Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 15231
01 March 2021

Preserving national minorities in Europe

Report[1]
Committee on Equality and Non-Discrimination
Rapporteur: Ms Elvira KOVÁCS, Serbia, Group of the European People's Party

Summary

Respect for linguistic, ethnic and cultural diversity, based on the recognition of the fundamental rights to equality and human dignity, is a cornerstone of the system of human rights protection in Europe, and crucial to preserving our pluralistic and inclusive democracies.

Today, however, a number of challenges are endangering the capacity to protect the rights of persons belonging to national minorities in Europe. These include diminishing support for the human rights agenda, intra- and interstate tensions, and at times conflicts, in which minorities are portrayed as a threat to security, and a rise in extreme nationalist discourse and hate speech stigmatising diversity. Broader social, economic or political problems or divisions may aggravate these problems.

Persons belonging to national minorities must be able to participate meaningfully in cultural, social and economic life and in public affairs in the country where they live. Yet both national minorities themselves and societies as a whole are diverse and constantly changing. This creates a need for continuous dialogue between the authorities and minorities.

The report reaffirms the importance of the Framework Convention for the Protection of National Minorities (ETS No. 157) as a crucial human rights instrument. It invites member States to take a series of measures to ensure that its standards are effectively implemented throughout Europe and that the convention mechanism itself remains strong.

1. Reference to committee: Doc. 14553, Reference 4390 of 25 June 2018.

Contents **Page**

A. Draft resolution 3
B. Draft recommendation 6
C. Explanatory memorandum by Ms Elvira Kovács, rapporteur 7
1. Introduction 7
2. Working methods, scope and aims of this report 7
3. Legal framework for the protection of minority rights in Europe 8
3.1. Universal standards 8
3.2. European standards 9
4. Current challenges for the substantive protection of minority rights in Europe 10
4.1. The Framework Convention on the Protection of National Minorities is not directly applicable 11
4.2. Perception of minorities as a security threat and re-securitisation of minority rights 11
4.3. Exclusive nation-building and rising nationalism, populism, hate speech and hate crimes 12
4.4. Increasing tensions around the use of minority languages and teaching in and of these languages 12
4.5. Changing media landscapes 13
4.6. Shrinking space for civil society 13
4.7. Diversity within minorities 13
4.8. The need for continuous dialogue and adaptation in constantly changing societies 13
4.9. Building inclusive and democratic societies 14
5. Current challenges regarding the monitoring of the implementation of minority rights under the Framework Convention 15
6. Conclusions 15
Appendix – Specific case-studies examined in the context of this report 17

A. Draft resolution[2]

1. Over twenty-five years ago, in 1995, the Framework Convention for the Protection of National Minorities (ETS No. 157, "the Framework Convention") was opened for signature. This crucial instrument is based on the shared understanding that preserving stability, democratic security and peace in Europe requires protecting national minorities; that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity; and that a climate of tolerance and dialogue must be created in order to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society. Importantly, the Framework Convention also recognises that the protection of the rights and freedoms of persons belonging to national minorities forms an integral part of the international protection of human rights, including the right to full and effective equality.

2. The Framework Convention has been ratified by 39 Council of Europe member States and signed by four more. Since it came into force in 1998, its implementation, through the adoption of important legislative and policy measures, has benefited national minorities in States parties and helped to maintain their linguistic, ethnic and cultural identities.

3. Today, however, a number of challenges are endangering the capacity to protect the rights of persons belonging to national minorities in Europe. Support for the human rights agenda is eroding in many quarters, and attention to minority rights has diminished. Intra- and interstate tensions, and at times conflicts, have shaken the stability of both States and European institutions. This has regrettably led to minorities again at times being perceived, as in the past, as a threat to the security and territorial integrity of States, and to the instrumentalisation for political ends of the rights of persons belonging to national minorities. Increasing tensions have also been observed around the use of minority languages and teaching in and of these languages.

4. In parallel, extreme nationalist discourse, populism, hate speech and hate crime are on the rise throughout Europe, often focusing on exclusive nation-building while stigmatising diversity and targeting anyone who is perceived as different. Such discourse endangers social cohesion and democratic stability, while designating persons belonging to national minorities as scapegoats. These dynamics are often aggravated where broader social, economic or political problems or divisions are present.

5. The Parliamentary Assembly notes that both national minorities themselves and societies as a whole are diverse and constantly changing. Migration flows both within and between States, for example, have had a profound impact on persons belonging to national minorities and on the implementation of their rights. This constant evolution creates a need for continuous dialogue between the authorities and minorities, in order to adapt rapidly to the changing needs of the latter.

6. The Assembly underlines that the persons belonging to national minorities can only exercise their rights effectively where they are able to participate meaningfully in cultural, social and economic life and in public affairs in the country where they live. It is therefore essential to build inclusive and democratic societies, in which persons belonging to minorities have an opportunity to engage actively and to influence decisions that affect them. Changing media landscapes may create new opportunities for expression in minority languages, but also new challenges, and States must ensure that these dynamics do not arbitrarily hinder the freedom of expression of persons belonging to national minorities or their access to information.

7. Given the multiplication of challenges currently faced in the implementation of minority rights in Europe, the Assembly considers that mainstreaming minority rights is crucial to keep minority protection working. The impact of all government policies and decisions on the rights of persons belonging to national minorities, needs to be assessed before they are adopted and implemented. This includes areas that may go beyond the specific provisions of the Framework Convention, such as housing policy or the privatisation of public services, which may indirectly affect the capacity of persons belonging to national minorities to enjoy the collective dimension of their rights.

8. The Assembly reaffirms its support for the Framework Convention. Respect for linguistic, ethnic and cultural diversity, based on the recognition of the fundamental rights to equality and human dignity, is a cornerstone of the system of human rights protection in Europe, and crucial to preserving pluralistic and inclusive democracies. It emphasises the importance of the multilateral monitoring system set up under this convention, and stresses that for the Framework Convention to fulfil its purpose as a living instrument, both institutional commitment from the Council of Europe and political will from its member States are required.

---

2. Draft resolution adopted by the committee on 27 November 2020.

9. In the light of these considerations, the Assembly urges all Council of Europe member States that are not yet parties to the Framework Convention, to complete the process of signing and ratifying it, in line with the Assembly's Recommendation 1766 (2006) "Ratification of the Framework Convention for the Protection of National Minorities by the member States of the Council of Europe" and Resolution 2262 (2019) "Promoting the rights of persons belonging to national minorities", and encourages those not parties to the European Charter for Regional or Minority Languages (ETS No. 148) also to ratify this instrument.

10. The Assembly calls on States Parties to the Framework Convention to strengthen their efforts to promote it and implement it in practice, and in particular, to:

10.1. ensure that the standards enshrined in the Framework Convention are effectively incorporated into domestic legislation and given effect in practice, by refraining from withdrawing already acquired minority rights and by completing wherever necessary the adoption of comprehensive legislative frameworks for the protection of the rights of persons belonging to national minorities, in full consultation with their representatives;

10.2. consider, in the case of States Parties which have ratified the Framework Convention while entering restrictive declarations and/or reservations, withdrawing these declarations and/or reservations;

10.3. foster pluralistic and inclusive societies, in which persons belonging to national minorities are able to express both their multiple identities and their loyalty to democratic constitutional principles, thereby contributing to a Europe united in diversity;

10.4. strengthen their dialogue with persons belonging to national minorities and place it on a continuous footing, notably by setting up permanent consultation mechanisms, where this has not yet been done, bearing in mind that the composition and functioning of such structures must enable the full and effective participation of national minorities on all issues that may affect their rights, and afford them the opportunity to influence outcomes tangibly;

10.5. ensure that policies and practices with respect to national minorities take into account the diversity existing within minorities and the intersectional issues that may affect them, in order that all persons belonging to national minorities may enjoy full and effective equality as guaranteed by the Framework Convention;

10.6. seriously consider the threats posed by hate speech promoted by State actors as well as parliamentarians, which dehumanises persons belonging to minorities and makes them more vulnerable to stigmatisation, discrimination and violence, call on representatives of the State and politicians to refrain from hate speech and instigate additional measures to combat hate speech or hate crimes perpetrated against persons belonging to minorities;

10.7. systematically consult and engage with the representatives of national minorities on the best means of implementing the recommendations addressed to the State Party under the monitoring mechanism of the Framework Convention, and implement them rapidly on the basis of these consultations;

10.8. consider developing indicators to help measure and evaluate outcomes in this field, in particular as regards societal integration;

10.9. develop additional outreach strategies for communicating about the Framework Convention and disseminating to the public the findings of its Advisory Committee, including in the State language and the languages of national minorities; these strategies should take full advantage of the increasing availability of new technologies.

11. It further calls on States that are not Parties to the Framework Convention to implement measures in line with those set out in paragraphs 10.2, 10.3, 10.4 and 10.5 above, in order to strengthen their own dialogue with persons belonging to national minorities within their territory and promote their full and effective equality.

12. The Assembly invites all member States to strengthen their multilateral dialogue on the protection of the rights of minorities and place it on a more continuous footing. It recalls in this context the important role that can also be played by complementary mechanisms existing in this field, notably the conflict prevention role of the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe. Given the close relationship that exists between respect for human rights and the proper functioning of the rule of law and of democratic institutions, existing synergies with the European Union in this field could also be strengthened.

13. The Assembly invites member States to explore all means to ensure that Council of Europe standards are effectively incorporated into domestic legislation and implemented in practice, by assisting European institutions to develop their regulation with a view to safeguarding Europe's national minorities.

14. Finally, bearing in mind that the rights of persons belonging to national minorities cannot be properly implemented without a strong framework in place for protecting and promoting full and effective equality, the Assembly urges those member States that are not yet parties to Protocol No. 12 to the European Convention on Human Rights (ETS No. 177) to complete the process of signing and ratifying it without delay.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution … (2021) "Preserving national minorities in Europe", in which it calls on Council of Europe member States to strengthen their commitment to the Framework Convention of the Protection of National Minorities (ETS No. 157, "the Framework Convention") and to implementing its standards, which form an integral part of the international protection of human rights.

2. The Assembly recalls that dialogue between the representatives of national minorities and the authorities, as well as between the authorities and the monitoring mechanism set up under the Framework Convention, is a crucial means of achieving the aims of this convention, and emphasises the importance of continuous multilateral engagement in this field.

3. The Assembly therefore calls on the Committee of Ministers to:

3.1. encourage States Parties to invest renewed efforts in implementing fully the recommendations of Council of Europe monitoring bodies as a way of preserving linguistic, ethnic and cultural diversity and building societies in which minorities are not merely tolerated but respected and perceived as an equal and integral part;

3.2. step up its efforts to ensure the rapid adoption of its resolutions to conclude the monitoring cycle with respect to each State Party, in accordance with the procedure set out in Resolution CM/Res(2019)49 on the revised monitoring arrangements under Articles 24 to 26 of the Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers on 11 December 2019;

3.3. examine ways to ensure regular and formal co-operation between the Advisory Committee of the Framework Convention and the European Commission for Democracy through Law (Venice Commission) when assessing the compliance with Council of Europe norms and standards of domestic legislation related to the protection of national minorities in member States;

3.4. consider establishing a more multi-faceted co-operation with civil society through the establishment of a public online platform that would enable more data to be collected and would allow serious concerns about the rights of persons belonging to national minorities to be detected at an earlier stage, along similar lines to the Platform for the Protection of Journalism and Safety of Journalists already put in place by the Council of Europe.

3. Draft recommendation adopted by the committee on 27 November 2020.

C. Explanatory memorandum by Ms Elvira Kovács, rapporteur

1. Introduction

1. Twenty-five years ago, on 1 February 1995, the Council of Europe's Framework Convention for the Protection of National Minorities (ETS No. 157, "the Framework Convention") was opened for signature. This instrument, born following years of dialogue between the Committee of Ministers and the Parliamentary Assembly of the Council of Europe,[4] is based on the understanding that protecting national minorities is "essential to stability, democratic security and peace" in Europe; that "a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity"; and that "the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society". Crucially, the Framework Convention also expressly recognises that the protection of the rights and freedoms of persons belonging to national minorities forms an integral part of the international protection of human rights.[5]

2. Today, support for the human rights agenda is eroding in many quarters. After the strong focus on minorities at the time of the adoption of the Framework Convention, attention to minority rights has diminished in more recent years. The message may still be the same but there is a challenge to communicate it better in an environment marked by diminishing support from States and also from some NGOs whose focus may have shifted away from minority issues. This requires new ways of thinking from all of us.

3. In parallel, we have been witnessing, throughout Europe, a rise in extremist discourse, often directed at anybody who is perceived as "different".[6] Such discourse endangers social cohesion and democratic stability while using members of minority communities as scapegoats. Hateful messages are falling on particularly fertile ground in those societies faced with wider social, economic or political problems or divisions.

4. Faced with the increasingly deliberate use of rhetoric stigmatising diversity and the frequent instrumentalisation of the rights of minorities for political ends, it is important to reaffirm that respect for linguistic, ethnic and cultural diversity is a cornerstone of the system of human rights protection in Europe. It is time to go back to fundamentals, to human dignity, inclusion, respect and recognition of minority rights in a changing environment, and to consider how understandings of equality and non-discrimination may interact with overall minority discourse.

5. Different languages, cultures and nations interact with and influence each other and this brings constant development, generates new ideas, and contributes significantly to the intellectual development of Europe.

6. Preserving linguistic, ethnic, cultural and national diversity also plays an important role in maintaining European peace and stability. Ethnic tensions represent a high risk for stability, and no European country is ethnically totally homogeneous. This makes it even more important for international bodies to keep this issue as a standing item on their agendas and not to deal with it only if somewhere the accumulated tension is close to breaking point or has already broken out.

2. Working methods, scope and aims of this report

7. I believe that the protection of minority cultures and languages needs to be analysed as part of a broader context in which a Europe without borders promotes minority policies whose goal is to allow people to live their identities and preserve their culture, traditions and languages without obstruction. "Unity through diversity" should be realised in Europe as a whole, as well as within its individual countries.

8. An essential part of the overall context is the implementation of the Framework Convention, which has benefited national minorities in States parties and helped to maintain their linguistic, ethnic and cultural identities. At the same time, as the monitoring work and regular activity reports of the Advisory Committee on the Framework Convention make clear, many challenges remain across the 39 States Parties in turning the principles enshrined in this instrument into lived realities for persons belonging to national minorities, and new challenges are constantly arising. I thus consider it important to look at the main overall trends in the

4. For further details, see the Explanatory Report to the Framework Convention for the Protection of National Minorities.
5. Preamble to and Article 1 of the Framework Convention.
6. See *inter alia* Assembly Resolution 2275 (2019) "The role and responsibilities of political leaders in combating hate speech and intolerance".

implementation of the Framework Convention, including both existing good practices that could be applied in other countries and the main difficulties experienced in its implementation, as well as how the Assembly can contribute to addressing these challenges.

9. Meanwhile, as the Assembly has previously noted, the fact that eight Council of Europe member States are still not parties to the Framework Convention weakens the protection it can provide. It creates a patchwork in which persons belonging to national minorities are unequally recognised and protected, and in which the provisions of the convention that are designed to promote equality, tolerance and intercultural dialogue for the benefit of all members of society are not applicable throughout the continent.[7]

10. Through a series of hearings and exchanges of views held during the course of preparation of this report, the committee has benefited from direct input from the Council of Europe Commissioner for Human Rights, the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe (OSCE), and the UN Special Rapporteur on Minority Issues, as well as from a former President of the Advisory Committee on the Framework Convention and its current Acting President.[8] I wish to thank all of these speakers for their highly pertinent observations. I also wish to thank the Venice Commission for its rapid response to the committee's request of 4 December 2019 for its opinion on recent changes to Latvian legislation on education in minority languages.[9]

11. The committee also authorised me to carry out fact-finding visits to Ukraine and the United Kingdom (Wales) in order to explore in more depth issues of relevance to my report. Due to the current public health situation in Europe, it was not possible to carry out these visits on the spot. However, I was pleased to be able to hold bilateral online meetings with government and civil society interlocutors in Ukraine and Wales, in the week of 2-6 November 2020. Although they took place at a very late stage in the preparation of the report, they enabled me to gather relevant first-hand information and engage in direct dialogue with national stakeholders. The discussions held were thought-provoking and extremely rich, and I have summarised my conclusions in an appendix to this report.

12. The recommendations formulated in the draft resolution and recommendation aim at ensuring a more consistent implementation of the legal and institutional framework for respecting and protecting the human rights of persons belonging to minorities, which is essential to peace and stability in Europe, and preserving the linguistic, ethnic and cultural diversity of the continent.

3. Legal framework for the protection of minority rights in Europe

3.1. Universal standards

13. A number of United Nations instruments explicitly recognise or contribute to protecting the rights of persons belonging to minorities, in particular Article 27 of the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; and the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

14. At the hearing held by our committee on 4 December 2019, Mr Fernand de Varennes, United Nations Special Rapporteur on Minority Issues, underlined the important link between international standards on the protection of minorities and the right to equality and non-discrimination. He stressed that all human rights that could protect minorities should be understood as minority rights. Thus, depriving persons of their nationality because they belong to certain religious or ethnic minorities can be understood as a breach of the general prohibition on discrimination. The freedom of religion, the right to equal treatment without discrimination based on religion and the freedom of association are rights held by all, but they are especially important for persons belonging to religious minorities. In some situations, the right to equal treatment without discrimination could

---

7. See *inter alia* Assembly Resolution 2262 (2019) "Promoting the rights of persons belonging to national minorities". Four States – Belgium, Greece, Iceland and Luxembourg – have signed but not ratified the Framework Convention, and four States – Andorra, France, Monaco and Turkey – have neither signed nor ratified it.

8. The committee held exchanges of views with Mr Lamberto Zannier, OSCE High Commissioner on National Minorities, on 23 January 2019, during the January 2019 part-session of the Assembly, and with Mr Fernand de Varennes, UN Special Rapporteur on Minority Issues, together with Ms Petra Roter, former President of the Advisory Committee on the Framework Convention, on 4 December 2019, in Paris. It held an exchange of views with the Commissioner for Human Rights on 29 January 2020, during the January 2020 part-session of the Assembly, in which issues related to the protection of the rights of persons belonging to national minorities were discussed. Finally, on 11 September 2020, it held a hearing via videoconference with Ms Marie Hagsgård, the Acting President of the Advisory Committee.

9. Venice Commission, Latvia: Opinion on the recent amendments to the legislation on education in minority languages, adopted on 18 June 2020 by a written procedure replacing the 123rd plenary session, CDL-AD(2020)012.

also place an obligation on States to provide public education in minority or indigenous languages. He emphasised that from the United Nations perspective, minority rights are not merely about protecting cultural or linguistic diversity but are human rights, held by individuals.

3.2. European standards

15. Many of the individual rights set out under the European Convention on Human Rights (ETS No. 5) and its Protocols are of particular importance to persons belonging to minorities, notably Articles 9 (freedom of thought, conscience and religion), 10 (freedom of expression), 11 (freedom of assembly and association) and 14 (prohibition of discrimination in the enjoyment of the rights and freedoms set forth in the Convention, which inter alia expressly prohibits discrimination on the ground of "association with a national minority"[10]); Article 2 of Protocol No. 1 (right to education); and Protocol No. 12 (general prohibition of discrimination, covering the same grounds as Article 14)[11].

16. The 1990 Copenhagen Document of the Conference on Security and Cooperation in Europe (CSCE, now the OSCE) "reaffirm[ed] that respect for the rights of persons belonging to national minorities as part of universally recognised human rights is an essential factor for peace, justice, stability and democracy" and set out a series of rights that persons belonging to national minorities enjoy, notably in order "freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to develop their culture in all its aspects, free of any attempts at assimilation against their will."[12] The Copenhagen Document remains a key statement of principles, and has been followed by a series of thematic recommendations and guidelines that explore in more depth the real-life implications of these principles.[13] However, their translation into practice is not formally monitored. In 1992, the OSCE participating States created the position of High Commissioner on National Minorities. As has often been emphasised, the High Commissioner does not work on behalf of (for) national minorities, but on national minorities; their role is to act not as an advocate for national minorities but as an instrument of conflict prevention, notably through early warning and early action mechanisms.[14]

17. The 1992 European Charter for Regional or Minority Languages (ETS No. 148), which sets out a series of commitments that States can take on in order to protect these languages, also recognises that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the UN International Covenant on Civil and Political Rights**.**[15]

18. The 1995 Framework Convention (ETS No. 157) represented a crucial step forward, not only in setting out the full range of rights of persons belonging to national minorities, but also in establishing a multilateral mechanism entrusted with monitoring the implementation of these standards by States Parties. Since the adoption of that convention, the importance of European commitment to the protection of national minorities and cultural diversity has been repeatedly reiterated by the Council of Europe's member States, for example in the Warsaw Declaration (Third Summit of Heads of State and Government of the Council of Europe, Warsaw, 16-17 May 2005).

19. The Eastern European countries which joined the Council of Europe in the 1990s accepted the obligations incumbent on all member States under the Statute, to comply with the principles of pluralist democracy and the rule of law. They entered into a number of specific commitments, which they agreed to honour within specified deadlines, including to conduct policy towards minorities according to the principles

---

10. This ground of discrimination appears rarely to have been explicitly invoked before the Court; the discrimination aspects in cases concerning persons belonging to national minorities where violations of Articles 2 or 3 of the Convention have been alleged have often been dealt with as cases of racism.
11. For a recent case examining the rights of persons belonging to national minorities through the prism of Article 1 of Protocol No. 12 to the Convention, and referring extensively to the Framework Convention, see the Court's judgment (finding no violation) in Ádám and others v. Romania, Fourth Section, 13 October 2020 (not yet final at the time of drafting this report), applications No. 81114/17 and 5 others.
12. Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990.
13. The Hague Recommendations regarding the Education Rights of National Minorities (1996); The Oslo Recommendations regarding the Linguistic Rights of National Minorities (1998); The Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999); Guidelines on the Use of Minority Languages in the Broadcast Media (2003); Recommendations on Policing in Multi-Ethnic Societies (2006); The Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (2008); The Ljubljana Guidelines on Integration of Diverse Societies (2012); The Graz Recommendations on Access to Justice and National Minorities (2017); The Tallinn Guidelines on National Minorities and the Media in the Digital Age (2019).
14. CSCE Helsinki Document, "The Challenges of Change", 10 July 1992; van der Stoel M., "The role of the CSCE High Commissioner on National Minorities in CSCE Conflict Prevention", *Studia Diplomatica*, 1994, 47(4) p. 59-70.
15. Preamble to the Charter.

set forth in Assembly Recommendation 1201 (1993). Following the entry into force of the Framework Convention in 1998, its signature and ratification within a year from the time of accession also became a fundamental requirement.

20. Under the Framework Convention, minority rights are granted at the individual level to each person belonging to a national minority, who is free to choose to be treated or not to be treated as such without disadvantage. It is further specified in Article 3.2 of the Framework Convention that minority rights may be exercised "individually as well as in community with others". In fact, a number of rights only make sense if exercised in community with others, and the enjoyment of some rights presupposes the presence of or even formal association with others. Minority rights therefore have an individual, a social and a collective dimension.[16]

21. Both the Preamble to the Framework Convention and its Article 5 recognise the need to protect the identity of persons belonging to national minorities. Several provisions (Articles 7 to 15) set out a framework for how to apply generally applicable human rights such as those set out in the Convention (see above) to persons belonging to national minorities. Others set out rights that are of more specific relevance to persons belonging to national minorities (Articles 16 to 18).

22. At the same time, the Framework Convention situates minority rights squarely within a broader equality and non-discrimination framework. It recognises that specific measures may be needed to promote the full and effective equality in society of persons belonging to national minorities (Article 4.2) and emphasises the importance of encouraging a spirit of tolerance and intercultural dialogue and of taking effective measures to promote mutual respect, understanding and co-operation amongst all persons living on the territory of the State (Article 6).

23. The Parliamentary Assembly of the Council of Europe and the European Parliament have adopted in recent years a number of resolutions and reports on the protection of minorities, which provide important guidance as to the standards that can contribute to ensuring the preservation of identity.[17]

24. It is important to note, however, that neither the conventions of the Council of Europe in the field of minority rights, nor the soft law instruments of the Parliamentary Assembly, although compulsory in theory, are directly enforceable in practice. This is why it is urgent and necessary in my view to find new ways to ensure that the above standards are effectively incorporated into domestic legislation and implemented in practice, by assisting European institutions to develop their regulation with a view to safeguarding Europe's linguistic, ethnic, cultural and national diversity.

4. Current challenges for the substantive protection of minority rights in Europe

25. In the past twenty years, the implementation of the Framework Convention has benefited national minorities in States parties and helped to maintain their linguistic, ethnic and cultural identity. However, a number of challenges are currently endangering the capacity to protect minority rights through the tools developed in the United Nations and Europe in the 1980s and 1990s. In particular, the stability of both States and European institutions has been shaken in recent years by intra- and interstate tensions, and at times conflicts. Migration flows have also had a profound impact, both directly and indirectly, on persons belonging to national minorities and on the implementation of minority rights as set out in the Framework Convention.[18]

26. In addition, the Covid-19 pandemic has thrown into sharp relief the vulnerability of persons belonging to national minorities as they have frequently faced discrimination, hate speech, stigma, a lack of information in minority languages and unequal access to education following the suspension of classes in schools and of

16. ACFC Thematic commentary No. 4 "The Framework Convention: a key tool to managing diversity through minority rights", ACFC/56DOC(2016)001.
17. See notably Parliamentary Assembly: Resolution 1334 (2003) "Positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe", Recommendation 1623 (2003) "Rights of national minorities", Recommendation 1735 (2006) "The concept of 'nation'", Recommendation 1766 (2006) "Ratification of the Framework Convention for the Protection of National Minorities by member States of the Council of Europe", Resolution 1832 (2011) "National sovereignty and statehood in contemporary international law: the need for clarification", Resolution 1985 (2014) "The situation and rights of national minorities in Europe", Resolution 2196 (2018) "The protection and promotion of regional or minority languages in Europe" and Resolution 2262 (2019) "Promoting the rights of persons belonging to national minorities"; European Parliament: Resolution of 7 February 2018 on protection and non-discrimination with regard to minorities in the EU Member States (2017/2937(RSP)) and Resolution of 13 November 2018 on minimum standards for minorities in the EU (2018/2036(INI)).
18. Advisory Committee Activity Report 2018.

pre-school education during lockdowns.[19] In order to protect minorities, governments need to ensure that measures that they take in response to such crises do not undermine social cohesion, but actively support it.[20]

27. In this chapter, I examine the major challenges to minority rights that have emerged in recent years.

4.1. The Framework Convention on the Protection of National Minorities is not directly applicable

28. Widely differing national situations as regards national minorities – for example the size, dispersion across the territory, and overall numbers of minorities – as well as differences between the situations of different national minorities within any given State mean that it is impossible to design one-size-fits-all solutions for effectively protecting the rights of persons belonging to national minorities. This is why the Framework Convention was conceived from the outset as, precisely, a framework, reflecting its flexibility and the scope for States to translate some of its provisions into their domestic law in a manner that is adapted to the specific situation within their territory.[21]

29. Legislation is therefore required to give its provisions effect. The Advisory Committee has repeatedly welcomed the progress made by States Parties in translating the principles set out by the convention into domestic legal systems.[22] But experience has shown that bringing legislation into line with international instruments is not sufficient to ensure the effective implementation of minority rights, especially where mindsets have not changed and minorities are still perceived as a threat (see further below). Often, the problem is that existing legal frameworks and agreements are not operationalised and there is no supervisory body to ensure enforcement at national level. The fact that laws are enacted and infrastructures set up does not mean that they are properly (or at all) implemented. Minority communities need more than formal equality: they need respect, recognition and continuous support, which is adapted to their needs, sustainable and foreseeable.[23] Sometimes the problem lies in insufficient implementation or application of regulations; in other cases, there is a need for additional regulation of specific issues arising in specific areas.

30. Moreover, because the Framework Convention sets out overarching principles rather than specific obligations, little can be achieved in the absence of genuine dialogue and good will, an issue explored further below.

4.2. Perception of minorities as a security threat and re-securitisation of minority rights

31. The past few years have seen an increasingly worrying trend in which minorities are portrayed as potentially, or by definition, disloyal to the State where they live – sometimes even as foreign agents – and, as such, a threat to security. This leads States to deny persons belonging to national minorities some rights linked to their identity (for example, freedom of association and the right to learn their language) and tends to create a hostile environment for these persons. This in turn can feed calls for greater autonomy, and sometimes secession. In parallel, this dynamic has also tied in with increasing concerns about terrorism in some States, heightening suspicions about the existence of potential perpetrators of terrorist acts within society.[24]

32. As a result, there has been a clear trend towards the re-securitisation of minority issues – exactly the dynamic that the Framework Convention was intended to overcome, as States Parties to the convention have recognised the need to ensure the full and effective equality of persons belonging to national minorities, in law and in practice. As the Advisory Committee has repeatedly emphasised, it is the implementation of minority rights, rather than their denial, that provides the best guarantee of peace, stability and democratic security.

---

19. Advisory Committee, Statement on the Covid-19 pandemic and national minorities, adopted on 28 May 2020; Committee of Experts on the European Charter for Regional or Minority Languages, "Covid-19 crisis: vital that authorities also communicate in regional and minority languages", 30 March 2020.
20. OSCE High Commissioner on National Minorities, "Streamlining diversity: Covid-19 measures that support social cohesion", 17 April 2020.
21. Advisory Committee, Thematic Commentary No. 4, *op. cit*., Introduction.
22. Advisory Committee Activity Reports 2020, 2018, 2016, 2014.
23. Presentation of Ms Marie Hagsgård, Acting President of the Advisory Committee, 11 September 2020.
24. Advisory Committee Activity Reports 2018, 2016, 2014. On the perceived threat of secessionism, see for example "President Iohannis accuses Transylvanian Hungarians of secessionism", *Transylvania Now*, 29 April 2020.

4.3. Exclusive nation-building and rising nationalism, populism, hate speech and hate crimes

33. The above re-securitisation dynamic is coupled with growing nationalistic populism which demonises and scapegoats minorities in ways dangerously reminiscent of the past. The most marginalised and vulnerable groups – those who most need human rights protection – are the groups most targeted by hate speech, hate crime, attacks based on their ethnic origin, denial of citizenship and restriction of access to education in minority languages – all of which are accelerating.[25] Persons belonging to minorities who are in a situation of socio-economic disadvantage are moreover often portrayed as a burden on society or as obstacles to the achievement of greater prosperity for all, heightening their vulnerability to attack.[26] This dynamic particularly affects Roma, as anti-Gypsyism remains rife both in public (including political) discourse and in the form of physical attacks on Roma and Traveller communities and individuals, and the segregation of these communities continues to be tolerated. Again, the Covid-19 pandemic cast a spotlight on these issues, and in some cases aggravated them.[27] Often, political representatives fail to condemn hate-based rhetoric, or even play an active part in it.[28]

34. The Advisory Committee has highlighted that while nationalism and populism are distinct phenomena, they are both based on a homogenising ideology that seeks to unite and protect an (imaginary) "us" from an (imaginary) "them". In such a context, increasing polarisation of societies along ethnic and linguistic lines can often be observed. Extreme nationalism and populism can also lead to the development of exclusive nation-building policies, in which the nation is conceived as monoethnic, monolinguistic, monocultural, mono-religious and as having a single history. This can lead to violations of the principle of free self-identification, including the right to express multiple identities. Even more dangerously, it reinforces the perception of persons belonging to national minorities as a threat, since they seek to express different identities. It also negatively affects language policies, as outlined below.[29]

4.4. Increasing tensions around the use of minority languages and teaching in and of these languages

35. As the Council of Europe Commissioner for Human Rights has stressed, language is often a cornerstone of people's identity. It is not only a means of communication but also carries symbolic weight. Preventing people from learning and using their languages can constitute a violation of their individual rights; at the same time, it can negatively affect communities as a whole. Precisely because of its symbolic value, language can become a highly charged issue, and unfortunately it is at times instrumentalised, escalating tensions and heightening polarisation in societies. Yet language policies can and should be designed so as to accommodate diversity, protect minority rights and defuse tensions.[30]

36. Efforts to promote the State language – which mostly pursue the legitimate aim of promoting integration and societal cohesion – may at times overstep the bounds of proportionality. Stringent proficiency requirements in the State language in order to have access to certain professions or to the civil service, decreasing provision of teaching in and of minority languages, restrictions on the right to sit school exams in these languages, the prohibition of public signage in minority languages and restrictions on the languages in which election campaign material can be published have all given rise to concern over recent years. Such issues have frequently been examined by the Advisory Committee in its monitoring work, but also by the Venice Commission.[31] The Covid-19 pandemic has also recently cast a spotlight on the importance of the use of minority languages in health care settings, as well as in social institutions.[32] Questions around minority languages are analysed further below, in the appendix to this report outlining key lessons that can be learned from the situations in Ukraine, Latvia and Wales.

---

25. Presentation of Mr Fernand de Varennes, UN Special Rapporteur on Minority Issues, 4 December 2019.
26. Advisory Committee Activity Report 2014.
27. "Covid-19: Rapporteur denounces discrimination against Roma and Travellers", statement of Mr Frantisek Kopriva, (Czech Republic, ALDE), rapporteur on Discrimination against Roma and Travellers in the field of housing, 27 March 2020.
28. Presentation of Ms Marie Hagsgård, *op. cit.*; Advisory Committee Activity Report 2020.
29. Advisory Committee Activity Report 2018.
30. Commissioner for Human Rights, "Language policies should accommodate diversity, protect minority rights and defuse tensions", Human Rights Comment, 29 October 2018.
31. Advisory Committee Activity Reports 2018, 2016, 2014; Venice Commission opinions (Ukraine / Latvia).
32. "Covid-19 response: using minority languages during the pandemic", video interview with the Chair of the Committee of Experts of the Language Charter, April 2020.

4.5. Changing media landscapes

37. Insufficient media production in minority languages in the States where minorities live has been a recurring theme in the monitoring of the implementation of the Framework Convention.[33] Limits placed on freedom of expression may also affect minorities.[34] Such factors can prompt persons belonging to national minorities to seek alternative information sources, resulting in a divided media landscape and parallel media realities – a trend that can significantly hinder efforts to achieve integrated societies.[35] At the same time, as was pointed out to me in my meetings with interlocutors from Wales (see appendix), the increasing digitalisation of media can help to make more diverse content more affordable to produce and to access, meaning that it is easier to cater to the diverse needs of persons belonging to national minorities, including young people and those living in urban and rural areas. However, elderly persons belonging to national minorities, as well as those living in particularly remote regions, may face new barriers in accessing digital media, which need to be overcome.

38. The development of social media, which has facilitated communication and contacts in many ways that are beneficial to persons belonging to national minorities, has at the same time opened up more space for hate speech, creating new challenges for the protection of minority rights.[36]

4.6. Shrinking space for civil society

39. There have been signs that shrinking space for civil society in some parts of Europe are making it increasingly difficult for persons belonging to national minorities to maintain their non-governmental organisations or register new ones.[37] The re-securitisation of minority issues, and the portrayal of minorities as a threat to society, exacerbate these difficulties. This is especially the case where new, restrictive legislation leads such NGOs to be classed as "foreign agents" if they receive funds from abroad.[38] It creates additional obstacles for these associations, which are often already struggling as they rely on short-term, precarious funding to carry out their activities.[39]

4.7. Diversity within minorities

40. All too often, national minorities (like many other minority groups) are assumed to be monolithic. For the authorities, taking account of the diversity within minorities, notably as regards gender, age, socio-economic status and urban–rural divides, may make communicating with them, accommodating their needs and overcoming the obstacles they may face in exercising their rights especially complex.[40] Sometimes ensuring access to minority rights needs to go hand in hand with addressing needs for infrastructure such as access to high-speed internet. For Roma, in particular where they live in segregated areas, enjoyment of minority rights may be dependent on improvement of access to more basic needs such roads, housing and schools. However, it is equally wrong to assume that all Roma live in poverty; such assumptions can moreover have the effect of feeding anti-Gypsyist stereotypes.[41]

4.8. The need for continuous dialogue and adaptation in constantly changing societies

41. As the Advisory Committee has emphasised, "transparency and dialogue are central tenets of the Framework Convention, as communication creates vectors for building understanding, mutual respect and trust, without which diversity becomes a source of friction instead of a cause for celebration."[42] Having effective, permanent and sufficiently representative consultation mechanisms in place, in which minorities can participate satisfactorily and in which they have confidence, is crucial in order to ensure that issues affecting

---

33. See for example Advisory Committee, Fourth Opinion on Germany, ACFC/OP/IV(2015)003, paragraphs 78-84.
34. See for example Advisory Committee, Fourth Opinion on Azerbaijan, ACFC/OP/IV(2017)006, paragraphs 50-52.
35. Advisory Committee Activity Report 2018; Fourth Opinion on Bosnia and Herzegovina, ACFC/OP/IV(2017)007, paragraph 86.
36. Presentation of Ms Petra Roter, former President of the Advisory Committee on the Framework Convention, 4 December 2019.
37. Advisory Committee Activity Report 2020.
38. Advisory Committee, Fourth Opinion on the Russian Federation, ACFC/OP/IV(2018)001, paragraphs 76-80, 83.
39. Advisory Committee Activity Report 2018; presentation of Ms Marie Hagsgård, *op. cit*.
40. Advisory Committee Activity Report 2018; Fourth Opinion on Armenia, ACFC/OP/IV(2016)006, paragraphs 51-54; Fourth Opinion on Poland, ACFC/OP/IV(2019)003, paragraph 168.
41. Advisory Committee Activity Report 2018; Fourth Opinion on Romania, ACFC/OP/IV(2017)005, recommendations for immediate action; Third Opinion on Bulgaria, ACFC/OP/III(2014)001, paragraph 50.
42. Advisory Committee Activity Report 2014.

persons belonging to national minorities can be dealt with in a way that allows the full variety and complexity of situations to be adequately addressed. However, the lack of such a consultative mechanism has been a recurring finding in the Advisory Committee's monitoring work.[43]

42. It also needs to be recognised that the needs of minorities may shift over time, due to demographic changes, migration from rural to urban areas, increasing diversity within families (so-called "mixed marriages"), and increasing diversity within society as a whole, notably due to international migration flows. Effective data collection, allowing for free self-identification including multiple ethnic, linguistic and/or religious affiliations, is needed in order to be able to understand and respond satisfactorily to changing needs.[44]

43. Finally, societies themselves are rapidly changing, partly as a result of migration flows (both within and between States) and partly as a result of other factors, such as increasing digitalisation. The latter can provide new opportunities for communication and education in minority languages, but may also exclude some persons belonging to national minorities, for instance the elderly or those living in remote areas without the necessary infrastructures. These dynamics necessarily impact human rights, including the rights of persons belonging to national minorities. Implementing the Framework Convention is thus not a finite task but a continuous process, requiring constant adaptation – just like the European Convention on Human Rights, the Framework Convention needs to be understood as a living instrument in order to provide real and adequate protection to persons belonging to national minorities. As the Advisory Committee has underlined, the question is how best to ensure that the principles of the convention are upheld and its goals achieved, in the long term as well as the short term, and regardless of changes in governments and their political priorities.[45]

4.9. Building inclusive and democratic societies

44. The twin challenge for the authorities in States with diverse populations is how to build societies in which minorities are not merely tolerated but respected and perceived as an equal and integral part. This issue was examined in depth by the Advisory Committee in its Thematic Commentary No. 4 on the Framework Convention.[46] The question is how to achieve the full and effective (not merely formal) equality of persons belonging to national minorities.[47] In order to achieve genuine equality in practice, minority rights need to be mainstreamed across all fields of government action, and government policies in a wide range of areas assessed as regards their impact on the individual and collective dimensions of minority rights – an issue discussed in particular in my meetings with interlocutors in Wales (see further below).

45. Mutual respect and empowerment through the active participation of all members of society in political, social and cultural life are also crucial. These issues were examined extensively by the Advisory Committee in its Thematic Commentary No. 2, which explores and develops the central thesis that "the effective participation of persons belonging to national minorities in public life is essential to ensure social cohesion and the development of a truly democratic society" and views the extent to which persons belonging to national minorities participate in public life as a key indicator of the level of pluralism and democracy of a society.[48]

46. The authorities must also constantly send the clear message that all members of society stand to benefit from living in an integrated society, rather than a divided one. It must be clear that the goal is not to assimilate everyone into a homogeneous mass but to ensure inclusion and non-discrimination for all individuals, in all fields of daily life.

47. The defining element of an integrated society is, in other words, not the sameness of its citizens but their shared sense of belonging. This is the best guarantee of the peace, stability and democratic security that everyone – whether they belong to a minority or to the majority – needs in order to flourish.

---

43. Presentation of Ms Marie Hagsgård, *op. cit.*; Advisory Committee Activity Report 2020.
44. Advisory Committee Activity Report 2018.
45. Advisory Committee Activity Reports 2018 and 2014.
46. Advisory Committee, Thematic Commentary No. 4 (2016), *op. cit*. See also OSCE High Commissioner on National Minorities, Ljluljana Guidelines on Integration of Diverse Societies, The Hague, November 2012.
47. Presentation of Ms Petra Roter, *op. cit*.
48. Advisory Committee, Thematic Commentary No. 2 on "The Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs", ACFC/31DOC(2008)001, paragraphs 1 and 8.

5. Current challenges regarding the monitoring of the implementation of minority rights under the Framework Convention

48. Above, I have pointed to the major challenges faced by both States and persons belonging to national minorities in ensuring full respect for minority rights in today's Europe, in particular as these rights are set out in the Framework Convention. In addition to these substantive issues, however, the monitoring system of the Framework Convention has itself also been under some degree of strain.

49. First, States' overall commitment towards the post-World War II multilateral human rights architecture appears to be weakening. It is moreover all too easy for States to ignore their obligations under United Nations and Council of Europe instruments on minority rights when they are subjected to monitoring only once every five years.[49]

50. Second, a number of factors, including increasing security concerns in many States, have led to a deterioration in both bilateral and multilateral co-operation in general. Such factors have not only affected the implementation of the Framework Convention within member States, as described above, but have also led to what the Advisory Committee has described as "stronger and more frequent ad hoc bilateralisation of minority issues".[50] While free and peaceful cross-border contacts can and frequently do play a positive role in the preservation of the rights of persons belonging to national minorities,[51] the strength of the monitoring process set up under the Framework Convention lies in its multilateral, rather than its bilateral nature. Under this mechanism, States Parties are accountable to each other collectively, and should rely on collective, rather than bilateral, supervision of the Framework Convention. Unfortunately, the increasing length of time taken between the adoption of the Advisory Committee's opinions and agreement by the Committee of Ministers on resolutions completing the monitoring cycle reflects a growing trend towards re-bilateralising minority concerns.

51. In response to these dynamics, the Advisory Committee has in recent years placed an increasing focus on maintaining an ongoing dialogue with States Parties, through the introduction of a new confidential dialogue with the authorities prior to the final adoption of its opinions,[52] and through carrying out follow-up activities, involving representatives of both the authorities and minorities, wherever possible.[53] New technologies also provide us with new means of keeping in touch with the situation of minorities in member States, and responding to difficulties as they arise. There should be no hesitation in mobilising such technologies to help strengthen the protection of the rights of persons belonging to national minorities.

6. Conclusions

52. In today's Europe, societies are dynamic and constantly evolving – as indeed they have been throughout history. It is time to re-consider traditional notions of national minorities and understandings of non-discrimination. In the 21st century environment, equality and human dignity, respect and recognition must be understood as central to the protection of the rights of persons belonging to national minorities.

53. Given the multiplication of challenges currently faced in the implementation of minority rights, mainstreaming minority rights is crucial in order to keep minority protection working. This is exactly the kind of issue that can only be approached at the level of cross-cutting human rights, in particular the right to equality and to be free from discrimination.

54. It is also of the utmost importance to acknowledge the evolving nature of the minority communities that make up Europe. Accommodation of diversity in society requires constant efforts on the part of the authorities, the majority and minorities. Inclusive and democratic societies can only be built, and can only thrive, where all their members are able to participate meaningfully in them, having an opportunity to engage actively in cultural, social and economic life and in public affairs, and to influence decisions that affect them.

55. The Framework Convention for the Protection of National Minorities is a living instrument and is designed to be able to accompany and support the parallel processes of transformation that both societies and minorities are experiencing. Fulfilling the Convention's potential to serve as a living instrument, however, requires both institutional commitment from the Council of Europe and political will from its member States.

---

49. Presentation of Mr Fernand de Varennes, *op. cit*.
50. Advisory Committee Activity Report 2018.
51. Advisory Committee Activity Report 2014.
52. Resolution CM/Res(2019)49 on the revised monitoring arrangements under Articles 24 to 26 of the Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers on 11 December 2019.
53. Presentation of Ms Marie Hagsgård, *op. cit.*; Advisory Committee Activity Report 2020.

56. The Framework Convention also serves as an indirect benchmark that helps the European Commission to evaluate the implementation of minority rights by potential candidates and candidate States. This is why I consider it important to strengthen co-ordination across all European institutions in order to help develop synergies between programs and initiatives. Strengthening the links between the European Union and the Council of Europe in the field of minority rights would also help to show how respect for human rights is related to the proper functioning of the rule of law and functioning of democratic institutions.

57. Furthermore, in order to protect minority rights effectively in today's Europe, we need to find new ways to ensure that the standards enshrined in the Framework Convention are effectively incorporated into domestic legislation and implemented in practice.

58. A number of measures should be also taken to increase the impact in practice of the Framework Convention and ensure that the recommendations made to member States under its monitoring mechanism are implemented rapidly. Thus, building on the reforms already adopted to streamline reporting and monitoring procedures, States Parties must invest renewed efforts in implementing the recommendations of monitoring bodies. These efforts could be coupled with the development of indicators to help measure and evaluate outcomes, in particular as regards societal integration.

59. Together with the fact-finding visits, bilateral meetings and desk research that are already an integral part of the monitoring process, a more multi-faceted co-operation with civil society could be developed, through the establishment of a public (online) platform, along similar lines to the Platform for the Protection of Journalism and Safety of Journalists already put in place by the Council of Europe. This would enable more data to be collected and would allow serious concerns about the rights of persons belonging to national minorities to be detected at an earlier stage. Modern technology could thus be used to keep the discussion on minority issues ongoing.

60. Additional outreach strategies for communicating about the Framework Convention and the findings of the Advisory Committee could also be developed, taking full advantage of the increasing availability of new technologies, in order to disseminate key findings to the public. The later should also be translated and disseminated by States Parties in the State language and the languages of national minorities. Where this is not already done, these strategies could also cover human rights and international treaties more broadly.

61. Finally, the eight States that have not ratified the Framework Convention should ratify it, in line with the repeated recommendations of the Assembly, and all member States that have not yet ratified Protocol No. 12 to the European Convention on Human Rights, containing a general prohibition on discrimination, should ratify it immediately.

Appendix – Specific case-studies examined in the context of this report

1. In the course of my work on this report, I have had the opportunity to examine in depth three specific situations of particular current interest in this field. The focus of all of these situations is language rights – an area closely linked to minority identities, as outlined by the Advisory Committee in its third Thematic Commentary on the Framework Convention, and equally, an area that has formed the subject of increasing tensions in a number of States in recent years. At our committee's request, the European Commission for Democracy through Law (Venice Commission) prepared an opinion on recent amendments to legislation on education in minority languages in Latvia.[54] In addition, the committee authorised me to carry out fact-finding visits to Ukraine and Wales (United Kingdom). Due to the pandemic, it was regrettably impossible to carry out full fact-finding visits. However, I was able to hold a series of remote meetings with representatives of national minorities and of the authorities in Ukraine, and, regarding Wales, with representatives of Welsh-speakers, the Welsh authorities and the Parliament of the United Kingdom.[55]

2. As I made clear to all the interlocutors I met in our remote meetings on Ukraine and Wales, my aim in each case was not to replace the monitoring work already carried out under Council of Europe treaties, but to look at the broader lessons that can be learned for minority protection across Europe from the different lived experiences in each of these places. I would like to thank all of my interlocutors, for the frank, open and deeply searching discussions we were able to hold, and for their willingness to look critically at the systems, structures and dynamics in place in their context. While many challenges to the effective protection of minority rights remain, and new challenges will of course arise as our societies evolve, these exchanges strengthened my conviction that dialogue is the crucial piece in this puzzle, and gave me renewed hope that where all sides participate in dialogue in good faith, progress can be achieved.

3. Because it is not feasible, within the scope of this report, to enter into great detail or make recommendations tailored to each specific situation, I have limited myself to summarising briefly below the background and key points raised in each case, with the aim of drawing on the lessons that can be learned from these experiences for the protection of minority rights in Europe more broadly.

Ukraine

4. According to the most recent population census in Ukraine, carried out in 2001, persons belonging to more than 130 nationalities and ethnic groups live in Ukraine. At that time, ethnic Ukrainians made up 77.8% of the population. Ethnic Russians made up 17.3%. The largest other groups were Belarusians, who made up 0.6% of the population, Moldovans and Crimean Tatars (0.5%), Bulgarians (0.4%), Romanians, Hungarians and Poles (0.3%) and Jews, Armenians, Greeks and Tatars (0.2%). As regards language, while many persons belonging to national minorities declared the language of their nationality to be their mother tongue, some declared it to be either Ukrainian or Russian; 14.8% of Ukrainians declared Russian to be their mother tongue, and 3.9% of Russians declared theirs to be Ukrainian.[56] It is important to note that these data are now two decades old; more recent data would help to build a more accurate picture of the current population in Ukraine, as well as of their language needs.

5. The situation of minorities and questions around language policy in Ukraine have been under high scrutiny in recent years. These have not only been examined through regular monitoring under the Framework Convention and the Language Charter,[57] and in an ad hoc visit to Ukraine carried out by the Advisory Committee in March 2014,[58] but have also been the subject of four opinions of the Venice

54. Venice Commission, Latvia: Opinion on the recent amendments to the legislation on education in minority languages, adopted on 18 June 2020 by a written procedure replacing the 123rd plenary session, CDL-AD(2020)012.
55. The programmes of these visits can be found, respectively in documents AS/Ega/Inf(2020)25 and AS/Ega/Inf(2020)26.
56. State Statistics Committee of Ukraine, http://2001.ukrcensus.gov.ua/eng/results/general/nationality/ (National composition of the population); http://2001.ukrcensus.gov.ua/eng/results/general/language/ (Linguistic composition of the population).
57. Third Opinion of the Advisory Committee adopted on 20 March 2012 and published on 28 March 2013, ACFC/OP/III(2012)002, together with government comments, GVT/COM/III(2013)001; CM resolution CM/ResCMN(2013)8 adopted on 18 December 2013; Fourth Opinion of the Advisory Committee adopted on 10 March 2017 and published on 5 March 2018, ACFC/OP/IV(2017)002, together with government comments, GVT/COM/IV(2018)002; CM resolution still pending. Second Report of the Committee of Experts on the Language Charter adopted on 15 November 2012 and published on 15 January 2014, ECRML(2014)3, together with CM recommendation CM/RecChL(2014)1; Third Report of the Committee of Experts on the Language Charter adopted on 24 March 2017, CM(2017)97; CM recommendation adopted on 12 December 2018, CM/RecChL(2018)6.
58. Ad hoc report of the Advisory Committee adopted on 1 April 2014, ACFC(2014)001.

Commission in the past decade.[59] Much attention has focused on the status of Russian and on the role of Ukrainian as the State language, and on how to ensure that the legitimate goal of promoting proficiency in the State language for all can be achieved while fully protecting the linguistic rights of persons belonging to national minorities. I would underline that I firmly believe that, in addition to being able to learn and speak their own language, proficiency in the State language is crucial to allow persons belonging to national minorities to live as fully integrated members of the society in which they live. As the Advisory Committee has underlined, States should therefore facilitate – and make attractive – the acquisition by persons belonging to national minorities of full proficiency in the State language.[60]

6. It is essential – but frequently difficult – to strike an appropriate balance between legitimate efforts to promote the State language, on the one hand, and the need to protect the language rights of persons belonging to minorities, on the other hand. In 2011, the Venice Commission criticised the (then) government's proposed measures allowing Russian to be used on a par with, or even instead of, Ukrainian. It found that these measures "would diminish the integrative force of the Ukrainian language and endanger the role that this language [had] to play as the sole State language".[61] Subsequently, the Advisory Committee, in its fourth opinion on Ukraine adopted in March 2017, expressed concerns about minority languages. It pointed not only to shortcomings in teacher training and teaching materials available to pupils following instruction in minority languages, but also to difficulties in providing qualified Ukrainian-language teachers in minority-language schools, which placed pupils studying in a minority language at a disadvantage in graduating from high school and entering tertiary education.[62]

7. In September 2017, the authorities enacted a new Law on Education, which had a major impact on access to education in minority languages. Owing to these bodies' respective monitoring calendars, the text of the Law as finally enacted has not yet been examined by the Advisory Committee on the Framework Convention or the Committee of Experts of the Language Charter. However, the Assembly itself has found that the new law significantly reduces access to education in minority languages, which (in publicly funded schools) will only be available during the first four years of primary education, and that this does not appear to strike an appropriate balance between the official language and the languages of national minorities.[63]The Venice Commission has also raised concerns as to whether the reduction in teaching through the medium of minority languages provided for under Article 7 of the Law was the only or the best way to promote proficiency in the State language, and whether the differential treatment between, on the one hand, EU languages, in which one or more disciplines may still be taught in the fifth grade and above, and, on the other hand, non-EU languages (notably Russian), which do not benefit from this provision, was proportionate.[64]

8. The law has not been modified since 2017, although its entry into force with respect to EU languages has now been delayed to 2023, notably in order to allow more teachers to be adequately trained. Despite encouragement from the OSCE High Commissioner for National Minorities to delay the law's implementation also for non-EU languages,[65] the restrictions for these languages came into effect as of 1 September 2020. The new provisions continue to be a source of significant concerns among representatives of all national minorities; understandably, my remote meetings focused mainly on this issue. Russian speakers were particularly worried about the impact of the provisions, which are already directly affecting them,[66] but

---

59. Ukraine: Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language, adopted by the Venice Commission at its 121st Plenary Session (6-7 December 2019), CDL-AD(2019)032; Ukraine: Opinion on the provisions of the Law on Education of 5 September 2017, which concern the use of the State Language and Minority and other Languages in Education, adopted by the Commission at its 113th Plenary Session (8-9 December 2017), CDL-AD(2017)030; Opinion on the draft law on principles of the state language policy of Ukraine adopted by the Venice Commission at its 89th Plenary Session (16-17 December 2011), CDL-AD(2011)047; Opinion on the Draft Law on languages in Ukraine adopted by the Venice Commission at its 86th Plenary Session (25-26 March 2011), CDL-AD(2011)008.

60. See Advisory Committee, Thematic Commentary No. 3 on The Language Rights of Persons Belonging to National Minorities under the Framework Convention, ACFC/44DOC(2012)001 rev, Part VII.

61. Opinion on the draft law on principles of the state language policy of Ukraine adopted by the Venice Commission at its 89th Plenary Session (16-17 December 2011), CDL-AD(2011)047, paragraph 98.

62. Fourth Opinion of the Advisory Committee adopted on 10 March 2017 and published on 5 March 2018, ACFC/OP/IV(2017)002, paragraphs 154-159.

63. Resolution 2189 (2017) "The new Ukrainian law on education: a major impediment to the teaching of national minorities' mother tongues", adopted on 12 October 2017.

64. Ukraine – Opinion on the provisions of the Law on Education of 5 September 2017, which concern the use of the State Language and Minority and other Languages in Education, adopted by the Commission at its 113th Plenary Session (8-9 December 2017), CDL-AD(2017)030; for more information about the contents of the law, see Doc. 14415.

65. Address by Mr Lamberto Zannier, OSCE High Commissioner on National Minorities, to the 1270th Plenary meeting of the OSCE Permanent Council, Vienna, 4 June 2020, HCNM.GAL/3/20/Rev.2.

speakers of EU languages also expressed fear that the reforms will ultimately be detrimental to their children's language skills, education, and access to State services (including healthcare), as well as to the preservation of their language as a minority language in Ukraine. These developments, combined with recent changes to the State Language Law, which in the words of the OSCE High Commissioner "does not ensure sufficient legal clarity or guarantees for the protection of the linguistic rights of minorities",[67] and the possible negative impact of territorial administrative reforms on the rights of persons belonging to national minorities, mean that national minorities continue to feel deeply concerned about the current situation in Ukraine.

9. I do not intend to make my own evaluation of individual laws, as the Assembly has already taken a position on the 2017 Law on Education, and specific concerns and recommendations have also been made (or will no doubt be made) with regard to the laws on education and on the functioning of Ukrainian as the State language, by the Venice Commission, the Advisory Committee and the Committee of Experts on the Language Charter. I do however wish to stress that, at a minimum, minorities should be given sufficient time to adapt to changes increasing the role of the State language. The ongoing conflict with the Russian Federation in Eastern Ukraine, and the illegal occupation of the Crimean Peninsula by the Russian Federation since early 2014, have undeniably made bilateral relations between this country and Ukraine extremely complex, and have added to already high sensitivities about the use of the State language (Ukrainian) and Russian in Ukraine. Nonetheless, policies with respect to national minorities should in no circumstances be contingent on interstate relations.[68] Moreover, as noted above, a fair balance needs to be struck, on the one hand, between legitimate efforts to promote the State language and, on the other, the need to protect the language rights of persons belonging to minorities. I would also emphasise that in addition to their consternation at the diminution of the achieved level of rights of persons belonging to national minorities in Ukraine, a further concern expressed by all minority representatives regarding education in their languages was that they felt they had not been adequately consulted on the above changes, or able to influence the process in any significant way.

10. In March 2020, Ukraine established the State Service for Ethnic Policy and Freedom of Conscience, a new agency set up in a context of broader reforms to central government institutions, and intended to provide depoliticised expert support and advice to policy-makers on matters concerning national minorities and religions. I greatly appreciated the possibility to have an open and frank discussion with the head of this body, who appeared realistic about the challenges faced but also determined to take an inclusive approach. She underlined that the agency was not yet fully staffed but was in the process of establishing contacts with national minority organisations, both umbrella organisations and those at grassroots level. Aware that the long-lasting lack of a comprehensive legislative framework governing the rights of persons belonging to national minorities aggravates problems in the protection of minority rights in Ukraine,[69] she noted that a working group set up in the Verkhovna Rada was the initial stages of its own work on this matter. She further emphasised, first, the need to examine carefully the different models that already exist elsewhere and their potential applicability to the Ukrainian context, and second, that extensive consultations with activists and experts would be crucial.

11. Over and above their specific concerns about access to education in minority languages – which have not been resolved since 2017 – the underlying message of all the minority interlocutors I met was the need for a genuine dialogue, and for their concerns to be heard and addressed. Moreover, the failure to resolve these concerns adequately when they were raised led to vigorous protests from neighbouring States regarding access to education in minority languages, as well as debates in the Assembly itself. In this sense, the tensions surrounding access to education in minority languages in Ukraine highlight the importance of building mutual trust through continuous dialogue and ensuring that minorities are able to participate effectively in decision-making processes, as well as the risk that these issues may become subject to ad hoc bilateralisation if they are not resolved rapidly.[70]

---

66. The Head of the Department of School Education in the Ministry of Education pointed out during our remote meeting that Russian is the only non-EU language affected by this provision. The Crimean Tatar language, which is taught in one school under the effective control of the Ukrainian authorities, benefits from more favourable provisions as it is recognised as an indigenous language. Belarusian has never been taught in minority schools in Ukraine. Moldovan minority pupils can, if they so choose, benefit from instruction in Romanian in line with the provisions on EU languages.

67. Address by Mr Lamberto Zannier, OSCE High Commissioner on National Minorities, to the 1270th Plenary meeting of the OSCE Permanent Council, Vienna, 4 June 2020, HCNM.GAL/3/20/Rev.2.

68. On this point, see Advisory Committee, Fourth Opinion on Poland, ACFC/OP/IV(2019)003, paragraph 82.

69. See *inter alia* the Third Opinion of the Advisory Committee, adopted on 20 March 2012 and published on 28 March 2013, ACFC/OP/III(2012)002.

70. For a comprehensive statement of principles in this field, see OSCE High Commissioner on National Minorities, Bolzano/Bozen Recommendations on National Minorities in Interstate Relations, The Hague, June 2008.

Latvia

12. Certain elements of the situation of national minorities in Latvia bear similarities to those in Ukraine. A majority – 62.1% – of the population identifies as Latvian, 26.9% as Russian, 3.3% as Belarusian, 2.2% as Ukrainian and the same proportion as Polish, and 1.2% as Lithuanian, with nearly 100 other (smaller) groups identified in the most recent census. Latvian, the State language, is the mother tongue of 60.8% of the population, while 36% of the population have Russian as their mother tongue and 3.2% another language.[71] Some data show that pupils following minority education programmes have a lower level of proficiency in the State language than pupils in Latvian-medium education.[72] Recent amendments, designed to improve proficiency in the State language, have curbed access to education in minority languages and increased the proportion of instruction that must be provided in Latvian, with teaching in non-EU languages moreover being subject to greater restrictions than that in EU languages in both public and private schools.

13. In the light of this situation, and in the context of my work on the present report, the committee decided at its meeting of 4 December 2019 to request the opinion of the Venice Commission on the recent amendments to the legislation on education in minority languages in Latvia. I wish to thank the Venice Commission for its rapid and thorough follow-up to this request.

14. As of June 2018, minority education programmes were available in seven languages in Latvia: Russian, Polish, Hebrew, Ukrainian, Estonian, Lithuanian and Belarusian. A series of amendments, covering all levels of education from preschool to higher education, were introduced in Latvian legislation and regulations between March and November 2018, and scheduled to come into force progressively over three academic years starting from September 2019. The amendments have been described in detail in the opinion of the Venice Commission.[73] Some amendments concerning higher education in private institutions were found by the Constitutional Court of Latvia on 11 June 2020 to be incompatible with the Constitution and void as of May 2021. Another part of this case was subsequently referred to the European Court of Justice for a preliminary ruling.[74] On 19 June 2020, one day after the Venice Commission adopted its opinion, the Constitutional Court found the amendments relating to pre-school education for children aged 5-7 years to be in conformity with the Latvian Constitution.[75]

15. The situation arising as a result of the 2018 amendments can be briefly summarised as follows. At preschool level, a bilingual approach can (still) be used from the age of 1.5 years, but from the age of 5 years (when preschool education becomes compulsory) to 7 years, it is now required that Latvian be the main language of communication in play-based lessons. At primary level, the highest proportion of teaching that can be delivered in a minority language is 50% in grades 1-6, and 20% in grades 7-9 (previously the highest proportion of instruction possible in a minority language at grades 7-9 was 40%). Teaching must be delivered entirely in Latvian in grades 10-12, except for minority language and literature courses, which may be given in the minority language (previously up to 40% of teaching at grades 10-12 could be provided in the minority language). A minority language may also be taught as a foreign language (through the medium of Latvian); however, as of November 2018, the first foreign language taught must be an EU language; non-EU languages can only be taught as a second foreign language.[76]

16. As noted above with respect to Ukraine, there is no question that promoting proficiency in the State language of persons belonging to national minorities is compatible with the requirements of the Framework Convention. However, a balance must always be struck between majority and minority languages in education, and measures taken to promote proficiency in the State language must be both appropriate to this aim and proportionate.[77] Having examined the above situation, the Venice Commission raised a number of serious concerns. It observed, *inter alia*, that the new rules on preschool education would not allow pupils belonging to minorities to preserve and develop their mother tongue – a view shared by three United Nations Special Rapporteurs;[78] that there should be a legal requirement to ensure that enough schools offered

71. Central Statistics Bureau of Latvia, Indicators characterising languages used by the population of Latvia, Mother tongue of population of Latvia, 2017.
72. CDL-AD(2020)012, *op. cit.*, paragraphs 22 to 26.
73. *Ibid.*, paragraphs 36 to 58.
74. Judgment in case No. 2019-20-01, summary in English, full text in Latvian, and decision of 17 July 2020, available on the Court's website.
75. Judgment in case No. 2019-20-03, summary in English and full text in Latvian available on the Court's website.
76. See in particular paragraphs 41, 51-57 and 94 of the Venice Commission's opinion.
77. See Advisory Committee, Thematic Commentary No. 3 on The Language Rights of Persons Belonging to National Minorities under the Framework Convention, ACFC/44DOC(2012)001 rev, Parts VI and VII.
78. Letter of 24 September 2019 of the Special Rapporteur on the right to education, the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion, and the Special Rapporteur on minority issues.

minority education in grades 1 to 9 wherever there was sufficient demand for it; that at upper secondary level (grades 10-12), the law should be implemented in such a way as to ensure that pupils could attain a level of proficiency that would enable them to address complex issues in their minority language; and that the possibilities for persons belonging to national minorities to have access to higher education in their minority language should be enlarged. It also emphasised the need to guarantee the quality of education received by pupils in minority education programmes, both through improving teacher training in Latvian and minority languages, and by providing adequate teaching materials.[79]

17. In addition to these concerns, I wish to raise three further considerations. First, the less favourable treatment of non-EU languages may lead a significant proportion of Latvia's population to feel stigmatised and undervalued. This runs counter to the thrust of Article 6 of the Framework Convention, by which States undertake to promote tolerance, understanding and mutual respect among all persons living on their territory. Second, it is not clear whether the authorities considered alternatives that may have been less harmful to minority language education before enacting and implementing the changes described above. Third, the fact that consultations with representatives of national minorities did not enable them to influence in any tangible way the outcomes of this process may be a source of resentment and distrust. It is unfortunately a given, in any consultation process, that not all diverging points can always be fully taken into account. However, effective participation of persons belonging to national minorities remains crucial wherever legislative or other measures may affect their rights, and the State bears responsibility, under Article 15 of the Framework Convention, for creating the necessary conditions for such dialogue to occur.

Wales

18. Language questions were also at the heart of my meetings on Wales. The Welsh language is spoken only in Wales. Once the predominant language in Wales, the number of Welsh speakers dropped sharply over the 20th century, and by the 1991 census, only 18.5% of people living in Wales identified as Welsh-speaking.[80] From the Laws in Wales Act of 1535 until the first Welsh Language Act in 1967, which granted limited recognition to Welsh, the only language used in public affairs and the administration of justice in Wales was English. In 1993, Welsh was given equal status to English in public life, and in 2011, Welsh was granted official language status.[81] Civil society actors and politicians point out that speaking Welsh was for a very long time frowned upon, and even punished in schools. This undermined both the prestige of the Welsh language and Welsh-speakers' own self-esteem. They emphasise that the status of Welsh was a divisive issue throughout much of the 20th century. The road to the current situation, where almost everyone is proud of the Welsh language and pleased to hear it spoken,[82] has been long, and progress made since the 1960s in recognising and protecting the Welsh language could only be achieved thanks to considerable struggles.

19. English remains, overall, the dominant language in Wales today. However, Welsh is used in many places as a community language, most notably in the west and north-west of Wales, and the number of Welsh speakers has risen overall in the past decades. All the interlocutors whom I met – whether from the Welsh government or parliament, the United Kingdom Parliament's Welsh Affairs Select Committee, or from civil society – welcomed the fact that the learning and use of Welsh is now actively promoted, and that this official policy is no longer a political punching ball. At present only a handful of politicians, elected to the Welsh Parliament on an anti-EU agenda in 2016, contest parts of the Welsh government's language policy, such as the publication of advertisements for civil service employment requiring knowledge of Welsh. The Welsh Government's target of one million Welsh speakers by 2050 was seen by all those I met as ambitious, but also as legitimate and desirable, and there was a strong sense that this consensus can and must be preserved.

20. Today, where differences arise on the subject of Welsh, they mostly concern how to achieve the goal of promoting and facilitating the use of the language by all, rather than the goal itself. There are clear challenges to address as regards the teaching and learning of Welsh in schools, and the best model – whether Welsh-medium, bilingual or English-medium schooling (in the latter case, with Welsh being taught as a compulsory subject) may vary depending on the overall linguistic situation in a given town or region. All my interlocutors regretted, however, that where Welsh is taught as a subject in English-medium schools, many pupils still

---

79. CDL-AD(2020)012, *op. cit.*, paragraphs 87, 90, 92-95 and 101-102.
80. Jones H.M, "A statistical overview of the Welsh language", Welsh Language Board, 2012, chapter 4; Welsh Government, "Cymraeg 2050: A million Welsh speakers", 2017, p. 20.
81. Welsh Language Act 1993 and Welsh Language (Wales) Measure 2011.
82. 86% of persons surveyed felt that the Welsh language was something to be proud of, and 62% of those who couldn't speak the language said they would like to be able to speak it: "Welsh language confidence and attitudes" (National survey for Wales), April 2017 to March 2018.

leave school feeling unable to use it in daily life, despite having been required to learn the language for 11 years. This can lead to resentment, especially if pupils feel that being obliged to learn Welsh may have prevented them from studying another language or subject that may appear to offer them more attractive job prospects. Major improvements in methodology and approach would seem to be needed here, and, as the Welsh Language Commissioner recently underlined, a radical increase in the number of teachers in Wales able to teach through the medium of Welsh is also needed if the 2050 target is to be reached.[83]

21. Interestingly, the Covid-19 pandemic seems to have led to increased interest among adults in learning the Welsh language. Some interlocutors speculated that, for some employees on furlough or who had lost their job due to the pandemic, the combination of having more free time and of seeing the advantages of being able to access more stable employment in the civil service might be driving this dynamic – which moreover appeared to have persisted beyond the end of the spring lockdown. Related to this point, I particularly appreciated the approach emphasised by Cymdeithas yr Iaith with respect to arguments that Welsh, or the imposition of Welsh language requirements, is exclusionary. They underlined that the issue is not the language but the (insufficient) structures in place for learning and using it, and that greater efforts are needed to overcome existing obstacles – for example, through providing free language classes for adults, or attaching language conditions to the award of public grants – in order to make the language accessible to all.[84]

22. All my interlocutors also emphasised the difference between being able to speak a language and actually using it in practice. Here, both confidence in the language and opportunities to use it play a part. One part of the challenge for children from non-Welsh-speaking families, in particular where Welsh is only spoken by a small proportion of the community where they live, is ensuring that they have access to spaces and activities they enjoy where the medium of communication is the Welsh language. This can help to change their relationship with the language – transforming it from something they perceive as a burden imposed on them in school to a language they are pleased to use as part of their ordinary social interactions. Supporting Welsh-language media is also crucial. Without getting into debates on whether competence over broadcasting should be transferred from Westminster to Wales – a complex question which would also have major budgetary implications – I think it is worth highlighting here the crucial role played by both the broadcast and the print and online media in supporting language diversity and creating a sense of community. Some interlocutors also highlighted that, perhaps contrary to expectations, digitalisation has not led to Welsh being swamped by English but is in fact creating new opportunities for Welsh artists to reach new audiences, including among young people.

23. Finally, I want to underline the key lesson that all of my interlocutors drove home: the future of a language cannot be divorced from the context in which it is used. Language issues need to be mainstreamed across all government departments, not seen as the preserve of only one, specifically language-focused ministry. Rising housing costs, inadequate salaries, and a lack of access to employment or of infrastructure can all drive demographic change, to the detriment of the local language. The linguistic impact of housing development plans, for instance, should be taken into account in the same way as their environmental impact must be. Indeed, when a Welsh-speaking head teacher cannot afford to buy a house in her local community, how long can she be expected to resist the pull of higher salaries in neighbouring England, even if this means her Welsh language skills will not be used? Likewise, when major companies seek to open operations in Wales, why should they not be required to contribute to efforts to promote the Welsh language? As government services are increasingly privatised and community services outsourced (for example as banks close local branches and move service provision online), the challenges for preserving and promoting the Welsh language intensify. Perhaps nowhere more clearly than through these examples do we see the importance of understanding minority rights as more than simply individual rights: for minority rights to be effective, their collective dimension must be protected too.

---

83. Iorwerth H., "The Welsh language and the statutory education workforce in Wales", Briefing Note, Welsh Language Commissioner, August 2020.

84. Detailed proposals of Cymdeithas yr Iaith are available in their July 2020 vision statement, "More than a million: Welsh language citizenship for all".