states to avoid cooperation with the HCNM.

The HCNM is to deal with minority questions where there is a risk for conflict.[4] Possible involvement is largely at the discretion of the HCNM, and how he or she defines the risk of conflict. Credible testimonies assert that the people who drafted the mandate of the HCNM had the grave conflicts in the Western Balkans and Eastern Europe in mind. Conflicts referred to in the mandate could therefore range from skirmishes to genocide, as in the case of former Yugoslavia. This means that in some countries, there is a certain stigma and aversion related to the involvement of the HCNM.

Compared to the instruments of the Council of Europe, the OSCE HCNM is less well known – at least west of Vienna, to use an OSCE expression. One reason for the relative anonymity of the HCNM is probably that the institution works through quiet diplomacy.

The working methods and emphases of the different High Commissioners have been different. The first HCNM used public appearances if necessary to harness the political will of partners; in later years, the work was done only through quiet diplomacy. A view on my experiences can be found in the OSCE Yearbook 2017.[5] In it, I describe the work of the HCNM as early prevention, or as work that aims to stop vicious circles of conflicts recurring. The HCNM is supposed to give an early warning if there is a risk of

an ethnic conflict. However, if the HCNM has to issue such a warning, it is a sign that the prevention work has failed. A very careful approach is needed in order not to further exacerbate ethnic mistrust by calling a political crisis a crisis related to minority issues.

Although the HCNM is a conflict prevention instrument, a lot of the advice and solutions given to participating States has become a kind of norm for the rights of minorities. This is due to the fact that the institution started operating before the Council of Europe minority related Conventions entered into force.[6]

The HCNM does not have any sticks and a very few carrots; good cooperation with institutions such as the EU is thus central. Naturally, there is also cooperation with other bodies and institutions in the field of minority rights, especially the Council of Europe.

2. Minorities as a matter of fact, not of law

The minorities discussed here are often called ethnic, linguistic, cultural, religious or national minorities. Sometimes you will also find the term ethnolinguistic minority. I will not be talking for instance about sexual minorities in this context.

Sometimes a minority will prefer the self-definition of a community, constituent people or group, for example, rather than a minority. However, apart from the case of indigenous peoples (see below), group rights are not recognised in international law. In this light, it might be understandable that I have experienced minorities who strive to be recognised as indigenous people.

Although the status of minority is recognized, however, we cannot find a definition of what a national minority is in central international instruments, whether legally binding ones or instruments that countries have committed themselves to.

This is true for documents adopted by the UN, the Council of Europe as well as by the OSCE. It seems it has been too difficult to agree on such a definition.

The Framework Convention for the Protection of National Minorities of the Council of Europe (FCNM), does define a minority indirectly when it mentions what kind of identities it tries to preserve and promote. The convention names ethnic, cultural, linguistic and religious identities in this context.[7]

One reason for the lack of clarity relates to the varying notions of the word nation: does it refer to the state or a group of persons? In a recent debate in Sweden the former deputy speaker of the Parliament said that Jews and Sámi people are not "Swedish". This sparked comments on what Swedish and Sweden is – a definition of a state or an ethnicity. One scholar pointed out that the notion of 'nation' in the UN Charter refers to states, not nationalities.[8]

Among practitioners of international law, however, there seems to be a wide-spread consensus that the status of a minority is a matter of fact, not of law.

The absence of a definition in international law seems to have been less detrimental than what one imagined when the new international norms were adopted. In fact, some argue that the lack of a definition enables a more dynamic and progressive interpretation and adaptation to changing needs. Related to this is the question of the basic right to self-identification, but also the newer notion that multiple identities should be acknowledged and accepted.

Minorities in national legislation

In different parts of Europe, different documents and actors are regarded as central in minority policy development. In countries that are well integrated into the Council of Europe, EU or EEA, the documents issued by the Council of Europe are seen as the most important ones. However, the practical impact they have had on national legislation, compared to for instance the concrete effect of the Copenhagen Criteria for EU membership, could be debated. In many countries, minority legislation was introduced as a direct result of the Copenhagen Criteria, often in good cooperation with the OSCE HCNM.

The way a minority is defined within a country is a reflection of the way the state has been built, of political ambitions and the history of the state, especially in cases where borders and people have moved a lot. Some countries in Europe do not recognise any minorities in their countries.

If a country does not recognize national minorities, it often indicates that the country has not ratified the European conventions (e.g. Greece, France). Thus there is no access to the European minority monitoring system. In addition, there is sometimes differences in opinion between international bodies and national ones, on the status of some groups as minorities. For minorities living in countries not adhering to any minority conventions, the Human Dimension Implementation Meeting (HDIM) of OSCE[9] might be one of the few arenas where they can highlight their concerns to representatives of states or organisations. As the title implies, the HDIM aims at taking stock of how OSCE participating states are implementing their commitments to the Human Dimension of the OSCE. It is an annual meeting convening for about two weeks, gathering hundreds of Human Rights activists and state representatives.

Despite some resistance in the international legal community, a minority in national legislation is quite often a group with long ties to the country. An important consideration is the history of the settlement, an issue that affects both more nomadic minorities and newcomers to a certain region.

In earlier days, some argued that only minorities with a so-called Kin-State could obtain the status of a national minority. This definition has since been rejected and is not in line with respect for human rights of persons belonging to a national

minority. The kin-minority situation is often created when borders are re-drawn after wars. However, we can note that a Kin-State might object to the terms the minority uses about itself. An example are the Vlachs or Romanians in Serbia. The view of the Romanian state is that this group of people should be called Romanians, thus emphasising their roots to Romania, whereas the authorities in Serbia mostly prefer the name Vlach. Amongst the people themselves, support for both views can be found.

Citizenship as precondition – a highly politicised question

A politically charged question is whether members of a national minority should be citizens of the country where they reside, in order to enjoy the rights possibly conferred upon them.

In this context it is interesting to compare two proposals that have been discussed in the preparation of the international norms:

Already in the 1970s, Special Rapporteur of the UN Francesco Capotorti proposed four minority criteria: a group 1) that is numerically inferior to the rest of the population, 2) that does not hold a dominant position in the state, 3) whose members **are nationals** of the country in which they are living, and 4) who maintain a sense of solidarity directed towards preserving their culture, traditions, religion or language.[10]

The proposal of the Venice Commission,[11] that eventually led to the Framework Convention (FCNM) suggested: "For the purposes of this Convention, the term minority shall mean a group which is smaller in number than the rest of the population of a State; whose members, who **are nationals** of that State, have ethnical, religious or linguistic features different from those of the rest of the population and are guided by the will to safeguard their culture, traditions, religion or language".[12]

We can note that both proposals included the notion of citizenship of the country in question; a proposal that had the backing of many big powers, such as Germany. However, as no definition was agreed upon, these suggested definitions were not accepted in the international documents.

In debates, many scholars did argue that a definition must not include citizenship, as it would exclude situations where people for political reasons have been deprived of citizenship or are unable to get one. However, many national legislations still have this requirement, which leads to a certain tension between national and international law.

The situation of the Rohingya is a good reminder of how problematic the citizenship criteria is. Despite residing in the Rakhine state of Myanmar for centuries, the Rohingya are not legally recognized as citizens, or as a minority of the state. This renders them stateless and without legal protection in their own country – or much protection in any other country, for that matter.

The question of citizenship is relevant also in the discussion of Russian-speakers in the Baltic countries. When Estonia and Latvia regained independence in 1991, they did not automatically grant citizenship to all residing in the country. This meant that a lot of Russian-speaking people were left without citizenship in their country of residence. Had the international definition of a minority included citizenship, international organisations would not have been able to do much for the Russian-speaking groups. The absence of citizenship as a minority criterion enabled the OSCE to be active in both countries, even establishing an office in Narva. Likewise, in its report, the Framework Convention (FCNM) deals with the Russian speakers in the Baltic States.[13]

In my view, it is important to stick to the view that belonging to a minority is a question of fact, not of law. A formal position of citizenship, therefore, cannot be a precondition for minority status.

What is a national minority?

In many national laws there is a rule that a minority is recognized as such only if it has resided in a country for a number of years, often 100 years or more. Other ways to define a mi-

nority is to demand that the group has lived in a country for more than three generations, or has been rooted there before a certain date. These definitions have, from time to time, led to efforts to divide national minorities further by establishing a separate group of historic or traditional national minorities.

The Federal Union of European Nationalities, FUEN, the strongest Pan-European NGO for minorities, emphasises in their resolutions the notion to "feel entirely at home on the territory where they have been living traditionally". Though emphasising geographical roots, the same organisation pays special attention to the Roma, which is a minority for whom the question of historical or long-term settlement is sometimes disputed.

However, the majority of experts do find this further division of minorities into two different categories detrimental, and I would adhere to this line. It would weaken the voice of minorities even further. The division between traditional or non-traditional minorities also reflects the tensions surrounding the relation between newer minorities and traditional national minorities.

The fourth Thematic Commentary, clarifying the interpretations of the application of the FCNM,[14] did not receive entirely positive reactions from national minorities, particularly those that could be called traditional minorities. The reaction was related to the perception of old and new minorities; a tension that has existed amongst the so-called older minorities for some time. The representatives of older minorities objected to what they considered too wide a scope. Since parts of the commentary related to the general atmosphere of tolerance in society, it touched upon questions that are relevant to both national minorities and migrants.

A key question for minorities will always be: are they open or closed communities? Are they just mirrors of the majority, equally nationalistic? Or is it possible to imagine that minorities truly implement the rule that each person must have the right to define her/himself, including not identifying with a minority. Personally, I strongly support multiple identities – at the same time I am a Swedish-Speaking Finn, a Nordic and a European, the strength of each identity varying according to circumstance.

What is an indigenous people?

The Convention no 169 concerning Indigenous and Tribal Peoples (1989) of the International Labour Organisation, henceforth the ILO 169, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[15] provide a set of criteria for identifying indigenous peoples. The first document, the ILO Convention 169, talks about tribes or people whose social, cultural and economic conditions distinguish them from the majority population. Account should also be taken of their descent from the populations who inhabited the country at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. They also have the right to determine who should belong to the group. The UNDRIP is a bit different as it mentions historic injustices these people have encountered, the right to development, the cultural and spiritual traditions as well as histories and philosophies.

Both documents take as a point of departure the possession of collective rights and the right to autonomy or self-determination. You could also say that the UNDRIP is a bit clearer on the rights to education compared to international documents dealing with the right to education of minorities.

In the early 1990s there was a debate around individual or collective rights, and clearly there was an aversion against collective rights for minorities. However, for instance in the implementation of the Framework Convention (FCNM) there is an understanding that some of the individual rights can meaningfully be upheld only when supported by a group. For example, the right to education does not mean anything

if there is not a sufficient number of persons to demand it.

The absence of group rights is to my mind one of the reasons why some minorities rather long for a position as indigenous people. This tendency could be observed among the Crimean Tatars working hard to obtain this status in Ukraine, even after the illegal annexation of Crimea by Russia. And of course, when the Tatars expressed such a wish, other groups in Crimea either objected to or wished to have the same status.

The Roma – the largest minority in Europe

The status of the Roma remains, at least in some countries, both ambiguous and problematic. The Roma/ Sinti/ Travellers are Europe's biggest minority but still there is a tendency to treat the group differently from other minorities. Sometimes their situation is dealt with only as a social question. But their other rights, including rights to civic participation, should be dealt with in the same way as the situation of other minorities in a country.

The criteria of citizenship and historical ties continue to haunt the Roma. In 2018 Switzerland rejected efforts to define Roma/Travellers as a national minority under the Framework Convention (FCNM), citing that the community does not fulfil the citizenship criteria of having longstanding ties to the country. In the Netherlands, the Framework Convention only applies to the Frisian community; Roma and Sinti are excluded because of "the citizenship and the territoriality principle". In Denmark the situation is similar, as only the German minority in south Jutland is recognized.[16] In some of these cases reference is made to the fact that groups either settled late (in the 1960s), or have not expressed an interest in being represented as a minority. The question of representative voices of Roma has been debated in many countries in light of such opinions.

The first universal documents in the 1990s[17] mentioned Roma, and the OSCE Participating States tasked the first HCNM to draft a report on Roma in 1993.[18] This lead to a Contact Point, i.e. a smaller unit within the larger office at the Office for Democratic Institutions and Human Rights of the OSCE (ODIHR),[19] and the adoption of an action plan.[20]

The chocking studies commissioned by the Open Society Foundations (i.e. Soros foundations) in Bulgaria and Romania at the turn of the century, revealed to me the graveness of the situation of the Roma. When working in the joint parliamentary committee with Romania I visited orphanages, prisons with women and youth. I also tried to draw the attention of Romanian authorities to the plight of the Roma.

There were informal discussions on whether to block some countries from joining the EU because of their treatment of the Roma. The advice I was given was that the majority's rage would turn against this minority if doing so. Still today some argue along these lines, especially when the question of beggars in Western countries is raised.

In an effort to increase cooperation and ensure the participation of the groups themselves, the European Roma and Travellers Forum was set up at the Council of Europe. It was to be a consultative body for the CoE and a credible voice for all Roma in Europe.

However, not much resources were devoted by the EU to the needs of the Roma – at least before the minority became visible in Western Europe due to the enlargement of the EU, and due to outrageous treatment by some countries, e.g. France, expelling Roma from their country.

Only then did the highest EU level turn its attention to the needs of the Roma, and more resources for housing, health care and education were made available to countries with considerable Roma populations. The Council of Europe also organised a high-level meeting, which resulted in the establishment of a Roma mediators' programme. As long as it was financed, it had some success in enabling young people to work as "go-betweens"; as mediators between the authorities and the Roma population. This model has later been implemented

regarding other minorities in the OSCE area, including Central Asia.

During EU membership negotiations several countries had been obliged to draft Roma strategies. As soon as they were inside the EU, however, implementation became more lax. And even where resources had been made available for better housing, it was difficult to find places where such houses could be constructed. As guardian of the Treaties the EU Commission has launched infringement proceedings, for instance against Slovakia, regarding education.[21]

In the education of Roma children, emphasis has been on avoiding segregation. The strong norm in art. 13 of the Framework Convention (FCNM) "…to promote equal opportunities for access to education at all levels for persons belonging to national minorities", has been important. In the case of the Roma it is well argued that equal opportunities are not given if the children attend separate educational institutions that do not attract equally good teachers as other schools. The Advisory Committee of the Framework Convention has been consistent and persistent in advocating this line. And persistence is needed as segregation continued for a long time – or continues still – despite a ruling by the European Court of Human Rights against the Czech Republic in 2007. The courts found that the state had violated the rights of Roma children by placing them in sub-standard "special schools";[22] i. e. schools intended for children with learning difficulties. The EU Commission has also launched infringement proceedings against the Czech Republic, Hungary and Slovakia for breaches of the Race Equality Directive[23] for the same reasons.

The failure to provide proper education for the Roma is an example of how European funding has not brought results. It is important in this instance to underline also the responsibility of the national and regional authorities.

In the future we must take a long-term perspective on the Roma. This has been done for instance in the Swedish Roma and Sinti programme. The Swedish programme recognizes that it will take 20 years to give quality education to new generations of Roma, and thus provide the population with equal opportunities.

Fortunately, my impression is that scholarships given to young Roma are yielding results, as educated and talented Roma want to make their voices heard to the benefit of their own people.

Another fundamental issue is access to health education for Roma women. A step in the right direction would be to highlight the suffering that the Roma faced during the holocaust.

Only ethnic minorities as real national minorities?

During my years as HCNM, I sometimes felt that part of the international diplomatic community regarded only ethnic minorities as "real" minorities. Thereby forgetting groups with other elements such as distinct cultural, linguistic or religious features different from the rest of the population, with a wish to preserve and develop these features. Some scholars use the term ethnolinguistic groups.

The focus on ethnicity might be related to the areas topical at the time, such as the Balkans, Ukraine and Central Asia. The wars in the Balkans were often given a very ethnic dimension, and the traditions in that area seldom gave room for discussing what ethnicity is; is it social, cultural or biological heritage? In Ukraine, on the other hand, some people felt that the tension that lead to the uprising and the conflict in the east of the country was a constructed one – language was not seen as a real reason for dividing people into groups.

However, such reasoning was in many ways out of touch with the divisions of Ukraine and the complexity of the relations between different groups of people in the country. Ukraine has been deeply divided both geographically and linguistically, and in terms of the position of the Ukrainian culture and language. In addition, should we talk about one or many ethnicities among the

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Slavic speakers?

This impression does not mean that linguistic differences cannot create huge tensions – language has been one of the principal tools in nation building. Thus, there have been tensions between majorities and minorities almost everywhere.

A special case is Turkey, where only non-Islamic groups are regarded as minorities. Of this follows a denial of the existence of a Kurdish minority. Here one could argue that the situation is the opposite of stressing only ethnicity.

Religion will likely play an increasing role in defining identities. But in countries where repression of linguistic or ethnic difference is increasing, a possible scenario is that worship of religion will be the only situation where an individual will find the place to fully express him/herself. On the other hand, religious communities can be quite closed to the outer world, also due to increased suppression or surveillance. In such circumstances minority policy and prevention of conflicts will at least not be easier.

3. On Kin-States and "their minorities"

Kin-State policy can be defined as the policies pursued by a country with an interest in the situation of a Kin-Minority in another country. Such relations often exist because a minority has been, so to say, left on the wrong side of the border.

Kin-State policy was rather the norm after WW I, with many bilateral treaties regulating the situation of minorities. Such a policy can have both positive and negative effects. Among the positive ones can be noted ensuring access to education for the minority, not to mention possible financial support. Some examples of positive effects will be mentioned later. The consensus today is, however, that the primary responsibility lies with the country of residence, not with the Kin-State. If a Kin-State policy is pursued without the agreement of the target country, tension will be created.

While the international conventions and universal declarations that

were adopted in the 1990s were regarded as achievements, some concerns have been raised concerning Kin-State activism. A consequence of "Kin-State" policy can be that the international community is less interested in minority questions as a common issue. This is of course to the detriment of weaker minorities that have no Kin-State. If only States with minorities in other countries express an interest in these questions, then the entire policy becomes weaker, affecting also the monitoring mechanisms.

Therefore, efforts have been made to distinguish between acceptable and non-acceptable policy of this kind, both by The Venice Commission and by the HCNM.

The ultimate breach of the norms of international law has of course been the actions by the Russian Federation, when the situation of a Kin-minority has been used as grounds for military intervention, like in Georgia. It is also interesting to see how the Responsibility to Protect (R2P) concept (see below for details) was misused as an extension to kin-state policy.

The Copenhagen criteria have actually led to Kin-State activism also from countries already "inside the club" in the EU, towards those countries that are in the applicant or candidate position, as described below. Such behaviour does not give minority policy a good taste, nor friends in the EU.

A long history of bilateralism in minority questions

From a philosophical point of view, it could be argued that a resurgence of Kin-State activism in the 21st century was just a return to the usual mode of operations. Kin-State activism and concerns were often addressed through bilateral treaties especially after the WW I. The results are not encouraging.

For those who did not follow minority issues closely at the turn of the Millennium, the impression might be that a more active Kin-State policy was first promoted by the Russian Federation with its Compatriots policy, especially in relation to the war with Georgia in

August 2008 and further on.

However, the adoption of the Status Law in Hungary in June 2001 can be seen as the real turning point, as the country *publicly announced* non-friendly actions towards its neighbours where a kin-minority resides. The Prime Minister of Romania immediately requested an opinion on the law from the Venice Commission,[24] and soon after also the Hungarian authorities turned to this esteemed institution of the Council of Europe. Of course one could argue that some other countries had followed such a line *de facto*; but the difference here was that such ambitions were not hidden anymore or wrapped in minority friendly language.

Kin-State activism can even be based on legislation in the "mother country". Indeed, quite many countries in Central and Eastern Europe have such legislation.[25] The responsibility brought about by legislation can then in some cases be translated into bilateral agreements where the modus operandi is specified.

Even in the 1990s bilateral agreements were concluded without basis in legislation, especially between countries that aspired for membership in the EU.

Positive contributions

Kin-State policies can have positive implications, for instance by supporting the cultural and educational development of the minority. I would argue that the two most successful policies are those between Austria and Italy on South Tirol, and between Denmark and Germany on the minorities living on the "other side of the border". The treaties on South Tirol managed to appease a situation that was very tense, and sometimes violent.

The Bonn–Copenhagen Declarations of 1955, ratified by the national Parliaments, resolved grievances regarding the situation of the German/Danish minorities. The situation had been aggravated by WWII because of the German occupation of Denmark. It is well known that the Nato Accession of Germany in 1954 was one factor contributing to these declarations. The declaration strengthened the right to cultivate connections across borders, allow school subsidies across the border and is based on the European Convention on Human Rights.[26] Germany has co-operation treaties regarding many other countries too where there is a German minority.

The positive contributions of minorities in neighbourhood relations was also highlighted in 2016, when the Chairman in Office of the OSCE, the German Ministry for Foreign Affairs together with the HCNM organised a conference on the bridge-building potential of minorities. In support of the Conference a study was commissioned.[27] In addition to earlier mentioned forms of support, the study highlighted measures promoting personal safety and economic activities as positive contributions.

Tensions because of Kin-State policy

Tensions can arise when a Kin-State tries to exert jurisdiction over citizens of another country in contradiction to international law. Support for political parties or religious organisations in another country is also likely to create tensions. Such tensions can be seen in the way Hungary supports Hungarian parties in neighbouring countries, even though it is not easy to know how the economic support is given.

In 2018, two examples of tensions could be cited.

The Austrian government is said to plan granting dual citizenship to German-speaking persons in the Italian province of South Tyrol. The Italian Foreign Minister has found this plan "inappropriate" with potentially "disturbing consequences". Hungary in turn is allegedly planning to hand out passports to Ukrainian citizens. This procedure is not accepted by Ukraine, which is also critical of the economic assistance given by the Hungarian government to Hungarian families in Ukraine.

Campaigning with an aggressive message among the so-called diaspora for domestic elections likewise creates tensions. It is important to note that a Kin-State is not necessarily the neighbouring country, as for instance Turkey has

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this kind of relation with all groups speaking a Turkish language. It is also possible that we will see more actions by so-called non-state actors, like religious or cultural organisations, working on behalf of a Kin-State abroad. This is not always easy to detect as funding streams are not necessarily transparent.

Turkey and the Crimean Tatars can be seen as an example of non-immediate neighbours working closely together. This includes for instance cooperation between religious organisations or development agencies. The annexation of Crimea in 2014 made Turkey very outspoken regarding the situation of the Crimean Tatars. It is obvious that Turkey is also very active in relation to Muslim organisations in the Western Balkans.

To a Swedish-speaking Finnish audience these situations may appear foreign. Since the break-up of the common country in 1809 there has been very little support from Sweden, even though the Swedish-speaking Finns might have wished for some support at least in some instances. One exemption was the bilateral treaty between Finland and Sweden in 1987 on mutual broadcasting of analogue TV.[28] On the other hand, Sweden has not reacted negatively when Finns have commented on the situation of Finns in Sweden. We can conclude that the geographical reality restricts irredentism and the relations are good to the degree that even sharp remarks are deemed permissible.

Kin-State relations according to international norms

There are two main sources to consult when it comes to the position of international organisations on the issue of Kin-State relations. In October 2001, The Venice Commission issued a report requested by the governments of Romania and Hungary. This was called the Report on the Preferential Treatment of National Minorities by their Kin-State.[29]

According to the report, four principles are central for preferential treatment to be acceptable:

1. It should respect the territorial integrity of the other country;
2. it should build on the principle of pacta sunt servanda, i.e. agreements are to be upheld;
3. be based on friendly neighbourly relations, and
4. should not be a form of forbidden discrimination as it is defined for instance in the ECHR.

The second document is the Bolzano/Bozen recommendations of the HCNM, issued in June 2008.[30] They build on the findings of the Venice Commission and are more detailed. Three central principles underpin them:

1. The protection of the minority is primarily the task of the country where the minority resides.
2. Extraterritorial jurisdiction is not allowed.
3. Support for kins must be given in consultation with the recipient country and with respect for territorial integrity and sovereignty, and good neighbourly relations.

The HCNM recommendations include that educational support should have the explicit or presumed consent of the authorities where the educational institution is established. States should also refrain from financing political parties of an ethnic or religious character in a foreign country.[31]

The Advisory Committee of the Framework Convention has referred to the Kin-State policy in its reports, and stressed among other things that a country cannot outsource its responsibility to care for the needs of a minority by relying on support from a Kin-State.[32]

When trying to follow public opinion in different states, even within the EU, two extremes can be found. It is understandable that the Baltic States, who are objects of Kin-State policy, appear very suspicious about such activities, whereas Hungary, often seen as the active part giving support to its Kins in other countries, does not seem to have objections.

Responsibility to Protect and misuse of the Kin State policy

In the 2000s, new tensions erupted between Hungary and its neighbours. The relationship between Hungary and Slovakia deteriorated because of how Hungarian citizenship was regulated: citizens who commanded the Hungarian language and had Hungarian ancestry could claim citizenship without having an address in Hungary. In response, Slovakia adopted a law that would strip these same persons of their Slovakian citizenship. This tension lasted for quite a while, until governments in both countries could agree and differences were put aside – maybe to achieve cooperation on bigger issues on a European level.

The Russian Federation also developed its Compatriots' policy[33] in 1999, but it took a while before the international community took notice. It is not always easy for outsiders to understand the division of labour between the two Russian organisations working in this field of international cooperation: the Russian World (*Russkij Mir*) and the Russian Cooperation (*Rossotrudnichestvo*). Cultural houses with activities similar to those of the British Council are organised. Forums, regional and global, are held with participation from adjacent countries with Russian minorities.

The tensions around the Russian law[34] and the organisations working in this field have grown, however. The outspoken principle that it is the duty of the Russian Federation to protect Russian citizens or Russian speakers, at least in all parts of the former USSR and sometimes in a geographically broader sense, is not seen as unproblematic.

Meanwhile it should be noted that the international concept of Responsibility to Protect (R2P)[35] was elaborated and accepted at the UN in 2005, as a response to the genocides in Rwanda and Srebrenica. This notion of R2P, as well as the Constitution of the Russian Federation, was raised in some early speeches by Foreign Minister Lavrov justifying the military attack on Georgia in August 2008 as a need to

protect Russian citizens. Thus, principles of R2P can be misused in the name of kin-state policies.

The crisis in and around Ukraine (see below) is framed differently, as the Russian Federation is denying any military involvement and thus the principles of R2P have not been invoked in the same way. However, we notice that the situation of Russian-speakers in Ukraine has often been the theme of Russian high profile statements. The case of Georgia already gave Kin-State policy a bad taste, and events in Ukraine have not improved that image.

Kin-State Policy in the EU framework

The Copenhagen criteria on the respect for human rights, including respect for and protection of minorities, led as mentioned to the adoption of both new legislation and new strategies in several Candidate Countries; whether or not they were implemented after accession to the EU.

It seems that the "countries in the club" have learnt to use the tools available to them to improve the situation of their Kins in applicant countries.

Serbia, whose neighbours Croatia, Slovenia, Hungary, Romania and Bulgaria are already in the EU, can certainly feel this effect. Romania is raising the situation of their Kins, who in Serbia are called Vlachs, a name Romania has refused to accept, whereas Bulgaria has devoted attention to its Bulgarian minority in Serbia.

Similar trends have been observed in the framework of the Eastern Partnership of the EU. An example is Hungary threatening to block further alignment between Ukraine and the EU if the Ukrainian Education law is not amended.[36]

4. The Golden Years of the 1990s

The 1990s are both in the human rights community in general and in the minority rights community in particular regarded as the Golden Years. This was a time when several new international norms were adopted.

In the minority community, the feeling was that minority rights were finally recognised by the international community as part of the human rights regime. Attempts for such international recognition had failed after both WWI and WWII. Simultaneously, the idea that national sovereignty would be bound or at least guided by decisions of international organisations was accepted. There was therefore reason to be hopeful that the monitoring mechanisms would make a big difference for persons belonging to national minorities.

No norms after the First and Second World Wars

The efforts in the 1990s felt very different from the failure at the Paris Peace Conference in 1919, which had rejected attempts to include the protection of minorities into the Covenant of the League of Nations. Minorities were considered an "Eastern problem". Instead, minority treaties were concluded between the Allied and Associated Powers on the one hand, and newly established or enlarged states on the other. In many ways however there was, as has been summarised, "a remarkable failure to recognise the essential cause of the war. Countries simply endeavoured to contain the problem by sorting out the nationalities with the hypothesis that monolithic nations coincident with states would allow peaceful relations between states."[37]

A special case was the treaty of Lausanne with Turkey. It restricted the position of minority specifically to non-Muslims, thereby excluding the Kurdish population from any minority protection.

After WW II, the UN declaration on Human Rights of 1948 did not include any special reference to minorities. However, many articles of the Declaration prohibited discrimination on the basis of race, language, national origin or other status.

Two important Declarations in the 1990s: UN and OSCE

In the early 1990s two remarkable documents were adopted, introducing minority questions into the international debate.

The first one was the **Copenhagen Document** or **Declaration of the CSCE** (later OSCE), of 1990.[38]

In the opinion of some experts, this document was the most far-reaching at its time and set the path for further development in the area we now call the OSCE. In the 1970s, a similar effort had failed. The geographical area that the document covers is vast, from Vancouver to Vladivostok as the phrase goes, including 57 states as Mongolia joined the organisation in 2012.[39]

The second important declaration is the **UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities**, adopted by the UN General Assembly on the 18th of December 1992.

Before this declaration, the UN had used article 27 of the International Convention on Civil and Political Rights (ICCPR) as a basis for important decisions concerning minority rights.[40] Article 27 concerns the right of minorities to enjoy their own culture, and to profess and practice their own religion and use their own language.

The Framework Convention on the Protection of National Minorities [41]

The year 2018 marked the 20th anniversary of the Framework Convention for the Protection of National Minorities by the Council of Europe (CoE). The CoE was enlarging as a result of the fall of the Berlin wall. Countries with minority issues high on the political agenda entered the Council of Europe.

Consequently, there was an abundance of initiatives in the Council of Europe aiming at a legally binding text on national minorities.[42] The impression was that the case law

of the European Court of Human Rights was weaker than that of similar bodies within the UN system.[43]

As the preparation of the Framework Convention was initiated, there were mainly three options of what to develop, namely:

4. an additional protocol to the European Convention on Human Rights,
5. a specific convention on the rights of national minorities; or
6. a framework convention on the matter.

Clearly, there was some disappointment when in the end only a Framework Convention (FCNM) was adopted. Had the option of an additional protocol been the solution, it would have given individuals access to the European Court on Human rights in Strasbourg. The member state in question could have been made obligated to change legislation that was in breach with the protocol and possibly compensate the individual. Today, however, there is no mechanism in place for individual complaints on state failings to live up to the Framework Convention.

Two recurrent disputes regarding minority rights were of course debated: collective rights and the definition of minorities. In elaborating the norms, it had been decided that collective rights should not be examined further. These rights were linked to the definition of national minorities which was left open – and still is. However, in October 1993 at the Vienna Summit, Heads of State and Government agreed that *"the national minorities which the **upheavals of history** have established in Europe should be protected and respected so that they can contribute **to stability and peace**"*. These two themes; history, plus stability and peace as reasons for minority rights have continued to appear in almost all discussions until today.

The Charter on Regional and Minority Languages

The Charter on Regional and Minority Languages of the Council of Europe was adopted already in 1992

to protect and promote historical regional and minority languages in Europe. However, the Charter entered into force only in 1998, and is less extensively ratified than the Framework Convention.[44]

The charter only applies to languages traditionally used by the nationals of the State Parties, excluding the languages of newcomers.[45] Languages that are official within regions, provinces or federal units within a State, such as Catalan in Spain, are not classified as official languages of the State and may therefore benefit from the Charter.[46]

The level of protection offered to the languages will be very different, as a ratifying country has a wide margin of appreciation of which articles it will adopt and at what level. However, one of the compulsory provisions states that, according to the situation of each language, the state shall base their policies, legislation and practice on inter alia the promotion of appropriate types of transnational exchanges in the fields covered by the Charter. As the Charter has provisions on media, administration and education it can be a useful instrument for the protection of national minorities, including those spread across state borders.

The Copenhagen Criteria for adhesion to the European Union

My personal conviction is that the most important words, at least for the improvement of the legal position of minorities in Europe, are to be found in the so-called Copenhagen Criteria for adhesion to the EU.

In June 1993 the European Council, i.e. the meeting of heads of state and/or government, established the criteria that a country has to meet before entering into membership negotiations.[47] These include that "membership requires that the candidate country (….) has achieved stability of institutions guaranteeing (…) human rights, respect for and protection of minorities."[48] The criteria contain many other conditions as well, including a functioning market economy and rule of law. These were the first benchmark criteria against which the EU Commission

was going to judge the applicant countries in the so-called Progress Reports. Such criteria had not been set for candidate countries in the earlier enlargements.

While the history on the Criteria might remain untold, I find that their importance cannot be underestimated. Slovakia's lack of respect for the rights of the Hungarian minority in Slovakia was one of the obstacles for its EU membership bid. As long as prime minister Meciar continued with his nationalist policies Slovakia could not enter into negotiations – perhaps the most well-known example of the importance of the Criteria. The criteria were also important in regulating majority and minority relations in Romania. Albania is currently elaborating a new law on minorities in anticipation of EU membership negotiations.

Why were the international efforts successful in the 1990s?

When observing these Golden years of minority rights, there are of course at least two different interpretations of why the efforts were more successful than previous ones.

The most benevolent argument would be that the recognition of minority rights was part of the general efforts to improve international human rights. Finally then, the turn came to minority rights.[49] Maybe it is important in this context to note the fall of apartheid in South Africa. This meant that one obstacle for minority rights was eliminated, as the word minority seemed to have been contaminated by this awful system. This is not to say that countries based on minority rule did not continue to exist (e.g. Iraq).

The other interpretation is that the fear of more deadly conflicts was one of the reasons why progress could be seen in the field of minority rights. If conflicts related to minorities escalated in the wake of new countries being created in Central and Eastern Europe – what tools would there be to contain the conflict? (Still Srebrenica was to happen on 11–12 of July 1995). Because of this fear, some countries who had been hesitant or even

strongly opposed to minority rights had to give in. Minority rights were seen more as a conflict prevention tool than anything else: not as other human rights that should be respected in a strict and precise way, rights that could be enforced by the European courts. It has been suggested that this is what lies behind the Estonian acceptance of minority rights norms nationally: decision-makers could see the security value in doing so.

5. Backsliding

During large parts of the 2010s there has been a less optimistic tone on minority issues.

There is a notable fatigue regarding the international human rights monitoring system in general.[50] This concerns also the Council of Europe instruments, i.e. the Charter (ECRML) and the Framework Convention (FCNM). It seems that the will to take the advice of such bodies into account has decreased. National sovereignty is emphasised and the appetite for co-operation in the field seems to have decreased.

Rule of law is one of the cornerstones of minority protection; when it is undermined, so are minority rights. Playing on fear of others is increasingly common, and so is hate speech.

Stalling EU enlargement did not have as big consequences as feared, but more detrimental has been the phenomenon of double standards inside the EU: a former candidate country can, without any sanctions, stop implementing measures that were agreed in the accession negotiations.

The crisis in and around Ukraine, including the illegal annexation of Crimea, and the independence ambitions of some autonomous territories such as Scotland or Catalonia can be seen as a toxic mix. Under these circumstances it has been very difficult to promote autonomy as a solution. A question that some people have also been asking is: while the Russian Federation saw some merit in minority rights in the

1990s – is that interest now gone?

When did the backsliding begin? The difficult picture in the 2010s

As I began my mandate as HCNM in August 2013, there was already the feeling of backsliding of human rights and minority rights. Even though countries had committed themselves to OSCE documents like the Copenhagen Declaration,[51] many breaches could be noticed; in the east as well as in the west.

To introduce any new treaty obligations to States was out of reach; the minority reporting system experienced a certain fatigue and the reports were not gaining a lot of public attention. The same mood could be felt more generally in the human rights circles.

The biggest Human Rights' event in Europe, the annual OSCE Human Dimension Implementation Meeting (HDIM),[52] did not produce results, but continued to be a place where actors that otherwise had little exposure could meet. The ministerial Councils of the OSCE could seldom agree on new commitments in the human dimension, i.e. in the field of human rights. Freedom of speech was also under increasing pressure and the space for civil society begun to shrink. For OSCE and for Europe in general the war in Georgia in August 2008 certainly can be mentioned as one of the turning points.

An increasing amount of hate speech and playing on the fear of "The Other" started to spread.

The Jewish and the Roma populations were direct targets of these expressions, but also less visible minorities could feel the fall-out of these phenomena.[53]

Right-wing or xenophobic populism gained support in the form of political parties like Front National (now Rassemblement National) in France, FPÖ (Freiheitliche Partei Österreichs) in Austria and several parties in the Nordics.[54] In 2011, Finland had the questionable honour of being the scene of one of the biggest electoral victories for a populist party with xenophobic elements, and many such victories have followed elsewhere. The

increased support for these forces can of course also be seen as a result of the economic austerity that plagued Europe after 2008, and later of the increase in asylum seekers in 2015. The events in 2015 seem to have had a big impact on the political scene in many countries in Europe. In 2009 in Switzerland, the referendum on a ban on Minarets was one such expression of rising intolerance.

Authoritarian rulers also scored electoral victories and, in the mind of many, weakened democracy. The Rule of Law, the first precondition for effective protection of minorities, backtracked.

Backsliding in the EU: double standards and no support for national minorities

While the Copenhagen criteria for adhesion to the European Union had been the single most important document for national minority legislation in the region during the 1990s and early 2000, the effect of double standards could be felt in the case of national minorities. A country has to respect the rights of minorities while applying for membership; but once inside the club, there are no sanctions for not respecting these rights. If a systematic disregard for the fundamental values of the EU is observed, a procedure against that country can be launched according to art 7 of the Treaty on European Union. This procedure has not been discussed in relation to minority rights.

Such backtracking on minority rights commitments made during the accession process could be noticed in former candidate countries, presently members of the EU, like Croatia, Romania, Slovakia and Bulgaria. In 2014 in Romania, President Basescu was sentenced to a fine, though symbolic, for saying "very few Roma want to work". In Bulgaria, government members of the National Front for Salvation of Bulgaria (NFSB) are too well-known for their hate speech against minority groups in the country. In Slovakia a political party has a "wing" organising train trips to areas densely populated by Roma, in order to agonise the popu-

lation. And in Croatia commitments to bilingual signs in areas with many Serbs is weakening, and the Minority Council has expressed concern on a range of issues. I cannot but see this backsliding as an effect of the double standard problem.

A clear setback has also been that the Charter of Fundamental Rights of the EU has no explicit provision on minorities, no matter how hard some delegations worked on it. Thus it still restricts minority rights to a national issue for member states. This weakness cannot easily be compensated by the general provisions in the Treaties and the Charter on the value of diversity and the respect for minorities. Additionally, EU actions in the field of culture demands unanimous decisions in the EU Council of Ministers, something that is virtually impossible to obtain.

Previously, funding for pilot projects supporting work within and between national minority groups was possible to obtain from the EU. However, the EU budget could not continue to support minority or lesser used languages, or the cooperation on these issues,[55] because of the lack of a legal basis in the treaties. This was a big blow to the efficiency of the work in favour of diversity. After a transition period the special budget line was abolished, and the financial support decreased dramatically. This was also one of the reasons for the closing of the European Bureau for Lesser Used Languages, EBLUL.[56] In comparison to many other NGOs, the NGO community regarding national minorities has worked under difficult conditions.

Worth noting is also that in the EU's latest action plan for external work with Human Rights, national minorities can hardly be found.[57]

Fatigue of reporting or difficulties to get access

On two fronts a fatigue in reporting on the implementation on minority rights can be noticed; in both the procedures of the Council of Europe (regarding the Framework Convention and the Charter) and in the UN system.

In the Framework Convention (FCNM) system, countries are providing their state reports with increasing delays, and the remarks continue to be the same from one reporting cycle to another. The opinions of the Advisory Committee or even the state reports are not always published in languages that citizens of a given country could understand, not to mention the minorities themselves. An example of this was a cycle ago when Bulgaria's documents were made available only in English. The resources of the Council of Europe are also limited: sometimes two or three of the bodies of the Council of Europe, the European Commission against Racism and Intolerance, and the bodies of the Charter and the Framework Convention conduct joint missions.

It is easy to find interlocutors who claim that the Council of Europe is in a crisis at present,[58] as some countries are not paying their share of the budget, and there is a lack of implementation of the decisions of the European Court of Human Rights. Above all, some member states are said not to respect the values on which the Council is built.

Reflexions on this fatigue can also be found in a booklet titled "20 years of Dealing with Diversity: Is the Framework Convention at a Crossroad?".[59] The booklet suggests, among other things, that the reporting needs to be faster and it must use new technology, that civil society in reality must be put on equal footing with governments and that focus must be on how the findings are communicated; they should be communicated to the majority as well as the minorities. The relevant actors are challenged to be more strategic and more political.

In 2018, in order to also commemorate the anniversary of the European Charter for Regional and Minority Languages, a high-level Conference was organised; the conclusions of the Conference will form a basis for efforts to reinforce the reporting system.[60]

In the UN there are also questions regarding the efficiency of different methods of follow-up;

even after the Human Rights Council was reformed and the Universal Periodic Review (UPR) introduced as a comprehensive method to highlight the situation in a given country.[61]

There are many UN Special Procedures Rapporteurs, and their resources are not always sufficient. One example is the UN Special Rapporteur on minority issues (formerly the Independent Expert on minority issues), who has a very small staff.

Lack of access to countries continues to be a problem, both for the UN rapporteurs but also in some cases for the OSCE institutions. Countries are not co-operating in accordance with the commitments they have made. Even during the "Golden Years" there were countries that looked upon the minority rights documents as being western or as an intrusion on national sovereignty. Both UN and OSCE actors tried, however, to get access to a country when a report to an international organisation was due, especially the UPR, since the inclination to co-operate usually was stronger at the time.

One of the biggest deficiencies in the monitoring systems are the areas with non-recognised rulers. It is difficult for international actors go gain access to these territories. Such areas are Abkhazia, South Ossetia and Crimea – areas with an immense need for monitoring and reporting. Either the de facto or de jure authorities reject access, or they cannot accept the conditions under which a monitoring body would be allowed into the territory. Efforts to do "status neutral monitoring", in other words, reporting in a way that avoids the issue of what country the territory belongs to, has also proven difficult.

The crisis in and around Ukraine

Ukraine is a vast country. There are dividing lines related to, among other things, language, ethnicity, perception of history and the role of the Soviet Union, and the different Greek-Orthodox churches. Clearly, the divisions that had existed in the Ukrainian society since independence in 1991, were used by the Russian Federation after the events that centered around the Maidan square in Kiev in 2014, when former president Yanukovich fled the country. The Russian propaganda played on old fears of Nazism and was directed against politicians of Ukranian nationalist parties.

Through OSCE mediation in 1994, Crimea gained regional autonomy. This solution, however, was not entirely respected by later Ukrainian governments. When unrest and uprisings happened in different parts of Ukraine, the fastest actions were taken in Crimea, with a sort of coup in the regional Parliament. This was followed by a quickly organised "referendum" that was not recognised by the international community.

In 2018, millions of inhabitants are still displaced or live in difficult conditions since the crisis. Thousands have been killed since the violence around Luhansk and Donetsk erupted, and the Minsk agreements for a peaceful solution have not been implemented.

The population of Crimea is different from the rest of Ukraine, as the vast majority is Russian-speaking. But there are also Ukrainians, Crimean Tatars, Karaims and Greeks, to mention only the largest groups. The special feature of the Crimean Tatars is that they were deported in 1944 by Stalin to Central Asia and begun returning to Crimea in the late 1980s.

The events in Ukraine have escalated the fear of separatism in other parts of the former Soviet Union. Minority language protection and understanding for minority issues has de facto become one of the casualties of the crises in and around Ukraine, as many feel that minority protection has been misused.

Many countries try to follow the opinions amongst their Russian-speaking population closely – do they support Russian actions in Ukraine and Crimea or disapprove of them? This indicates that minorities are looked upon mainly as a security issue, thus ignoring that lasting security can be built only when human rights are respected.

Controversies regarding language and education

Backsliding in minority rights can also be seen in education – for instance in Ukraine. In 2017, the Ukrainian Parliament adopted a framework law on primary and secondary education that clearly differentiates between the different minorities in the country. The law defines indigenous people as people without a Kin-State, which includes Crimean Tatars, Karaims, Gagauz and Roma. The highest legal protection is awarded tuition in these languages. Next in the hierarchy are official EU-languages, spoken by minority groups in the country. However, mother tongue education in these languages is not defined as a right. And finally, tuition in non-EU-languages – in reality, Jewish and Russian – should only be taught as mother tongue. The law has received criticism for, inter alia, limiting the amount of tuition provided in minority languages, especially at secondary level.

Similar changes are happening elsewhere. Education in majority language(s) is increasing at the expense of education in minority language(s), and mastering the majority language is regarded as most important. This has been most evident in the Baltic states. At the turn of the century, Estonia changed its language regime of Russian schools from Russian-only to bilingual education. Latvia is following suite. In March 2018, the Latvian Parliament decided to raise the quota of instruction in Latvian in Russian schools to 80 %, starting September 2019. The results in Latvian exams are mentioned as one of the reasons for the change: Authorities say that Russian-speaking pupils do not score well in exams, which are conducted in Latvian only.

If the Framework Convention (FCNM) and other declarations were to be followed, teaching should be used to increase understanding. The documents stress the importance of teaching about the minority culture to the majority, about increasing tolerance and respect. Often, however, such facts are absent in textbooks intended for majority pupils.

History has always been quite a political subject, and efforts have been made to decrease the divisive potential of history teaching. However, there continues to be instances where history is part of a conflict between majority and minority. Patriotic education, rather than education to become active citizens, is on the rise. Once more - a challenge to the principles that are underlined as factors contributing to peace and stability.

6. The way forward

In the spring of 2018, UN and the World Bank published a joint study called Pathways for Peace.[62] The study underlines that it is horizontal inequalities,[63] not vertical ones, that bring about war – besides of course climate change and competition for resources. The study stresses the need to address grievances related to exclusion, such as exclusion from access to power, natural resources, security and justice. Ethnicity or language is often considered a reason for such exclusion.[64] Prevention of conflict can be efficient only when human rights, including minority rights, are respected.

Two key questions are paramount for the future: how to make minority issues more relevant, and how to relate to migration and immigration.

At the outset, it is very clear that minorities are in very different positions in different countries in Europe, as described above. At one end of the spectrum we have groups who are struggling to keep their culture alive. These are often groups with no political power and seldom any economic power. On the other extreme there are minorities that are considered to pose a political or even a security threat in the country where they live. There are also minorities that do not accept the present borders. In-between we find the rest, i.e. minority groups struggling with everyday questions like (to mention the most common issues) access to service,

information, education and access to textbooks, retaining their geographical or personal names and street signs.

Minorities are facing a strategic choice: whether or not to be advocates of tolerance and diversity in general (and advocate also the case of immigrants) or to stick to the protection of the interests of the own group. It would be important that minorities were not behaving like mirrors of majorities by being in their own way as nationalistic as some majorities. An openness to cooperation with all minority groups, including migrants, is necessary, for example in combatting hate speech and fear of 'the Other'. It does not mean that the legal instruments for the protection of national minorities should be amended. It is unrealistic to believe that any amendments would be accepted by the majority at this time.

Making minority questions more relevant without confrontation is no easy task. Here we might look towards the importance of preventative work: without striving for proper minority rights, the risk for conflict might grow – leading, among other things, to an increase in asylum seekers to Europe. The EU needs to address national minority rights in its external strategies, while simultaneously do the same at home.

In his inaugural speech in December 2016, Secretary General of the UN Antonio Guterres put prevention at the centre, and stressed the need to address root causes of conflict. Furthermore, he stressed that: "Tous, y compris les minorités de tout genre, doivent pouvoir jouir de l'ensemble des droits humains – civils, politiques, économiques, sociaux et culturels – sans aucune discrimination." (translation: All, including all different minorities, must be able to enjoy human rights – civil, political, economic, social and cultural rights, without discrimination). This might indicate an increasing awareness and recognition of national minority issues at the global level.

All is not gloomy in Europe

In 2018, some developments can be noticed in Europe – both in the EU, taking as a point of departure art 2 of the Treaty on European Union,[65] and in the Council of Europe.

The so-called Minority Safepack initiative, a citizens' initiative according to the relatively new EU legislation, is moving forward.[66] The initiative aims at making EU funding more accessible for minorities, asks for a language diversity centre to be established, and for "the open method of coordination" to be used to enhance best practice in language planning.[67] Questions related to media are also addressed. Furthermore, the Safepack asks for research into the added value of minorities to the social and economic development of society.

A report on minimum standards for minorities in the EU is being elaborated in the European Parliament as an own-initiative. The draft suggests establishing cultural funds available to representatives of regional and minority organisations. Further it floats the idea that EU should accede to the Framework Convention (FCNM). Media should be more accessible, and teaching of minority language should be strengthened.

In January 2018, the Parliamentary Assembly of the Council of Europe, that previously was very active regarding minority issues and also instrumental for the adoption of the Charter, passed a resolution on regional and minority languages. The report[68] urges member States to take the necessary steps to ratify the European Charter for Regional or Minority Languages. It suggests different ways of supporting the implementation of the Charter and encourages scientific co-operation between member States.

To summarize; even if there are many obstacles in the EU towards a more active approach on minority issues, some activities could be launched. One of the most important would be support for research relevant to minorities, and for more research on integration of diverse societies. Research into the so-called economic case, i.e. the

costs and benefits of minorities, is desperately needed, even if there is some research being done, for instance by the World Bank on the costs of exclusion of Roma in European countries.

If a systematic threat to the Rule of Law can be detected, it is possible to launch the so-called art. 7 procedure of the EU Treaty. This procedure is to be used when a member state is in clear breach of the values expressed in article 2. Respect for the rights of persons belonging to national minorities is included in article 2. Therefore, is should be possible to invoke the infringement procedure as a consequence for the obvious ignoring of the rights of the Roma.

In other words, all is not gloomy in Europe but substantial work lies ahead in order to stop the current backsliding of minority policies in Europe; a prerequisite for both equality and conflict prevention.

Noter

[1] Also called Accession Criteria (see https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en).

[2] Arie Bloed (2013) 'The High Commissioner on National Minorities: Origins and Background' in Journal on Ethnopolitics and Minority Issues in Europe, Vol 12, No 3, pp 15–24, (https://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2013/Bloed.pdf).

[3] Helsinki Decisions II, Summit 9-10 July 1993, CSCE Helsinki Document 1992, Challenges of Change at http://www.osce.org/mc/39530.

[4] The mandate given to the HCNM is "The High Commissioner will provide 'early warning' and as appropriate 'early action' at the earliest possible stage in regard to tensions involving national minority issues which have not yet developed beyond an early warning stage, but in the judgement of the High Commissioner, have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States, requiring the attention and action by the Council or the CSO." (https://www.osce.org/mc/39530?download=true, Chapter II, article (3).

[5] Astrid Thors (2017) 'A Retrospective on My Time as OSCE HCNM', OSCE Yearbook 2017, pages 245–261.

[6] The guidelines and recommendations of HCNM to be found at https://www.osce.org/hcnm/thematic-recommendations-and-guidelines.

[7] E.g. in Preamble and articles 6 and 17 of the Council of Europe Framework Convention for the Protection of National Minorities. Full text: https://rm.coe.int/16800c10cf.

[8] Dr. Mark Klamberg in Dagens Nyheter, 16 June 2018 (article 'Björn Söders (SD) utspel om samer och judar får hård kritik', www.dn.se).

[9] See https://www.osce.org/odihr/hdim.

[10] See https://www.ohchr.org/en/issues/minorities/pages/internationallaw.aspx. Written already in the 1970s, one can see the reflection of the apartheid situation in this document – a fact that for a time prevented minority protection to be developed.

[11] Full name: European Commission for Democracy through Law.

[12] Commission for Democracy through Law (i.e. Venice Commission), Factsheet A.17.1.91, article 2(1).

[13] See latest reports on Estonia (https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168047d0e5) and Latvia (https://rm.coe.int/3rd-op-latvia-en/16808d891d).

[14] 'The Framework Convention: a key tool to managing diversity through minority rights', Thematic Commentary No. 4 (https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a4811). All country-specific reports can be found at the Council of Europe homepage: https://www.coe.int/en/web/minorities/country-

specific-monitoring.

[15] For more on UNDRIP, see https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

[16] Greenland and the Faeroe Islands have been invited by the FCNM to be included in the monitoring process but have declined.

[17] See Copenhagen Document/ Declaration of the CSCE (later OSCE) of 1990, https://www.osce.org/odihr/elections/14304?download=true.

[18] See 'Statement of the HCNM on his study of the Roma in the CSCE region', September 1993 https://www.osce.org/hcnm/36434?download=true.

[19] Since the Roma were not seen as a source of a conflict, the responsibility was handed to ODIHR (Office for Democratic Institutions and Human Rights of the OSCE), within the mandate of the HCNM.

[20] 'Decision No. 3/03 Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (MC.DEC/3/03)' https://www.osce.org/odihr/17554?download=true.

[21] See e.g. https://www.opensocietyfoundations.org/press-releases/european-commission-targets-slovakia-over-roma-school-discrimination.

[22] 'Case D.H and Others v the Czech Republic, no 57325/00', Grand Chamber decision (http://www.errc.org/uploads/upload_en/file/02/D1/m000002D1.pdf).

[23] See COUNCIL DIRECTIVE 2000/43/EC at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0043&from=EN.

[24] The Commission for Democracy through, also called the Law Venice Commission.

[25] Such provisions have been included e.g. in the Hungarian Constitution 1989, the Romanian Constitution 1991, Slovenian Constitution 1991, Northern Macedonian Constitution 1991, Croatian Constitution 1991, Ukrainian Constitution 1996, Polish Constitution 1997 and the Slovak Constitution 2001.

[26] The European Convention on Human Rights (ECHR) is formally called the Convention for the Protection of Human Rights and Fundamental Freedoms.

[27] 'Dynamic of Integration in the OSCE Area: National Minorities and Bridge Building' http://www.ecmi.de/projects/bridge-building-and-integration-in-diverse-societies/.

[28] During the times of analogue television, Ostrobotnia, the Åland Islands and some other parts of the coastal areas profited from so called TV and radio spill-over, like in other border areas. However, some Swedish-speaking areas did not profit from this spill-over effect, and the Finnish speakers in Sweden could not see Finnish Television. A solution to the problem was agreed by Olof Palme, Prime Minister of Sweden at the time, and Kalevi Sorsa, his Finnish colleague. It later led to a formal agreement in 1987, which was very difficult to renew when the digital age came.

[29] See https://www.venice.coe.int/webforms/documents/?pdf=CDL-INF(2001)019-e.

[30] See https://www.osce.org/hcnm/bolzano-bozen-recommendations.

[31] Here the HCNM is more restrictive than the Framework Convention (FCNM).

[32] See Thematic Commentary 4, page 15 (https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a4811).

[33] Federal law on the state policy of the Russian Federation in respect of Compatriots abroad, March 1999. The institutional set-up has varied over the years, giving responsibility to different bodies.

[34] See previous footnote.

[35] See http://www.un.org/en/genocideprevention/about-responsibility-to-protect.html.

[36] See more on this below.

[37] John Packer (1993) 'On definition of minorities', in J. Packer & K. Myntti (eds) The protection of Ethnic and Linguistic Minorities in Europe, ÅA Institute for Human Rights, p. 35.

[38] The official name being the Copenhagen Document of the Conference on the Human Dimension of the CSCE, for full text see https://www.osce.org/odihr/elections/14304?download=true.

[39] The fact that the OSCE includes such a vast area is partly due to the deliberate decision to include all parts of the former Soviet Union.

[40] Article 27 of ICCPR: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

[41] In the text, 'the Framework Convention' will be used as an abbreviation for the Council of Europe's Framework Convention on the Protection of National Minorities.

[42] In the Parliamentary Assembly of the Council of Europe (official abbreviation: PACE). Many of these initiatives called for a protocol on minority rights to be added to the European Convention on Human Rights. The Parliamentary Assembly itself, other bodies and experts, including the Venice Commission, elaborated drafts. I would also like to mention that an Austrian minister submitted a draft for such a protocol to his colleagues in 1991, as I see that Austria, as well as Finland and Switzerland, traditionally have been the western countries wishing to promote the situation of national minorities in the environments where I have been working. The parts concerning the Framework Convention in this chapter are based on Aarnio in Phillips and Rosas pp. 123-133, but also on an interview with Aarnio.

[43] Art 14 of the European Convention on Human Rights compared to art 27 ICCPR. Cited as one of the reasons why there was a need for a legal instrument in the CoE.

[44] Georgia and Moldova are two examples of countries not having ratified the

Charter, despite the fact that the preparations for ratification are advanced in both countries. That France has not ratified the Charter is rather often an argument for non-ratification in other countries.

[45] It is to be noted that none of the Baltic States have adhered to the Charter. Some states, such as Ukraine and Sweden, have tied the status of minority language to the recognised national minorities, which are defined by ethnic, cultural and/or religious criteria. In Sweden, besides three forms of Sámi language, Romani and Yiddish, both Finnish and Meänkieli are covered by the Charter. The latter might surprise a layman, as the merits of this distinction between these two lastly mentioned languages has been much debated.

[46] On the other hand, Ireland has not been able to sign the Charter on behalf of the Irish language as it is defined as the first official language of the state. The United Kingdom has ratified the Charter in respect to Welsh in Wales and Irish in Northern Ireland. Welsh is often mentioned as a language benefitting from the Charter. A revival of some languages protected by the Charter can certainly be seen, but how much that is due to adhesion to the Charter can certainly be debated.

[47] European Council in Copenhagen 21-22 June 1993, Conclusions of the Presidency, SN 180/1/93 REV 1, p 13 at http://www.concilium.europa.eu/media/21225/72921.pdf

[48] I do not know if we ever will know really and exactly how these criteria came about. (Some ideas can be found in a report called 'Europe and the challenge of enlargement', which the European Council had tasked the EU Commission to present in June 1992. The Commission introduced a paper on these issues also the following year.) These criteria had not been prepared in advance in the usual way through the meetings of EU ambassadors. It seems that the leaders present in Copenhagen decided to make an important statement on EU Enlargement. That decision compelled a high civil servant, the Deputy Secretary General of the Commission, Horst Gunther Krenzler to act as he was tasked to draft a text. And that he quickly did – some say in the bar of a hotel. But from where did the inspiration to include a reference to rule of law, and of course to minorities, come from?

[49] Kinga Gál in National Minorities in Inter-State Relations, OSCE 2011, pages 207–213, https://www.osce.org/hcnm/78054.

[50] https://www.wiltonpark.org.uk/wp-content/uploads/WP1574-Report.pdf

[51] Copenhagen Declaration 1990, see earlier footnote.

[52] See previous footnote.

[53] MIDIS II ev.

[54] Fremskrittspartiet in Norway (2005: 22.1 %), although more of an anti-tax and rightwing party; Dansk Folkeparti in Denmark (2001: 12 % and 2015: 21 %), a clearly anti-immigration and nationalist party; and the True Finns in Finland (2007: 4.1 % and 2011: 19.1%).

[55] Court of Justice ruling C-106/96 of May 12, 1998. This ruling concerned all kinds of projects, not only minority or lesser used languages.

[56] See further: http://www.michelegazzola.com/attachments/File/Papers/Gazzola-Grin-Moring-Haeggman.pdf

[57] EU action plan on human rights and democracy 2015-2019 (https://www.consilium.europa.eu/media/30003/web_en__actionplanhumanrights.pdf).

[58] The minister of Foreign and European Affairs of Luxembourg, speech in Strasbourg 28.6.2018, see www.coe.int.

[59] European Center for Minority Issues (ECMI): FCNM in Focus, interviews and preface by Stephanie Marsal, independent consultant.

[60] see https://www.coe.int/en/web/minorities/20-years-conference.

[61] https://www.wiltonpark.org.uk/wp-content/uploads/WP1574-Report.pdf.

[62] Pathways for Peace https://www.worldbank.org/en/topic/fragilityconflictviolence/publication/pathways-for-peace-inclusive-approaches-to-preventing-violent-conflict.

[63] Meaning similar sociological and economic position, but unequal because of religion, ethnicity, language or similar factors.

[64] Evidence collected by the UN independent expert/Special Rapporteur on minority questions can likewise point to how divisive legislation has provoked conflicts, for example in Sri Lanka. For a long time the rapporteur also pointed at the risks of conflict in Cameroon, long before the international community became aware of the grievances of the Anglophone population in a country considered to be Francophone.

[65] Minorities are explicitly mentioned in art. 2.

[66] Further information on the webpage of FUEN, initiator of the initiative: (https://www.fuen.org/news/single/article/fuens-successful-minority-safepack-initiative-created-a-european-movement-for-minority-rights/). When over 1.3 million signatures were collected (of which over 600 000 in Hungary and over 300 000 in Romania; less than 4 000 in Finland), the European Court of Justice (the EU Court) took the decision that the EU Commission's previous rejection of the initiative was incorrect.

[67] The open method of coordination has been used to inspire action where the Commission does not have a mandate to initiate legislation. In this case, the initiators have in mind planning that would make the use of lesser used languages more vibrant.

[68] CoE Parliamentary Assembly Resolution 2196 (2018): http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24410&lang=en.

Sammandrag

Astrid Thors var högkommissionär för minoritetsfrågor i OSSE (OSCE High Commissioner on National Minorities) åren 2013–2016. Hon hade då inblick framför allt i processerna på Balkan, i centrala och östra Europa samt centrala Asien. Hon följde på nära håll förberedelserna som pågick under åren 1996–2004 då bland annat Slovakien, Rumänien och Lettland skulle bli medlemmar i EU.

Existensen av minoriteter, understryker Thors, är ett faktum snarare än en definitionsfråga. Definitionsfrågor är komplicerade: inte ens de internationella dokument som söker säkra minoriteters rättigheter innehåller någon tydlig definition. Är kin-state minorities, de som så att säga ”hamnat på fel sida om gränsen”, de enda riktiga minoriteterna? Detta är en uppfattning som man senare har frångått. Däremot är kin-state-förhållanden vanliga och utnyttjas både i positivt och negativt hänseende.

1990-talet var minoritetspolitikens gyllene tid, konstaterar Thors. Då antogs viktiga dokument både på global och på europeisk nivå. Thors betraktar två dokument som avgörande: 1) OSSE:s så kallade Köpenhamnsdokument (OSSE-deklarationen) från 1990 samt 2) FN:s deklaration om rättigheterna för personer som hör till nationella eller etniska, religiösa eller språkliga minoriteter från 1992. Dessutom godkändes Europarådets ramkonvention om skydd för nationella minoriteter samt Europarådets sk. språkstadga (Europeisk stadga om landsdels- eller minoritetsspråk). Bägge trädde i kraft år 1998. År 1993 fastslogs även de så kallade Köpenhamnskriterierna, dvs de kriterier ett land bör uppfylla innan förhandlingar om EU-medlemskap kan inledas. I kriterierna ingår vissa standarder som måste uppfyllas gällande rättssäkerhet och minoriteters rättigheter. I praktiken uppfattar Thors det sistnämnda dokumentet som det mest avgörande. Länder som söker medlemskap i EU har på grund av dem varit tvungna att stärka sitt minoritetsskydd. Problemet är bristen på sanktioner om man som EU-medlem bryter mot kriterierna.

Utvecklingen på 1990-talet anser Thors hänga samman med två saker. Det ena var en allmän medvind för stärkta mänskliga rättigheter. Att minoritetsrättigheter blev en del av denna utveckling underlättades troligen av att apartheidsystemet i Sydafrika avskaffades. Ordet ’minoritet’ hade inte längre den negativa belastning som Sydafrikas minoritetsstyre förorsakat. Den andra och viktigare orsaken uppfattar Thors ha varit rädslan för minoritetsrelaterade konflikter. Sovjetunionens fall gav upphov till nya stater i öst- och centraleuropa, och man ville undvika eskalerande konflikter som i värsta fall kunde bli våldsamma (vilket de ändå blev i forna Jugoslavien). Även länder som ställt sig avogt till minoritetsskydd gav efter med säkerhetsaspekten som motivering.

Under det senaste decenniet har utvecklingen gått i motsatt riktning. Många stater verkar prioritera bilaterala lösningar och kin-state-relationer högre än internationella överenskommelser. Det verkar råda en trötthet gällande rapportering och uppföljning av internationella instrument; rapporter försenas eller uteblir. Samtidigt har stödet för högernationalistiska partier blossat upp i många EU-länder. Hatprat är ett växande problem. De ekonomiska svackorna och en tidvis större invandring har stärkt problematiken från och med 2000-talet. Krisen i Ukraina har gett upphov till rädsla för att separatistiska tendenser kommer att stärkas också i andra post-Sovjetiska områden.

Astrid Thors konstaterar att allting ändå inte ser mörkt ut. Bland annat har Europaparlamentet tagit initiativ till en rapport om ett slags minimumstandard gällande nationella minoriteter. I utkastet föreslås bland annat att EU ansluter sig till Europarådets ramkonvention om skydd för nationella minoriteter, att undervisningen i minoritetsspråk stärks och att kulturmedel görs tillgängliga. Behandlingen av det så kallade Minority Safepack-initiativet, dvs ett medborgarinitiativ för att stärka

stödet för minoriteter inom EU, har också gått vidare. Thors påtalar att EU även har möjlighet till ett så kallat artikel 7-förfarande, som innebär att rösträtten i EU helt eller delvis tas ifrån en medlemsstat som inte uppfyller EU:s grundläggande principer, exempelvis respekt för mänskliga rättigheter. Enligt Thors kunde ett dylikt förfarande tas i bruk på basis av vissa länders behandling av den romska befolkningen.

Thors efterlyser mera forskning kring minoritetsfrågan, i synnerhet gällande hur minoriteter kan bidra positivt till samhällsutvecklingen. Minoriteterna själva måste dessutom reflektera över sitt eget förhållningssätt. Vill man vara en öppen och inkluderande eller en sluten och exkluderande minoritet. Vill man dra skiljelinjer mellan gamla och nya minoriteter, eller acceptera samhällsutvecklingen som allt mer mångfacetterad där individen ofta har multipla identiteter. Detta ser Thors som en viktig ödesfråga för minoriteterna.

Yhteenveto

Astrid Thors toimi vuosina 2013–2016 Euroopan turvallisuus- ja yhteistyöjärjestön ETYJ:n vähemmistövaltuutettuna, jolloin hän paneutui erityisesti Balkanin, Keski- ja Itä-Euroopan sekä Keski-Aasian olosuhteisiin. Sitä ennen Thors oli seurannut 1996–2004 läheltä muun muassa Slovakian, Romanian ja Latvian EU-jäsenyysprosesseja.

Vähemmistöjen olemassaolo on tosiasia eikä määrittelykysymys, Thors tähdentää. Määritelmät ovat aina monimutkaisia: edes vähemmistöjen oikeuksia turvaavat kansainväliset asiakirjat eivät sisällä tyhjentäviä määritelmiä. Ovatko ”rajan väärälle puolelle jääneet” ryhmittymät (kin-state minorities) ainoita oikeita vähemmistöjä? Tällainen näkemys on sittemmin jäänyt taka-alalle, vaikka kin-state-olosuhteet ovatkin tavallisia ja niitä käytetään sekä positiivisiin että negatiivisiin tarkoituksiin.

Thorsin mukaan 1990-luku oli vähemmistöpolitiikan kulta-aikaa, jolloin hyväksyttiin sekä globaalilla että Euroopan tasolla tärkeitä periaatteita. Erityisen merkittäviä olivat 1) ETYJ:n niin sanottu Kööpenhaminan asiakirja (1990) sekä 2) YK:n yleiskokouksen julistus kansallisten, etnisten, uskonnollisten ja kielellisten vähemmistöjen oikeuksista (1992). Euroopan neuvosto puolestaan hyväksyi puitesopimuksen kansallisten vähemmistöjen suojelusta sekä alueellisia ja vähemmistökieliä koskevan peruskirjan, jotka astuivat voimaan 1998.

Vuonna 1993 päätettiin myös niin sanotut Kööpenhaminan kriteerit, jotka Euroopan unioniin pyrkivän maan tuli täyttää ennen jäsenneuvottelujen aloittamista. Thors pitää näitä oikeusturvaa ja vähemmistöjen oikeuksia määrittäviä standardeja ratkaisevan tärkeinä. Ne ovat pakottaneet jäsenhakijamaat vahvistamaan vähemmistöjensä suojaa. Ongelmaksi on kuitenkin jäänyt sanktioiden puute, jos EU:n jäsenmaa rikkoo asetettuja kriteereitä.

Kehitystä auttoi 1990-luvulla ihmisoikeuksien vahvistamisen nauttima yleinen myötätuuli, joka

vauhditti myös vähemmistöjen oikeuksia. Etelä-Afrikassa purettiin apartheid-järjestelmä, joka oli rasittanut ”vähemmistön” käsitettä negatiivisilla mielleyhtymillä. Vielä olennaisempaa oli Thorsin mukaan pelko vähemmistöihin liittyvistä konflikteista. Neuvostoliiton hajoaminen loi Itä- ja Keski-Euroopaan uusia valtioita, joiden pelättiin ajautuvan etnisiin konflikteihin tai jopa väkivaltaan (kuten tapahtuikin Jugoslaviassa). Turvallisuusperiaatteen pohjalta vastahakoisetkin maat paransivat vähemmistöjen oikeuksia.

Suunta on sittemmin kääntynyt päinvastaiseksi. Monet maat tuntuvat 2000-luvulla asettavan bilateraaliset ratkaisut ja kin-state-suhteet kansainvälisten sopimusten edelle. On väsytty raportointiin, jota kansainvälinen seuranta edellyttää. Samanaikaisesti on koettu nationalistisen oikeiston nousu ja vihapuheiden leviäminen. Talouden taantumat ja maahanmuuttoaallot ovat kiristäneet asenteita. Ukrainan kriisi on nostattanut pelkoja siitä, että separatistiset pyrkimykset saattavat voimistua myös muilla entisen Neuvostoliiton alueilla.

Astrid Thors näkee kuitenkin myös valoisia piirteitä, kuten esimerkiksi europarlamentin aloite vähimmäisstandardien luomisesta kansallisten vähemmistöjen kohtelulle. EU:n ehdotetaan liittyvän Euroopan neuvoston tätä koskevaan puitesopimukseen. Opetusta vähemmistöjen kielillä sekä niiden edellytyksiä kulttuurin vaalimiseen tulisi myös vahvistaa.

Vähemmistöjen tukemista Euroopan unionissa ajava kansalaisaloite, niin sanottu Minority Safepack, on myös mennyt eteenpäin. Thors viittaa EU:n mahdollisuuteen käyttää artikla seitsemää, eli pidättää äänioikeus jäsenmailta, jotka eivät täytä unionin perusarvoja ihmisoikeuksien kunnioittamisen osalta. Esimerkiksi romanien kohtelu joissakin maissa antaisi perusteita tällaisille sanktioille.

Thors toivoo lisää tutkimusta vähemmistöihin liittyvistä kysymyksistä, erityisesti siitä, miten ne voivat vaikuttaa positiivisesti yhteiskunnan kehitykseen. Vähemmistöjen tulee myös itse pohtia asennoitumistaan: haluavatko ne olla ulospäin avoimia vai poissulkevia ryhmittymiä. Vedetäänkö vanhojen ja uusien vähemmistöjen välille jakolinjoja, vai hyväksytäänkö monimuotoinen yhteiskuntakehitys, jossa yksilöillä on samanaikaisesti useita identiteettejä? Nämä ovat Thorsin mukaan jatkossa vähemmistöjen tulevaisuuden kohtalonkysymyksiä.

MINORITY POLICIES IN EUROPE

Appendix

Overview of international bodies dealing with minority policy in Europe (as mentioned in this publication)

	OSCE	European Union		Council of Europe	United Nations
Explanation	Organization for Security and Co-operation in Europe; i.e. a regional security body	Political and economic union between countries in Europe		Human Rights organization for the greater European continent	Global organization to promote co-operation and peace
Member Countries	57 states from Asia, Europe & North America	28 countries in Europe		47 member states, including the 28 EU countries	193 member states worldwide
Agencies dealing with minority issues	• **HCNM** (High Commissioner on National Minorities) • ODIHR (Office for Democratic Institutions and Human Rights) • Human Dimension Implementation Meeting (HDIM)	• FRA (Fundamental Rights Agency)		• Venice Commission (the European Commission for Democracy through Law)	• Human Rights Council • Permanent Forum for Indigenous Issues • High Commissioner for Human Rights • Special Rapporteurs
Central documents	• Copenhagen Document/ Declaration of the CSCE (later OSCE)	• Copenhagen Criteria • Treaty on European Union		• European Convention on Human Rights (ECHR) • Framework Convention on National Minorities **(FCNM)** • European Charter for Regional and Minority Languages (ECRML)	• Declaration on Human Rights • International Covenant on Civil and Political Rights (ICCPR) • Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities • UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

About the Author

Astrid Thors *(LLM), member of the Swedish People's Party in Finland, has been a member of the Finnish Parliament for nearly ten years and was a Member of the European Parliament during 1996–2004. During 2007–2011 she was Minister of Migration and European Affairs in Finland. Thors acted as the fourth OSCE High Commissioner on National Minorities in 2013–2016.*

Om författaren

Astrid Thors *(jur.kand., vicehäradshövding) har suttit som riksdagsledamot för SFP under närmare 10 år och som ledamot i Europaparlamentet åren 1996–2004. Hon var Migrations- och Europaminister i Vanhanens andra regering 2007–2011. Åren 2013–2016 agerade Thors som High Commissioner on National Minorities för Organisationen för säkerhet och samarbete i Europa (OSSE).*

Tekijästä

Astrid Thors *(oik. kand., varatuomari) on ollut lähes kymmenen vuotta RKP:n kansanedustaja sekä vuodet 1996–2004 europarlamentin jäsen. Hän toimi maahanmuutto- ja Eurooppa-ministerinä Matti Vanhasen toisessa hallituksessa 2007–2011 ja Euroopan turvallisuus- ja yhteistyöjärjestön ETYJ:n vähemmistövaltuutettuna 2013–2016.*

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