



## **THE MIXED TALE OF CROATIA'S IMPLEMENTATION OF THE FCNM**

### **SUCCESSFUL LEGISLATIVE AND INSTITUTIONAL IMPLEMENTATION MARRIED BY LOCAL ADMINISTRATIVE RESISTANCE AND MISAPPLICATION**

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# THE MIXED TALE OF CROATIA'S IMPLEMENTATION OF THE FCNM. SUCCESSFUL LEGISLATIVE AND INSTITUTIONAL IMPLEMENTATION MARRED BY LOCAL ADMINISTRATIVE RESISTANCE AND MISAPPLICATION

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*With the Framework Convention for the Protection of National Minorities (FCNM), the Council of Europe recognized that national minority protection was essential for European “stability, democratic security, and peace”. Yet, because the FCNM is nonjusticiable, and because its monitoring mechanism is voluntary and highly discretionary, many legal commentators’ initial predictions were ambivalent or pessimistic. Two decades and several monitoring cycles after the FCNM entered into force, there is sufficient data to begin assessing the accuracy of the initial predictions. This working paper answers a narrow question: to what extent have the FCNM’s monitoring procedure and the Advisory Committee’s recommendations been effective in facilitating Croatia’s implementation of its legal obligation under the FCNM? In brief, the Croatian implementation record reveals mixed results. Whereas Croatian authorities have made significant progress toward full and effective constitutional, legislative and institutional implementation of their FCNM obligations, this success has been marred by resistance and disobedience at the level of local application. An analysis of Croatia’s progress demonstrates that its national minority protection measures are not properly characterized as legislative lip-service, and that even though Croatia has much work to do to fully implement the FCNM, including on several issues of pressing concern, its real progress should be neither underestimated nor devalued. Ultimately, there are good reasons to be optimistic about the FCNM’s monitoring procedure’s ability to encourage States Parties to enhance their national minority protection, particularly at the legislative and institutional levels.*

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## 1. Introduction

With the Framework Convention for the Protection of National Minorities (FCNM), the Council of Europe recognized that national minority protection was essential for European “stability, democratic security, and peace”.<sup>1</sup> Although States Parties enjoy considerable discretion in determining how to implement their obligations, the FCNM would not be much of a national minority protection instrument, if States Parties could unilaterally declare their compliance with its legal requirements. In very broad terms, Articles 24 to 26 and the secondary norms established by the Rules on the Monitoring Arrangements, and the Rules of Procedure of the Advisory Committee, specify its monitoring procedure, which is described in Part III below. Because the FCNM is not justiciable, States Parties’ implementation is voluntary and highly discretionary, and effective monitoring requires States Parties’ willing cooperation with the Advisory Committee, many prominent legal commentators’ initial predictions were ambivalent or pessimistic.

Two decades and several monitoring cycles after the FCNM entered into force, there is sufficient data to begin to assess the accuracy of the initial predictions. The general research question is directed toward the effectiveness of the FCNM’s monitoring procedure, but this working paper reports the results of a legal analysis of Croatia’s implementation alone. To what extent have the FCNM’s monitoring procedure and the Advisory Committee’s recommendations been effective in facilitating Croatia’s implementation of its legal obligation under

the FCNM? In brief, the Croatian implementation record reveals mixed results. Whereas Croatian authorities have made significant progress toward full and effective constitutional, legislative and institutional implementation of their FCNM obligations, this success has been marred by resistance and disobedience at the level of local application. An analysis of Croatia’s progress demonstrates that its national minority protection measures are not properly characterized as legislative lip-service, and that even though Croatia has much work to do to fully implement the FCNM, including on several issues of pressing concern, its real progress should be neither underestimated nor devalued. Ultimately, there are good reasons to be optimistic about the FCNM’s monitoring procedure’s ability to encourage States Parties to enhance their national minority protection, particularly at the legislative and institutional levels, even though the monitoring process is voluntary and nonjusticiable; however, it is important to recognize that there may be hard limits to States Parties’ willingness to comply.

## 2. My Research Project

This Working Paper is part of the European Centre for Minority Issues’ (ECMI) larger research project, seeking to assess the effectiveness of the FCNM’s monitoring process. A central inquiry involves a determination of the extent of a State Party’s implementation, given the range of issues identified by the Advisory Committee. Also, the larger project aims to identify persistent issues and possible reasons for States Parties’ failures to fully and effectively implement their legal obligations. Additionally, it



endeavours to reveal positive and negative implementation indicators, as well as effective techniques and suggestions employed by the Advisory Committee.<sup>2</sup> The ECMI's larger research project aspires to inform States Parties' implementation, and the Advisory Committee's effectiveness in encouraging this implementation.

To this end, I have conducted a detailed issue-by-issue analysis of the Advisory Committee's Opinions on Croatia's implementation through four monitoring cycles. Croatia was chosen from a list of States Parties reputed to be generally cooperative with, and responsive to, the Advisory Committee. An analysis of an uncooperative or unresponsive State Party would not be a fruitful starting-point insofar as the preconditions for the Advisory Committee to facilitate State Party implementation are not satisfied, even though analyses of these recalcitrant States Parties would be beneficial at the comparative stage.

In its four Opinions, the Advisory Committee identified forty implementation issues, many of which contained several sub-issues. After tracking the Advisory Committee's comments on each issue through the four monitoring cycles, I classified them into four categories:

- (i) (almost) *full and effective implementation*;
- (ii) *substantial implementation*, but additional improvements are required for full and effective implementation;
- (iii) *significant implementation*, but substantial additional improvements are

required for full and effective implementation; and,

- (iv) (almost) *no implementation* toward full and effective implementation.

Using this schema, I found that Croatia's progress on the forty issues yielded the following results: ten issues (25%) under category (i); twelve issues (30%) under (ii) and (iii); and, six issues (15%) under (iv). Thus, Croatia has (almost) fully and effectively implemented ten issues, meaning that these issues are unlikely to arise again, unless Croatia veers off its current course, and on only six issues has Croatia made (almost) no progress toward implementation. In the two decades since the FCNM entered into force, Croatia has made at least substantial progress toward resolving 55% of the issues identified by the Advisory Committee. On an initial inspection, then, Croatia appears to have made real progress toward fully complying with its legal obligations under the FCNM, while simultaneously raising questions about its failure to progress on several issues. So, why has Croatia fully implemented some of its obligations, while almost wholly ignoring others? This question will be explored in Part IV, where I list and analyze the issues falling under each classification in the categorization schema.

### **3. Monitoring and Cooperation via Timely Submission**

The FCNM is a legally-binding instrument of international law devoted to the protection of national minorities, but initial predictions of its effectiveness were pessimistic because it



is not justiciable. Instead, Articles 24 to 26 and the subsequent Rules establish a dialogic monitoring procedure – a process inviting States Parties to cooperate with the Advisory Committee with the objective of attaining full and effective implementation of the FCNM. Under Article 24, the Committee of Ministers of the Council of Europe is responsible for monitoring the FCNM’s implementation. Under Article 25, each State Party is obligated to submit its State Report with full information on the legislative and other measures taken to give effect to the FCNM’s principles. A State Party’s first Report is due fifteen months after it has ratified the FCNM, and then every subsequent State Report is due five years after the previous due date. Under Article 26, an advisory committee was to be formed to assist the Committee of Ministers to assess and evaluate the adequacy of States Parties’ measures. The Advisory Committee collects information from State authorities, civil society, minority and civil rights organizations, and other interlocutors, perhaps during an invited visit to the State Party, and then drafts its Opinion, citing progress and issues, and offering suggestions and recommendations. The State Party is then entitled to submit a Comment within four months. Ultimately, the Committee of Ministers issues a Resolution with its recommendations to the State Party. The fundamental flaw in this monitoring process is that States Parties can ignore both the Advisory Committee’s Opinions and the Committee of Ministers’ Recommendations. The ECMI’s research project seeks to determine the extent to which this fundamental flaw has limited the FCNM implementation in practice, and to determine

where the Advisory Committee’s recommendations have yielded fruitful results. In short, the Advisory Committee has indeed influenced greater compliance with the FCNM.

Yet, there is potentially an important lesson here. The FCNM provides only a framework for States Parties’ national minority protection schemas because States Parties find themselves in different situations with distinct problems. The FCNM’s mostly programmatic provisions establish not only objectives for States Parties to pursue, but also a measure of discretion to permit their undertakings to be particularized to their history, circumstances and unique political culture. While the FCNM is a multilateral instrument of international law, States Parties have opted for a pragmatic approach with incremental progress and ongoing monitoring rather than a juridical approach with justiciable provisions. Apparently, for many legal and political commentators, this preference signals a less than wholehearted commitment to national minority protection, but there is an alternative interpretation. The history of international human rights law during the United Nations’ era reveals a deep-seated concern with what has too often been labelled the “minority problem”. Although cynically cast as merely a matter for peace, order and security at the domestic and regional levels, it is doubtful that there is not also some concern for the plight of minorities and their human rights. Prior to the FCNM, States had negotiated to include national minority rights in central human rights documents, like the Universal Declaration of Human Rights (1948) and



International Covenant on Civil and Political Rights (1966), but sufficient agreement was elusive. States Parties found themselves in profoundly different socioeconomic, cultural, political, legal and historical circumstances, facing distinct challenges, and being differentially empowered to effectively contend with these challenges. For States seeking to protect national minorities, a legal framework with programmatic provisions and a pragmatic approach furnishes an opportunity for a legally-binding commitment to make incremental progress on this difficult issue. The FCNM reflects a realization that States Parties may not be capable of fully implementing their legal obligations immediately, while nonetheless being committed to national minority protection as an aspirational objective. Surely, a multilateral framework convention with an ongoing monitoring procedure was preferable to maintaining the status quo: no legally-binding international law for national minority protection.

Given the reality behind the FCNM and its monitoring procedure, it may be appropriate to lower our expectations of the pace at which States Parties will implement the requisite national minority protections. According to its Tenth Activity Report, “[t]he ACFC considers the monitoring mechanism as an open-ended process where each step builds on the previous ones in a continuum between cycles aimed at positively improving the situation for minorities on the ground.”<sup>3</sup> The Advisory Committee’s pragmatic approach to incrementally improving the conditions for persons belonging to national minorities

(PBNMs) corresponds well with States Parties’ commitment to work toward the full and effective implementation of the FCNM. Thus, like the Advisory Committee, we should expect to see some progress between monitoring cycles, but perhaps not on every identified issue.

### **3.1 Punctual Submission of State Reports as an Indicator of Cooperation**

An indicator of a State Party’s cooperation with the FCNM’s monitoring mechanism, generally, and the Advisory Committee, specifically, is the timely submission of its State Report. Overwhelmingly, States Parties do not deliver their Reports by the specified due date. Croatia’s performance on this indicator was excellent in the first two monitoring cycles, but slid to the middle of the pack in the next two cycles, although not all States Parties have entered the fourth cycle. Through four cycles, Croatia’s submissions were 147.5 days late, but through three cycles, it ranked 11<sup>th</sup> in average days late, and 4<sup>th</sup> in average rank. So, Croatia fares well comparatively, although it appears that most States Parties are not overly concerned about submitting their State Reports late. Of course, without a detailed examination of the reasons, the statistics on days overdue, average days overdue and average rank are merely suggestive of cooperation. After all, a State Party may submit an inadequate Report early, whereas another may delay submitting because it is gathering full information on its FCNM implementation. Despite the obvious need to delve deeper into the reasons for a State Party’s late submission, punctual submission



(or submitting a State Report closer to the due date) is an indicator of cooperation with the FCNM’s monitoring mechanism, and Croatia fares comparatively well on it.

<b>CYCLE</b>	<b>DAYS OVERDUE</b>	<b>RANK</b>	<b>AVERAGE OVERDUE</b>
First	43	8 of 39	294
Second	72	6 of 39	325.5
Third	253	21 of 38	TBD
Fourth	222	17 of 21	TBD

### **3.2 The Advisory Committee’s Assessment as an Indicator of Cooperation**

Another indicator of State Party cooperation with the FCNM’s monitoring mechanism is the Advisory Committee’s assessment of it. Overall, the Advisory Committee has found the Croatian authorities to be very cooperative. In the first cycle, the Advisory Committee noted that Croatia’s consultation was limited, and that several prominent non-governmental organizations dealing with minority issues were not informed of the process.<sup>4</sup> Afterward, Croatia implemented several important changes to its legislation and practice, resulting in increased dialogue between State authorities and PBNMs’ representatives.<sup>5</sup> The Advisory Committee has been impressed with Croatia’s constructive, cooperative and inclusive approach to the FCNM’s monitoring process, particularly its (i) translation and dissemination of the Advisory Committee’s

Opinions to national minority organizations, (ii) follow-up seminars, and (iii) consultation with the Council of National Minorities and the representatives of national minority associations.<sup>6</sup> The Advisory Committee’s assessment of a State Party’s implementation of its obligations vis-à-vis the FCNM’s monitoring cycle is an important indicator, and here too, the Croatian authorities have fared well.

### **4. Analysis of Croatia’s Compliance with the FCNM Based On Its Progress Toward Full and Effective Implementation**

#### **Croatia’s Post-Conflict Context: Temporary Issues from the 1991-1995 Armed Conflict**

When the FCNM entered into force, Croatia was still a nascent sovereign state, fresh off its declared independence from the Socialist Federal Republic of Yugoslavia, and the subsequent armed conflict. The armed conflict resulted in significant human casualties and displacements, damaged infrastructure, and a decreased economic output. Additionally, for our purposes, Croatian authorities encountered several thorny and contentious issues, complicating their FCNM implementation. For instance, Croatia would have to contend with the prosecution of alleged war crimes, the official acknowledgement of its victims from the armed conflict, the reconstruction of dwellings and basic infrastructure, and the tenancy rights of returnees. Also, Croatia would have to address the underrepresentation of Serbs in official posts,



like administrative bodies, the judiciary, and the police forces, and establish the background preconditions for PBNMs to be willing to exercise their rights. These issues will be examined below, but the takeaway is that, with fresh wounds from the armed conflict, Croatia, as a nascent independent state, inherited a host of highly problematic implementation issues. Predictably, progress on many of these issues was slow, and Croatian central authorities encountered much resistance, particularly from local administrators. Yet, Croatia has made progress or resolved many of these issues, and it is very likely that once these conflict-related issues have been resolved adequately, they will not resurface again. In this sense, these issues are temporary, and prudence would suggest that Croatian authorities should prioritize their resolution to eliminate them from future monitoring cycles. Nonetheless, any analysis of Croatia's FCNM implementation in the two decades following its independence and the 1991-1995 armed conflict would be remiss not to account for its nascent character, its incurred losses, and its inherited issues. Based on Croatia's history, we should expect slow progress toward its full and effective implementation of the FCNM, but my analysis suggests that Croatia has indeed exceeded this expectation.

It is a mistake to regard Croatia's 1991-1995 armed conflict as a strictly historical matter. It cannot be properly relegated to the annals of history because it continues to impact and impede Croatia's ability and willingness to resolve some issues and implement specific articles of the FCNM. For this reason, the

Advisory Committee, legal analysts and other commentators should remain cognizant of Croatia's recent wounds, and sensitive to the armed conflict's enduring legacy. We should exercise caution in our assessments and recommendations, and recognize the real danger that overly eager and direct recommendations could produce counterproductive results. In general, I suggest, it is preferential to delay direct implementation, and opt for an indirect strategy focusing on the necessary preconditions for progressive measures. To be clear, however, Croatia is legally obligated to resolve these implementation issues.

#### **4.1 Analysis: Issues with (Almost) Full and Effective Implementation**

Through four monitoring cycles, Croatia has managed to almost fully resolve ten of the forty issues identified by the Advisory Committee. Almost full and effective implementation of twenty-five percent of its issues is an admirable accomplishment, but some issues are much easier to resolve because they involve a low burden with only a negative obligation to refrain from an identified type of conduct, e.g., Articles 7 and 8, whereas other issues with positive obligations to ensure specific conditions are much more demanding, e.g., Articles 4 and 15.

Unsurprisingly, Croatia's excellent record resolving implementation issues involves many of the less demanding issues. They fall into three categories. First, there are the implementation issues falling under Articles



7 and 8, involving traditional liberal rights and freedoms. These Articles impose on States Parties a negative duty of non-interference with individuals’ peaceful assembly, association, expression, thought, conscience and religion, including their right to establish religious institutions, organizations and associations. These familiar rights and freedoms do not have a special dimension for PBNMs, meaning that, as long as States Parties do not intentionally

or unintentionally restrict their exercise by PBNMs, the full and effective implementation of these Articles is rather straightforward.

Second, there are issues of constitutional or legislative implementation, and, often, the central government can take the necessary action, unilaterally. For instance, the Advisory Committee was concerned that Croatia’s constitution recognized only ten national minorities and a generic ‘other’ category, even though its national minority protection legislation identified and applied to a total of twenty-two minorities.<sup>7</sup> Even though this legislation did not limit national minority protection to the constitutionally-recognized groups alone,<sup>8</sup> Croatian authorities adhered to the Advisory Committee’s recommendation to constitutionally recognize all twenty-two groups to establish a sense of equality between them.<sup>9</sup> Typically, constitutional revision involves greater complexity than legislative action, so the delay may have been reasonable. On other matters, for instance the legal safeguards on the collection, storage and use of personal data, Croatia quickly adopted European standards for census and personal affiliation data protection.<sup>10</sup> The Advisory Committee identified the issue in the initial monitoring cycle, and Croatian authorities had resolved it by the second cycle. Again, this type of issue may be unilaterally resolved by the central government because it pertains to the State Party’s legislative guarantees. Beyond this legislative stage, FCNM implementation requires institutional and local implementation. Conceptually and

Article	Issue Description
3	Constitutional Recognition of National Minorities
3	Legal Safeguards for Census Data on Personal Affiliations
7	Regulatory Framework concerning National Minority Associations
8	Equal Treatment for PBNMs where there are Religion-Based Differences
9	Undue Limitations on Transmitting or Receiving Information and/or Ideas in a Minority Language
9	Public Broadcasting On/For PBNMS in Minority Languages
9	Private Broadcasters
15	Representation in Elected Bodies and Participation in Decision-Making
17	Transfrontier Contact
18	Bilateral Treaties and Cooperation



practically, States Parties will experience fewer impediments to the enactment of legislation than they will to the introduction of effective institutions and policies to satisfy their legislative guarantees. Yet, constitutional and legislative implementation is a crucial step in the process, which shifts attention to the institutional and local application stages. Often, matters become far more complex at these later stages, as we will see below.

Third, there are non-domestic issues, typically falling within the central government's jurisdiction. Article 17.1 establishes a negative duty on States Parties to refrain from interfering with the right of PBNMs to freely establish and maintain peaceful contacts across frontiers with persons lawfully residing in other States. In the first cycle, the Advisory Committee suggested that Croatia improve its implementation, particularly with its bordering neighbours,<sup>11</sup> and in the second cycle, the ACFC was pleased that Croatia's agreement with some neighbouring States had facilitated temporary visa-free cross-border travel for PBNMs, and it encouraged Croatia to continue to facilitate such travel.<sup>12</sup> Similarly, although it imposes a positive obligation to take concrete measures, Article 18.1 requires States Parties to endeavour to conclude bilateral and multilateral agreements with other States, particularly neighbouring States, to ensure the protection of PBNMs, where necessary. These Articles involve foreign policy and agreements with other States. On the issues identified under these Articles, States Parties will likely be able to take the appropriate measures, and

once resolved, these implementation issues are unlikely to arise again.

In conclusion, Croatia has an excellent record of addressing issues pertaining to traditional liberal rights and freedoms, or involving unilateral legislative action. Legislative implementation is an integral step in the overall implementation of the FCNM, and national legislation often sets a standard upon which the State Party's policies and conduct may be evaluated. Although this legislation may need to be revisited and revised, as occurred with the political representation of PBNMs in Croatia's elected bodies, legislative implementation remains the crucial first step for the full and effective implementation of the FCNM. At this stage, Croatia has fared well, meaning that, generally, the Advisory Committee is satisfied with Croatia's legal framework for national minority protection.

#### **4.2 Analysis: Issues with Substantial Implementation**

Croatia has made substantial progress toward fully and effectively implementing its FCNM obligations on twelve issues, but additional improvements are still required. Issues fall into this category when the State Party is closer to full and effective implementation than to its starting line. Typically, these issues require not only legislative implementation, but also subsequent institutional implementation and local application. Exceptionally, some of the temporary issues discussed in relation to the 1991-1995 armed conflict's legacy fall into this category as well.



Article	Issue Description
4	Anti-discrimination Legislation
4	Former Tenancy Rights-Holders
4	Office of the Ombudsperson
4	Returnee Repossession of Property
5	Support for the Preservation/Development of National Minority Identities/Cultures
6	Promotion of Tolerance and Intercultural Dialogue by Other Relevant Actors
6	Stereotyping in the Media
10	Right to Official Use of Minority Language and Script
11	Identity Documents in Minority Languages
14	Availability of Instruction in and of Minority Languages
14	Specialized Teacher Training
16	Sustainable Voluntary Return

In this substantial implementation category, eight of the twelve issues involve adequate legislative implementation with unsatisfactory institutional implementation or application. The Advisory Committee's recommendations on Croatia's anti-discrimination law is telling. At first, the Advisory Committee suggested that Croatia improve its legislation by extending its scope beyond the employment field alone.<sup>13</sup> In the second cycle, although Croatia had improved its criminal prohibitions against direct and

indirect discrimination, the Advisory Committee suggested that further improvements were necessary in education and housing.<sup>14</sup> Then, in the third cycle, the Advisory Committee noted Croatia's legislative improvements, but shifted its attention to the institutional implementation and application of the anti-discrimination law, particularly by the judiciary.<sup>15</sup> For instance, the Advisory Committee stressed the crucial role of disaggregated data for monitoring legislation implementing States Parties' commitments under the FCNM.

With Croatia's support for the preservation and development of national minority identities and cultures, the Ombudsperson's Office, stereotyping in the media, the right to official use of minority language and script, the right to identity documents in minority languages, the availability of instruction in and of minority languages, and specialized teacher training, the familiar pattern repeats. First, Croatian authorities enact legislation, and the Advisory Committee suggests revisions until the legislation is satisfactory. Then, the Advisory Committee's attention shifts to the institutions required to monitor and apply the legislation, and their capacity to perform their assigned functions, given their financial and human resources. Either simultaneously or subsequently, the Advisory Committee may draw the State Party's attention to some deficiency in the institution's application of its legislated agenda, or perhaps to a lack of real progress on the ground, despite what appears to be adequate progress on the legislative and institutional levels. For instance, with stereotyping in the media, Croatia had



implemented the Advisory Committee's recommendations to have the Croatian Journalists' Association adopt a Code of Ethics with an obligation to defend human rights, dignity, freedom and pluralism, and to establish a Council of Electronic Media as an independent regulatory body for radio and television broadcasters.<sup>16</sup> Yet, in the fourth cycle, after a nationalist resurgence and political radicalization had worsened the overall environment for PBNMs, the Advisory Committee noted that civil society and national minority representatives had complained about the media's role in diffusing hate speech against PBNMs, particularly the Serb and Roma minorities, but also Albanians, Montenegrins, Slovenians and Bosniaks.<sup>17</sup> On this issue, Croatia's implementation had regressed due to the practical ineffectiveness of its legislation and institutions, when confronted with the nationalist resurgence and political radicalization; thus, the Advisory Committee suggested specific improvements to enhance their effectiveness.

The other four issues are somewhat aberrant insofar as they call for an ad hoc governmental response to Croatia's post-conflict context rather than legislative implementation. On the former tenancy rights-holder issue, the Advisory Committee welcomed Croatia's introduction of its Housing Care Programme,<sup>18</sup> and then its State Office for the Reconstruction and Housing Care, particularly welcoming its county-level offices for local administration.<sup>19</sup> On the returnee property repossession and reconstruction issue, the Advisory Committee was pleased to receive

Croatia's assurance that an adequate budget for speedy resolution of outstanding cases has been made available.<sup>20</sup> On these issues, Croatia has made significant progress, and it appears likely that it will resolve all pending cases soon.

These issues, like the promotion of tolerance and intercultural dialogue issue, are integral components of a larger issue: the sustainable voluntary return of PBNMs who sought refuge outside of Croatia during the 1991-1995 armed conflict. The Advisory Committee worried about the housing-related issues, particularly for potential Serb returnees,<sup>21</sup> and it welcomed the abovementioned progress, even though it was not convinced that returnees were able to establish dignified lives with adequate living and working conditions.<sup>22</sup> In the fourth cycle, the Advisory Committee noted the precipitous drop in the proportion of PBNMs in Croatia in the two decades following its independence,<sup>23</sup> and recommended State action against the nationalist resurgence, prompt condemnation of hate crimes against PBNMs, proactive promotion of housing and reconstruction assistance, and targeted support for infrastructure, transportation and other amenities in the returnee areas.<sup>24</sup> Due to its progress on several related issues, like the housing-related issues discussed in this section and anti-discrimination law, Croatia has made significant progress toward a sustainable voluntary return policy, even though an alarming UNHRC report indicates that only 54% of Serbian returnees remained in Croatia rather than return to their asylum country.<sup>25</sup> Despite its progress, the return process often remains marred by inadequate



housing, high unemployment, and discrimination. The sustainable voluntary return issue highlights the interconnectedness of many implementation issues, and how progress on an issue may simultaneously constitute progress on another issue because the former issue serves as a necessary or facilitating condition for the latter. States parties would be well served to note these interconnections, and prioritize progressing on these facilitating issues. Overall, Croatia has made at least substantial progress on the majority of issues, but serious issues remain.

### 4.3 Analysis: Issues with Significant Implementation

The positive narrative of Croatia’s FCNM implementation has come to a close, and I turn now to those issues where Croatian authorities have made significant progress, but where substantial additional improvements are required for full and effective implementation. In short, on these twelve issues, Croatia has made progress, but still finds itself closer to the starting line than the finish line. Interestingly, none of these issues involve inadequate legislative or institutional implementation. In most cases, the Advisory Committee was satisfied with Croatia’s legislative and institutional progress, but worried about practical application at the local level.

Article	Issue Description
3	Acquiring and Interpreting Census Data on Personal Affiliations
3	Citizenship Criterion for ‘National Minority’

6	Ethnically-Motivated Incidents and Hate Crimes
6	Promotion of Tolerance and Intercultural Dialogue by Authorities
6	War Crimes
9	Amount of Minority Television and Radio Broadcasting
11	Display of Topographical Indications in Minority Languages
12	Availability of Textbooks in Minority Languages
12	Education of Roma Children
12	Negative Stereotypes in History Textbooks
15	Participation as Employees in Administrative, Executive and Judicial Bodies
15	The Roma

The two implementation issues falling under Article 3 are significant because they impact who is covered by Croatia’s national minority protection measures, and the information underlying these measures. In the second cycle, the Advisory Committee noted that Croatia’s legislative protection of national minorities *a priori* excluded non-citizens where a citizenship criterion was inapposite, like non-discrimination protection.<sup>26</sup> As a result, the Committee recommended that Croatia review its national minority protection legislation to ensure that the citizenship requirement was invoked judiciously, and only in pursuit of legitimate



aims.<sup>27</sup> In subsequent cycles, it repeated its concern, emphasized that the citizenship criterion risked establishing arbitrary and unjustified distinctions, and expressed deep concern about its function in a post-conflict context, where many PBNMs have been experiencing difficulties in obtaining Croatian citizenship.<sup>28</sup> The worry is that the most vulnerable people may be denied national minority protection because they cannot establish or acquire Croatian citizenship. The Advisory Committee recognizes that the citizenship criterion may be relevant for some FCNM articles, and consequently recommends a flexible article-by-article<sup>29</sup> and case-by-case<sup>30</sup> approach to non-citizen requests for the enjoyment of national minority rights. Surprisingly, Croatia has not yet acceded to the Advisory Committee's recommendation for a comprehensive review, although it has relaxed the citizenship requirement on an ad hoc basis.

The acquisition and interpretation of census data is another bedrock implementation issue. Since a State Party's national minority protection measures often depend on the number and concentration of PBNMs, the Advisory Committee encourages States Parties to seek reliable, up-to-date and disaggregated statistical data from several sources beyond the census alone, and to avoid placing undue weight on census results.<sup>31</sup> Also, the Committee recommends that States Parties consult with national minority representatives, when analyzing census results for a specific purpose, particularly where a numerical threshold exists.<sup>32</sup> There are at least four reasons

offered for the recommended scepticism and consultation about census results:

(i) individuals may be reluctant to identify themselves as PBNMs in post-conflict Croatia for fear of retribution;<sup>33</sup>

(ii) individuals may have sought refuge outside Croatia during the 1991-1995 conflict, and not re-established residency in Croatia due to lack of adequate housing, lack of employment opportunities, discrimination, or fear of reprisal; e.g., in the second cycle, the Advisory Committee noted that many Croatian Serbs residing outside the country were not included in the census records;<sup>34</sup>

(iii) national minority representatives claimed to represent significantly larger communities than conveyed by the census results;<sup>35</sup> and,

(iv) serious irregularities in the census enumeration were reported, particularly for the Serb and Roma minorities; e.g., there were insufficient minority language questionnaires, enumerators suggested not indicating a minority affiliation, and enumerators recorded data based on assumption without inquiry.<sup>36</sup>

The Advisory Committee has consistently expressed concern about the accuracy of Croatia's data, particularly due to flaws in the census procedures.<sup>37</sup> Although there is an element of local resistance with some census officials encouraging PBNMs to report as ethnically Croatian or Catholic, the primary flaws result from poor design, inadequate training of census officials, and lack of consultation with representatives of PBNMs. Croatian authorities have taken steps to



improve their census data, but much improvement is required.

Another two issues in the significant implementation category involve the Roma, whose plight presents a special challenge for many States Parties. In the first cycle, the Advisory Committee recommended that Croatia take positive measures to ensure the effective participation of the Roma in social and economic life, particularly for Roma women, and to ameliorate deprivations in their living conditions.<sup>38</sup> In the second cycle, it advised Croatia to prioritize its implementation of the National Programme for the Roma.<sup>39</sup> In the third and fourth cycles, Croatia demonstrated its commitment to improving the Roma's plight. The Advisory Committee welcomed Croatia joining eight other States<sup>40</sup> in the Declaration of the Decade of Roma Inclusion to eliminate discrimination against Roma in education, employment, health and housing, and its National Action Plan for the Decade of Roma Inclusion.<sup>41</sup> Also, it welcomed Croatia's improvement of the deplorable living conditions in some Roma settlements, particularly with the construction of water pipes and sewage networks.<sup>42</sup> Nonetheless, the Advisory Committee expressed concern about Roma living conditions, exclusion from mainstream society, and discrimination in employment, social protection, and healthcare.<sup>43</sup> Thus, it recommended that Croatia work with Roma organizations to draft, implement, monitor and evaluate programmes to further improve the Roma's situation.<sup>44</sup> In the fourth cycle, the Advisory Committee expressed deep concern about Roma living conditions, citing that 92.3%

live in relative poverty (compared to 42% for non-Roma), and 65% are unemployed (compared to 24%).<sup>45</sup>

The Advisory Committee has identified the education of Roma children as an integral component of any strategy to assist the Roma to find meaningful employment, improve their living conditions, and, ultimately, integrate into an accommodating multicultural society. Without a secondary education certificate, young adult Roma face reduced prospects on the labour market, where they encounter discriminatory attitudes as well.<sup>46</sup> Consequently, the education of Roma children is a high priority issue.

Given this grander vision, unsurprisingly, the Advisory Committee has been perturbed by the segregation of Roma children into separate classrooms because it is often unnecessary, stigmatizing, reinforcing of negative stereotypes, and a denial of equal access to education.<sup>47</sup> In the first cycle, the Committee drew Croatia's attention to this issue,<sup>48</sup> and, in the second cycle, it noted that the segregation of Roma children into separate classrooms had become increasingly rare, even though it continued to occur in various counties.<sup>49</sup> In the fourth cycle, however, the Advisory Committee expressed concern that only 25% of Roma children complete elementary education, and only 10% complete secondary school.<sup>50</sup> With Croatia's distressing lack of progress on this issue, the Advisory Committee recommended that Croatia develop a comprehensive strategy to ensure that Roma children have effective and equal access to education, coordinate with local authorities



for its implementation, and allocate sufficient human and financial resources for the task.<sup>51</sup> To contend with the disproportionately high drop-out rate for Roma students, the Advisory Committee recommended increasing the use of Roma languages in school to promote understanding and development, as well as academic achievement and inclusion.<sup>52</sup> Distressingly, despite Croatia's attempts to ameliorate the situation of persons belonging to the Roma minority, these efforts have not yielded the desired results. On this umbrella issue, Croatian authorities have demonstrated the political will to take action, even in concert with neighbouring States. The Advisory Committee has offered several suggestions for yielding the desired results. The upcoming cycles will reveal whether Croatian authorities act on these recommendations, and whether they improve the situation of the Roma.

On the remaining issues, Croatia's progress has been inadequate due to lack of political will and/or local resistance or misapplication. The ethnically-motivated incidents and hate crimes issue is representative of Croatia's implementation difficulties on these issues. Under Article 6.2, States Parties have undertaken to protect PBNMs from threats and acts of discrimination, hostility and violence, resulting from their ethnic, cultural, linguistic or religious identity. To this end, the Advisory Committee has consistently instructed Croatia to take positive measures to prevent, investigate and prosecute racially- and ethnically-motivated attacks, especially against persons in the Serbian Orthodox, Jewish, and Roma minorities.<sup>53</sup> Also, the

Committee expressed concern about the lack of reliable statistics because, on the one hand, police often failed to categorize ethnically-motivated incidents as such, but also, on the other hand, PBNMs often do not report such incidents due to lack of faith in the police and judiciary.<sup>54</sup> On this issue, other issues like PBNM representation in the police force, prosecutorial bodies, and judiciary, and PBNM faith in the justice system, arise once again. So, in the fourth cycle, even though the Advisory Committee was satisfied with Croatia's revised criminal legislation and introduction of a monitoring procedure for all offences possibly constituting hate crimes, it noted that only seven cases were registered in the first six months, with a single person committing four of them.<sup>55</sup> Moreover, the Committee seemed appalled by how few cases of hate crime were recorded, and how most of these concluded with an acquittal or a conditional sentence – for the Advisory Committee, this data implied a misapplication of the available legal framework.<sup>56</sup> It assessed the Ministry of Justice's hate crime records against the 82 cases, registered by the Serb National Council, of ethnically-based violence against their members.<sup>57</sup> Further progress on this implementation issue seems to require Croatian authorities to take concrete steps to train and monitor members of the police force and judiciary, to educate the public on domestic legislation, and to garner the trust of PBNMs so that they will report possible ethnically-motivated incidents or hate crimes. In short, Croatian authorities must take positive measures to overcome local resistance and misapplication of its legislation.



Another relevant factor in these significant implementation issues is Croatian nationalism, particularly between the third and fourth cycles as the twentieth anniversary of Operation Storm and the successful end of the 1991-1995 armed conflict was commemorated. The war crimes issue is telling here. In the first cycle, the Advisory Committee recommended that Croatia contend with war crimes without ethnic bias,<sup>58</sup> and in the second cycle, that Croatia institute comprehensive training to eliminate ethnic bias, and increase PBNM participation in courts and prosecutorial bodies.<sup>59</sup> In the third and fourth cycles, the Advisory Committee expressed deep concern about the widespread ethnic bias in war crimes trials, particularly by accepting the accused's role as defender of the homeland as a mitigating factor, when the accused is an ethnic Croat.<sup>60</sup> Through the four cycles, the Committee has consistently requested that Croatia ensure that all war crimes are conducted in accordance with the rule of law and strict non-discrimination, and prosecuted without regard for the ethnicity of the victim or defendant.<sup>61</sup> Croatia's response is captured well by a single statement: "Criminal prosecution of war crimes is based on clear and objective criteria, relying exclusively on the principle of legality, regardless of who is the perpetrator and who is the victim."<sup>62</sup> In short, Croatia denies that there is ethnic bias in war crimes trials, and explained that "impartiality was ensured by the legislative framework and establishment of four specialized courts for war crimes, which allowed hearings to be transferred from local courts in order to avoid public pressure."<sup>63</sup> Where a State Party denies the issue

underlying the Advisory Committee's recommendation, it is very unlikely that it will take positive measures to implement it.

Croatian nationalism seems to impact the ability of Croatian authorities to perceive their bias and contend with it. I believe that Croatian nationalism, and a corresponding resistance to becoming a multicultural State, impedes efforts to fully and effectively apply domestic legislation pertaining to the amount of minority television and radio broadcasting, the availability of textbooks in minority languages, the display of topographical signs in minority languages, negative stereotypes in history textbooks, and the participation of PBNMs as employees in administrative, executive and judicial bodies. Croatian authorities may be unaware of their nationalist leanings, but it is manifested in their reluctance to take simple measures, like introducing bilingual signs for towns historically-inhabited by large proportions of national minorities. The Advisory Committee may experience significant difficulties in convincing Croatian authorities and officials to take positive measures inconsistent with its nationalist aspirations.

On the significant implementation issues, generally, Croatia has made adequate progress in its legislative and institutional implementation, but the desired outcomes are frustrated by poor local application, often due to lack of political will and/or local resistance or misapplication. Where the crucial step of enshrining FCNM obligations into domestic law has been achieved, an initial test of Advisory Committee's effectiveness has been passed. Perhaps, the true test of its effectiveness, and a State Party's resolve to



fully and effectively implement the FCNM, rests at the local application stage. This is the stage impacting the actual conditions of PBNMs.

**4.4 Analysis: Issues with (Almost) No Implementation**

In this final category, there are the issues upon which Croatia has not progressed in a meaningful way in the twenty years since the FCNM entered into force. Unsurprisingly, these issues fall under Articles 4 and 15. Under Article 4.1, States Parties undertake to guarantee “equality before the law” and “equal protection of the law”, particularly through robust anti-discrimination measures. Article 4.2 specifies the extent and scope of States Parties’ anti-discrimination obligations: “full and effective equality” and “in all areas of economic, social, political and cultural life”. Relatedly, Article 15 requires States Parties to “create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs”. The terminology of “full” and “effective”, and the wide scope covering economic, social, cultural and political life, indicate how robust these equality and participation provisions are. As a result, we should expect all States Parties to struggle to adequately implement such demanding provisions.

Article	Issue Description
4	Acquisition of Croatian Citizenship
4	Access to Justice

4	Employment and Basic Infrastructure
4	Situation of the Roma
15	National Minority Organizations
15	Participation in Socio-Economic Life

Articles 4 and 15 are often interconnected in subject-matter, but also, concerned less with States Parties’ activities, and more with the results of these activities. For instance, the employment and basic infrastructure issue falls under States Parties’ commitment to full and effective equality in economic life. Of course, this issue is closely related to the participation in socio-economic life issue. In the first two cycles, the Advisory Committee suggested that Croatia take additional positive measures in the field of employment.<sup>64</sup> Specifically, it identified two concerns: the intentional, historical and continued, exclusion of Serbs from public posts from law-enforcement to education,<sup>65</sup> and the presence of communities lacking basic infrastructure, like water or electricity, particularly in war-impacted areas and Roma settlements.<sup>66</sup> While these issues have an equality and discrimination basis sufficient to categorize them under Article 4.2, they were discussed under Article 15 and elsewhere as well. Under Article 15, the Advisory Committee has expressed deep concern about the economic plight of PBNMs, particularly members of the Serb and Roma minorities.<sup>67</sup> In the first two cycles, it was troubled by the unequal participation of PBNMs in socio-economic life reflected by their high unemployment rate, particularly in the war-



affected areas, and resulting (at least partly) from past and current discrimination.<sup>68</sup> The Advisory Committee recommended increased attention to the persistent negative consequences of past discrimination,<sup>69</sup> and to the reconstruction and development of war-affected areas.<sup>70</sup> In the third cycle, it expressed concern about the continued lack of infrastructure and employment opportunities in war-affected areas, particularly in areas inhabited by the Serb and Roma minorities,<sup>71</sup> and recommended that Croatia prioritize ameliorating these conditions.<sup>72</sup> In the fourth cycle, the Advisory Committee's comments indicate that Croatia had made almost no progress on this pressing issue. Together, Articles 4 and 15 provide big picture assessments of a State Party's actual outcomes. Unfortunately, on these measures, Croatia has not performed adequately, particularly for its Serb and Roma minorities.

On the one hand, Croatia may have fared poorly on its implementation of Articles 4 and 15 because they are demanding, outcome-oriented, big picture assessments. On the other hand, however, two issues point toward a different and more troubling explanation. Although the Advisory Committee had not discussed access to justice as a standalone issue until the fourth cycle, it had linked other issues to it several times. The Advisory Committee noted that, every year, the highest number of complaints received by the Ombudsperson concern the judiciary's objectivity and fairness, particularly in its treatment of war crimes.<sup>73</sup> By the fourth cycle, Croatia had managed to fully resolve fewer than 25% of war crimes

cases, with only a single conviction at final instance, and this conviction came with the minimum possible sentence and a merger of two sentences for separate crimes.<sup>74</sup> Moreover, PBNMs claim that Croatia has not adequately acknowledged, or compensated, victims of war crimes or civilian victims of Operation Storm.<sup>75</sup> As a result, there is a widespread perception among PBNMs, particularly the Serb minority, that they will not be treated fairly or equally by Croatia's legal system. The Advisory Committee connected these concerns about PBNMs' equal access to justice with the persistent problem of underrepresentation of PBNMs in the judiciary (under Article 15) because this problem too undermines PBNMs' trust in the judiciary, thereby reducing their willingness to seek legal remedies.<sup>76</sup> The Committee's comments suggest that the operation of Croatia's justice system reflects a nationalist aspiration undermining equal access to justice for PBNMs. The Croatian judiciary's general treatment of war crimes committed by ethnic Croats is captured by the "defence of the homeland" serving as a mitigating factor.<sup>77</sup> On this issue, like so many others, there is a clash between two visions: Croatia as the nation-state of ethnic Croats, and Croatia as an egalitarian, multicultural state.

There is perhaps no clearer illustration of this clash than the acquisition of Croatian citizenship issue. The Advisory Committee recommended that Croatia's citizenship acquisition process be fully accessible to PBNMs, and since this issue is categorized under Article 4, the Committee signalled that it should be non-discriminatory as well.<sup>78</sup> So, States Parties will be judged on two



standards: a *minimum accessibility threshold*, and a *comparative burdens assessment*. Croatia's citizenship acquisition process fails on both standards. On the one hand, the Advisory Committee identified three primary obstacles encountered by PBNMs, particularly elderly Serbian returnees, Bosniaks and the Roma as long-time denizens: (i) lost or destroyed identity documents;<sup>79</sup> (ii) residency requirements;<sup>80</sup> and, (iii) the Croatian language and script proficiency requirements.<sup>81</sup> On the other hand, Croatia's citizenship acquisition process favours ethnic Croats with a simplified application process, fewer and lower requirements, and access to dual citizenship.<sup>82</sup> Throughout the four monitoring cycles, the Committee recommended that Croatia prioritize contending with the special difficulties experienced by some PBNMs in meeting the citizenship acquisition requirements,<sup>83</sup> and eliminating the preferential treatment of ethnic Croats abroad over long-term residents.<sup>84</sup> Although the Advisory Committee welcomed various measures undertaken by Croatia, most notably the deployment of mobile teams, it noted that lack of consultation with national minority representatives, coupled with insufficient knowledge of the minority language, hindered the effectiveness of such measures.<sup>85</sup> Overall, Croatian authorities have taken inadequate steps to contend with the obstacles to minimum accessibility to citizenship for PBNMs, and no steps whatsoever to end their discriminatory preferential practices for ethnic Croats abroad.

The accessibility barriers are highly problematic because, since Croatia has a citizenship requirement for various national minority protections, obstacles and barriers to citizenship acquisition translate into obstacles and barriers to national minority protection. Thus, the Advisory Committee recommended that Croatia ensure that the absence of confirmed citizenship is not an obstacle to basic rights.<sup>86</sup> Croatia's lack of progress on removing these barriers suggests a lack of political will, and perhaps also a reluctance to recognize some PBNMs as Croatian citizens, particularly members of the Serb, Roma and Bosniak minorities.

While Croatia's lack of progress on removing the identified barriers to citizenship acquisition by long-time denizens suggests that Croatian authorities may view Croatia as a nation-state for ethnic Croats, the preferential acquisition process for ethnic Croats lends much weight to this explanation. How else is it possible to explain why Croatian authorities have not removed obstacles to citizenship acquisition for PBNMs who have lived their entire lives within Croatia's current borders, while they have a simplified procedure for ethnic Croats who have never stepped foot on Croatian soil? Or how they have failed to remove these obstacles or revise their acquisition process over the two decades since the FCNM has entered into force? This deep-seated nationalism accounts for Croatia's lack of progress on this important issue, as well as their resistance to conducting a comprehensive review of the citizenship requirement for national minority protection.



Croatian nationalism is not limited to the legislative and institutional domains, however. Despite Croatia's laudable cooperation with the Advisory Committee and the FCNM monitoring process, recall that the Committee expressed concern about the overall environment for PBNMs, resulting from a recent nationalist resurgence and political radicalization.<sup>87</sup> Because Croatia's legislative framework for national minority protection requires local application, these worrying cultural and political trends have resulted in increased resistance at the local level, and, consequently, decreased levels of national minority protection. With this resistance at the local level, which encompasses government, administrative and judicial bodies, as well as the police and schools, many PBNMs refrain from invoking their rights due to a lack of faith in local officials, but also due to fear of negative repercussions. The Advisory Committee noted that Croatia's legislative framework for national minority protection remains favourable, but also that there is a worrying disparity with, and decreased effective implementation at, the local level.

There is a distressing lesson here about the effectiveness of the FCNM's monitoring process and the Advisory Committee's recommendations. Not only is there a possibility that a State Party's nationalism may conflict with its egalitarian and multiculturalist obligations under the FCNM, but this is a *perpetual* possibility. The FCNM is an international national minority protection instrument, and, in nation-states, national minorities are defined relative to a

national majority. The possibility of conflict between implementing FCNM obligations for a particular national minority and a State Party's nationalist agenda will depend on that agenda, but also specific features of the national minority and its history. In Croatia's case, the authorities are willing to accommodate some minorities, whereas there is much hesitation and/or resistance to treat other minorities similarly. For instance, the Advisory Committee frequently noted Croatia's policies vis-à-vis the Italians in Istria, particularly for the official use of a minority language and bilingual topographical signs, and recommended that it serve as Croatia's model for national minority policies throughout the country.<sup>88</sup> Croatia's policies relative to the Italian minority starkly contrast with its policies for the Serb, Roma and Bosniak minorities, perhaps because the Italians are not perceived as a threat to Croatia's nationalist vision. Non-threatening national minorities are more likely to be accommodated, whereas the three identified minorities do not fit well within Croatia's nationalist vision: (i) the Serbs for historic reasons; (ii) the Roma, perhaps due to their profound cultural differences from ethnic Croats; (iii) the Muslim Bosniaks based on religious differences. Quite simply, due to the fundamental flaw identified early in this paper, there is no mechanism or process by which the Advisory Committee, the Committee of Ministers or the Council of Europe can compel compliance with the FCNM from a resistant State Party. Where that Party's nationalism creates a tension and opposition to a national minority protection measure, it is unlikely that it will comply, and it is impossible to compel compliance. This is



the practical limit to the FCNM's effectiveness.

## 5. Concluding Remarks

My analysis of Croatia's implementation as an indication of the FCNM's monitoring process began with a record of excellent implementation, but ended with those issues where Croatia has made almost no progress. Our initial sense of optimism was dashed by the sobering awareness that the FCNM's monitoring process is essentially voluntary, and States Parties cannot be compelled to implement national minority protection measures. Yet, this possibility is unsurprising. After all, we identified it as an intentional feature of the FCNM's monitoring process, raising the question of the extent to which it undermined the FCNM's implementation. My analysis of Croatia's implementation reveals that this possibility has had a minimal impact. First, Croatia has achieved (almost) full and effective implementation of the FCNM on 25% of the Advisory Committee's identified issues. Second, Croatia has achieved at least substantial implementation on a majority of these issues. Third, even though substantial improvement is required on these issues, Croatia has achieved significant implementation on several application issues – issues arising after adequate legislative and institutional implementation has been attained. Typically, the central government has indicated the political will to tackle the larger issue, taking concrete action to legislate and introduce the requisite institutions, but then encountering difficulties in attaining the desired results. Sometimes, the authorities have failed to consult and

cooperate with representatives of national minority organizations. At other times, they have failed to achieve the requisite institutional capacity due to insufficient financial or human resources. There is good reason to be optimistic, however. On almost every issue, Croatia has made some progress between cycles, even if its progress is occasionally minimal, lacking, or ineffective. What is important here is that Croatia has demonstrated a propensity to cooperate with, listen to, and accept the Advisory Committee's recommendations. This optimism may have been dashed somewhat by the analysis of those issues upon which Croatia has made almost no progress, but it is unsurprising that these issues fall under Articles 4 and 15. As a State Party's implementation improves, we should expect more issues to gravitate toward these demanding, big picture and outcome-oriented Articles. Full and effective equality, and full participation, in economic, social, cultural and political life is the ideal manifestation of the FCNM in a truly egalitarian and multicultural society. A lofty goal, indeed.

The most significant factor impeding Croatia's implementation has been a nationalist resistance to measures aimed at protecting three specific national minorities. Given Croatia's recent history as a nascent independent state involved in an armed conflict, some patience may be warranted. The Advisory Committee has had a profound impact on Croatia's domestic legislation and institutional design, thereby setting the stage to continue to fruitfully cooperate with Croatia as Croatian authorities move toward not only further implementing the FCNM,



but also actualizing their legislative guarantees to PBNMs. While some commentators have hastily dismissed Croatia's progress as legislative lip-service in pursuit of accession to the European Union, my analysis reveals Croatia's continued progress after its accession in 2013, despite persistent financial difficulties from the 1991-1995 armed conflict, and the 2008 economic crisis. In my estimation, Croatia has reached a complex stage in its FCNM implementation because its satisfactory legislative and institutional implementation must be applied locally to yield concrete results for PBNMs. Generally, the situation for PBNMs requires substantial improvement to fully and effectively meet the FCNM's promises, particularly for members of the Serb, Roma and Bosniak national minorities. The Advisory Committee's function as an expert body encouraging and facilitating States Parties' national minority protection measures will likely require sophisticated recommendations to move Croatia from substantial legislative and institutional implementation to full and effective local application. In the two decades since the

FCNM entered into force, Croatia has made real progress, and we have good reason to remain optimistic that, with the Advisory Committee's assistance, it will be able to continue to do so.



## Notes

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<sup>1</sup> FCNM, Preamble.

<sup>2</sup> There is a question about the conceptual gap between a State Party's implementation and the Advisory Committee's role in that implementation. For the purposes of this research study, whatever the motivation for Croatia's measures, the implementation itself will count toward the monitoring process's effectiveness.

<sup>3</sup> Tenth Activity Report (2016) at 20.

<sup>4</sup> 1<sup>st</sup> ACFC Opinion, para 8.

<sup>5</sup> 2<sup>nd</sup> ACFC Opinion, 4 and para 7.

<sup>6</sup> 3<sup>rd</sup> ACFC Opinion, paras 6-7; 4<sup>th</sup> ACFC Opinion, para 2.

<sup>7</sup> 1<sup>st</sup> ACFC Opinion, paras 13-16.

<sup>8</sup> 2<sup>nd</sup> ACFC Opinion, para 23.

<sup>9</sup> 4<sup>th</sup> ACFC Opinion, para 10.

<sup>10</sup> 2<sup>nd</sup> ACFC Opinion, para 33.

<sup>11</sup> 1<sup>st</sup> ACFC Opinion, para 67, 23.

<sup>12</sup> 2<sup>nd</sup> ACFC Opinion, paras 176-177.

<sup>13</sup> 1<sup>st</sup> ACFC Opinion, paras 21-23, and 25.

<sup>14</sup> 2<sup>nd</sup> ACFC Opinion, paras 41 and 44.

<sup>15</sup> 3<sup>rd</sup> ACFC Opinion, paras 57-61; 4<sup>th</sup> ACFC Opinion, paras 19-21.

<sup>16</sup> 3<sup>rd</sup> ACFC Opinion, paras 102-103.

<sup>17</sup> 4<sup>th</sup> ACFC Opinion, para 43.

<sup>18</sup> 3<sup>rd</sup> ACFC Opinion, paras 69-70; 4<sup>th</sup> ACFC Opinion, para 24.

<sup>19</sup> 4<sup>th</sup> ACFC Opinion, para 24.

<sup>20</sup> 2<sup>nd</sup> ACFC Opinion, para 48; 3<sup>rd</sup> ACFC Opinion, paras 66, 67; 4<sup>th</sup> ACFC Opinion, paras 24, 26.

<sup>21</sup> 1<sup>st</sup> ACFC Opinion, para 66; 2<sup>nd</sup> ACFC Opinion, para 173.

<sup>22</sup> 3<sup>rd</sup> ACFC Opinion, para 193.

<sup>23</sup> 4<sup>th</sup> ACFC Opinion, para 98.

<sup>24</sup> 4<sup>th</sup> ACFC Opinion, para 98.

<sup>25</sup> 3<sup>rd</sup> ACFC Opinion, para 192.

<sup>26</sup> 2<sup>nd</sup> ACFC Opinion, paras 28-29.

<sup>27</sup> 2<sup>nd</sup> ACFC Opinion, para 30

<sup>28</sup> 3<sup>rd</sup> ACFC Opinion, paras 42-45.

<sup>29</sup> 3<sup>rd</sup> ACFC Opinion, para 46.

<sup>30</sup> 4<sup>th</sup> ACFC Opinion, para 11.

<sup>31</sup> 1<sup>st</sup> ACFC Opinion 19; 2<sup>nd</sup> ACFC Opinion, para 36.

<sup>32</sup> 4<sup>th</sup> ACFC Opinion, para 16.

<sup>33</sup> 1<sup>st</sup> ACFC Opinion, para 20.

<sup>34</sup> 2<sup>nd</sup> ACFC Opinion, paras 34-35.

<sup>35</sup> 4<sup>th</sup> ACFC Opinion, paras 12-13.

<sup>36</sup> 4<sup>th</sup> ACFC Opinion, para 14.

<sup>37</sup> 3<sup>rd</sup> ACFC Opinion, paras 48-54.

<sup>38</sup> 1<sup>st</sup> ACFC Opinion, para 65. Intersectionality again.

<sup>39</sup> 2<sup>nd</sup> ACFC Opinion, para 153.

<sup>40</sup> Croatia joined with Bulgaria, the Czech Republic, Hungary, the Former Yugoslav Republic of Macedonia, Montenegro, Romania, Serbia, and Slovakia. Later, Albania, Bosnia and Hercegovina, and Spain joined, too.

<sup>41</sup> 3<sup>rd</sup> ACFC Opinion, para 171.

<sup>42</sup> 3<sup>rd</sup> ACFC Opinion, para 172.

<sup>43</sup> 3<sup>rd</sup> ACFC Opinion, para 173.

<sup>44</sup> 3<sup>rd</sup> ACFC Opinion, para 175.

<sup>45</sup> 4<sup>th</sup> ACFC Opinion, para 93.

<sup>46</sup> 4<sup>th</sup> ACFC Opinion, para 69.

<sup>47</sup> 1<sup>st</sup> ACFC Opinion, 21; 2<sup>nd</sup> ACFC Opinion, paras 129-132; 3<sup>rd</sup> ACFC Opinion, para 159; 4<sup>th</sup> ACFC Opinion, para 68.

<sup>48</sup> 1<sup>st</sup> ACFC Opinion, para 49.



- <sup>49</sup> 2<sup>nd</sup> ACFC Opinion, para 129.
- <sup>50</sup> 4<sup>th</sup> ACFC Opinion, para 68.
- <sup>51</sup> 4<sup>th</sup> ACFC Opinion, para 71.
- <sup>52</sup> 4<sup>th</sup> ACFC Opinion, para 72.
- <sup>53</sup> 1<sup>st</sup> ACFC Opinion, para 35; 2<sup>nd</sup> ACFC Opinion, paras 93-94; 3<sup>rd</sup> ACFC Opinion, para 116.
- <sup>54</sup> 2<sup>nd</sup> ACFC Opinion, paras 93-94; 3<sup>rd</sup> ACFC Opinion, para 113; 4<sup>th</sup> ACFC Opinion, paras 47-48.
- <sup>55</sup> 4<sup>th</sup> ACFC Opinion, para 47.
- <sup>56</sup> 4<sup>th</sup> ACFC Opinion, para 47.
- <sup>57</sup> 4<sup>th</sup> ACFC Opinion, para 48.
- <sup>58</sup> 1<sup>st</sup> ACFC Opinion, para 34.
- <sup>59</sup> 2<sup>nd</sup> ACFC Opinion, para 91.
- <sup>60</sup> 3<sup>rd</sup> ACFC Opinion, para 108; 4<sup>th</sup> ACFC Opinion, para 27.
- <sup>61</sup> 3<sup>rd</sup> ACFC Opinion, para 109.
- <sup>62</sup> 4<sup>th</sup> State Comment, 14.
- <sup>63</sup> 4<sup>th</sup> State Comment, 15.
- <sup>64</sup> 1<sup>st</sup> ACFC Opinion, para 26; 2<sup>nd</sup> ACFC Opinion, para 62.
- <sup>65</sup> 1<sup>st</sup> ACFC Opinion, para 26.
- <sup>66</sup> 2<sup>nd</sup> ACFC Opinion, para 62.
- <sup>67</sup> Due to the ACFC extensive comments on the socio-economic situation of the Roma, and Croatia's special initiatives aimed at ameliorating it, I have separated the ACFC discussion into a separate section. See Section 2.34.
- <sup>68</sup> 1<sup>st</sup> ACFC Opinion, para 54; 2<sup>nd</sup> ACFC Opinion, para 150.
- <sup>69</sup> 1<sup>st</sup> ACFC Opinion, 22.
- <sup>70</sup> 2<sup>nd</sup> ACFC Opinion, para 152.
- <sup>71</sup> 3<sup>rd</sup> ACFC Opinion, para 174.
- <sup>72</sup> 3<sup>rd</sup> ACFC Opinion, para 176.
- <sup>73</sup> 4<sup>th</sup> ACFC Opinion, para 27.
- <sup>74</sup> 4<sup>th</sup> ACFC Opinion, para 28.
- <sup>75</sup> 4<sup>th</sup> ACFC Opinion, para 28.
- <sup>76</sup> 4<sup>th</sup> ACFC Opinion, paras 29-31.
- <sup>77</sup> 4<sup>th</sup> ACFC Opinion, para 27.
- <sup>78</sup> 2<sup>nd</sup> ACFC Opinion, para 68.
- <sup>79</sup> 1<sup>st</sup> ACFC Opinion, para 27; 4<sup>th</sup> ACFC Opinion, para 22.
- <sup>80</sup> 2<sup>nd</sup> ACFC Opinion, paras 65-66.
- <sup>81</sup> 2<sup>nd</sup> ACFC Opinion, paras 65-66; 3<sup>rd</sup> ACFC Opinion, paras 80-81.
- <sup>82</sup> 2<sup>nd</sup> ACFC Opinion, para 66; 3<sup>rd</sup> ACFC Opinion, para 79; 4<sup>th</sup> ACFC Opinion, para 23.
- <sup>83</sup> 1<sup>st</sup> ACFC Opinion, 19; 2<sup>nd</sup> ACFC Opinion, paras 65-66; 3<sup>rd</sup> ACFC Opinion, paras 79-81; 4<sup>th</sup> ACFC Opinion, para 22.
- <sup>84</sup> 4<sup>th</sup> ACFC Opinion, paras 22-23.
- <sup>85</sup> 4<sup>th</sup> ACFC Opinion, paras 22-23. The Advisory Committee's comments emphasize that consultation is not merely a matter of recognition and respect, but also relevant to the efficacy of state measures. Prior consultation with national minority representatives is likely to increase the effectiveness and efficiency of a State Party's measures aimed at the FCNM's implementation, and the Advisory Committee is right to recommend it.
- <sup>86</sup> 2<sup>nd</sup> ACFC Opinion, para 68; 3<sup>rd</sup> ACFC Opinion, para 83.
- <sup>87</sup> 4<sup>th</sup> ACFC Opinion, para 4.
- <sup>88</sup> See 3<sup>rd</sup> ACFC Opinion, paras 136-138, and 1<sup>st</sup> ACFC Opinion, para 46.



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