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The OSCE High Commissioner on National Minorities as Norm-setter? Relations Between the Commissioner's Recommendations and the Evolving Interpretation of the Framework Convention for the Protection of National Minorities

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Abstract

This article examines the norm-setting role of the OSCE High Commissioner on National Minorities (HCNM), particularly in relation to the evolving interpretation of the Framework Convention for the Protection of National Minorities (FCNM). It explores the interaction between the HCNM's various sets of Recommendations and the work of the Advisory Committee on the FCNM (ACFC). The article argues that while the HCNM's intention when starting the practice of endorsing or drafting thematic recommendations was not focused on norm-setting, its Recommendations have gradually contributed to particularizing international obligations concerning minority rights, especially in areas where the FCNM is less specific. The article highlights the importance of the HCNM and the ACFC in promoting an inclusive approach to minority rights, moving from a protectionist stance to the holistic management of diverse societies. It concludes by identifying factors that contribute to the HCNM's successful norm-setting, such as consultation,

collaboration and a bold and creative, yet legally grounded, approach to recommendations.

Keywords: *HCNM; ACFC; norm-setting; soft law; soft jurisprudence*

Introduction

The Office of the High Commissioner on National Minorities was established in 1992 as a response to rising tensions within and between OSCE participating states involving persons belonging to national minorities and the majority population of the respective countries (Sabanadze, 2009b, p. 104). The main purpose of the institution at its inception was, therefore, to be an instrument of security and conflict prevention. Its mandate foresees that the HCNM shall “provide ‘early warning’ and, as appropriate, ‘early action’ at the earliest possible stage in regard to tensions involving national minority issues [...] that have the potential to develop into a conflict within the CSCE area, affecting peace, stability or relations between participating States” (OSCE Helsinki Document, 1992: Chapter II, para. 3). The concrete way of operationalizing this mandate in terms of approach, policy, and normative framework had to be developed by the successive HCNMs (Sabanadze, 2009b, p. 111). In any event, the position was conceived as one of diplomacy in concrete conflict-prone situations and not as one of norm-setting.

Various authors have, however, attested that the HCNM has evolved in its role so that the position now would be better understood as a “normative actor” (Jackson-Preece, 2013, p. 77) or, a bit more carefully, as a “normative intermediary” (Ratner, 2000). Also Herman and Wouters (2017, pp. 17 & 21) conclude by referring to Farahat (2008) that the OSCE is involved in standard-setting through the recommendations of the HCNM and that these standards, though non-binding, “are at least as effective as formal international law” and may therefore be identified as “being normative in nature”.

One of the HCNMs wrote that the Recommendations and Guidelines “draw their authority from the prestige of the office of the High Commissioner, the high quality of experts and contributing partners, and, most importantly, the personal accountability of the High Commissioner to the membership of the [OSCE].” (Zannier & Lotti, 2020, p. 237) Skovgaard

also mentioned the absence of self-interest as a source of the HCNM's moral authority (Skovgaard, 2007, p. 6). To this, one can add that the Recommendations and Guidelines draw their legitimacy from the fact that they are derived from the experience of the HCNM in carrying out its security mandate within the framework of international law. As such, they were drafted having in mind how this experience, profoundly entrenched in international law, can be publicly shared rather than asking how minority rights norms can be interpreted. Their original purpose was thus to support the HCNM's position in its interaction with states and to provide useful guidance in practice. But there is no doubt that by this they have contributed to a better understanding of the European rights regime for national minorities and, to some extent, also to its evolution.

The objective of this article is to examine in depth the contribution of the High Commissioner's nine Recommendations or Guidelines to this development. When we speak about norm-setting, this should not be understood in a strict legal sense, as if we were to investigate to what extent the Recommendations and Guidelines can be considered or have led to international hard law. Indeed, when we think of "norms" in this sense, the Framework Convention for the Protection of National Minorities (FCNM) remains the key document of the European rights regime for national minorities, on the basis of which the ACFC has developed its soft jurisprudence. Rather, it will be interesting to see how the work of the HCNM, and in particular its Recommendations and Guidelines, relates to the FCNM and its interpretation through the ACFC.

The function of soft law performed by institutional practice has long been acknowledged in a variety of fields, including the field of minority rights (Holt, Machnyikova, & Packer, 2016; Lantschner, 2008). Kicker and Möstl have introduced the notions of "norm standard" and "implementation standard" that is a helpful distinction in this context. With "norm standard" they refer to legally binding human rights standards adopted by states primarily in the form of human rights treaties, but also encompass customary international law and human rights principles. Norm standards are seldom subject to amendments and have a low level of flexibility. In the context of this article, the FCNM can be clearly defined as a "norm standard". With "implementation standards", they refer to the "material outputs adopted by independent expert bodies for the clarification and interpretation of norm standards". Although not legally binding, "they still carry a considerable political, moral and persuasive force". As they reflect the ever-growing experience of independent bodies, they have a high level of flexibility and adaptability to changing circumstances (Kicker & Möstl, 2012, pp. 107-

116). Following this definition, the soft jurisprudence of the ACFC clearly falls within this category. Yet the Recommendations of the HCNM, by the fact that they derive from the experience of the HCNM in finding solutions to tense minority issues on the basis of international law (including the FCNM), can also be considered “implementation standards”. While this might not have been the initial motivation for the HCNM when deciding to draft such general recommendations, they still contribute to the clarification and interpretation of the legal norms they are based upon. As will be described below, their potential of going beyond the FCNM increases with the decreasing level of specificity of this Convention.

The main focus of this study is thus to ascertain the HCNM’s role in the development of norms understood as implementation standards, and does so by examining the relationship of its Recommendations with the FCNM as well as the cross-fertilization with the interpretation thereof by the ACFC in its country-specific opinions and Thematic Commentaries.

A different way of looking at a potential norm-setting role of the HCNM, which will not be further pursued in this study, would be to examine to what extent its Recommendations and Guidelines have contributed to the emergence of new hard law or hard jurisprudence, thereby strengthening or reinforcing the European minority rights regime. A cursory research of the minority-related case-law of the European Court of Human Rights suggests that HCNM implementation standards have only played a limited role. Explicit references can be found only sparingly, and exclusively under the section of the judgements dealing with relevant international law or texts,¹ rather than in the Court’s assessment. Interestingly, in several judgments the HCNM Recommendations are mentioned in the EU section, as they constituted the basis for the European Union’s “Guiding Principles” for improving the situation of Roma in candidate countries.² In one case, the Oslo Recommendations are referred to in the applicant’s submission.³

It is more likely, but also beyond the scope of this study, that the HCNM’s work (including its Recommendations and Guidelines) influenced the drafting of national minority legislation at national level.⁴ In these contexts, the country-specific recommendations given by the HCNM to the states concerned will play a central role, but these are certainly given with the General Recommendations in mind (Farahat, 2008, p. 1467).

Other players that would be interesting to look at to get a better understanding of the HCNM’s role as a normative actor include other CoE bodies, such as the Committee of Ministers when drafting minority related recommendations,⁵ the Venice Commission⁶ or

ECRI,⁷ and the European Union. With regard to the European Union, one can clearly ascertain the important role of the HCNM and its Recommendations during the accession period of the 2004 enlargement wave (Skovgaard, 2007, pp. 6-7; Farahat, 2008, p. 1472). Regarding later accessions, in particular Croatia in 2013, the Commission gave less importance to HCNM positions. Regarding the EU's internal realm, for instance in the work of the Fundamental Rights Agency on subjects related to minorities, there seems to be little awareness of HCNM standards. It remains out of the scope of this study to further investigate the relevance of HCNM Recommendations and Guidelines for any of these actors.

The focus of this study will therefore be placed on the way in which the various HCNM Recommendations and Guidelines inform the work of the ACFC and vice-versa, thereby contributing to the interpretation of the FCNM. This is relevant to the extent that the HCNM could be seen as having a norm-setting function also vis-à-vis those OSCE participating states that have not ratified the FCNM (Farahat, 2008, p. 1466).

1. Norm-setting through HCNM Recommendations?

All Recommendations of the HCNM are well-grounded in existing legal standards, ranging from the FCNM and the Language Charter to various UN human rights treaties and principles of international law (Packer, 2000a, pp. 716-717). They particularize existing international obligations on the basis of the Office's experience on the ground (Farahat, 2008, p. 1469). These underlying legal standards exist, however, at different levels of detail concerning the different specific aspects of minority protection. This leads to the hypothesis that the vaguer or the less minority-tailored these legal standards (the norm standards) are, the bigger the HCNM's (soft-law) contribution to strengthening, reinforcing, or potentially even amplifying the minority rights regime may be. Whether this assumption is correct in relation to the FCNM will be shown in the following.

There are some areas where legally-binding and minority-tailored standards exist in the FCNM. One could think that in these areas there is the least amount of room for the HCNM to contribute to norm-setting via its implementation standards. But the HCNM adopted Recommendations in these fields, and thus made them more concrete, at a time when the interpretation of the FCNM through the ACFC was not yet so developed (or for some parts, not at all). These were indeed the fields covered by the four first Recommendations of the HCNM: 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), and the Guidelines on the Use of Minority Languages in the Broadcast Media (2003). They will be dealt with more closely in subsection 1.1 below, and the interplay between them and the evolving interpretation of the FCNM will be analysed, including through the Thematic Commentaries of the ACFC. To remain with the artistic language adopted by Gudmundur Alfredsson (2000), who depicted the FCNM as a “frame with an incomplete painting”, one could say that with these four recommendations the HCNM has “shaded in the spaces between the lines”: it has filled the gaps by providing detail.

In other areas, there is a legally-binding standard in the FCNM, but it broadly follows the approach of the European Convention of Human Rights and is therefore much less minority-tailored as the previously-mentioned areas. Consequently, there could be more room for the HCNM to substantiate it, for instance, by reference to other legally-binding documents, such as the Language Charter. This goes in particular for the access to justice and national minorities, that was dealt with by the Graz Recommendations (2017), an area covered mainly by Articles 4, 6, and 10(3) of the FCNM. This area will be looked at in subsection 1.2 below. Speaking again in artistic terms, the HCNM is “joining the dots”: i.e., making the links.

And then there are areas that are less well-covered by existing legally-binding standards, including the FCNM, and although the ACFC is regularly dealing with these issues during its country-specific monitoring, it has not yet come up with any thematic guidelines in the field. This goes for the fields covered by the HCNM’s Recommendations on Policing in Multi-Ethnic Societies (2006), the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations (2008), and the Tallinn Guidelines on National Minorities and the Media in the Digital Age (2019). How they contribute to the understanding and interpretation of the FCNM will be looked at in subsection 1.3 below. In these contexts, one could speak about the HCNM “sketching the outlines” of thus far underexplored areas.

Finally, in subsection 1.4, the Ljubljana Guidelines will be discussed as they could be seen as the culmination of a paradigm shift, understanding minority rights not only as means to protect and promote the language, culture, and identity of persons belonging to national minorities but also as a tool for the management of diverse societies. This is similarly reflected in the ACFC’s Thematic Commentaries Nos. 3 and 4, the latter not by coincidence being titled “The Framework Convention: a key tool to managing diversity through minority rights.” This integrationist approach was there in the text of the FCNM from the beginning, as well as in the

documents of both the HCNM and the ACFC. But one can clearly observe a gradual shift of both institutions towards a more holistic understanding of minority rights as a contribution to creating integrated societies. So, the artwork has not changed, but rather the lens through which it is looked at.

1.1. Shading in the spaces between the lines: Education, language, participation, and media as key fields in minority rights

Only a few years into its Office, the HCNM realized that tensions surrounding the issue of education were a recurring part of his work. In these initial years, he dealt with issues related to minority language education in Albania, Slovakia, Romania, Hungary and in what was then FYROM (Sieminski & Packer, 1996, p. 190) and therefore decided to develop guidelines for states in this field as early as 1995, resulting in *The Hague Recommendations* launched in 1996. It has to be remembered that the FCNM was only opened for signature in February 1995, and was to enter into force only three years later, on 1 February 1998, with the monitoring work of the ACFC to start in 1999. While the main reference document for The Hague Recommendations was thus the Copenhagen Document, they nevertheless – albeit rather sparingly – also referred to the FCNM.

The Hague Recommendations followed a clearly integrative approach, as they favour bilingual models of teaching (see Recommendations 11-13, according to which education should start using predominantly the minority language while gradually increasing the share of majority language instruction). On the one hand, this approach addresses the right to learn and be taught in the minority language, but also the responsibility to acquire an adequate knowledge of the state language. On the other hand, it creates the condition for children with different linguistic background to interact in a shared classroom and to learn about each other. At this stage, integration was seen as crucial for the sake of stability, rather than as an end in itself. Indicative of this may be that, at several points, the Recommendation refers to the integration of persons belonging to national minorities “into” the wider national society, rather than to the “integration of diverse societies”, which is the language employed by the Ljubljana Guidelines that bring integration as a bi-directional process more in focus, involving both minorities and majorities alike. The Explanatory Note to the above Recommendations is quite straightforward in qualifying “submersion-type approaches” – whereby the curriculum is taught exclusively in the state language – as not being in line with international standards and denoting schools where “the entire curriculum is taught exclusively through the medium of the minority mother tongue,

throughout the entire educational process and where the majority language is not taught at all or only to a minimal extent” as “segregated schools” (The Hague Recommendations, 1996, p. 14). Similarly, the Explanatory Note underlines that “the intellectual and cultural development of majorities and minorities should not take place in isolation” at the tertiary level of education as well, thereby signalling a preference for integrated rather than parallel tertiary education (The Hague Recommendations, 1996, p. 15).

While overall The Hague Recommendations have a very strong focus on the language of education, Recommendations 19 and 20 deal with the content of education. They underline the importance of “intercultural education”; that, in this spirit, the general compulsory curriculum should include the teaching of the history, cultures, and traditions of the national minorities living in a country, and that curriculum content related to national minorities should be developed with their active participation.

The Hague Recommendations were “a source of inspiration” in the first years of the monitoring of the FCNM by the ACFC (Phillips, 2011, p. 125), even though the ACFC was certainly focusing on developing its own criteria for interpreting the education-related articles of the FCNM and hardly ever explicitly referred to the Recommendations in its country-specific opinions.⁸ Such explicit references can be found in the first Thematic Commentary of the ACFC on Education (2006), especially in the section dealing with the interpretation of Art. 14 FCNM; thus, the provision dealing with language in education. The Commentary refers to a shared understanding of the ACFC and the HCNM starting from the “basic assumption of the need to balance the goal of the preservation and development of minority identity and language with that of *integration of minorities in the societies* where they live as well as dialogue between different individuals and groups” (Thematic Commentary on Education, 2006, para 89, emphasis added). It highlights that the “Framework Convention adds to all this the explicit importance of promoting in the field of education the mutual respect, understanding and cooperation among all persons living within a state (Article 6)”. However, this is already well-reflected in The Hague Recommendations 19 and 20 and the respective parts of the explanatory note, even if an explicit reference to Art. 6 FCNM is missing. The Thematic Commentary also underlines the contribution of The Hague Recommendations in providing valuable assistance on the issue of decentralization and participation in education-related issues. Recommendation 7 is to be highlighted in this context, which explicitly addresses the important issue of parental involvement and choice in the educational system that should be encouraged through specific measures by participating states.

While the focus of The Hague Recommendations is thus on the language(s) used as a medium of instruction and learned at various levels of education, as well as to a more limited extent on the content of education, the Thematic Commentary provides more details when it comes to teacher training, the production and availability of quality educational materials, as well as to equal opportunities for access to education. The thinking of the ACFC is further developed in its Third Thematic Commentary on Language Rights, which also contains a section on language rights and education. Overall, this section follows and strengthens the line of the Hague Recommendations when it comes to encouraging multilingual and dual-medium education models, which attract children from minority and majority backgrounds and can “contribute to intercultural comprehension and co-operation” (paras. 72 and 81). This exemplifies the mantra of achieving social cohesion through education which is imbued in the Commentary on Language Rights (see e.g., also paras. 77 and 83) and which is further elaborated on by the Ljubljana Guidelines and the fourth Thematic Commentary of the ACFC.

One might therefore say that in the early stages of the FCNM, The Hague Recommendations were already key in fleshing out concrete steps through which the education system can contribute to integration, an approach which was later strengthened by the HCNM’s own work and thematic work of the ACFC.

An integrative approach was probably less clearly pronounced in the *Oslo Recommendations regarding Linguistic Rights* that followed in 1998 (for an early discussion see Eide, 1999; and later de Varennes and Kuzborska, 2018; Henrard, 2022). They have been described as having followed a “first generation” approach, focusing more on main – and in some way more “basic” – linguistic rights for persons belonging to national minorities in a more defensive way and aiming mainly at securing their existence (Palermo, 2018, pp. 143 & 148). The way in which Recommendations 13-15 (including the Explanatory Note) deal with the use of minority languages in relations with administrative authorities adds little to the wording of the Art 10(2) FCNM, which has been interpreted in great detail by the jurisprudence of the ACFC (see in particular the Thematic Commentary on Language Rights, paras. 55-58). Their contribution is more interesting when it comes to the use of minority languages in economic life (Rec 12, discussed in Croft, 2018), in community life and NGOs (Recommendations 6-7), as well as in relations with judicial authorities (in particular Recs 18-19, dealt with below in subsection 1.3. See also Packer & Siemienski, 1999, pp. 347-348).

Changing external circumstances, such as the improvement of legal frameworks but at the same time increased security concerns and the overall less favourable environment for national minorities, called for a more “contextual, dynamic and progressive interpretation” of international instruments “to make the standards living instruments” (Palermo, 2018, pp. 140-141). For Palermo, this turning point was taken by ACFC’s Thematic Commentary on Language Rights which came just a few months before the Ljubljana Guidelines of the HCNM. Members of the ACFC were involved in the drafting of the Ljubljana Guidelines and the Office of the HCNM was consulted in the drafting of the Thematic Commentary. One can therefore say that these two institutions jointly moved ahead in the interpretation of international instruments, from a more protective towards a more holistic societal approach, a development that also included the last thematic Commentary of the ACFC and that will be further described in subsection 1.4.

When it comes to the aim of creating integrated societies, the effective participation of persons belonging to national minorities in cultural, social, and economic life and public affairs is key (Art. 15 FCNM). The *Lund Recommendations* (1999) focused on the aspect of public life (for an early discussion see Packer, 2000b; and later Henrard, 2005; Drzewicki, 2009; Pentassuglia, 2022). They inspired the drafting of ACFC’s country-specific opinions (Phillips, 2011, p. 125), are referred to in some of them,⁹ and have been carefully taken into consideration when drafting the Thematic Commentary on Participation (para. 7). This Commentary is, however, much larger in scope as it deals not only with effective participation in public life, but also with cultural and socioeconomic life. This has been explained by underlining that for the most discriminated minority groups, political participation will never be effective without their simultaneous robust involvement in cultural, social, and economic life, in particular if political participation is mainly understood as the mere presence of minority representatives in elected bodies (thus, in the sense of representation, which is rather passive, static, and formal). Effective participation requires dynamic, real involvement in decision-making (Palermo and Roter, 2019, p. 85).

The Lund Recommendations indeed focus considerably on participation in the sense of representation (Recommendations 6-11). Recommendations 12-13 deal with Advisory and Consultative Bodies, but also here the later Thematic Commentary on Participation provides many more details (paras. 106-119). The Recommendations devote considerable attention to the issue of self-governance and autonomy, both in its territorial or its non-territorial form (Recommendations 14-21). Looking at their impact, the Recommendations on territorial

autonomy have neither managed to allay the concerns of states that it constitutes a threat to their territorial integrity (although the Explanatory Note, p. 30, explicitly states that self-government can help preserve the unity of States) nor to change the understanding among some minorities that it serves to rule “their” territory. The Explanatory Note also proposes different organizational forms (federations, autonomy arrangements within unitary states, or federations) and underlines that arrangements need not be uniform across the country but vary according to needs and expressed desires. But still, territorial autonomy continues to be “framed in terms of who accommodates whom, rather than in terms of good governance as such” or “as an instrument for complexity management” (Palermo and Roter, 2019, pp. 98-99). The Lund Recommendations regarding territorial autonomy could also not be strengthened by the ACFC, considering the formulation of Art. 15 and the Explanatory Report, that mentions decentralized or local forms of government as one of several possible measures that state parties could promote. In fact, the Thematic Commentary on Participation explains in para. 133 that the FCNM “does not provide for the right of persons belonging to national minorities to autonomy, whether territorial or cultural.” This does of course not stop the ACFC from commenting on such arrangements where they exist.

Non-territorial arrangements, unlike territorial autonomy arrangements, have increased over the almost quarter-century since the launch of the Lund Recommendations. They are perceived as less threatening to the territorial integrity of states; they do not require a forced identification of a territory with a dominant group settling therein; and they do not imply territorial claims (Palermo and Roter, 2019, pp. 100-101). The Thematic Commentary on Participation further specifies some conditions required in order for non-territorial autonomy arrangements to function properly, including clear legal provisions regarding the scope of the system and competences of the respective bodies, the relations between them and other state institutions, as well as their funding. Electoral systems for autonomous bodies should entail protection against possible abuse and representativeness should be a key consideration in their design (paras. 136-137).

This latter condition is particularly necessary to ensure effectiveness of participation. In Recommendation 5, the Lund Recommendations lay out that governmental authorities and minorities should pursue “an inclusive, transparent, and accountable process of consultation in order to maintain a climate of confidence.” The Explanatory Note specifies for the requirement of inclusiveness that this means that it is inclusive of those concerned. This implies first, individuals affiliating with the same community but also others who affiliate with other

communities, and second, inclusive in the sense of intra-community diversity, typically referring to the views of women, the youth, and the elderly, an approach also very much followed by the ACFC in its work.

In the context of the creation of inclusive processes as grounds for effective participation, the Lund Recommendations already mention the importance of public media. States should encourage them to foster intercultural understanding and address the concerns of minorities (Recommendation 5). It quite rightly refers in this context to Art. 6(1) FCNM, which sees the particular role of the media in fostering a spirit of intercultural dialogue and the promotion of mutual respect and understanding among all persons living in a state. Following a request by some OSCE participating states to address this issue in more detail, the HCNM dedicated its next set of *Guidelines to broadcast media* in 2003 (Stephan & Nurumov, 2018, p. 83). These guidelines were adopted when the monitoring of the ACFC was approaching the end of the first monitoring cycle. Their focus was however, as before in The Hague Recommendations, less on content-related issues and more on the use of minority languages. The Guidelines build on the freedom of expression (repeating nearly verbatim Art. 9(1) FCNM), cultural and linguistic diversity, the protection of minority identities (in line with Art. 5 FCNM), as well as equality and non-discrimination (in line with Art. 4 FCNM). They lay down that policies should be developed by ensuring the effective participation of persons belonging to national minorities (in line with Art. 15 FCNM). While regulation is permissible, including such that promotes the use of selected languages, it must pursue a legitimate aim and be proportionate. When assessing proportionality, factors such as the existing political, social, and religious context; the number, variety, geographical reach, character, function and languages of available broadcasting services; as well as the rights, needs and expressed desires of audiences affected should be considered (Recommendations 9-11). Minority language broadcasting should not be subject to undue or disproportionate requirements for translation, dubbing, or subtitling (Recommendation 12) and the free reception of transfrontier broadcasts shall not be prohibited on the basis of language. The availability of such broadcasts, however, does not reduce the obligation of a state to provide for domestically-produced broadcasts (Recommendation 13). To support broadcasting in minority languages, states should provide access to broadcasting, state funding, and capacity building (Recommendations 14-17).

The Guidelines have seen no explicit reception in texts produced by the ACFC, but they are echoed both in its country-specific opinions and its thematic work. Very much in line with its societal orientation, the third Thematic Commentary, for instance, picks up on the

importance of media to promote cultural and linguistic diversity existing within society and their role in strengthening social cohesion (paras. 40-41 and 44-45). It addresses issues of funding, which might have to be adjusted in order to make up for possible additional costs by broadcasting in minority languages, and it acknowledges the legitimacy of the aim to promote the official language(s) also through quotas in the public sector media, while at the same time putting in place special provisions to ensure that the linguistic rights of persons belonging to national minorities are guaranteed (para. 43). In the context of private sector media, it explicitly ruled out the compatibility with Art. 9(3) FCNM of an official language quota of 75%. The proportionality test, as spelled out in more detail in the Guidelines of the HCNM, is also certainly relevant when assessing the compatibility with the FCNM of measures promoting the state language(s). As with the Guidelines of the HCNM, the Thematic Commentary also summarizes the ACFC's standing jurisprudence regarding the reception of broadcasts from abroad in that they should "not be seen as substitute for locally-produced programmes, which normally better meet the needs and interests of minority communities." (para. 48).

Besides the convergence between the HCNM Guidelines and the interpretation of FCNM through the ACFC, it is interesting to note that the Parliamentary Assembly of the CoE has also dedicated a recommendation to the Guidelines, as well as the need to enhance cooperation and synergy with the OSCE in this context.¹⁰ It recommended that when monitoring the FCNM, the CM should regularly take into account the HCNM Guidelines. The underlying report of the Committee on Legal Affairs and Human Rights underlines the complementarity of the Guidelines with CoE instruments, in particular the FCNM, and sees the added value of the Guidelines in the fact that they present the international legal and policy standards in a single and coherent document, that they are more detailed as regards the proposed measures, and that they are aimed at all those concerned by this question, not just the authorities.

This overview has shown that sometimes these first Recommendations of the HCNM, which cover central aspects of minorities' rights protection, constituted a reiteration of existing standards, giving them renewed weight and visibility (Packer & Sieminski, 1999, p. 349). More often, however, they provided additional details, useful in understanding the concrete meaning of the vaguely formulated norm standards, or proposing concrete measures for implementation, thereby shading in the spaces between the lines of the incomplete painting. All the areas covered by these initial Recommendations and Guidelines were later followed by Thematic Commentaries of the ACFC; to some extent, these were even more concrete but

certainly built on the HCNM Recommendations. One could therefore conclude that the development of implementation standards through summarizing experience in conflict prevention on the basis of international law (HNNM) and interpretation of the FCNM as the central norm-standard (ACFC) proceeded in lockstep, the two institutions mutually reinforcing each other. The HCNM and the ACFC therefore both contributed to making the picture more complete.

1.2. Joining the dots: Access to justice and national minorities

While the topics in the previously-discussed subsection were grounded in minority-specific legally-binding standards through the FCNM, which – as just shown – have been conjointly interpreted by the AC and the HCNM, the subject covered by the *Graz Recommendations on Access to Justice and National Minorities (2017)* is a bit different. Some Recommendations clearly have their legal foundation in provisions of the FCNM: first and foremost, this goes for the principle of non-discrimination and equality, which is of special importance when it comes to access to justice (see Recommendation 1 and the Explanatory Note with reference to Articles 4, 6, and 15 FCNM). Recommendation 5 of the Graz Recommendations, recommending that the composition of various judicial institutions should aim to reflect the diversity of the population at all levels, is – amongst others – grounded in Art. 15 FCNM and the effective participation of persons belonging to national minorities in all areas of life (see also paras. 120-128 of the Thematic Commentary on Language Rights).

Then, there are Recommendations for which there is no explicit basis in the FCNM, but the interpretation of the ACFC during its monitoring has evolved in a direction which also covers these areas. One example would be Recommendation 2, which asks States to establish, strengthen, and fund independent human rights institutions that can secure effective remedies for all complainants, including persons belonging to national minorities (Tudisco, 2021). In the monitoring of Art. 4 FCNM, the ACFC regularly looks at the institutional framework established for the protection from discrimination, and in this context looks at the independence and functioning of human rights institutions or equality bodies. Another example is Recommendation 6, that puts a focus on working to build trust between minority communities and law-enforcement agencies – an aspect frequently covered by the ACFC in its monitoring under Art. 6(2).¹¹ In these cases, the Graz Recommendations would provide additional strength to the AC's argument and any reference to them would be to the benefit of both institutions.¹² A possible explanation for why the Graz Recommendations have so far seen hardly any

referencing by the ACFC could be the fact that they were less well-grounded in the concrete field experience of the HCNM itself, and were approached in a more academic way as compared to previous and later Recommendations.

Finally, there is one Recommendation, No. 3, which speaks to one particular provision of the FCNM, Art. 10(3); it broadly follows the approach of the European Convention on Human Rights and is thereby circumscribed quite clearly in its scope. Recommendation 3 expands this scope by recommending that persons belonging to national minorities should be able to “take part in proceedings” in a language they understand, “and preferably in their language”. Art. 10(3) FCNM is limited to criminal proceedings, addresses only the defendant and only refers to a language which he or she understands. While the AC has of course “welcomed the guarantee of the right to interpretation into a minority language not only in the context of criminal proceedings, but also in that of civil and administrative proceedings” (Thematic Commentary on Language Rights, para 59), it could not go as far as requiring it from all state parties to the FCNM. Recommendation 3 of the Graz Recommendations builds on Recommendations 18-19 of the Oslo Recommendations. Packer and Siemienski (1999) commented on these recommendations as going back to the HCNM’s encouragement to the experts working on the Recommendations to “be bold and creative while remaining within the parameters of international human rights law.” The experts were aware that these recommendations could expand existing standards and discussed and reflected on them a lot. In the end, the proposal was the result of “a combination of standards, especially the principles of non-discrimination and equality before the courts, together with other specific standards relating to due process of law in addition to principles of democratic participation and good governance.” They therefore still remain within existing international human rights standards, which is necessary to carry legitimacy and authority. “If this were not the case they could be rejected out-of-hand as a subjective and ungrounded document” (Packer & Siemienski, 1999, pp. 348-349).

This shows that where the scope of the FCNM is clearly delimited, there is room for the HCNM to move beyond the FCNM by joining the dots consisting of various sources of law and principles. It remains, however, impossible for the ACFC to push its own boundaries by reference to the HCNM’s implementation standards.¹³

1.3. Sketching the outlines: policing in multiethnic societies, national minorities in interstate relations, and media in the digital age

The norm-setting potential of the HCNM is particularly promising in those areas that are less well covered by existing (legally binding) standards, including the FCNM. This goes for, in chronological order, the Recommendations on Policing in Multi-Ethnic Societies (2006) the Bolzano/Bozen Recommendations on National Minorities in Interstate Relations (2008) and the Tallinn Guidelines on National Minorities and the Media in the Digital Age (2019). While the starting condition for the three of them is thus similar, they have been received differently. Looking into the reasons for this will also show some factors that have an impact on the likelihood of recommendations contributing to norm-setting.

Although the ACFC regularly deals with law enforcement under Art. 6(2), there are only two references to the *Recommendations on Policing* in its opinions: once when asking for increased diversity in the police force as a means of enhancing minority communities' trust in the police and the police's sensitivity to minority-related issues,¹⁴ and again in the context of factual information on police training courses, according to which police officers were also supposed to be familiar with the OSCE Recommendations on Policing in Multi-Ethnic Societies.¹⁵ In terms of their content, they cover many aspects that are regularly dealt with by the AC (e.g., Rec 16 on ethnic profiling, Rec 17 on encouraging reporting to the police, Rec 18 on the deployment of ethnically-mixed teams in multi-ethnic areas, Rec 19 on the effective enforcement of anti-discrimination law). At the same time, some of the recommendations are detailed to the extent that the ACFC could see itself reproached for micromanaging the way the FCNM is implemented if it referred to them in its opinions (e.g., Rec 11 on the responsibilities of police managers and supervisors). These rather technical recommendations might therefore deploy their norm-setting impact less in the context of monitoring (as in the context of concrete domestic policymaking and implementation) and might therefore constitute, from the HCNM's perspective, a valuable reference document for project work on the ground.¹⁶ In addition to their operational character, their lack of reception has been explained elsewhere by not having a strong link to existing norms, standards, and principles as well as by disregarding previously done work on the same subject matter (Bloed & Letschert, 2009, pp. 111-112 and pp. 117-118).¹⁷

The situation looks quite different when it comes to the *Bolzano/Bozen Recommendations on National Minorities in Interstate Relations* (2008). Within the whole set of HCNM Recommendations, they appear to play a particularly important role when it comes

to standard setting. Although minorities have historically played a central role in bilateral relations, international law applicable to this field has had surprisingly little concrete to offer, to the extent that some have commented that kin-state policies had been conducted in an “international legal vacuum” (Palermo, 2011). Existing norms are broad and general and could be – and indeed have been – abused for geopolitical purposes. Against this background, the Bolzano/Bozen Recommendations were “the most complete document on this subject ever produced by the international community [and were therefore] intended to contribute to further development of international standards on the matter.” (Palermo, 2011, pp. 23-26; see also Sabanadze, 2009a, 2010; Roter, 2011; and Phillips, 2011).

According to Palermo, it was a natural fit for the HCNM to take up this issue, first considering the security dimension of his mandate being the most suitable starting point on the topic. In this context, it is to be highlighted that the Bolzano/Bozen Recommendations were the first Recommendations drafted mainly in-house and then endorsed by international experts, rather than the other way round. This was because the cumulative experience of the HCNM was decisive considering the limited amount of normative support contained in international standards (Palermo, 2011, p. 22). Second, the HCNM was considered the most suitable institution to deal with the subject, as it is very difficult to address it via standard setting or monitoring mechanisms like the ACFC (Palermo, 2011, p. 25).

The FCNM is indeed almost exclusively concerned with the way a state party treats the minorities residing on its territory; only Articles 17 and 18 have a bilateral dimension. The latter contains a procedural clause for addressing kin-State issues via bi- and multilateral agreements, but does not contain any substantive guidance as to what kind of policies can be adopted. When formulating its assessment and Recommendations in this context, the ACFC refers to the Bolzano/Bozen Recommendations to underline that the protection of national minorities is a primary responsibility of the state in which those minorities reside (Recommendation 2).¹⁸ It also refers to Recommendation 15 which established that “[w]hen granting benefits to persons belonging to national minorities residing abroad, States should ensure that they are consistent in their support for persons belonging to minorities within their own jurisdiction”.¹⁹ The ACFC is sometimes confronted with state parties claiming the principle of reciprocity with respect to the protection of national minorities in inter-state relations. Although it transpires from the Bolzano/Bozen Recommendations that they do not endorse such a principle (Palermo, 2011, p. 19), there is no explicit Recommendation in this sense that the ACFC could rely on in such cases.²⁰

The Bolzano/Bozen Recommendations have been described as the “bible” when it comes to addressing issues of national minorities in interstate relations. Although innovative, they are deeply rooted in international law, in particular the principle of sovereignty (understood as right and obligation, see Wolff, 2013, p. 66) and the principle of friendly, including good neighbourly relations, which are also mentioned in Articles 2 and 21 of the FCNM. The main tenets of the Bolzano/Bozen Recommendations are: first, that the respect for and protection of minority rights is the responsibility of the State where the minority resides (Recommendation 2) and second: that other States may have an interest – and quite often a constitutionally-declared responsibility – to support persons belonging to national minorities residing abroad, especially those with whom they are linked by ethnic, cultural, linguistic, or religious identity, or a common cultural heritage. “However, this does not imply, in any way, a right under international law to exercise jurisdiction over these persons on the territory of another State with-out that State’s consent” (Recommendation 4). Finally, States can pursue this interest through extending benefits to minorities abroad only in consultation with the State of residence and with due respect for the principles of territorial integrity, sovereignty, and friendly, including good neighbourly, relations (Section III, Recommendations 9-15). In its final Recommendations 16-19 (Section IV), the document lays out different multilateral and bilateral instruments and mechanisms that can be used in this process. These latter sections are especially of enormous relevance in detailing the ingredients for successful interstate relations in which minority issues play a role.

It should also be noted that the Recommendations build on the experience of the then HCNM Rolf Ekéus as set out in his 2001 statement on “Sovereignty, Responsibility and National Minorities” and his successor Knut Vollebaeck, as well as in the “Report on the Preferential Treatment of National Minorities by their Kin-State”, issued by the CoE’s Venice Commission in the same year (Bolzano/Bozen Recommendations, p. 2). So, not only did they manage to provide substantive guidance on an essentially underexplored topic while remaining within the borders of international law, but they also took other organisations’ work on the issue into account, which might further explain their positive reception by the international community. Whether this guidance has been consistently observed by OSCE participating states in their bilateral relations is a different story. However, in the HCNM’s conversations with countries discussing how to deal with an issue and find solutions, the Bolzano/Bozen Recommendations (along with the Ljubljana Guidelines) are the Recommendations most often used.

The *Tallinn Guidelines on National Minorities and the Media in the Digital Age* (2019) are the most recent set of Guidelines. They build upon and update the 2003 Broadcast Media Guidelines. Indeed, the topic requires a “contemporary and forward-looking interpretation” (Tallinn Guidelines, p. 12) of norms and standards, including of the FCNM’s provisions to keep it a living instrument. While the 2003 Guidelines had a strong focus on language use in broadcast media, the more recent ones take a broader view. The Tallinn Guidelines are based on the Ljubljana Guidelines, to the extent that information and communication and the technologies which enable them are seen as tools that can facilitate the integration of diverse societies (p. 6 of the Recommendations). They draw inspiration from the Bolzano/Bozen Recommendations, “because the transnational and international dimensions to freedom of expression are essential for many national minorities who wish to maintain effective cultural, linguistic, political and other ties with their “kin-” or neighbouring States.” (*ibid.*). The Guidelines thus “acknowledge the complementary roles of the media in advancing the goal of societal cohesion within States, while ensuring that the human rights to freedom of expression and cultural rights are not limited by State borders.” (p. 7 of the Recommendations)

The relevance of the media in either contributing to a more integrated society or in undermining such cohesion is captured very well by Arts. 6 and 9 FCNM. On the one hand, technological developments increase opportunities for seeking, receiving, and imparting information, especially for individuals via social media, but on the other hand can contribute to informational insulation and societal fragmentation (Guidelines, p 9). Indeed, this latter aspect has, for instance, been observed in Estonia.²¹ Another aspect that the ACFC regularly looks at in its country-specific opinions is the prevalence of derogatory attitudes or even hate speech on the internet and social media,²² as well as measures undertaken by state parties to combat it via legislation or by engaging with social media platforms.²³

The Tallinn Guidelines also take into account the fact that there is a multiplicity of actors that needs to be taken into consideration, including internet intermediaries within and beyond their borders. By referring to encouraging or – as appropriate – requiring “internet intermediaries based within their jurisdiction to apply human rights due diligence throughout their operation” and to consider implications for minority rights (Recommendation 10), or to enabling conditions such as ensuring that universal service obligations are upheld by the providers of electronic communications networks and services (Recommendation 8), they provide interesting reference points for future ACFC monitoring and possible recommendations. Further references to internet intermediaries can be found in

Recommendations 11, 31, 33, 34, 36, 37. Most importantly, Recommendation 37 describes what states should require internet intermediaries to do to make sure illegal content is removed, such as ideas based on racial superiority or hatred, or incitement to racial discrimination. Recalling that “States and State or public actors should refrain from any disinformation, propaganda or inflammatory discourse which aim to, or are likely to, undermine friendly relations among States and/or the sovereignty of other States” (Recommendation 31) is something that has not been addressed by the ACFC so far and might require a combined reading of Art. 6 and Art. 2 of the FCNM.

The level of detail at which the HCNM has addressed the issue of media in the digital age is therefore likely to be a useful reference document for the further development of the jurisprudence of the ACFC under Articles 6 and 9 FCNM (possibly read in conjunction with Art. 2 FCNM). So far, it has referred mainly to Recommendations that address the traditional public service media.²⁴

In summary, where the FCNM remains vague, the HCNM’s Recommendations and Guidelines have been able to outline the contours of these areas much more comprehensively than the ACFC has been able to do so far. If the Recommendations were deeply rooted in the experience of the HCNM (as was certainly the case of the Bolzano/Bozen Recommendations and, to a lesser extent, the Tallinn Guidelines), this has obviously favoured their reception by other bodies, such as the ACFC.

1.4 The “societal approach” lens: The Ljubljana Guidelines and the thematic work of the ACFC

The previous three subsections have looked at how the HCNM’s Recommendations and Guidelines relate to the FCNM and the soft jurisprudence of the ACFC, as well as their potential of norm-setting (with norm being understood as implementation standard) in the context of more or less specific legal provisions contained in the FCNM. Broadly speaking, they found that the greater the legal specificity of FCNM, the lesser the HCNM’s contribution. Conversely, the more legal gaps or vagueness that can be found in the FCNM, then the more the HCNM can fill those gaps. The *Ljubljana Guidelines on Integration of Diverse Societies (2012)* are difficult to fit into this equation. Rather than treating a specific topic of minority protection in-depth (indeed, they cover a whole range of issues), their contribution is to look at minority protection through a specific lens: the integration of diverse societies. This last subsection focuses on how the work of both institutions (the HCNM and the ACFC) has

gradually moved towards emphasizing the need to understand minority rights as contributing to the management of diverse societies.

The Ljubljana Guidelines occupy a central position in the HCNM's set of recommendations. Together with the Thematic Commentaries No. 3 and 4 of the ACFC, the Guidelines stand for a shift from a predominantly protective/defensive approach to minority protection to a more holistic/societal approach. Although this integrative approach was already visible in the HCNM's very first Recommendation regarding education rights, integration was then seen as instrumental to reach the aim of security, rather than an end in itself. The approach taken by the Ljubljana Guidelines and the last two Thematic Commentaries of the ACFC conceptualizes identity as something that might be "shifting, complex, plural", as something that is "not static but evolves throughout a person's life" (Palermo, 2018, p. 144). Therefore, granting minority rights is not about trying to accommodate a homogenous group's claims that might clash with those of other homogenous groups; rather, they should be conceived of as a tool to manage diversity.

The Ljubljana Guidelines are organized around structural principles (Section I), principles for integration (Section II), and elements of an integration policy framework (Section III), which then discuss a range of key policy areas (Section IV): through the lens of integrating diverse societies, these touch on every aspect dealt with by other Recommendations. Similar to the Bolzano/Bozen Recommendations, the Ljubljana Guidelines emphasize the concept of sovereignty. According to the Recommendations, sovereignty is a prerequisite for a stable society and implies a state's rights and responsibilities, one of these responsibilities being the development and implementation of integration policies aiming at sustainable social cohesion, which in turn provides a framework for effective conflict prevention (see also Wolff, 2013, pp. 70-73).

In the understanding of the Ljubljana Guidelines, integration "is a dynamic, multi-actor process of mutual engagement that facilitates effective participation by all members of a diverse society in the economic, political, social and cultural life, and fosters a shared and inclusive sense of belonging at national and local levels." Integration policies aim "to create a society in which diversity is respected and everyone ... contributes to building and maintaining a common and inclusive civic identity." Most importantly, the introduction to the Guidelines underlines that "[s]ociety as a whole benefits from such a policy" and that this process "can lead to changes in majority and minority cultures." (Ljubljana Guidelines, pp 3-4).²⁵ This

approach is also reflected in a change of the HCNM's language, which speaks about the "integration of multi-ethnic societies" rather than the "integration of a minority group into a particular society", a terminology used in earlier Recommendations.

The language used in this part of the Recommendations significantly resembles the language of the Thematic Commentary on Language Rights, which was adopted by the ACFC just a few month before the Ljubljana Guidelines. This Commentary, for instance, states in para. 25, that "[p]rogress can hardly be made if the assumption – rigidity of identities – does not reflect reality, which shows growing fluidity of positions in society." The two documents were more or less drafted in parallel, and personnel overlap between the HCNM and the ACFC facilitated a joint shift in approach of both institutions that was described as a "turning point" in the approach to minority protection (Palermo, 2018, p. 143) and was further consolidated in Thematic Commentary No. 4 entitled "The Framework Convention: a key tool to managing diversity through minority rights". The societal approach emphasized by both institutions ever since is well-described in the final paragraph (para. 87) of this last Thematic Commentary (to date): "The Framework Convention is a powerful tool to assist states to address these challenges [that undermine stability, democratic security and peace] and create stable and sustainable societies where *difference is expressed and affirmed*, where *equal access to rights and resources* is facilitated *despite difference*, and where *social interaction and constant dialogue* is promoted and encouraged *across difference*." (emphasis added).

The Ljubljana Guidelines are the set of recommendations most frequently referred to in ACFC opinions (21 references in relation to 20 countries). The increased preoccupation with integration-related issues is furthermore reflected in the fact that the European Commission against Racism and Intolerance (ECRI) included integration policies among the four issues that it monitored in all countries during its fifth round of country monitoring. The HCNM's Guidelines have been referred to in 14 out of 42 reports, which also underlines their relevance for other CoE bodies.

Conclusions

According to Jackson-Preece (2013, p. 81), "[s]uccessful conflict prevention and resolution entails successful normative standard setting and persuasion; hence, in order to be effective, security actors must also be normative actors." The initial intention of the HCNM when drafting the first set of Recommendations might not have been to interpret norm standards (thereby contributing to the development of implementation standards), but rather to share

experience collected on the ground in carrying out his conflict prevention mandate in line with international law. Over time, the Recommendations and Guidelines have changed in their function. While the Recommendations have not created new law, they have, together with the Thematic Commentaries of the ACFC and in line with the living instrument doctrine, provided a modern interpretation of underlying treaty norms, including the FCNM, a revision of which is currently politically impossible and maybe not even desirable. They are “more than just a mere compilation of the work of the respective institution on one particular subject.” They give substance to the provisions of international law and have been described as “medicine against aging” (Palermo, 2018, pp. 142-143; Palermo, 2011, p. 25, referring to Bloed & Letschert, 2008).

The above chapters have shown how the HCNM Recommendations and Guidelines relate to the FCNM and the soft jurisprudence of the ACFC. In the fields of education, use of minority languages, political participation, and media, it was the HCNM who started particularizing existing international obligations, including the FCNM, even if that instrument was only opened for signature when the first two sets of Recommendations were drafted. ACFC thematic commentaries that came later added further detail. The HCNM and ACFC thereby jointly contributed to the development of implementation standards – to shading in the spaces between the lines – by mutually reinforcing each other. This development was brought together at the HCNM level by the Ljubljana Guidelines, which addressed all the above issues from the perspective of the integration of diverse societies. One could therefore observe an evolution in the interpretation – and the convergence of this evolution – by the two bodies.

When it comes to fields where the FCNM broadly follows the approach of the ECHR (the use of language in relations with judicial authorities), the HCNM went beyond the scope of the FCNM and has strengthened the effective enjoyment of linguistic rights of national minorities in relations with judicial authorities. It did so by creatively joining the dots of various international law instruments and principles, and pushing the boundaries as far as possible.

In areas that are less well covered by highly specific provisions of the FCNM, the contribution of the HCNM was to sketch the outlines of these areas, be it with regard to national minorities in interstate relations, policing in multiethnic societies, or media in the digital age. The FCNM is very vague in these fields or needs to be interpreted in light of changing circumstances, such as the shift from traditional to digital media. The contribution was certainly highest with regard to providing guidance in the field of national minorities in interstate

relations. Also, the Tallinn Guidelines contain a number of elements that will be relevant for monitoring under the FCNM. The Policing Recommendations have seen the lowest level of reception, maybe because they were less well-grounded in the HCNM's expertise and international law.

The HCNM, together with the ACFC, has definitely had an impact on the *approach* to minority rights, shifting from a predominantly protective/defensive approach to a more holistic/societal approach with the Ljubljana Guidelines and the last two Thematic Commentaries of the ACFC. Achieving the integration of diverse societies through minority rights requires a delicate balancing act. In light of recent developments (the COVID pandemic, which exacerbated pre-existing inequalities, as well as the Russian aggression against Ukraine) and national legislation (particularly with regard to limiting minority rights in the field of language and education), it appears more and more challenging to accommodate legitimate concerns regarding national security and to achieve the appropriate balance between the legitimate aim of promoting the state language on one hand, and the protection and promotion of national minorities, their culture, language, and identity on the other. The guidance of HCNM Recommendations and ACFC Thematic Commentaries is all the more needed and useful.

The article gives some indication of the possible factors contributing to a positive reception of HCNM norms, understood in the sense of implementation standards. A first is *consultation*: the HCNM can make the strongest impact if it identifies areas where there is an expressed need for guidance; where the law is unclear or lacks specificity so that by filling these gaps there would be a "value added". Presumably, this would result in the HCNM focusing on those areas where the office has collected extensive expertise. If this is lacking, the Recommendations might be too technical and less used in practice.

A second important factor is *collaboration*: It is important for the HCNM to build coalitions of support around recommendations: to engage in dialogue and borrow from other regional and international frameworks, as well as from outside the context of minority rights, to see if analogies can be drawn from other fields. This formal and informal collaboration contributes to raised awareness, mutual reinforcement of standards, and cross-fertilization, for instance between the HCNM and the ACFC. More awareness-raising among other CoE bodies, especially the Committee of Ministers, would be useful to inform their thinking around minority issues and strengthen the legitimacy and leverage of the HCNM Recommendations.

This will lead to strong messages being conveyed to OSCE participating states and will thus reach beyond CoE member states or the state parties to the FCNM (Farahat, 2008, p. 1466).

Grounding any set of Recommendations in international law and principles and in the experience of the HCNM are thus important factors for successful norm-setting by the HCNM. But this does not mean that the HCNM cannot be *creative* and bold in its approach: this being a third factor of success, especially when it comes to pushing boundaries as much as possible within the parameters of international law and defining the borders of thus far less-covered fields of law.

Notes

¹ See, for instance, the cases of *Bakirdzi and E.C. v Hungary*; and *Grosaru v Romania*.

² See, for instance, the cases of *Chapman v the United Kingdom*; *Coster v the United Kingdom*; and *Lee v the United Kingdom*.

³ See the case *Nusret Kaya et al. v Turkey*.

⁴ For some examples regarding Estonia, see Sarv (2002) and Croft (2018) – the latter also on Latvia; regarding Romania and Slovakia, see Skovgaard (2007); regarding Kazakhstan and Kyrgyzstan see Stoianova and Angermann (2018); regarding Georgia, see Sabanadze (2009b; 2011); regarding Ukraine, see Smith and Semenyshyn (2018).

⁵ A recent Committee of Ministers recommendation refers to the Ljubljana Guidelines in its preamble: [Recommendation of the Committee of Ministers to member States on the importance of plurilingual and intercultural education for democratic culture](#) (Adopted by the Committee of Ministers on 2 February 2022 at the 1423rd meeting of the Ministers' Deputies). As for the Parliamentary Assembly, the report on [Preserving national minorities in Europe](#) refers to the HCNM but not to specific recommendations or guidelines.

⁶ There are many references to HCNM Recommendations in Venice Commission opinions and reports. Some examples are: Latvia - Opinion on the recent amendments to the Legislation on Education in Minority Language, CDL-AD(2020)012, reference to the Hague Recommendations in para 86; Ukraine - Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language, CDL-AD(2019)032, reference to the Ljubljana Guidelines in para. 128; Slovakia - Opinion on the act on the state language of the Slovak Republic, CDL-AD(2010)035, reference to the Recommendations on Policing in Multi-ethnic Societies in para 101; or Opinion on the Draft Law on the Statute of National Minorities living in Romania, CDL-AD(2005)026, reference to the Lund Recommendations in para. 58. Most references are to the Ljubljana Guidelines and the Lund Recommendations.

⁷ The ECRI's fifth report, which focused on integration policies, mentioned the Ljubljana Guidelines either in the footnotes or the bibliography (in the case of Belgium, Bulgaria, Germany, Luxembourg, The Netherlands, Slovakia and Switzerland).

⁸ According to Hudoc-FCNM, the ACFC referred to Hague Recommendations only once, in Germany, 4th opinion, para 130.

⁹ See 5th cycle opinions on Croatia, Italy, the Slovak Republic, and Spain.

¹⁰ Parliamentary Assembly of the Council of Europe: The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance co-operation and synergy with the OSCE, Recommendation 1773(2006).

¹¹ See e.g., 4th cycle opinions on Germany, para. 77; Norway, para. 58; and Ireland, para. 60; and 5th cycle opinion on North Macedonia, para. 77.

¹² So far, there has been only one reference to the Graz Recommendations in Ireland, 4th opinion, para 23.

¹³ Rather than referring to Graz Recommendations, the ACFC would, where possible, refer to the Language Charter and the undertakings that states have committed to under its Article 9.

¹⁴ Finland, 5th opinion (Article 6).

¹⁵ Serbia, 3rd opinion (Article 6).

¹⁶ De Graaf and Verstichel describe how the Recommendations have indeed emerged from the need for practical, operational guidance for policing in multi-ethnic societies, encountered in the HCNM's experience in Kyrgyzstan, Azerbaijan, Armenia, Georgia, and several field missions in post-conflict Yugoslavia. See de Graaf and Verstichel (2007, pp. 318-320).

¹⁷ To be fair, a footnote in the Recommendations does make reference to some relevant international norms and standards, including the FCNM, as well as to the Rotterdam Charter on *Policing for a Multi-Ethnic Society*, but this of course falls short of the standing practice to provide legal backing for each Recommendation separately. On the legal foundation of the Recommendations, see de Graaf and Verstichel (2007, pp. 321-322).

¹⁸ E.g., Russian Federation, 4th opinion, para. 148, fourth Thematic Commentary, para. 36

¹⁹ Bulgaria, 4th opinion, para. 213.

²⁰ Russian Federation, 4th opinion, para. 148.

²¹ See Estonia, 5th opinion, para. 85.

²² See e.g., 5th cycle opinions on Armenia, para 75; Germany, para. 98; Italy, para. 92, 94, 97-98; the Slovak Republic, para 5; Slovenia, paras 105 and 108; the Czech Republic, para. 59 (under Art. 4); 4th cycle opinions on Austria, para. 36; Norway, para 49; Portugal, para. 86; Romania, para 64; Sweden, para 50; Spain, paras 53-54; 3rd cycle opinions on Spain, para 85; Slovenia, para 75; Slovak Republic, para. 98; 2nd cycle opinion on Latvia, para 153.

²³ See e.g., 5th cycle opinions on the United Kingdom, paras. 118, 121 and in particular 123; Italy, paras. 95 and 106.

²⁴ To Recommendation 7 in 5th cycle opinions on Croatia, para 157; Finland, para 118, and Slovak Republic, para 168. The third opinion on Georgia, para 94, refers to Recommendation 12, the third opinion of Montenegro, paras 101 and 103, to Recommendations 15 and 19.

²⁵ For an earlier reflection on the elements that define the approach of integrating diversity, see the 2006 address to the OSCE Parliamentary Assembly by HCNM Rolf Ekéus, summarized in Sabanadze (2009, pp. 115-116), in which amongst others he emphasized that integration is about interaction, not mere tolerance of plurality of cultures, and that political space is required to practice the policy of difference.

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