

NACIONALNE MANJINE/NATIONAL MINORITIES

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**Some Political,
Security and
Legal Challenges:
Dilemmas of
Minority Issues
in Europe**

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SUMMARY: The nation-state has been redefined, and yet issues that affect it in its current form have been left unchanged. Issues of refugees and migrations have not been legislated since 1951 at the global level and turn of the millennium at the EU level. National minorities are perceived as a threat in “new” Europe while international organisations that should help central and eastern European states are being controlled by the West and are acting in the primary interest of western countries. Duality is thus being reinforced and accentuated. The EU, Council of Europe and the OSCE are seemingly ignoring the process of significant racial, religious, cultural and civilizational change across Europe. Weaker states are therefore unprepared and unsupported to deal with their minority issues and especially with the issues of new migrations to Europe. National sovereignty is connected with the securitisation of minority issues, in particular in Central and Eastern Europe. The process benefits ethno-nationalist populists that form governments that often create political pressure and economic instability, thus pushing their citizens to emigrate to “old” Europe. The process of reacting and antagonising immigrants is being repeated, and the whole of Europe is facing a problem functioning liberal democracies could solve with reformed *modus operandi* of international organisations.

KEY WORDS:

**Minority, Migration,
Security, Populist,
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Introduction

In recent years, national minority groups living in 'new' European countries have experienced increased securitisation. For example, Slovakia has amended its citizenship law in 2011 and effectively banned dual citizenship in response to Hungary's previously adopted policy of allowing ethnic Hungarians living abroad to apply for Hungarian citizenship. Slovakian Prime Minister "has called Hungary's move a 'security threat.'"¹ Similarly, doubts about Hungarian loyalty has been expressed in Serbia and Romania, when the new Law on Hungarian Citizenship came into force on January 1, 2011.²

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Originally, the liberal democratic model formed the foundation for sovereign nation-states sharing moral and ideological values, focusing on the rights and inclusion of national minorities, in an integrated Europe. Since then, historical, political and security developments have destabilised the European Union as the integrative framework, whilst legal, political and security differences have the potential to divide the continent. The unofficial division that roughly coincides with Churchill's 'Iron Curtain' is reflected in different legal frameworks for minority protection in states of the 'old' and 'new' Europe. Consequently, minority rights regime in the West is justice based and, in the East, it is security based (Kymlicka, 2004: 144-145). Whilst the security approach to minorities in the 'new' Europe carries the risk of undermining the justice-oriented approach supported in the 'old' Europe, national minorities are likely to encounter real or perceived discrimination, losing any hope that the justice approach will ever become a reality. As a consequence, the integration of society becomes more problematic, causing the state to reinforce its security concerns, leading to a vicious cycle.

This paper aims to investigate minority protection in the context of security, law and politics. The international regime of national minorities in Europe has been established since the 1990s with the adoption of the Framework Convention for the Protection of National Minorities and the European Charter for Minority or Regional Languages at the Council of Europe. The ratification of these documents has been a requirement for the newly emerging democracies in Central and Eastern Europe but not so for the western countries of the 'old' Europe. Thus, it led to a duality in approaches to national minority protection. While

1 <https://www.bbc.co.uk/news/10166610> (13.12.2019.)

2 <https://balkaninsight.com/2011/01/11/serbia-s-ethnic-hungarians-jump-at-citizenship-offer/> (13.12.2019.) or <https://www.bbc.co.uk/news/world-europe-24848361> (13.12.2019.)

many *de facto* national minorities have not been recognised in the countries of the 'old' Europe those who have been recognised are enjoying protection based on a justice approach. The 'new' Europe states have offered formally a more inclusive approach by naming larger number of national minorities, but the principle of protection is security based.

The lack of a universally accepted definition of a national minority provides states with a selective approach to their policies and ultimately creates possibilities for instability within the society. The paper will focus on the security approach to minorities in the 'new' Europe. The international instruments for the protection of national minorities will be inspected in the context of the lack of universally agreed definition and the state's freedom to apply or not to apply the instruments to a particular group by defining it or not as a national minority. State attitudes towards minorities are going to be tested as a means of checking whether the securitisation of the minority issues, developed in the 'new' Europe eventually affects the 'old' Europe. Diverse theoretical debate on these issues, referenced in the paper, will support the overall argument that diversity of approaches to national minority protection in Europe are undermining universal standards and commitments to liberal democracy, rule of law and human rights.

This study is based on four years of fieldwork, carried out during my time in the Advisory Committee on the Framework Convention of the Council of Europe. The two main research methods involved documentary analysis and non-participant observation. Documentary analysis consisted of reviewing primary documents of the Council of Europe, Organisation for Security and Cooperation in Europe European Union and the United Nations. Participant observation occurred as part of my role in the Advisory Committee on the Framework Convention for the Protection of National Minorities, and its working groups providing expertise to the Council of Europe. In this position, I visited many European countries, visiting minority settlements in 'old' and 'new' Europe, interviewing members of minority groups, activists, academic experts, civil servants and politicians at all levels of governments. This is providing for the assessment and comparative analysis of specific cases at the national level, national practices and efforts to develop pan-European standards of minority protection and integration.

As part of participant observation, I reviewed reports by international organisations on member-state policies. It is expanded by an analysis of international instruments of minority protection and comparative study of individual states' national minority legislation and policies. The dominantly qualitative methods are based upon examination

of international treaties that would help contextualise and offer insight into a dominant approach to the issue of national minority protection. Furthermore, specific national concepts, state legislations and policies towards minorities are subjected to critical comparative analysis.

The framework provided has established the grounds for the argument and explanation of securitization of minority issues in the significant number of countries and, arguably, in Europe as a whole. It is also reframing Europe into the two, as argued in the paper: the 'old' Europe in its superior behaviour and juxtaposition of national minority rights with regards to 'new' Europe, largely made of post-communist countries. A check of the policy of filling the leading positions in European institutions will add an element for discussion on the divided continent dominated by its one part.

Literature Review

Academic literature on this topic, like the international organisations, is dominated by the approach stemming from the times of Hans Kohn and the idea of a "moralistic distinction between a 'good' nationalism, which he associated with the West, and a 'bad' nationalism typical for the non-Western world" (Jaskulowski, 2010: 290). This idea generally shaped the academic debate on nationalism in the second half of the twentieth century. Kohn argued that western "nationalism found its expression predominantly, but never exclusively, in political and economic changes," while elsewhere, it "found its expression predominantly in the cultural field" (Kohn, 2008: 4). "Even the classical theorists of nationalism," Malešević argues, "such as Gellner and Anderson believed that nationalism is conceptually inchoate" (Malešević, 2019: 1). Anderson acknowledged a "political power of nationalisms vs. their philosophical poverty" (Anderson, 2006: 5).

Rezai describes the division "into western and eastern-central Europe," and argue, by referencing Pentassuglia's work (Pentassuglia, 2001: 3-38) that "the main reason for this division lies in cultural and political differences before the collapse of the Soviet Union and the creation of 'the post-communist east' and extension of western integration and complex minority standards" (Rezai, 2015: 60). "In Europe," Pentassuglia argues, "the notion of the autonomy of minorities as a tool for preserving their identities strikes at the heart of further complexities" (Pentassuglia, 2001: 5).

Malešević, when analysing Western Balkans, notes that "both nationalism and violence are regularly singled out as the most important impediments for the social development of the region," before arguing

that “a careful historical sociological analysis shows that neither of the two common perceptions holds up” (Malešević, 2019: 185). Pieterse offers a hypothesis that “nationalism refers to urban nationalism, while rural nationalism is often termed ethnicity” (Pieterse, 2004: 31). Delayed urbanisation and industrialisation of large parts of Eastern and Central Europe might have provided some elements for the development of distinctions on western, good, civic nationalism and eastern, bad, ethnic nationalism, as Schöpflin has interpreted Kohn’s categorisation (Schöpflin, 2000: 4-5). A large number of national minorities in the “new” Europe has been reflected in the state’s official recognition. It has possibly strengthened the form of ethnic nationalism, at least some of its manifestations, which, in turn, might have added to arguments on two different natures of nationalism – western and non-western.

Janmaat, in his testing of the Kohn’s hypothesis, suggests that in the West “the post-war political and economic achievements are likely to have increased ... identification with public and political institutions among broad sections of the population” (Janmaat, 2006: 72). The change, according to the same author, “might happen in East European countries,” following successful political and economic changes and “differences between East and West in the qualitative nature of national identifications might disappear altogether” (Janmaat, 2006: 72).

Other authors also observed the divide in Europe. Kymlicka argues that “in the West, there is a trend toward accepting the legitimacy of minority nationalism, and toward accommodating it through some form of territorial autonomy,” while in Central and Eastern Europe, “minority nationalism is often viewed as illegitimate, and the idea of territorial autonomy is strongly resisted.” (Kymlicka, 2004: 144-145). Other authors write about the “two processes: ... integration of Western European states and a process of disintegration in Central and Eastern Europe...” (Raduški, 2008: 235). Craig, however, draws a different conclusion. She demonstrates “how both political and legal considerations tend to inform the work of both the HCNm [High Commissioner for National Minorities] and the Advisory Committee [for the Framework Convention for the Protection of National Minorities], supporting the claim that talk of two separate ‘minority rights’ tracks is no longer appropriate” (Craig, 2012: 64).

The countries of Central and Eastern Europe going through the nation-building process in the renewed attempt of sovereign state development did not offer their national minorities participation in the processes of nationalising state. The accession to the EU process thus had to deal with the national minority politics. “The status of minority groups

in Europe was cemented as part of EU conditionality with the Copenhagen criteria of 1993” (Galbreath & McEvoy, 2010: 359). Thus, from the very beginning of the accession process, the ‘new’ Europe was in a discriminated position having to react to its irrational concerns about the minorities’ behaviours and loyalties and having to follow the dictate from the ‘old’ Europe. Galbreath & McEvoy found that “unsurprisingly, much of the literature on minority rights in Europe focuses on whether and how the EU’s ‘minority condition’ has been implemented in accession states” (Galbreath & McEvoy, 2010: 359).

The double standards of the European Union in the field of national minorities, as some authors (Johnson, 2006: 35) argue, have always been denied by officials in international organizations. Leaders of pan-European organisations, however, disagree with the division and repeat a mantra of one and unified Europe. Nils Muižnieks, then the Council of Europe’s Commissioner on Human Rights, disagreed there were two Europes, old and new, with different understandings of values, if not the norms.³

Academics do see the difference. “Minority rights is one of the accession criteria” (Kimlycka, 2002: 1). The European Union basing its policies on “standard-setting already initiated by the Organization for Security and Cooperation in Europe and the Council of Europe, initially without any contribution of its own,” Nancheva explains, endorsed “the emerging European minority rights norms and project them externally as a condition for membership” (Nancheva, 2016: 140). Jutila found that “government representatives built new institutional structures to deal with minority situations in various Central and East European countries (Jutila, 2006: 167). These countries have been obliged to commit to such policies in the context the accession to the European Union. Thus with, “the complex role of nationalism in the region,” states Nancheva, “national minority regulation acquired even higher priority” (Nancheva, 2016: 132). She proceeds to argue, referencing Williams (2000) and Hillion (2004), that this minority rights regime “has been blamed for enforcing a double standard across ‘old’ and ‘new’ Europe and especially in the process of EU membership preparation” (Nancheva, 2016: 133).

International Organizations and National Minority Regimes

A substantial problem in minority rights is a lack of a universally agreed definition. “Some attempted definitions of the term ‘national mi-

3 Nils Muižnieks during the meeting with members of the Advisory Committee on the Framework Convention for the Protection of National Minorities, Strasbourg 2014-2018.

nority' have been quite broad," Craig (2012: 47) summarises offering the example from the Council of Europe practice that suggested "covering groups of citizens who 'maintain longstanding, firm and lasting ties' with the State and who 'display distinctive ethnic, cultural, religious or linguistic characteristics'"⁴

Many international organizations offer their interpretations and understandings of national minorities. There is, however, a lack of a universally accepted definition of national minorities. The Framework Convention for the Protection of National Minorities "is the first legally binding multilateral instrument devoted to the protection of minorities and is regarded as the most comprehensive international standard in the field of minority rights."⁵ Nevertheless, there is no definition of national minorities in the Convention. States that have ratified the Convention are given the space to self-define the minority. Thus, many states generally exclude non-citizens and migrants from protection under the Convention. Other states specify groups to whom the Framework Convention is applicable. Besides, some states are claiming that no national minorities are living in their territories. The result is that only 39 out of 47 Council of Europe members participate in the monitoring process. Even within states that have ratified the Convention, many groups are restricted from enjoying the protection.

While the Treaty of the European Union and the European Charter of Fundamental Rights reference minority rights, Rezai points out that "the EU has no generally accepted legal definition for ... national minority and ... in regard to minority protection the EU relies on the COE's protection system" (Rezai, 2015: 59). The Council of Europe and its bodies, however, do not define national minorities either.

An internationally accepted definition of national minorities adopted by the United Nations in 1992 covers not only national but also religious, ethnic and linguistic minorities.⁶ This Declaration adds to the 1966 Covenant on Civil and Political Rights which states that persons belonging to minority groups will have the right "to enjoy their own culture, to profess and practise their own religion, or to use their own

4 Art. 1 of PACE Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights, 1 February 1993. As quoted in Craig, Elizabeth. 2012. From security to justice? The development of a more justice-oriented approach to the realisation of European minority rights standards. *Netherlands Quarterly of Human Rights*, 30 (1). p.47.

5 <https://www.ohchr.org/documents/publications/guideminorities8en.pdf> (21.04.2019.)

6 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Adopted by General Assembly resolution 47/135 of 18 December 1992.

language.”⁷ Some scholars, however, disagree and argue that “national minority is distinct from an ethnic, religious or linguistic minority” (Valentine, 2004: 445). The 1992 Declaration is focussed more on the rights and duties of states and minorities and less on the definition of minorities, thus leaving political space to states to interpret the Declaration in practice. The European essential human rights document prohibits discrimination of enjoying rights “on any ground ... [including] association with a national minority...”⁸

The Framework Convention for the Protection of National Minorities, however, “protects only ‘national’ not religious communities” (Giegerich, 2004: 445). The European Charter for Regional and Minority Languages somewhat defines national minorities while speaking of “regional or minority languages”. According to the Charter, they are languages “traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population.”⁹ This might help to interpret national minorities as a group of nationals of a State that are numerically smaller than the rest of the State’s population. However, if one takes this route, it excludes significant groups who are *de facto* minorities as a result of more recent migrations what has created a political issue in several European states.

Recommendations and guidelines issued by the High Commissioner on National Minorities at the OSCE (Organisation for Security and Cooperation in Europe) also fall short of clearly defining the term. The Commissioner, Max van der Stoep, acknowledged in 1995 that “experts have been sitting for decades trying to come to a common definition” of national minorities but “have never succeeded in doing this.” As a practitioner, he pointed out “that you recognize a national minority when you see it.”¹⁰ He stated earlier that “the existence of a minority is a question of fact and not of definition.”¹¹

There have been individual attempts of no or minimal impact to define national minorities. “Although the term minority has been used in some hard and soft international documents,” such attempts typically claim, “it has no definition in international law” (Rezai, 2015: 53). Thus

7 Article 27 of the International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

8 Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14* Rome, 4.XI.1950, Article 14.

9 The European Charter for Regional and Minority Languages, Article 1.

10 <https://www.osce.org/hcnm/36591?download=true> (23.04.2019.)

11 <https://www.osce.org/hcnm/38038?download=true> (23.04.2019.)

states are provided with an opportunity to define national minorities according to their self-interests which they generally do.

Some academics even argue that “the concept of national minority is traditionally understood in a European context as referring to ethnic groups living in a state, that are linked to a nation that has constituted its own state, so-called ‘kin-state’” (Turnšek et al., 2010: 7). This view is rather widespread among authors. The argument has been developed that “European integration can have an amplifying effect on nationalism regardless of whether kin states are existing members, acceding states or outside the process altogether” (Galbreath and McEvoy, 2010: 357). Craig has noticed different approaches of international organisations to the issue of “kin-state”: “However, whilst the HCNm focuses primarily on the situation of minority groups with kin-States, the Advisory Committee often seems to avoid mentioning specific minority groups and has tended to adopt a much broader perspective in relation to issues previously touched upon by the HCNm” (Craig, 2012: 57).

It is still possible to object to the view of minority issues exclusively or even dominantly in the lights of relations between states. The term “kin-state” is wrong to be used. The Advisory Committee has put a great effort to avoid even mentioning it in their opinions. It might mislead towards the wrong concept of a national minority. Some states see it as a tool of foreign policy and use the position of national minority for their own state’s advantage regardless of the actual situation. This understanding of the national minority has led some authors to define minority in the context of living outside of a perceived homeland. Many minorities, however, do not live in such a position. Roma might be the largest such group without a nation-state in Europe. There are, nevertheless, many others what the authors have failed to cover under their definition.

The lack of the definition, Jackson-Preece argues, is not a coincidence but “it has hugely important implications with regard to the exercise and enforcement of minority rights” (Jackson-Preece, 2014: 3). She finds “controversy with regard to the definition of a minority,” that “centres upon the identity” providing “only those recognized minority rights holders” with “the validity of the associated minority rights claim” (Jackson-Preece, 2014: 3-4). Therefore, common understanding in international organizations and among many academics is that setting only a framework instead of the definition potentially provides enjoyment of rights to a higher number of groups and individuals.

“The protection of national minorities is essential to stability, democratic security and peace” (The Framework Convention, 1994)

in Europe, states the Framework Convention. “The EU approach to Eastern Europe as developed in the 1990s,” Pentassuglia argues, “rests on a variety of mechanisms and initiatives designed to favour and/or consolidate transition to market economy and further regional peace and stability” (Pentassuglia, 2001: 10). Western Europe has found an extended market where to export surplus produce, but this newly opened market in return could export instability and undermine western security. The situation has inevitably led to the development of different human rights and national minority standards in two parts of Europe.

Thus two contradictions of minority protection and rights have been raised. Minority rights are human rights. The Universal Declaration of Human Rights in its preamble declared human rights as universal and individual.¹² There is no universality in the application of minority rights which are, albeit individual, to be enjoyed collectively. A lack of universality and individuality are the two contradictions of minority rights that have been used by several states to deny some rights to some groups.

“Countries of post-communist Europe,” Kimlycka argues, “have been pressured to adopt Western standards or models of multiculturalism and minority rights” (Kimlycka, 2002: 1). The Eastern and Central European states are fully integrated into the monitoring systems of the Council of Europe while several Western European states are selective to specific instruments to be applied or are refusing to become a part of the monitoring processes. Once the instruments have been adopted, it meant ‘old Europe’ had legal grounds to interfere and impose policies upon ‘new Europe’. The policies have been applied not through bilateral measures of dominant states but by the control of international organizations. When one looks at structures of pan-European and international organizations, it is clear who dominates them.

It took 20 years for the Advisory Committee on the Framework Convention for the Protection of National minorities to have President based east of Ljubljana despite the fact, as it has been shown, that the majority of recognised minorities are based exactly in Central and Eastern Europe. Andorra, France, Monaco and Turkey have neither signed nor ratified the Framework Convention, and further four countries, Iceland, Belgium, Luxembourg and Greece have signed but have never ratified the Convention. Considering that Greece is politically, if not geographically, considered western, it makes Turkey the only non-western country that is not party-state to the Framework Convention.

12 <https://www.un.org/en/universal-declaration-human-rights/> (18.05.2019.)

During the 60 years of existence in various forms of the European Court of Human Rights, all presidents of the Court have been westerners. Between 1959 and 2019, there have been three British presidents, two each from France and Italy, and one from Belgium, Norway, Germany, Switzerland and Luxembourg. The Court is yet to elect its president from Central or Eastern Europe.

Ever since the establishment of the Council of Europe in 1949, a Secretary-General was a westerner. While many central and eastern European countries have not been members of the organization during the first four decades, there were five highest appointments since Hungary, followed by other former communist states, joined the Council of Europe in 1990. Finally, Croatian Marija Pejčinović Burić was elected in 2019.

In 1993, The Conference on Security and Cooperation in Europe, later the OSCE, named first High Commissioner on Human rights. During the first 25 years of existence, none of the commissioners has come from central or eastern Europe. The organization attempted to deal with largely ethnic-based conflicts in the former Yugoslavia and the former Soviet Union. Still, the commissioners came from The Netherlands, Sweden, Norway, Finland and Italy.

The model of the behaviour of western states follows the pattern of post-imperial policies applied through international organizations like the United Nations, World Bank, International Monetary Fund, World Trade Organization. The West controls international organizations instead of imposing a direct control or confrontation in bilateral relations with other actors.

None of the nine UN secretaries-general and one acting in this position has come from Central or Eastern Europe. Despite the understanding that the leading positions are allocated to provide a sense of equality among the five unofficial regional groups. All other regions have provided a secretary-general in the past. Therefore, the understanding was an eastern European, and preferably a woman would take over the position and yet it was a middle-aged Portuguese man who was appointed in 2017. However, geopolitics played an important role here, and he was perhaps a better choice for Russia than any female or male candidate from Eastern Europe.¹³

The Language Charter and the Framework Convention of the Council of Europe have been added to the UN Declaration and were

¹³ <https://worldpolicy.org/2016/10/12/why-was-a-western-european-man-selected-for-secretary-general/> (18.05.2019.)

followed by several Opinions by the OSCE High Commissioner for National Minorities. Old Europe has invented and developed instruments for the new Europe in order to secure old Europe's stability and security that they felt has been threatened by the size and speed of changes in the new Europe. National minority rights have been seen as potentially disturbing the state of affairs. Therefore national minority regimes have been put as a policy of conditionality in the accession process to the European Union. "In short," Kymlicka concludes, "we see a dramatic difference between East and West in the basic approaches to substate nationalism and multination federalism" (Kymlicka, 2002: 17).

Democratic political competition in ethnically heterogeneous societies of Central and Eastern Europe has increased competition between a national majority, often wary of minority's potential for secessionism, and minority, aware of its numerical inferiority. Minority tends to seek greater autonomy that would secure their own dominance at the substate level where their presence might not be numerically inferior. Electoral laws often impose restrictive electoral thresholds that prevent numerically inferior groups from political representation unless the group homogenises behind one, often nationalist, political party. The Venice Commission observed that "electoral thresholds should not affect the chances of national minorities to be represented" (Venice Commission, 2018: 28).

International instruments for the protection of minorities are applied differently in the old and new Europe. Liberal democratic traditions run more rooted in old Europe while Central and Eastern European countries are rather selective in implementation of international standards. It is, however, possible to look at the control over international institutions by the West. If their work is put under scrutiny, it is possible to see that significant concerns are often expressed in concert with individual state interests of leading western nations.

National Regimes of National Minority Protection

This part of the paper will offer a view into the diversity of individual state attitudes towards national minority regimes. Broad data of national legislation and minority recognition will be brought forward to present this diversity and reimpose the argument of dual attitudes towards the issue of national minority found generally in Europe. Therefore case-studies from the 'old' and 'new' Europe will be contrasted.

France denies the existence of national minorities in the state and is not signatory to the convention. Portugal and Malta are part of

the Convention but claim no minority groups live in their countries. Greece, surrounded by countries with numerous national minority groups, uniquely is not part of European monitoring mechanisms for national minority rights protection and minority languages.

“Virtually all of the former socialist-Bloc countries,” claims Johnson, “rushed to ratify the document in the mid-1990s after a consistent rhetorical message from the EU about the need to protect minorities” (Johnson, 2006: 33). Although this claim is generally valid, Latvia ratified the Convention only in 2005, ten years after signing it and one year after joining the European Union.¹⁴

Western states are more restrictive in defining and granting the status of national minorities. Some authors argue “the criteria for recognition are very restrictive for European immigrants and impossible for non-European immigrants or groups” (Rezai, 2015: 67). While this might generally stand, there are exceptions, like the Vietnamese minority in the Czech Republic or Egyptians in several countries in the Balkans, and many of the 193 national groups recognised in Russia. “All 193 ethnic groups identified by the 2010 census,” claims the Advisory Committee on the Framework Convention, “are considered as falling within the scope of application of the Framework Convention” (Fourth Opinion on the Russian Federation, 2018: 5). A large number of these groups have Asian origin. Roma communities across Europe look into its origins outside Europe.

“Four national minorities are officially recognized in Germany: the Danish minority, the Frisian ethnic group, the German Sinti and Roma, and the Sorbian people” (Fifth Report submitted by Germany, 2019: 8). There are three additional groups to which “the Framework Convention will also be applied to” (Fourth Opinion on Germany, 2015: 6). The Czech Republic has 14 recognised national minorities (Fourth Opinion on the Czech Republic, 2015: 4). Multicultural The Netherlands recognizes Frisians only as a national minority. Bosnia-Herzegovina has 17 national minority groups. Austria recognizes six national minority groups (Fourth Report submitted by Austria, 2016: 18) while Hungary has 13 such groups (Fourth Opinion on Hungary, 2016: 5). Although “the Framework Convention is not recognised in the Spanish legal system,” the Council of Europe’s bodies have repeatedly “been approached by persons belonging to organisations representing the Basque, Catalan and Galician cultures and languages, who have expressed interest in the protection offered by the Framework Convention” (Fourth Opinion on

¹⁴ <https://www.coe.int/en/web/minorities/latvia> 03.05.2019.

Spain, 2014: 4-6). Nevertheless, “the Spanish authorities take a pragmatic approach in applying the provisions of the Framework Convention to Roma, including foreign Roma” (Fourth Opinion on Spain, 2014: 10). At the same time, Albania recognizes and applies provisions of the Framework Convention to nine national minorities (Fourth Opinion on Albania, 2018: 9). Romania has 18 national minority groups (Fourth Report submitted by Romania, 2016: 16-17) while “Portugal does not recognize the existence of national minorities” (Fourth Report submitted by Portugal, 2018: 4).

These examples confirm the view that different interpretation and application of international agreements reflect the old-new or East-West division. There are, undoubtedly, exceptions to this practice. Italy stands out of the Western states where “12 recognised historical linguistic minorities live” (Fifth Report submitted by Italy, 2019: 38). Meanwhile, there are only three “constitutionally recognised minorities” in Slovenia while the largest ones, former compatriots of Slovenes in Yugoslavia; Serbs, Croats and Bosniaks, are missing from the list (Fourth Opinion on Slovenia 2018: 16). The Austrian government has expressed concerns for the lack of political representation and minority status of German speakers in Slovenia. The response of Slovenia, then a candidate country to the EU, was raising issues of inadequate linguistic rights for Slovene minority in Austria. “Austria was an EU member, and thus did not have to comply with even minimal levels of minority rights, conditionality (an identified failure on the part of the EU and Commission in particular),” Galbreath and McEvoy have argued under the subtitle “Member–Acceding’ Dyads” (Galbreath and McEvoy, 2010: 362-363). Academic research of legislations across Europe shows “lots of articles in regard to minority protection ... in the Eastern European countries as a result of EU call for protection of minorities.” The same research continues by stating “the trend is not the same” in Western Europe (Rezai, 2015: 62).

Countries of Central and Eastern Europe rarely act as allies or regional group but rather like rival states. Therefore this makes them weaker in communication with international organizations or with leading European powers. These countries have adopted a broad understanding of national minority as part of conditioned processes of European integrations. History might have played a particular role during the state and nation-building processes, thus creating national minorities. Western European countries, meanwhile, do not recognise groups of its own citizens with a specific culture and language as a national minority.

Turks and Poles are the two largest non-German communities in Germany but are not recognized as a national minority. They lack

a traditional presence in a specific, usually rural, area. However, the Polish community have been present in various forms in Germany for well over a century. Even Turks that started arriving in more significant numbers in the 1960s have established, by now, presence in Germany of more than half a century. There is no stipulation of a number of years for the presence to be recognized as traditional. They are mainly urban communities with no connection to specific rural geographic area, and the authorities keep considering them as immigrants without a minority status that provides additional benefits and protection.

Thinktanks and NGOs take less conservative understanding. The Minority Rights Group states three additional minority groups in Germany, namely Vietnamese and “Turks and Kurds” under a joint entry.¹⁵ The same organization disagrees with the Dutch interpretation of the term national minority and states, in addition to ten other immigrant communities, Moluccans and Muslims as minorities in the Netherlands.¹⁶ These organizations provide pressure upon national authorities and manage to make them change some of the policies, but they do not manage to change the major status of ethnic communities into national minorities.

Roma in Switzerland, Turks and Serbs in Austria, Portuguese in Luxembourg and many other national groups across Western Europe face the same problems of non-recognition. Perhaps the most ironic situation is with Croats in Austria. Traditional Croat minority is based in Burgenland and is recognized as a national minority. However, Croats that migrated to Austria during the 20th century do not have the status of national minority despite their numbers, distinct culture and identity. There are more such Croats in Austria than that of Burgenland Croats, who lose their status if they move out of Burgenland.

Traditional local Roma communities in Germany and Austria are granted national minority status, Roma people from the EU countries also enjoy state benefits, but Roma originally from the outside of the European Union are deprived of similar rights. There is a clear hierarchy of different groups of Roma that states organize despite suggestions from the Council of Europe to the contrary and recognition of minority rights regardless of citizenship.

The overall view on national minorities regimes across Europe does reflect geopolitical changes of the 1990s and the consequently developed policies of conditionality that have affected the ‘new’ Europe.

15 <https://minorityrights.org/country/germany/> (04.05.2019.)

16 <https://minorityrights.org/country/netherlands/> (04.05.2019.)

The EU engagement “transposes the problems of national and international minority regimes into the realm of Europeanization” (Nancheva, 2016: 136). The same author argues, this policy does not provide a solution. The involvement, nevertheless, was necessary. The ‘old’ Europe’s security concerns have not been unfounded. Dissolution of the three former communist federations and ethnic strife present in the region provide strength to arguments in support of such policies. The issue is whether the adopted legislation at the national level and ratification of international instruments have provided for the increased security in the ‘new’ Europe. Besides, the question is whether international organisations can continue ignoring the ‘old’ Europe’s insistence on the very restrictive application of international instruments in their national legislations. While violent conflicts have been avoided, several incidents in Catalonia, Northern Ireland and France draw the attention to the need to deal with the issues rather than ignore them.

(Re)securitization of Minority Issues

The dissolution of Yugoslavia and the recognition of its successor states have been based on popular will, i.e. referenda supporting declarations of political elites. The internal borders have been recognised as new international borders. Ethnic element in the creation of new states has been refused in the post-Yugoslav case. A similar principle has been applied in the post-Soviet Union. Internal republics’ borders have been recognised as boundaries of the successor states. The ethnic principle, however, has been applied in the unification of Germany. This was the first change of borders in Europe since the Helsinki Accords of 1975.

The border changes in the 1990s, regardless of the principle, were not opposed within Germany while some ethnic groups have violently resisted the newly created states in post-communist Europe. The societies have been reformed, and democracy, the rule of law, human rights have been applied to national legislation. Misinterpretation of minority rights, however, came with democracy to some of the countries. Tyranny of majority has been applied in most radical cases of the exercise of the majority’s will. National and regional security issues have been affected and consequently national minority rights regime has been questioned. When the majority-minority conflict became violent, it resulted in the increased number of citizens migrating towards the area where they felt secure. Such areas are either where their ethnic group lives as the majority or in the ‘old’ Europe. The new immigrants thus show no concerns over moving from the state in which they had the official status of a national minority to the state where they will never be granted

such status and neither would be seeking it. Nevertheless, at the same time, they were ready to engage in violent conflict in the state of their origin in order to secure some specific group status.

A state in the 'new' Europe is primarily concerned with its territorial integrity and minorities are often seen as a threat. Thus, minority issues have been securitised. The minorities' collective behaviour is often led by the justice-seeking ideology of equality and protection. While, central and eastern European countries tend to be concerned more with security issue and act accordingly, the western part of the continent, according to Kymlicka, "hope to achieve both of these goals – to simultaneously promote both security for states and justice for minorities" (Kymlicka, 2002: 145). Thus, the movement of people from 'new' Europe to the 'old' Europe, whether they are abandoning their state as majority members or as recognised minority members, shows primary concern with the lack of implementation of the standards that have been officially adopted. Security is not only about the survival of the states but also about the survival of societal (group) identities (Jutilla, 2006: 168). These migrants are thus showing confidence in developed state's practices in the 'old' Europe even if some international instruments have not been applied in such a state, but a simultaneous achievement of both goals seems to be more likely in an established liberal democracy.

Security concerns contributed to European institutions' development of instruments for minority protection in the 1990s. Johnson argues that "minority protection can be seen from a more strategic perspective," in a context of "a need for regional stability" ... and ... "a concern over migration patterns" (Johnson, 2006: 45). A question remains whether the application of instruments for the protection of national minorities has prevented further security threats in 'new Europe'. When a state is ruled by a nationalist and authoritarian leader, it is more likely to act as 'kin-state' and therefore further securitise the minority issue in neighbouring countries. The example of Viktor Orban's Hungary and its relations with neighbours underlines the inadequateness of the 'kin-state' approach.

The results are seen in bilateral relations between the states. Slovakia introduced language law in 2009 restricting use of minority languages that affected primarily Hungarian minority. Hungarian president was banned from attending a ceremony in Slovakian town with Hungarian majority in the same year. In 2019, Slovakia effectively criminalised singing foreign national anthems unless the official delegation from that country is present. It was Hungary, of course, who reacted the strongest.

Instead of deteriorating into a more serious issue, the democratic change in societies has made ethnic politics "a matter of 'ballots not

bullets, operating under normal democratic procedures” (Kimlycka, 2002: 10-11). However, instead of inter-state conflict, it is discrimination of national minorities that have become the instrument for solving contested issues. Parallel societies in Slovakia, Romania and several other European countries exist. Integration of Romanian society has not been achieved as the majority is concerned with state security. They see minority as a threat to it, while the minority is concerned with justice and are vulnerable to the question of perceived inequality.

Observing different case studies, Kimlycka argues that “the result is sometimes described as the phenomenon of ‘parallel societies’, or even of ‘two solitudes’” (Kimlycka, 2002: 12). Turnšek, Hinge and Karakatsani recall Amartya Sen’s Identity and Violence (Sen, 2007) when stating the importance “to define what form of multiculturalism should be taken. Namely, the vocal defence of multiculturalism is very often merely a plea for ‘plural monoculturalism’, understood as cultures co-existing side by side” (Turnšek et al., 2010: 13). This is what in effect, keeps the communities separate. Different terminology, two solitudes or plural monoculturalism or parallel societies, describes the same situation of a divided nation and a presence of inter-cultural gap that provides the potential for politicisation of the cultural differences and ultimately to a widening of the political gap in the state. “Many people,” says Kimlycka, “avoid inter-group contact, where possible, or at least do not go out of their way to increase their contact with members of the other group” (Kimlycka, 2002: 11).

Orban’s triumphal statement following the electoral victory described the result as “a noble form of revenge” over the “political forces who voted against the re-admittance of Hungarians living beyond our current state borders.”¹⁷ The electoral success came “about thanks to the votes of precisely those cross-border Hungarians,” Orban underlined.¹⁸ Similar examples of using “passportisation” of minority issues by issuing citizenship to ethnic groups living abroad reflect nationalist policies at home and add to security threats felt abroad from actions of national minorities.

Western countries have used tools of a *de facto* federalisation or, at least, decentralisation to solve minority issues. “Respect for human dignity and cultural identity combines with conflict prevention purposes,”

17 <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp> (03.05.2019.)

18 <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/prime-minister-viktor-orban-s-speech-at-the-25th-balvanyos-summer-free-university-and-student-camp> (03.05.2019.)

as Pentassuglia argues (Pentassuglia, 2001: 4). “There is enormous resistance,” Kimlycka found in central and eastern European countries, “to the idea of federalism or other forms of territorial autonomy for national minorities” (Kimlycka, 2002: 16). The only cases of de-centralising policies in the ‘new’ Europe came after violent conflicts, except for North Macedonia. It was often a refusal to decentralise and thus accommodate some of the minority demands that led to violence. A consociation was a solution for post-conflict states in this region. With the supervised sovereignty over Kosovo and Bosnia-Herzegovina, security concerns have been partly solved. In North Macedonia, the intervention took place to prevent violence and could be judged success from the security point of view.

Democratic electoral processes tend to uncover deep divisions in society. Majority group wants to secure nation-state and its borders with strong central institutions. The majority community, in its national romantic sense of past times, creates an atmosphere in which popular support often moves towards more nationalistic majority political groups. Minority group feels endangered in a position of numerical inferiority and wants greater autonomy, preservation of its own culture, traditions, language and political representation. They are thus seeking political groups with stronger demands for more autonomy, more nationalist political demands and leading even towards secessionist movements. “The only way to eliminate secessionist mobilization and communal divisions would be to eliminate substate nationalisms, and that in turn could only be achieved by restricting individual rights and democratic freedoms” (Kymlicka, 2002: 15). Suspension of democratic instruments and values cannot be a solution in a functioning democratic regime.

In Central and Eastern Europe, it is the state’s and minority’s behaviour that is creating security concerns. In the West, it is generally political parties and radical political groups that have moved from justice based concerns to security based minority concerns. With the rise of far-right nationalist political parties across Europe and their entrance into national governments, state actions have increasingly becoming based on securitised interpretation of minority issues. Europe is “confronted with currents,” Angela Merkel said in 2019, “who want to destroy the Europe of our values.” Media reported her saying “Far-right parties rejected values like the protection of minorities and basic human rights.”¹⁹

19 <https://www.theguardian.com/world/2019/may/18/austrian-government-in-crisis-over-secret-strache-footage> (19.05.2019.)

The first targets of such groups and policies are visible minorities, i.e., racial minorities, many immigrant groups and Roma. “Rallies and marches on Roma housing estates, organised by extreme right-wing political organisations,” have been noted in the Czech Republic and the blame pointed at politicians who “instead of seeking to build a cohesive and tolerant society ... perpetuate divisions.” (Fourth Opinion on the Czech Republic, 2015: 1). In Romania, “Roma continue to suffer discrimination in access to housing, infrastructure, employment, health care and education,’ while “segregation of Roma children at school is still reported” (Fourth Opinion on Romania, 2017: 1).

In 2014, ‘the Government Plenipotentiary for Roma Communities was removed from the human rights structure and placed under the auspices of the Ministry of Interior’ in Slovakia (Fourth Opinion on Slovakia, 2014: 1). The change had been the consequence of securitising Roma issue in Slovakia. “Roma continue to face grave obstacles in accessing rights” (Fourth Opinion on Slovakia, 2014: 2). It has been reported in Austria “that Roma continue not to be taken seriously when reporting instances of alleged discrimination but are informed by relevant officials that such attitudes are common-place and thus not discriminatory” (Fourth Opinion on Austria, 2016: 9). In Germany “manifestations of antisemitism, anti-Gypsyism, and anti-Muslim and anti-immigrant sentiments are reported to be rising, as well as attacks against asylum-seekers” (Fourth Opinion on Germany, 2015: 1).

If minority groups are often perceived as a security threat to the state, Roma groups, however, never attempted any secessionist policies. Therefore, widespread discrimination of Roma is pure racism at work. Following the NATO intervention in 1999, groups of Albanians carried out attacks on local Serbs that media has described as revenge. However, local Roma also came under attack that the United Nations Secretary-General, Kofi Annan, addressed: “The continued lack of adequate security remains an overriding concern for the remaining minority communities in Kosovo. [...] The Roma and Ashkalija communities have suffered from violent attacks involving hand grenades, for example, and other explosions and arson in various locations in Kosovo.”²⁰ Other organizations like Human Rights Watch also carried out reports of violence against national minorities in Kosovo.²¹

20 <http://www.errc.org/roma-rights-journal/no-end-to-attacks-on-roma-in-kosovo> (24.05.2019.)

21 <https://www.hrw.org/reports/1999/kosov2/> (24.05.2019.)

Conclusion

The paper has shown the importance of establishing an international minority rights regime across Europe with no distinction between the 'old' and the 'new' Europe. However, it is evident that the conditions in the two regions are dissimilar. The selective recognition of minority groups in some of the most influential western countries reflects internal insecurities but also provides an example to central and eastern European countries to be selective in applying the rights they had to sign for during the processes of Europeanisation. The argument is that "external norm entrepreneurship of the EU soon attracted interest in the internal application of minority norms, which turned out to be rather limited," (Nancheva, 2016: 132) and proceeds that "promoting and developing this regime, such as it is, at the supranational level perpetuates national minority problems which integration is uniquely positioned to transcend" (Nancheva, 2016: 133). The longer the states have been within the EU, the less likely they are becoming to apply the instruments of minority protection by the pan-European organisations.

Domestic concerns with the exercise of democracy and the reliance on nationalist rhetoric and ideology create conditions for the focus of political debate on state preservation and removal of security threats to the state. Minorities are seen in such situation as threat and the whole issue has been securitised. It is irrelevant whether the threat is real or perceived. The whole process results in discrimination, often real but also possibly perceived only, of the national minority. The individual and collective insecurities, economic uncertainties and opportunities in the developed part of Europe contribute to migrations that consequently bring "others" to challenge job security and position in the society of the traditional western citizens. In addition to the circumstances that are not subject of this paper, the whole process results in the rise of nationalist politics in the (old) Europe. The consequence is reactionary policy towards newly arrived communities but also lesser care for the traditional national minorities in western Europe. States have developed "increasingly security-oriented approach to migration, with the strong emphasis on prevention, effective border controls, push-backs, restrictive asylum policies and militarization of usual police functions" (Jakešević and Tatalović, 2018: 37).

Recognition of the new communities as national minorities would be acceptance of the reality and diversity of the state in the contemporary world and not as a reflection of national romanticist views that allowed, in their liberal interpretation, for others to be live in their traditional minority communities. Some authors see "the possibility of extending the

Framework Convention's scope of application to immigrant groups" on the grounds of "the omission of a definition of the term 'national minority'" (Craig, 2012: 55).

The irony is that due to the perceived security threat in one part of Europe, some of the main values of developed liberal societies in the other part of Europe, such as human rights, have been endangered. The possible "option is to bring issues back into the realm of 'normal politics,'" with the addition of "desecuritization of international migration" (Jutila, 2006: 169). It is a question, however, whether this is possible in an atmosphere of risen tensions and politicians preparedness to exploit fault-lines within the society and Europe in order to secure a position in power. "Political psychology has begun to explore the notion of group-level empathy" (Sirin, Valentino, Villalobos 2017: 429) which could be tested in relations between minority and majority groups in the state.

Nancheva summed up the critical view of international instruments for the protection. "Locking the status of national minorities into the security agenda of the state, presuming the inevitably disadvantaged position of members of national minorities, and refusing to delegate the regulation of national minorities to supranational governance appear to be key features of the 'European standard' of minority protection" (Nancheva, 2016: 144).

The reborn nation-state on the outskirts of the European Union has to be redefined in order to provide primarily for security and new challenges it is facing in the contemporary era. The process of significant racial, religious, cultural and civilizational change is undergoing across Europe. While sovereignty and the nation-state are understood differently than during the Cold War and immediately after it, the understanding of a national minority has not been changed. This has to be redefined in order to provide conditions for securing stability in Europe. Recognition and provision of legal status for all national minorities across Europe can create political solution and security without securitisation of national minorities. It is a huge but necessary task due to fast-changing processes.

Therefore, both redefining nation-state at the national level and adopting a pan-European understanding of national minority are necessities for the preservation of security and stability in a changed Europe. Craig understands that "the failure to define the term 'national minority' ... "can be linked to its status as a multilateral human rights treaty imposing legal obligations on States and the need to achieve a consensus amongst States," (Craig, 2012: 47) which is right in the sense of realist politics. However, it is necessary to re-establish liberal values

and liberal politics at supranational level in order to transfer them universally to a national level. Another study offers the view that “actors may also be convinced that international norms provide a solution to national problems” (Jackson and Parke, 2006: 137). There is also a view that “dyads between old members and new members should see greater pressure from the ‘West’ on the ‘East’” (Galbreath and McEvoy, 2010: 363).

The paper concludes with the view that the securitisation of the minority issues, developed in the ‘new’ Europe has consequences in the ‘old’ Europe. This together contributes to complexities of securing rights of national minorities as the works of international organisations are often undermined by the exercise of sovereignty at a national level. Democratic conditions are providing for competing ideologies and the opportunity for populist claims that undermine position of minorities who are perceived as ‘others’ and increasingly include new unrecognised minorities. It all ends with national minorities regimes endangered at both national and international level.

Neven Anđelić*

Politički, sigurnosni i pravni izazovi: dileme oko manjinskih pitanja u Europi

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SAŽETAK: Nacionalna država je redefinirana, dok su pitanja koja utječu na njezin današnji oblik ostala nepromijenjena. Pitanja izbjeglica i migracija nisu bila predmetom pravnog reguliranja od 1951. godine na globalnoj razini te od početka novog tisućljeća na razini EU. Nacionalne manjine doživljavaju se kao prijetnja u “novoj” Europi dok su međunarodne organizacije koje bi trebale pomoći državama Srednje i Istočne Europe pod kontrolom Zapada i djeluju primarno u interesu zapadnih država. Na taj način dolazi do osnaživanja i naglašavanja dualnosti. Dojam je da Europska Unija, Vijeće Europe i OESS ignoriraju proces značajnih rasnih, religijskih, kulturnih i civilizacijskih promjena u Europi. Stoga su slabije države nepripremljene i nespremne baviti se manjinskim pitanjima, a posebice pitanjem novih migracija u Europi. Nacionalna suverenost povezana je sa sekuritizacijom manjinskih pitanja, posebice u Srednjoj i Istočnoj Europi. Taj proces na ruku ide etno-nacionalističkim populistima koji ulaze u vlade, koje često stvaraju politički pritisak i ekonomsku nestabilnost potičući tako građane da emigriraju u “staru” Europu. Proces reakcije i antagoniziranja imigranata se ponavlja, a cijela Europa suočena je s problemom koji bi mogle riješiti funkcionalne liberalne demokracije promjenom *modus operandi* međunarodnih organizacija.

KLJUČNE RIJEČI: Manjina, migracija, sigurnost, populizam, nacionalna-država

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