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EUROPEAN CENTRE
FOR
MINORITY ISSUES

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20 YEARS OF DEALING WITH DIVERSITY:

IS THE FRAMEWORK CONVENTION AT A CROSS-ROAD?

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PREFACE

Whatever our personal weaknesses may be, the nobility of our craft will always be rooted in two commitments, difficult to maintain: the refusal to lie about what one knows and the resistance to oppression.

Albert Camus

This publication was commissioned by the European Center for Minority Issues in view of the 20th anniversary of the entry into force of the Framework Convention for the Protection of National Minorities (FCNM) in February 2018. It is based on some 20 interviews with persons belonging to national minorities, human rights experts and activists, and government officials who, for the most part, have been closely involved with the FCNM. It offers a selection of experiences and views on the FCNM from across the Council of Europe area, starting with the way the Convention came to existence (Chapter I: The Making of the Convention) to the way it has been perceived and used in different contexts, both at national and multilateral levels (Chapter II: The Lives of the FCNM). Finally, it attempts to highlight the expectations and challenges for the future of the Convention (Chapter III: What can the FCNM Deliver?)

The publication is not meant to cover the great diversity of country-specific experiences with the FCNM from across the Council of Europe area. It only offers some snapshots on the use of the FCNM as an international instrument at different points in time in the last 20 years of its monitoring. The interview format of this publication is also meant to provide space for individual reflection, suggestion, or criticism on the FCNM to be expressed, with the hope that these may usefully serve as a basis for debating the FCNM's future development.

In preparing this publication, I have enjoyed the trust and support of ECMI. I would like to extend my special thanks to Petra Roter, President of the Advisory Committee for her caring attention and insightful thoughts. Both have been precious in shaping its content.

I am grateful to all those personalities who have been willing to join in a conversation about the FCNM and have shared their stories and put forward their views. Some interviewees' reflections may echo or contradict others'. This is perhaps where the added value of such a publication lies: it does not intend to place a judgment on those views but hopes to illuminate, through the questions asked, the motives and key experiences behind people's views. In many respect, this publication allows the skeptical, the doubting, and the supportive commentators of the FCNM meet in a free conversation about national minority protection in Europe today.

Because he mastered so brilliantly the art of conversation, I would like to dedicate this publication to the memory of Frank Steketee. Frank was most involved with the development of the Council of Europe's minority protection system in the 1990s. His creative spirit, enthusiasm, and sense of humor have never ceased to be a source of inspiration.

Stéphanie Marsal
Independent Consultant

FCNM

***Stéphanie Marsal** is a Human and Minority Rights Consultant who previously worked as Senior Political Advisor to the OSCE High Commissioner on National Minorities. She graduated in Political Science and Human Rights Law from the Institut des Hautes Études Européennes in Strasbourg and studied at the Maxwell School of Citizenship and Public Affairs, Syracuse, USA. She specializes in comparative human and minority rights law, conflict prevention, and good governance. She previously worked for the Council of Europe in different positions, including in the Secretariat of the Framework Convention for the Protection of National Minorities from 2001 to 2008, and more recently the European Commission against Racism and Intolerance (ECRI).*

INTRODUCTION

1998 – 2018: The road traveled

1st February 1998: Nine months of negotiations on the text of the FCNM have elapsed. Twelve ratifications of the FCNM by Council of Europe member states have been registered. The FCNM enters into force, marking a new development in favor of strengthening international human rights law. The need to protect the rights of national minorities through international instruments is then evident. The Yugoslav wars are in the minds of all. Violence in Kosovo is simmering. 'This should not happen again.'

Negotiations on a treaty on minorities were not easy. For example, how to define the use of minority languages – not their private use but their public use? How to define the territorial areas where the linguistic protection should be applied? And of course, how to define a national minority to start with? Compromises are found on some principles, the Explanatory Report providing some interpretative guidance. Encapsulating 'national minorities' into a definition remains an impossible task.

The Framework Convention for the Protection of National Minorities exists. Concerns are voiced on the FCNM programmatic and vague provisions. Its enforcement mechanism is seen as weak: how can an expert committee, the Advisory Committee (ACFC), be flanked by a political committee, the Committee of Ministers, which has a final say in the monitoring process? As Gudmundur Alfredsson points out, 'let us imagine the United Nations Human Rights Council adopting findings and recommendations from the UN treaty bodies'? This would be unthinkable.

Some saw the incomplete painting in the frame. Others focused on the painting still to be done. And the commitment to 'fill the frame' is indeed there in 1998: monitoring work starts, steered by a secretariat composed of staff with human rights advocacy background and members of the Advisory Committee with political clout and expertise. Both work toward a common goal: 'to make a strong and inclusive monitoring process'. Resources allocated to the FCNM increase. A delegation of the Advisory Committee goes to Finland in August 1999 to discuss the implementation of the FCNM with the government and minorities *in situ.* This is the first country visit. This was not in the rules, but it happened. Shadow reports from civil society are encouraged and start to be submitted to the Council of Europe. This was not in the rules, but it happened. The leadership of the Advisory Committee keeps regular informal contacts with key governments. This was not in the rules either, but it happened. In other words, creative thinking is being applied to develop what Sia Spiliopoulou Åkermark describes as 'independent and structured working'.

The first opinions are released. They provide a thorough analysis of the state of play of minority protection in the contracting parties. They also provide critical comments. Whether in the East or the West, state parties' laws, policies and practices are examined with the same lens. NGOs start to engage with the FCNM and prepare shadow reports. The international NGO, Minority Rights Group, fully engages with the Council of Europe in this process, working with NGOs and national minorities to explain the FCNM standards and how they can be used domestically in advocacy work.

The number of ratifications increases. In 2004, the FCNM is ratified by 36 states. Georgia, Latvia, and the Netherlands will form part of the last wave of ratifications in 2005. The enlargement of the European Union which conditions entry upon *inter alia* the protection of national minorities helps to anchor this treaty in the democratic transition of EU candidate states. The EU enlargement is an asset for the FCNM. But if the 'promotion and respect for national minorities' is a criterion for joining the EU, what does it mean in practice? Ratification of the FCNM? Yes, with the notable exception of Latvia, which only ratified after its accession to the EU. For some, the assessment of compliance with this criterion is considered too formal. As a result, the political momentum for genuine reforms would have been lost since then.

Over the years, legislation in state parties is adopted with the FCNM standards shaping measures on non-discrimination, language rights in public administration, education and mass media, and to a certain extent, initiatives aimed at improving the situation of Roma. In particular, the Advisory Committee's position that the right of minorities to education in their language cannot lead to segregated education is of great help for those who are engaged in strategic litigation to fight discrimination against Roma. Monitoring of the FCNM continues to unfold, providing an overview of the implementation of the FCNM while progressively focusing attention on 'issues for immediate action', creating a sense of prioritization and urgency for governments to act upon the Advisory Committee's recommendations.

At the same time, the Council of Europe expands its monitoring mechanisms: the Language Charter enters into force almost at the same time as the FCNM. Other human rights mechanisms dealing with issues of national minorities are established: the European Commission against Racism and Intolerance (ECRI) and the Commissioner for Human Rights, which were established by the First and Second Summit of Heads of States and Governments respectively, start to operate in the late 1990s – early 2000. Roma issues get more institutional attention in the Council of Europe structures, with Roma specific programs and intergovernmental work by an Advisory Committee of Experts on Roma and Traveller Issues (CAHROM) being set up. Each mechanism has its specific focus and mandate. 'There is room for all of us' says Knut Vollebaek. The Council of Europe multiple monitoring mechanisms 'got out of hand' some like Lilla Farkas warn, regretting also the one-sided approach of Council of Europe monitoring delegations that get information from NGOs but do not necessarily come back to them once their reports are adopted.

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

2018: The FCNM at a crossroads?

1st February 2018: It has been 20 years since the FCNM entered into force. Thirty-nine states are covered by its monitoring system. For those states that have ratified the FCNM in the first wave, a fifth monitoring cycle is due to start in 2019.

Undoubtedly, the political climate on issues of diversity has changed since the early days of monitoring the Framework Convention. The threat to the liberal democratic framework is real, inside some of both EU member states and candidate states. Pluralistic democratic institutions and respect for rule of law on which minority protection is based are affected. Populism is on the rise and, as Antti Korkeakivi notes, 'if minority rights are again on the agenda, it is often in connection with a problem rather than a solution'. The EU enlargement is on hold, with only a few countries in the accession process. The traction of the FCNM seems limited to those candidate states in the Western Balkans 'but inside the EU or among countries with no prospect of joining, the leverage beyond voluntary compliance is limited' says Florian Bieber.

At a time characterized by a retreat from multilateralism and a re-bilateralization of minority issues, one may wonder: what is the way forward for the FCNM?

Revising the FCNM? Unrealistic or even dangerous, some warn.

Preserving the FCNM? The FCNM like international documents in the 1990s was part of a normative renaissance. As Natalie Sabanadze points out, '[T]hese times have gone but the norms are still there. If you cannot improve the norms, at least focus your efforts on preserving them'.

Making the FCNM a useful instrument? 'If you want to make the FCNM a useful instrument, you have to make it as flexible as possible to cover the problems as they appear' says Francesco Palermo to the question of new minorities being included in the scope of application of the FCNM. Some, like those in the Federal Union of European Nationalities (FUEN), have seen that 'accommodating increasing pluralism and creating inclusive societies became the new objectives of the FCNM and departed from the original aim of the FCNM of national minority protection'. Palermo replies: 'This does not mean including migrants in the scope of the FCNM. It means addressing specific issues on an article-by-article basis when individual provisions of the FCNM could help solve some specific problem'.

To what extent does accommodating diversity in a broad sense entail 'shifting the focus away from maintaining the minorities' identity and 'intensify[ing] assimilation pressure and demographic decline of national minorities'? Are the two goals competing, one wonders. Rights are vindicated for all. 'It is not a question that there is more or less for a person who experiences racism' says Anastasia Crickley. 'We simply cannot have a hierarchy of oppression'.

But ultimately what can the FCNM do to help? As Mark Lattimer notes, 'we are used to telling member states what they should do to fulfill their obligations under the Framework Convention. Now we also need to ask what the Convention can do for member states, and for Europe.' And this may well go beyond producing more reports and guidelines but be politically strategic and focus on impact, as many of those interviewed for this publication have emphasized.

I.
THE MAKING OF THE FRAMEWORK CONVENTION

The negotiators

Sergio Bartole

The very flexible interpretation of the provisions of the Convention adopted by the ACFC does not facilitate the submission of judicial claims by the interested persons […]. Frequently the ACFC gives the impression of working as a social policy body instead a body of legal experts.

How did you get involved in the negotiations of the FCNM and what did you think that you could achieve as a representative of Italy?

I was involved in the preparation of the FCNM by the Chief of the Legal Department of the Foreign Affairs Ministry, who knew of my studies on the protection of minorities and was looking for an expert who would be able to support the work of the diplomats in charge of the enterprise. During the negotiations, I had frequently to be the support of myself because diplomats of the Ministry did not attend the sessions of the bodies entrusted with the task of drafting the Convention and I had to work alone on the basis of the directives of the Ministry. In any case, from the very beginning, we have adopted the line of supporting solutions which were supposed to ensure an adequate protection of the concerned minorities but – at the same time – leave a margin of appreciation to the states in view of the specificities of each society.

We know that the concept of national minorities is not defined in the FCNM. We also know that some negotiating states like France and Turkey do not recognize the concept of national minorities. What were the disagreements on the groups to be covered by the Framework at the time and how did the negotiations overcome these disagreements?

The absence of a definition of national minorities is the result of a compromise which – according to many of us – does not endanger the implementation of the Convention as long as the normative content of this document offers sufficient elements to identify the subjects interested by the measures of the protection. An essential role in the matter was supposed to be played by the principle of non-discrimination, which requires a rational justification of the possible legal differences of treatment between the persons. A factor that facilitated the drafting of the Convention was the decision to adopt a framework act. At the same time, the problem arose regarding the direct application of the provisions of the Convention, which are supposed to be principles requiring legislative implementation in view of their practical application. Therefore, they should not be directly applied in an all-or-nothing fashion. I supported the idea that even in the absence of their legislative implementation by the concerned states, the general relevance of the basic principles of the act should be taken into account and they should be applied as far as the principle of the equality of treatment required their general application.

Can you tell us about one particularly contentious issue [other than the scope of application rational personae] in the negotiations?

The details of the use of minority languages were very conflicting, especially with regard to the passage from the private use of the languages themselves to their public use in relations with public authorities. The dilemma concerned also the delimitation of the territorial areas where the linguistic protection should be applied.

Perhaps you could give us an example of the type of opposition or arguments against and for that emerged regarding the public use of language?

A preliminary discussion concerned the protection of the private right to speak the minority language also in public, which has to be construed as a personal freedom. Somebody did not perceive the difference between this freedom and the right of speaking the minority language in relations with public authorities. With regard to Article 14 Paragraph 2 of the FCNM, it was necessary to introduce the distinction between traditional minorities and minorities who are present in an area in substantial numbers to extend the protection to non-indigenous minorities.

We know that throughout history, issues of minorities have been politicized. How did you see the FCNM as a possible instrument to reduce the politicization of national minority issues? How could a monitoring tandem – a political committee and an expert committee in an advisory role (the ACFC), counter such a politicization?

The coordination between the interventions of the political organs of the Council of Europe and the ACFC should be secured by the legal expertise and credibility of the advisory body itself. On the other side, we can perhaps say that the coverage of the matter by the judicial authorities has not yet been well secured in practice. The very flexible interpretation of the provisions of the Convention adopted by the ACFC does not facilitate the submission of judicial claims by interested persons when and if it is not complied with in practice. Frequently the ACFC gives the impression of working as a social policy body instead a body of legal experts.

In your view, a social approach seems to have taken over from a legal approach. But wouldn't you say that the subject matter makes it difficult to stick to a purely legal approach and is better suited for a multidisciplinary approach?

I share the opinion that a multidisciplinary approach to the matter is necessary. However, I think that, eventually, a final legal evaluation of the question of conformity of states' legislation and practices with the FCNM should be conducted. A negative evaluation has to be explicitly stated even if – as a follow-up – we introduce practical suggestions to modify and correct the existing practices.

As an international law expert, what were the most remarkable achievements of the FCNM? Were you satisfied with the resulting text of the Framework Convention? In hindsight, do you have any regrets about the text?

The positive results of the entering in force of the FCNM are numerous. First of all, it introduced a large set of legal provisions into the international legal system in an area where the guarantees of the law were very poor, or completely missing. Second, through the 'case law' of the ACFC, the basis was established of the necessary future developments of those guarantees which can be accepted and elaborated by other actors in the transnational system. Thirdly, it helped the functioning of the principle of conditionality in view of the admission of new member states to the Council of Europe and to the European Union. An effective protection of the works of art and architecture which are heritage of the minorities is still missing. As you know, after the adoption of the FCNM, a committee was established to deal with the problems of the protection of minority heritage but it did not get any useful result.

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What advice would you give to the monitoring bodies of the Framework Convention for the future? What changes – both in the way of operating and in the analysis – would you say the FCNM should aim to achieve in the future?

The ACFC should work with a view to extending protection to the migrants whose presence is today a major problem for Europe. But attention should be paid to the necessary differentiation of the different situations.

***Professor Sergio Bartole** is Professor Emeritus of Constitutional Law at the Faculty of Trieste and member of the scientific boards of the main Italian Journals of Constitutional Law. He took part on behalf of the Italian Minister of Foreign Affairs in the preparation of the FCNM and from 1998 to 2002 was a member of the relevant Advisory Committee. He is currently the substitute member of the Venice Commission for Italy.*

The skeptics

Gudmundur Alfredsson

[…] if the rights to identity, culture, traditions, customs, language, minority schools and other minority rights are respected, the result will be diversity. You are not going to go to court and say that my right to diversity has been violated; diversity is merely the goal.

Why did you get interested in the drafting of the FCNM?

As an academic doing a fair amount of publishing on minority rights, taking an interest in the preparation of the Framework Convention (FCNM) was a logical step. Earlier I had been secretary of a working group that was drafting what became the 1992 United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (adopted by General Assembly Resolution 47/135 of 18 December 1992). This Declaration was disappointing on both substance and monitoring as the UN human rights treaties offer stronger protection. It took decades before a Special Rapporteur was appointed to monitor the national implementation of the Declaration. When the Council of Europe started to work on a treaty there was of course the hope that a new European text would lead to an improvement of the UN standards.

After your article from the year 2000 on 'A Frame with an Incomplete Painting', you were labeled, perhaps wrongfully, as an initial skeptic. What were the main reasons for your initial skepticism on the FCNM and how do you see the situation today?

In that article ('A Frame with an Incomplete Painting: Comparison of the Framework Convention for the Protection of National Minorities with International Standards and Monitoring Procedures', International Journal on Minority and Group Rights, Kluwer Law International, vol. 7, no. 4, 2000, pp. 291¬–304), I was skeptical because the contents of the FCNM are minimalistic. They actually fall below the level of rights available in UN treaties. Thus, provisions in the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and other treaties offer better protection by way of specific rights and complaints procedures. The programmatic approach of the FCNM is also a weakness; minorities and their members should have meaningful rights and not mere access to government programs. Also, texts originating with the Organization for Security and Cooperation in Europe (OSCE) contain better language.

Today I continue to be skeptical about the FCNM. Certainly, the Advisory Committee has been busy painting, but as far as minority rights are concerned the painting is still inadequate. For one thing, the scope of application has moved toward covering a range of population groups which have traditionally enjoyed different levels of protection under international human rights law; indigenous peoples today have better protection than minorities, and minorities have enjoyed more rights than recent arrivals like migrant workers, refugees, asylum seekers and other immigrants. Even if a formal definition of the ‚minority' term has not been adopted, we know them and the other groups when we see them (borrowing words from Max van der Stoel). And there are reasons why this ranking has emerged, related to history, cultural and territorial roots, and also the prevention of violent conflicts. The rights of the other groups certainly deserve attention, but that should be accomplished with existing human rights instruments or new ones and not under a minority banner.

For another thing, one focus in the work of the ACFC has been on diversity, multiculturalism, and inclusiveness. Again, there is nothing wrong with these goals but, in the process of extending human rights to other and different groups, notwithstanding the attempted classification by the Committee, there is a real risk that minority protection will be confused with or even watered down or reduced to the level available to these other groups. Some objections along these lines have been raised, for example by the Dutch Government in its comments on an ACFC Opinion (in document GVT/COM/II(2013)001).

You are talking about the ACFC focus on diversity. How would you then best situate the FCNM? In particular, if the FCNM is not an instrument for diversity, what is it?

My argument would be that if the rights to identity, culture, traditions, customs, language, minority schools, and other minority rights are respected, the result will be diversity. You are not going to go to court and say that my right to diversity has been violated; diversity is merely the goal. Minority rights work should rely on the specific legal standards that are in place in law and in fact. Watering them down by relying on vague aims and policies or equating minorities with other population groups that have traditionally enjoyed lesser rights will lead to dissatisfaction and not enhance diversity.

To what extent did the drafting process take into account concerns from minority communities or external observers?

There was minimal minority input or other external participation in the actual drafting process, as demonstrated by the results.

How much interest was there at the time for the negotiations of a such a Convention and how do you see this interest evolving today?

As explained above, there was considerable interest at the time of drafting, people were hoping that a European organization with democracy, human rights, and dignity among its ideals would be able to make progress as compared with previously adopted standards. When that failed, minority interest in the FCNM has declined and it will continue to do so unless and until improvements on contents and/or monitoring are made. Other global and regional organizations have not picked up any of the FCNM standards, they have only occasionally referred to the ACFC recommendations, and you rarely see press coverage of these recommendations in regard to minority rights.

You know the UN treaty body system very well, including the challenges attached to reporting systems. With a fifth monitoring cycle of the FCNM starting soon, what should the monitoring bodies of the Framework Convention do to increase its impact?

In order to give an enhanced role to the FCNM or an improved successor convention and its monitoring bodies, interestingly enough the Council of Europe can learn lessons from the United Nations as to the formulation of specific legal rights, monitoring methods, and procedures, and minority access to and participation in relevant meetings. Such minority access would include the Advisory Committee under the FCNM and other political and legislative instances at the Council of Europe where minority issues are brought up, with minorities having the right to speak, submit documentation and make proposals. To the degree possible, the minorities should be treated as subjects and not objects. And the Council of Europe should maintain a voluntary fund for assisting with minority representation (travel to and accommodation in Strasbourg). As to a reporting fatigue which certainly does exist with governments, an effort should be made to streamline and coordinate reporting requirements, at both the global and regional levels. Shadow reports should be actively encouraged and a complaints procedure should be established. Country visits should be expressly authorized by the FCNM. And the role of the Committee of Ministers should be reduced to taking note of and promoting the treaty body reports. The European governments themselves would consider it absurd if the UN Human Rights Council had to adopt findings and recommendations from the UN treaty bodies.

But why insisting on having a rule made on country visits when the practice is already there? If country visits should be expressly included in the text of the FCNM, wouldn't this mean re-opening discussion on the treaty and risking more restrictive regulations at a time when we see backsliding in human rights commitments?

Ideally of course, if minority persons are to enjoy equal rights and dignity with everyone else, with the necessary special measures in place, a minority rights protocol should be added to the European Human Rights Convention so that the European Court of Human Rights will have a say. This was discussed in the 1990s, and it is still relevant and feasible if we believe in the legal approach; the Council of Europe as an organization dedicated to human rights and democracy should be able to do it. If that is not possible, a protocol to the FCNM could be adopted with stipulations on, for example, country visits and complaints.

Do we still need a Framework Convention?

As things have developed, the FCNM will more than likely continue on its current path, that is as a tool for the achievement of diversity, multiculturalism, and inclusiveness. That is good as far as it goes, the rights of migrant workers, refugees and other immigrants are being upgraded, but minorities face a possible watering down of their rights in the process. Indeed, for the time being minority persons with grievances will be best advised to bring their situations to the attention of Geneva rather than Strasbourg, meaning as rights holders they have more to gain from UN treaties and complaints procedures, which most of the European states have accepted anyway, rather than the Framework Convention.

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The early builders

Antti Korkeakivi and Rainer Hofmann

Staff in the secretariat had human rights advocacy background and we were all ready to push the minority rights agenda and not only be reactive and wait for instructions.

Antti

[…] we had this idea at the beginning that there should be a continuous cycle of communication. This is why we established the practice of follow-up meetings. The idea was indeed to avoid having a state report, an Opinion and no communication until the next round.

Rainer

We are back in 1998 and the ACFC met for the first time. How did you imagine this first meeting would go? What did you want to achieve then? And how did you prepare for it?

Rainer: The first meeting was in Flensburg in June 1998. ECMI had invited the 18 committee members of the Advisory Committee and the Council of Europe Secretariat. It is there, in Flensburg, that we met for the first time. Personally, I had not been a member of an international expert committee before nor had I been involved in the drafting of the FCNM. I had of course published articles on the FCNM. On the whole, I was rather skeptical and my expectations were low. I was therefore positively surprised at the meeting by the high level of knowledge among us. At this meeting, we knew that time was ticking: the first state parties would report in March 1999 and we had therefore one year to organize our working methods. I was not familiar with the role and functioning of the Secretariat but realized quickly how well prepared it was. Together with some members of the Committee, we were determined to make things work.

Antti: When talking about the Secretariat at the time, my post was actually the only post that was specifically allocated to the FCNM. You had other posts but these were dedicated for the Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN) and management. In the run up to the meeting, we tried all together to support the ACFC. As Rainer said, the ECMI meeting was an important moment to get to know the members, Rainer, Gáspár (Bíró) and Alan (Phillips) among others. We realized that we had enough strong members to make the ACFC work. Staff in the Secretariat had a human rights advocacy background and we were all ready to push the minority rights agenda and not only be reactive and wait for instructions. It is true that expectations for the ACFC and the monitoring in general were low and this was the case both on the governmental side and to some extent on the minorities side as well. In fact, this helped us: the ACFC supported by the Secretariat was able to develop working methods without strong scrutiny from political actors. We were expected by many to deal with monitoring in a technical manner, pursue a certain type of soft monitoring, with the Committee of Ministers playing the main role. The atmosphere of the first meeting was excellent and Rainer's chairing was both inclusive and focused: it was not a free format, we had a clear mission to achieve and we knew what we were going to work on it together. We were fortunate that members of the Bureau had complementary skills, Rainer with his international law expertise, Alan with his NGO background and Gáspár, who is a member of a minority community, with his great political insights.

Some foundational steps were taken in the early days, the article-by-article approach, securing visits to the countries, protecting the independence of the ACFC vis-à-vis the Committee of Ministers. What were the key factors in securing these steps? Was there any discussion at the time on who was going to do what between the Secretariat and the Advisory Committee?

Rainer: Most members were convinced that what happened in the Yugoslav wars should not happen again. It was 1998 and Kosovo was still to happen. There was a strong impetus to make sure that this rather weak, toothless mechanism was turned into a serious undertaking. That's where my admiration for Antti came from those days: thanks to his creative thinking, we managed to establish sound working methods. If you look at the Committee of Ministers' Resolution (97)10, the idea was to have the ACFC sit in Strasbourg from time to time and examine the state reports sent by the state parties. This is not much. At the same time, the wording of that resolution did not prohibit the ACFC from actively seeking information nor did it prohibit accepting invitations from governments to undertake country visits. It was not too difficult to convince the ACFC to endorse this creative reading to this resolution. Some in the ACFC may have resisted it but we had strong members supporting this approach. That is how we made the monitoring work. The merit belongs largely to the Secretariat and Antti.

Antti: If you look at the very early days, like at the ECMI meeting, the ideas of country visits and the need for close interaction with NGOs were already there. Since we all shared that same goal of a strong and inclusive monitoring process, it was easier to figure out how we would make it happen. I should also point out that a number of states were ready to support the ACFC in developing its work. They did step in. That was key not only for conducting country visits but also for the process in the Committee of Ministers' Rapporteur Group on Human Rights (GR-H) and the Committee of Ministers itself. The successive chairs of the GR-H in the early days were very supportive. As I remember, at the very first meeting, before we knew each other, one member asked whether the ACFC would make the coffee and the Secretariat would add sugar to it or would it be vice-versa. This question quickly proved irrelevant as it was clear from the outset that we were working as a team. The Secretariat would not stay in the shadow. That also made us more creative and active in making the ACFC work. At the same time, we always respected the fact that decisions belonged to the ACFC members. When I look back at those days and I compare it to the situation in any international organization today, it is rather exceptional to see how rapidly we managed to build a real secretariat to support the ACFC. The Secretariat was never big enough given the tasks at hand but we were still able to grow from the first day, with not only more staff but also more resources for country visits.

The circumstances may be different today. How do you see this legacy being protected today?

Rainer: It is important to stress that at the end of the century, the situation was favorable: human rights were on the rise, everybody was going for more. The European Court of Human Rights (ECtHR) did not face the situation of today with the UK Government threatening to leave or the Duma adopting a law allowing it to ignore ECtHR judgments. As Antti pointed out, we had amazingly strong support from the major governments. We met influential government members in Strasbourg and these were not only from Germany, the UK or from Scandinavian countries. They were also from other parts of Europe. Budget-wise, these were days with zero budget growth but we did not have the budget cuts as we know them today. Perhaps the declining support has to do with governments not expecting us to be critical and this with everybody, both countries in Eastern and Western Europe. At the same time, there were few cases in the GR-H where strong opposition was voiced. On the contrary, we received congratulations on a job well done.

Does this mean that the ACFC should consider making some changes to its way of operating since you cannot take advantage of the positive atmosphere that was prevailing in the early days?

Rainer: I would need to be with the Committee to judge. It is true that ACFC Opinions today still include issues that were raised in the first Opinions. There is apparently very little happening to implement some of the ACFC recommendations. It is difficult for me to say the reasons for this state of affairs. A lack of interest by governments? Monitoring fatigue? I also hear that the NGO steam is decreasing.

Antti: Like any monitoring mechanism, the ACFC needs to regularly revisit its working methods and the way that it communicates to the world. If some recommendations from the first monitoring cycle have not been followed up, it may even be less likely that they are followed up in today's political context. As Rainer said, the support for the human rights agenda is eroding in many corners. Even friendly governments are, in some cases, reluctant to push for minority rights. The message may still be the same but there is a challenge to communicate it better in an environment marked by diminishing support from states and also from some traditional NGOs whose focus may have shifted away from minority issues. This requires new ways of thinking from all of us. As with all monitoring mechanisms, there is always a risk that the monitoring becomes routine if you don't check that your working methods still make sense in today's context.

Would you have an example of working methods that were necessary at the beginning and may not be as necessary at this point in time?

Antti: Take the monitoring cycle with the ACFC receiving the state reports, studying them, and getting reports from NGOs. It is still an old-fashioned process that dates back from the 1960s. The world is much faster today: people comment on issues in real time and there are ways to actually get input from both governments and NGOs much faster than through some consolidated reports. The human rights world and treaty bodies in particular are all functioning in a traditional way. This way may well be stipulated in the resolutions and even the Conventions themselves but there is also room to interpret these rules in a dynamic way and find new ways of reaching out. As Rainer said, after the strong focus on minorities at the time of the adoption of FCNM, we went through a period when attention to minority rights diminished. Today, if minority rights are again on the agenda, it is often in connection with a problem rather than a solution. Unfortunately, we see more and more of bilateralization taking over minority rights discussion to the detriment of multilateral engagement. This is a concern.

Rainer: I would add that better communication could be established through a sort of online platform where issues could be put forward. Governments would react to these and there would be an ongoing communication on the specific problem at stake in the country. We discussed this some time ago in Flensburg: this would not be replacing the monitoring system and would not be a social media platform either. It would be an instrument helping us to be much more reactive and find solutions to problems. Take the new Ukraine law on education for example. It has raised obvious problematic issues for all neighboring countries. You then have experts

engaging diplomatically on the issue. I understand that this is important and perhaps the only way to deal with the issue. However, if such a platform existed, we could have had this kind of diplomatic discussion with governments, NGOs, and other stakeholders communicating with each other. Overall, I see that we still do things the way we have done them before. As said, the FCNM monitoring mechanism is based on a model built in the 1960s. We used mail, we now use email. That's the scope of the technical change. I would hope that someone would come up with good ideas in that way.

With Antti, we had this idea at the beginning that there should be a continuous cycle of communication. This is why we established the practice of follow-up meetings. The idea was indeed to avoid having a state report, an opinion, and no communication until the next round. We thought that this was an important part of the monitoring. If we look at the number of follow-up seminars, we see a constant decrease over the years. I found that these follow-up meetings could be organized on selected issues or for some minorities. You could also use modern technology to keep the discussion ongoing without having to go to the country. This would be a way to keep governments under a certain pressure to do something.

The ACFC Opinions cover lot of ground. Would it help if the ACFC focused more on some strategic issues for which the government would know it would get some help rather than having the whole spectrum of rights reviewed?

Rainer: We have done this for quite some time by focusing on three major issues, the so-called 'recommendations for immediate action'. Perhaps these need to be more forcefully brought up in the dialogue with the governments at the GR-H or at the Committee of Ministers.

Antti: I also agree. Even if you select one, two, or three issues as a monitoring mechanism, you really have to work with other players and work together to get concrete results; technical support as well as some funding from partners may be needed to ensure results. In general, and this is still the case, the human rights system is too fragmented: we all give our recommendations but we have to make sure that they are implemented and that some serious follow-up is provided. We have to convey a coherent message whether it is the Council of Europe, the OSCE, or the UN. It takes a lot of work and it also requires different type of working methods. There are some issues that are important but you know that their follow-up is not going to happen while some concrete recommendations could materialize if there was enough of a push. Human rights mechanisms are losing rather than gaining resources so it is one more reason to unite.

Perhaps a concluding question for both of you. Looking back at these early days, what aspects are you most proud of?

Antti: I am very proud of the work of the ACFC and the way the monitoring took off. At the beginning, there was concern that this was a mechanism that will export double standards and would monitor mostly Eastern European countries. That was not the case and that sort of criticism died down. This is not to say that such analysis and criticism is not welcome; they should always be there as we need to keep these kinds of checks on our work. We did not have a superficial look at minority issues but got into a systematic, in-depth, country-by-country analysis for the first time for countries in both the East and West. This is still the only context in which such a comprehensive country-by-country analysis of minority rights is undertaken and it is therefore important to keep this general analysis that covers all articles of the FCNM together with targeted issues. I should also add that we started from scratch and building up something new leaves a lot of room for exciting work and creativity.

At the same time, there has been a lot of progress from those early days: at the beginning, the Secretariat was mostly male, the Bureau also, at least in the first round. We now have strong female leadership in the ACFC. There are issues that we did not handle the way we could have and should have. For example, we did not look at specific human rights problems faced by LGBT persons belonging to national minorities and there could have been more focus on religious minorities.

Rainer: One of the achievements is that the FCNM as interpreted by the ACFC today has become the reference for minority rights in Europe. For example, the EU when examining the situation in candidate states in the Western Balkans refers to the assessment of the ACFC. It may also send someone out to verify that the standards of the FCNM have been implemented. We did not expect many years ago that this would be that unchallenged. The relatively high number of state parties is also an achievement. Finally, the fact that women belonging to national minorities have been more to the fore is also a welcome development.

FCNM

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II.
THE LIVES OF THE FRAMEWORK CONVENTION

The FCNM in context

Discussing the FCNM as 'a living instrument'

Francesco Palermo

If you want to make the FCNM a useful instrument, you have to make it as flexible as possible to cover problems as they appear. In the absence of another available document, we have to do the best we can with what we have. Ultimately, it is about not letting the FCNM becoming obsolete in the world in which we are living.

In the absence of a definition of national minorities, the question as to whether the FCNM covers only so-called 'traditional' or also 'new minorities' has been present since the outset. It looks like this question is the elephant in the room. Why is it so? What is at stake?

This question is essentially placing the FCNM in a politico-ideological debate. My angle is a pragmatic one: it is about making the FCNM a useful instrument. Lawyers are used to dealing with general concepts that are not defined a priori. A number of international documents are dealing with terrorism, although there is no universal definition of the concept. The same applies to minorities. If you try to come up with a definition, that definition will never fit the reality, it will only fit some specific groups. We know what the historical origins of the FCNM are, we know what the drafters had in mind and we also know that there are objectively different claims among the various minority groups. If substantial differences in terms of claims exist between old and new minorities, there are also differences – sometimes not less significant – among groups who belong to the commonly accepted category of traditional minorities. What do the Roma in Bulgaria and the Germans in Denmark have in common apart from being categorized as national minorities? If you want to make the FCNM a useful instrument, you have to make it as flexible as possible to cover problems as they appear. In the absence of another available document, we have to do the best we can with what we have. Ultimately, it is about not letting the FCNM becoming obsolete in the world in which we are living.

Some have argued that it is of course relevant to address the needs of new groups like migrants but it should not come under the banner of national minorities. For those holding this view, this is hijacking the FCNM from its initial purpose. What are your views on this?

I would reply with two questions. Do we have a migrant convention? Not to my knowledge, apart from the UN Convention on the Rights of Migrant Workers, which has a limited scope. Do we have a better suited instrument? Not to my knowledge. And most likely there won't be such an instrument for a long time. Here again, I call for a pragmatic approach: the FCNM is the closest we have to cover minority situations in general. Besides, even if we did have different sets of instruments that were specific to each group or category, we would soon realize that in essence they would be based on the same principles and use the same tools. So why not using legally available documents where relevant and at all possible? This does not mean including migrants in the scope of the FCNM. It means addressing specific issues on an article-by-article basis when individual provisions of the FCNM could help solve some specific problem. It means not refusing

a priori the possible help that, in specific cases, the FCNM could provide. The only article of the FCNM that is explicitly applicable to migrants is Article 6, establishing a general prohibition of discrimination against any person living on the territory of a state party and obliging states to create a climate of tolerance. The rest is very contextual: for instance, Article 15 on participation might be looked at when exploring possible solutions on how to establish institutionalized dialogue with other groups including migrants.

A new commentary on the scope of application of the FCNM, the 4th Thematic Commentary, was adopted by the ACFC in 2016. What is new about this document and how do you see its role in shaping discussions on the scope of application of the FCNM?

The real shortcoming of the FCNM is not the absence of a clearly identified target group. The real problem lies with the definitive, black-and-white approach that is embedded in the text of the FCNM. That text was drafted with the idea that once you are a minority, your identity is set in stone and the Convention will give you a set of rights. This could be fine as a general approach. However, this is failing to appreciate that the realities of majority–minority relations and the very identity issues themselves are much more nuanced. The challenge of the ACFC has been precisely to make this instrument as close as possible to reality. It had to deal with concrete issues of integrated schooling, multiple identities, multilingualism, data collection, multiculturalism, social hierarchies and perceptions, new media (both as opportunity and challenges), all issues that were not really on the agenda of the drafters but that have become extremely relevant with the passing of time. The 4th Thematic Commentary was born out of the need to consolidate almost 20 years of ACFC work embracing the evolution of the question of identity in Europe. And it is beyond doubt that this question has evolved substantially over the last two decades.

How do you see the reactions to this 4th Thematic Commentary? Do you see some evolution in the approach of state parties with regard to the scope of application?

When you talk to people, whether they are minorities or government representatives in a specific country, they will point out to you the challenges that they are faced with when defining the beneficiaries of the FCNM. There are some grey areas in this respect in each country. If you discuss further, they will acknowledge that this commentary is an important document that may help them to address these grey areas. Some may go as far as to include other groups, as some countries have done adding to the initial lists of beneficiaries of the Convention. Some others do not do so but they appreciate instruments helping them to include situations or groups into a general broader minority discourse. Discussing these issues in abstract terms in international organizations headquarters may raise more skepticism. That skepticism is especially strong among countries who have issues with migration, which is a politically extremely sensitive topic. Sometimes the very institutional organization of work in different departments in the national administrations that do not talk to each other is a source of resistance. Our challenge however is to make sure that the realities on the ground influence the way work is organized, and not the other way around.

Is this skepticism also related to the fear of discussing measures regarding migrant issues in public since reporting would expose states' policies (or lack of it) in this area?

Some state parties report on groups which they do not consider as national minorities, even if reluctantly. Take the example of the Italian state report which covers the situation of the Roma community in detail, even though Roma are not a recognized minority. But let us be clear: the ACFC does not ask states to report on migrants. There are articles in the FCNM that can be interpreted broadly as having an impact on society as a whole and there are some that are more strictly confined to some minorities. This does not mean that there is an opposition between traditional minorities and new minorities. This means that access to certain rights can be enjoyed by minorities who fulfill certain criteria like traditional presence and sufficient demand. The commentary makes very clear when this is or might be the case.

Admittedly, there has been a political retreat from multicultural discussions in Europe and concerns for 'national unity' have been increasing over years. Nationalism is also on the rise. How do you see this context affecting support for the FCNM and how should the ACFC address or adapt to the challenges of our present time?

This is not an issue for the FCNM alone. The ACFC is part of a much broader machinery. When I was President of the ACFC, I systematically repeated to state representatives that we don't have the capacity nor the ambition to solve the problems of states. The usefulness of the FCNM is to provide advice based on expertise and comparative experience. After all, states have created mechanisms such as the FCNM and are contributing financially for these to function. It is therefore up to them to use them or not. They are the ultimate decision-makers. Monitoring bodies should not be seen as those who name and shame but more as friends giving disinterested suggestions. It can be that these suggestions are not considered appropriate but they are always given in good faith and are rational, so that they can well be opposed but based on equally rational and not ideological arguments.

But isn't also in the interest of states not to have just mere advice or suggestions but help on how to do things? Isn't this lack of operationalization of international advice that also affects the impact of the FCNM and how useful it is perceived?

We know that in practice, it is mostly the Opinions' executive summaries and the main recommendations that are read. Reading the recommendations out of context may give the impression of a teacher–student relationship. But you cannot analyze complex situations in a few pages. This is just a reason why the ACFC Opinions have not fundamentally changed in their structure and cover the whole spectrum of FCNM rights in some detail and should continue to do so even if some issues repeat themselves in all cycles of monitoring. Of course, I admit that some recommendations are generic and that should be avoided in the future. At the same time, it is difficult to go into details when there are general problems at stake. An ACFC Opinion will be more detailed if there are specific issues that can be addressed. Pointing out a problem may help the state to recognize that it has a problem. Take the example of Roma in nearly all countries: the problems are so big and intertwined that they cannot be solved only with minimal, detailed actions and structural action can be taken only if the states acknowledge that this is an issue.

There is a struggle in Europe (and beyond) on how diversity can be genuinely dealt with. The FCNM provides for state obligations which should eventually help them to 'manage diversity'. But can we leave it only to governments to provide answers? Isn't too much to ask or even illusory to expect politicians who are bound by short-term perspectives to deal with this issue?

I cannot imagine any other actors that could take on the role of the state in this field. I would try to reason away from the logic of obligations. We don't have the means to enforce obligations.

That said, it is true that states have obligations under treaty law but the logic should be based on states best interest. In that respect, the FCNM should be seen as supporting states in dealing with diversity. A friend does not pay lip service but rather points to the issues. They sometimes see things more clearly than the interested person, and have the duty to tell, but ultimately it is the affected person and not the friend who decides whether to take up the suggestions or not. This can be difficult for political reasons as the fear for diversity is shaping electoral campaigns. Nevertheless, the ACFC must continue to provide well-argued advice, even if government support is lacking.

What role do you see for civil society in dealing with these issues?

It very much depends on the context. There are contexts in which dialogue between academia, civil society, and other stakeholders and the government is adequate. Sometimes, some actors are more listened to than others. In some other cases, they are considered not helpful and are listened to by the government only because they are told that they should, and very little comes out of that. We should not expect miracle solutions coming from third parties. They are as biased as other actors. Expectations in terms of outcome should be kept reasonable. What matters more, however, is the attitude of the government toward participation as a help to identify the country's best interests.

When launching the 4th Thematic Commentary, were you expecting more political support from the Council of Europe for the work done?

It is not so much about supporting a single event like the launch of the commentary nor about a statement by the Council of Europe leadership calling for the implementation of the FCNM. It is about supporting everyday work on the FCNM and convincing states about the importance of that work. If the Council of Europe itself is not convinced that this is what we should do, then we have an issue.

What do you hope for the 4th Thematic Commentary's future?

It should contribute to changing approaches to the overall minority discourse. While the concrete suggestions are given in the country-specific opinions, the commentaries have more of a long-term focus: they are arguing an approach which hopefully will help states to deal with their issues. My experience so far is that every time I have explained that commentary, the attitude has been much more positive than it was at the beginning. I am aware that more discussions of the commentary need to be organized. The impact of the commentary may depend on the overall climate surrounding diversity issues but should the commentary help to influence that climate, that will already be an excellent contribution.

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

FCNM

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The FCNM viewed from the OSCE and EU angles

The FCNM and conflict prevention

Ambassador Knut Vollebaek

It does not help that you have support in Strasbourg, Vienna, or Geneva if you don't have support in the country. And this is something we should all aim at: finding alliances within society and also in the political environment in order to tackle issues.

Both the ACFC and the OSCE High Commissioner on National Minorities (HCNM) deal with minority issues, the ACFC as a human rights monitoring body and the OSCE HCNM as a conflict prevention body. There are at times clear overlaps. How did you approach your cooperation with the ACFC? What worked, what did not work?

In my work, I have tried to use the FCNM as my reference point. I often explained to countries that my overall goal was to help them in meeting the Council of Europe standards. I was there to guide them in this process, I was a sort of companion if you like. There was never a question of excluding a state for failing to comply with its obligations in the OSCE context; the only exception has been Yugoslavia. Rather, we aimed at bringing states to address shortcomings in meeting their commitments. In this process, the monitoring work of the Advisory Committee was important. In the HCNM, we could contribute to the regular reviews of the Council of Europe but we could also use those reviews, especially in those areas identified as shortcomings by the ACFC. In that respect, the human rights work of the ACFC and the conflict prevention mandate of the HCNM go hand in hand. Of course, there are some human rights aspects that do not lead to an immediate conflict. However, it is important to keep track of the overall climate in a country and the regular ACFC reviews did help in having a broad picture. In turn, this helped me to assess the current state of play of interethnic relations and judge if this is a country where I need to get involved.

Cooperation is often referred to. It is sometimes institutionalized. In your view, what is the most effective way to cooperate?

There is still a lot of competition between international organizations. At the same time, if you look at the overall international architecture, there is a good division of labor. And there is room for all of us. The Council of Europe provides us with the direction that a country should take. If we work together we can better anchor changes in this direction. It was also important that the HCNM could share in confidence its information and assessment with the Council of Europe and the EU. We could see that once our assessment was reflected in the then European Commission progress reports, countries started to work on the shortcomings identified. This type of cooperation is important; it is also possible. You can also overlap in a positive way and help each other. While I may not have called the ACFC on a daily basis, I was very much encouraging my staff to do so. At the end of the day, it was obvious that some of the information that was presented to me came from the Council of Europe and hopefully we could start working on it.

Arguably, it is a difficult time for multilateral diplomacy. There may not be as much appetite for discussing minority issues in multilateral fora and some have noted a re-bilateralization of minority issues. How do you explain such a situation? Have international control mechanisms such as the one of the FCNM lost their credibility?

Like many other people, I am worried about this trend. This can be explained partly by a lack of understanding of history. It is a long time since World War II, and we have forgotten the dire consequences of persecution of minorities, whether they are ethnic, religious, or sexual minorities. When the institution of the HCNM was established in the early 1990s, you had all of this: the consequences of an ethnic conflict or rather the lack of solution to an ethnic conflict. We worked frantically to avoid the spreading of the war. This is not more than 25 years ago. We seem to have forgotten that also. There seems to be a strong belief that we can control our traditional societies by stopping refugees or assimilating them. There is almost no distinction between the word assimilation and the word integration. Politicians use the word assimilation on purpose. This is despite the fact they have signed up to the FCNM and rights have been clearly stipulated. Look at the elections in Norway this year, the rhetoric was about Norwegian values. What are these? Goat, cheese or snow?

You referred to the confusion between the terms integration and assimilation. Have those who work on this issue, and explain why the distinction is important, been reaching out enough?

No, I am afraid that we have not. There is a fear of globalization. People are losing their job, they feel alienated, they feel that they are in limbo. Look at Brexit, at President Trump in the US, and so many other places. Politicians play into that: they see this anti-globalization tendency, they see that people feel attached to politicians who say: 'this is my country, my territory, my culture'. And this is presented as a political program. There is unfortunately no understanding that this is just rhetoric. You cannot close your borders. Globalization is there. The question is how to handle it. This type of anti-globalization rhetoric will not fulfill anything. We can't go back to a homogenous society.

How can international instruments like the FCNM, which were created to preserve diversity, play a role in that dominant discourse?

It is a challenge as there is a lack of political will to listen. We are better equipped as compared to where we were after World War II. After all, we have all these instruments but there is a lack of willingness to use them. The animosity between the big powers of course doesn't help. Maybe we have not reached out enough, that's probably true. At the same time, it is more difficult to reach out because of the lack of understanding of history. When you talk about the instruments of the Council of Europe or of the OSCE today, people say: 'yes, but do we really need them?'. Then you have this bilateralization of issues because there is this belief that you can achieve more by going bilateral than by going multilateral.

When it comes to national minorities, as High Commissioner, you were already faced with this skepticism and the growing re-bilateralization of minority issues. You still managed in some cases to enter these discussions, presumably with some resistance from the states. What arguments did you use to overcome this resistance? How were you able to play your cards, including the FCNM, to facilitate some discussions?

During my six years as High Commissioner on National Minorities, there were already negative trends. When I started, it was easier to get an understanding of our work and a willingness to cooperate. We saw this clearly with Russia. At the beginning of my mandate, skepticism toward the HCNM working in Russia was there but the authorities still accepted us. For example, we had plans for a seminar on multiethnic society. After several attacks on Central Asian workers took place, my interlocutors at the Duma admitted that there was indeed a problem. That changed later: the seminar was cancelled and then the message of the authorities was that they do not need any help. At the time, I could also count on the support of Western countries. I could also refer to them. And this is where we have a dangerous situation today: when you have people like former Prime Minister Cameron who questions why we should listen to the ECtHR in Strasbourg, it is more difficult for us to work. I remember when meeting with Mr. Dodik in Bosnia and Herzegovina, I tried to use my arguments in favor of multicultural societies and adhering to decisions by the Council of Europe. He told me 'But Mr. Vollebaek, if Mr. Cameron criticizes the ECtHR, why should I abide.' And I had to say to Mr. Dodik that with all due respect, I strongly disagree with Mr. Cameron.

In order to achieve some of our goals, the work had to be very contextual and relevant for the politicians. In particular, I had to convince them that it is in their interest to have my help as I was trying to stabilize the situation, which is of course always good for the politicians in power. Appealing to the sense of self-interest of politicians is very important. I had to explain that fulfilling minority rights is not altruism. Take the example of Ukraine or the Baltic states: it is in their interest to integrate the Russian population to avoid the growth of discontent and external influence to increase as a result. This may be called soft security but it is part of the security of the country. With the fear of terrorism, I realize however that it may be more difficult to achieve today.

Can you provide some example of achievements or successes?

We never have permanent success. It is a dynamic process. I remember talking to the Ministry of Foreign Affairs of Romania, who asked why I was coming to them now, as they were already EU members. Then I became an old schoolmaster, replying to them that fulfilling minority rights is a daily exercise; this is not an exam that you pass once and for all. If we look at Estonia and Latvia, the work of the High Commissioner on language, education, participation, and citizenship has been helpful in stabilizing a society and creating a situation where EU and NATO accession became possible. I used the norms of the Council of Europe in this process. These are also norms that the countries themselves decided upon. This is what I always say: these norms are not created by some international body, the countries themselves have decided that these are useful norms for a good society.

Societies are also evolving and for international monitoring bodies, it is also a challenge to ensure that norms evolve to fit today's societies. In 2012, you issued the Ljubljana Guidelines on Integration of Diverse Societies and in 2016, the ACFC issued its 4th Thematic Commentary on the scope of application of the FCNM. These documents have created some discussion on whether the focus has changed from preserving minority identities to looking at the society as a whole. Some states have wondered what that means for them and wondered whether they have to grant rights to everybody. How should the ACFC deal with these reactions?

We had this discussion when we talked about new minorities. When we said that we would look at the situation of new immigrants, it became controversial as norms and institutions were created in relation to so-called 'traditional minorities'. The is of course difficult enough with respect to traditional minorities if you look at the situation in Central Europe today for instance. At the same time, it has become even more difficult with new groups. There is a fear of opening Pandora's box because we may not foresee all the consequences.

When you talk about inclusion, avoiding alienation, facilitating integration, you need to place these principles in context. There are no blueprints, 'one size fits all' solution to make them work in practice. As you know, the HCNM doesn't always take the side of the minorities but emphasizes the need for mutual accommodation. You need to take into account the perception in some societies that minorities have been given a lot of privileges in society compared to others. It is not necessarily true of course. But we need to find ways of accommodating newcomers, refugees, and take into account the reactions that they may trigger with regard to their entitlements. This is needed in order to avoid animosity.

Would you say there was a perception that the FCNM was for minorities, with not enough attention paid to the society as a whole and that there would be a need for a rebalancing act?

Maybe that it is the perception of the majority but perhaps not of the minority. In Norway, some people may say that the Sami have more rights than they should. These people were forced to assimilate. Later when you realize that this is wrong – and that has not worked either, and you ought to do something different. We need to find a way to accommodate each other. And it is always easier to channel your attacks on minorities. But why would giving people rights mean that they cannot be part of the society?

How did you convince politicians on this?

I would use a counter-argument and say: show me a society where forced assimilation has worked. Yes, you can control this for a while but you cannot do it forever. You may have external forces that appeal to internal discontent. If you have a lot of discontent among minorities, they will start looking for help from abroad. Again, I go back to the issue of self-interest. Integration is of course complex but our societies are complex. We should not go for easy solutions, this will not work in the long run. We may not have been wise enough in our argumentation and surely, the security aspect of the argument has not been used enough.

Would you have any advice for the ACFC, which is to launch its 5th monitoring cycle?

In general, it is important to get an overview of the situation in a country and also refer to progress that has been made. In some countries, it may be more difficult to give advice because authorities don't want to hear complaints or criticism. If you are in the country for the fifth time, you have the advantage of having a good understanding of the situation and could perhaps have a thorough study of selected issues. Working more toward prioritization of issues is important. But it is important to seek more support in a society for addressing these issues. It does not help that you have support in Strasbourg, Vienna, or Geneva if you don't have support in the country. And this is something we should all aim at: finding alliances within society and also in the political environment in order to tackle issues.

***Knut Vollebaek** is former Minister of Foreign Affairs of Norway (1997–2000) and was Chairman-in-Office of the OSCE in 1999. Vollebaek has held a number of international positions, including OSCE High Commissioner on National Minorities (2007–13). He headed the Norwegian Government's Commission on Norwegian Travellers (2013–15) and is currently a member of the International Commission on Missing Persons Board of Commissioners.*

The FCNM and the EU enlargement

Ambassador Erwan Fouéré

[…] the methods and tools used by the European Commission in particular have been far too bureaucratic and not political enough in understanding the grass roots of the problems.

The Western Balkans is a region you know well. All the countries of that region have ratified the FCNM. How do you see this international scrutiny translating into policy?

A lot has to do with implementation. Surely the record of candidate countries is positive in terms of adopting the necessary legislation but implementation remains weak. Unfortunately, the monitoring system of the EU is also weak: you may have seen the European Commission regular progress reports noting the legislative reforms undertaken but acknowledging that implementation is lagging behind. The problem though is that despite this acknowledgment, not much is happening. If you take the example of the Macedonian legislation on non-discrimination which incorporated the EU antidiscrimination legislation, you will see that the body established by the parliament to oversee its implementation has been left without the necessary funding and resources. And this has not been changed for years.

Does this mean also that the monitoring has been too formal? And how do you see the newly established focus on rule of law and fundamental rights of the European Commission reports on candidate states addressing this?

This was a welcome move because it made clear that issues related to rule of law and fundamental rights and freedom are at the heart of the reform process. International reports, whether they come from European Commission, the OSCE, the Council of Europe, have all shown a distinct backsliding on rule of law in the region in the last three years, with some countries like Macedonia being in a more dramatic situation than others. And yet, this is despite the fact that you had this new EU approach. The problem is that the methods and tools used by the European Commission in particular have been far too bureaucratic and not political enough in understanding the grass roots of the problems. These are often very political issues and the EU has failed to appreciate this. Addressing them would require a major rethinking of how the European Commission operates. The enlargement process needs to be far more political, it needs to adopt methods that have an impact on the ground in these countries. These are candidate countries so the intrusive responsibility of the EU is much greater.

How can that that intrusive responsibility be made to work? Does this mean that conditionality as it has been practiced does not work?

It has certainly not worked at all in the case of Macedonia. That is a fact. It is all very good if the European Commission decides to renew its recommendation to open accession negotiations but that recommendation should have been suspended years ago after the first violence in the parliament in December 2012. That should have been the signal that things are not right. Unfortunately, the Commission kept on repeating the same, despite some of us alerting that the failure to take more forceful action would allow the actual leadership of the country to continue with a sense of impunity. You also had different messages from the EU, some strong messages

were extended by some EU leaders followed a few weeks later by much weaker ones by another. And this is the problem: the EU does not have an effective tool at its disposal to bring countries to effectively comply with the rule of law. In the Balkans, the EU is seen as favoring stability over rule of law. This was particularly accentuated with the migrant crisis where you have the then Austrian Minister of Foreign Affairs and now Prime Minister going to Macedonia and to all the countries at the rock face of the refugee crisis telling them to close the border. Then they comply and then all the other issues, like the rule of law are swept under the carpet. It is a serious miscalculation to believe that by guaranteeing stability in the region, you are at the same time guaranteeing the rule of law. We know that it does not work.

How can monitoring be made more effective?

You should raise the issue directly with the government concerned. You have to name and shame and make sure that they are aware that setbacks will affect their accession prospects. The EU progress reports were glossing over the real issues. The criticism voiced used far too diplomatic language. In Macedonia, the Priebe's report [1] had very clear language. This was a welcome change. At the same time, another report was produced two years after this first report showing that the government had done nothing. That is the problem: even if the report is excellent, the government keeps on missing the deadlines and nothing happens. There is no incentive to ensure implementation. The issue of sanctions has often been discussed but this requires unanimity within the EU. But you can still play with the recommendation even though I am aware that there is reluctance to withdraw such recommendations out of fear of creating a precedent. At the same time, not doing it plays into the hands of the government in place who can act with impunity. Much stronger cooperation with civil society is also essential. You have all these programs which are all project driven but do not support dialogue – I mean political dialogue. This would need to change in order to avoid the situation where most of the political dialogue is with the elite. If you don't open up the dialogue, then you can only reinforce this governmental elite.

Coming to your direct experience as the Special Representative of the Irish Presidency of the OSCE with special responsibility for the Transnistrian settlement process. That process involves a substantial set of minority issues. How did tools in the EU, the OSCE, and the Council of Europe help you in discussing these issues?

During the Irish presidency, we thought that there should be much more cooperation between the OSCE and the EU, notably in the field. There were areas, notably minority rights, where the EU does not have any relevant legislation but the OSCE has the expertise. Take the issue of the Latin school where the OSCE has an important role to play. Cooperation on those issues would be logical but it was not always automatic. It often depends on the personalities in the field: if you have a head of delegation who understands the value of cooperation, then it works very well. If you have a head of delegation who tends to be exclusionary, it won't happen even if there is a broad policy in favor of cooperation coming from the headquarters. In my work, I always made a point of emphasizing the added value of cooperation. That said, I had more leeway in Macedonia as I had two hats: I was able to play both the Council and the Commission angles and then use this authority to emphasize cooperation with the OSCE, on the integrated education strategy in particular. I also enjoyed excellent cooperation with the Council of Europe's Committee for the Prevention of Torture in respect of the prison conditions in Macedonia. In practice, it is really a question of sticking your neck out and saying that we need to join forces to have an impact.

What was then your experience with regard to access of human rights monitoring when it comes to Transnistria?

When the Secretary General of the Council of Europe had difficulties getting access, I would talk to the Moldovan Government and the authorities in Transnistria and explain that it is in their interest to allow access. There should be more coordination to avoid a situation where the host country plays one organization against the other. When I was in Macedonia, we had an effective system of weekly meetings of the EU, OSCE, NATO, and the US. We were undertaking joint activities. That worked well to ensure that the international community was speaking with one voice.

The Center for European Policy Studies (CEPS) recently published a report entitled 'Towards a Comprehensive EU Protection System for Minorities'. What obstacles do you see in achieving such a comprehensive protection system?

Overall, there is a lack of intellectual understanding for issues of minorities, as was shown by the reactions to the Catalan crisis. There is a difference between what is legal and what is just. You have of course different approaches according to the country concerned. You have for example the liberal approach of the United Kingdom that speaks about four nations and then you have the French who do not recognize any other languages than French because the Constitution says that the language of France is French. That legislation really could be changed. Respect and recognition are needed. The next question is, what rights? In Macedonia, you have rights that vary from one group to another, according to its numerical strength. This was enshrined in the 2001 Ohrid Framework Agreement, [2] with language rights provisions applying to languages spoken by at least 20 per cent of the local population. A heated discussion on language rights has emerged regarding the question of whether the state should become a bilingual state. This has triggered fears among some that this would be the end of the Macedonian language. Such fears have been feeding the nationalist agenda of some political actors. Here again, it is a question of how the debate is framed and what kind of understanding there is for minority issues.

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[1] Report of the Senior Experts' Group on systemic rule of law issues, led by Reinhard Priebe. This report was requested by the European Commission in 2015.

[2] The Ohrid Framework Agreement is a peace agreement signed by the government of Macedonia and ethnic Albanian representatives on 13 August 2001.

The FCNM and the EU enlargement

Allan Jones

I find it difficult when political leaders say to their citizens:'Look, let us only be as good as the worst EU member state'. If I were a citizen of this country, I would say no to this kind of political leadership.

The FCNM is an indirect benchmark that helps the European Commission to evaluate the implementation of minority rights of potential candidates and candidate states. In 2012, rule of law reforms covered by chapters 23 and 24 have been re-prioritized in the accession negotiations in order to focus on the impact of the reforms. What has this changed for the implementation of minority rights?

The new approach brings forward the fundamentals to the core of accession process. It is a response to EU member states insisting on the respect for the rule of law. This re-prioritization is meant to address their concerns with issues such as the independence of the judiciary, and issues around organized crime, and corruption. In the European Commission, we usually separate rule of law issues from fundamental rights and the rights of minorities. We tried to cover all these issues in chapters 23 and 24 and prioritize these chapters for those countries with which we are negotiating. This concerns in particular Serbia and Montenegro, where negotiations on chapters 23 and 24 have also been opened. We also tried to extend the spirit of the new approach to all the other countries. That led us to change the way we structured our reports. We have shared the experience with this new approach with all the countries in our 2015 multi-year strategy and have spelled out expectations in a way that has never been done as clearly before. On fundamental rights, we very much follow the FCNM and the European Convention on Human Rights in our reports. There may not be detailed reporting on those issues but the references are prominent given the commitments to these treaties countries have made.

How do you see the convergence on priority issues between the Council of Europe and the European Commission and how are these politically followed up?

When preparing the negotiations on chapter 23, we took the FCNM as an important reference point. This is meant to hold the countries to their commitments. Of course, the commitments undertaken are very general and you have to deepen the dialogue with the countries to find out how far they have gone with implementing what remain general recommendations from international monitoring bodies. We then examine how we can boost the reforms, including by providing financial assistance. Another aspect of this process is the specific interest that some EU member states have in the area of minority rights, and the pressure that they may exercise to have the accession process elaborate further on specific commitments. Some member states may try to push their agenda through their own bilateral channels and relations with the enlargement countries. This is where the process gets complex and where the European Commission tries to establish the right balance in its evaluation. And we do bring the FCNM assessment into this balancing act. We have not reached the stage of completing the accession negotiations and this is of course the challenge: to decide what remains to be done when you have interim benchmarks. Peer assessments, dialogue with colleagues in Strasbourg and others, all factor in the assessment. They also feed into the action plan that each country has adopted on chapters 23 and 24. A specific action plans also exists on national minorities. In this process, we have tried not be overly prescriptive while also ensuring that commitments are well reflected.

Some criticism has surfaced about the excessive bureaucratization of the implementation of the action plan on national minorities, with the perception that meeting reporting requirements may have become an end in itself. What is your view on this? Are those action plans overambitious?

This is not just a problem for the implementation of minority rights, it is a more general issue. This criticism is quite understandable as countries are trying to meet EU membership conditions. Meeting these conditions is not a walk in the park even for countries with very strong political will and the best administrative capacity. We are aware of the lack of administrative capacity in some countries but I don't think that there is any way around it. We cannot dictate the structure that countries should put in place to manage this type of process. What we can do is to insist that countries are not completely tied up in bureaucracies. We can insist that the process should remain open and inclusive and that it allows for coordination of positions and discussion of the type of reforms needed. And when we talk about reforms, we talk about genuine reforms with impact on the ground and not just paper-based reforms that would be produced with the sole aim of satisfying Brussels. That is a struggle as this is a major process. It is not obvious what the solution is to overcome issues of bureaucratization. Of course, the heavy procedures attached to implementing action plans can also be used as smoke screens to avoid getting into political action. At the same time, if there is political will, procedures can be streamlined and the process made operational.

How does this kind of process reach out to the political level? In some instances, you see a lot of energy invested at the administrative level but it is not obvious that the political level is giving the necessary political impulse to these processes. How can you ensure that this is the case?

That is where we have to use the EU political dialogue and the high level of interaction that the Enlargement Commissioner or the High Representative / Vice-President of the European Commission have with the national authorities. The association council meetings are also an opportunity for messaging, with a common position that will be conveyed publicly. These are opportunities to raise the profile of some of these issues and to provide support to the accession process in the country, including those who are doing the good work at home.

You have referred to the large number of issues that are reviewed and the way that they are addressed. In this context, minority rights are sometimes isolated from the human rights agenda or at least perceived as such. How do you see the segmentation of issues which may be created by this process?

Our policy documents include a prominent minority rights agenda. This is also reflected in the architecture of our cooperation with the countries. Protection of minorities is part of the political criteria, it is part of chapter 23. When you look at the issues being flagged, there is one minority that comes to the center of attention: the Roma minority. For other minorities, it varies a lot from country to country. We will then need to have a tailor-made approach from a political point of view. Some national minorities are in a better position than others depending on the support of the kin-state that they get. This may not be the national minorities that we would call for specific intervention at EU level. We have to take into account what the impact of our work is in terms of human rights more generally and the impact on stability in the country and the region.

You implicitly refer to minority issues drifting to the bilateral arena, which is a risky path. How does the European Commission address that? With what tools?

There is no hard EU body of law on minority rights so it makes it difficult for the EU to come out strongly on those issues, especially as there are different positions among EU member states. Some EU members care strongly for particular minority issues in a given country even though they may pay less attention to these at home. This makes it difficult for the EU to start intervening in this type of case. The reality is that many of these issues are bilateral issues, they have to do with history, they have to do with a complex set of issues. What we want to focus on are the key aspects of the accession process. This means looking at the fundamentals across the board, the economic criteria, and the body of law and then supporting these countries in meeting these criteria. This is a process based on the country's own merit and we don't want bilateral issues to interfere with it. Of course, we don't want bilateral issues to be imported into the EU either so there is a balance to be struck. However, it is not the role of the European Commission to mediate this type of bilateral issue, especially as the protagonists of these bilateral issues are member states and they have a veto right on accession. It is therefore helpful for other actors to get involved and support the process.

The FCNM is an instrument of the Council of Europe that has not been ratified by some EU member states. The argument of double standards returns regularly in the discussions on minority rights. How do you address this?

This is an issue that comes up frequently. The reality is that the EU cannot give any discount on conditions that have been set at the highest level for a country to be accepted as a new member state. Of course, there will always be examples in member states where issues may be perceived as being worse than in a candidate country. But we are not conducting the accession process on the basis of the lowest common denominator. The idea of double standards is also very popular in those countries that do not want to apply high standards. This is something that needs to be recognized and needs to be confronted head on. We need to explain to candidate countries that what we are doing is to ultimately improve the overall situation for all their citizens. It is not because the EU is trying to be difficult; it is because we have all collectively agreed to certain standards and these are clearly reflected in the Copenhagen membership criteria. And we, in the European Commission, have been tasked with making sure that these standards are met. There is no way around it. Sometimes political leaders may well play on this double standards argument but this won't help them in the accession process. I find it difficult when political leaders say to their citizens: 'Look, let us only be as good as the worst EU member state'. If I were a citizen of this country, I would say no to this kind of political leadership.

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The FCNM, bilateral relations, and multilateral diplomacy

Ambassador Natalie Sabanadze

Diplomats also have this reciprocity discourse [on national minorities] in formal settings and they have no idea that this is wrong. Nobody says that this is wrong. This is also due to the fact that understanding of international standards is being weakened.

You were one of the main people behind the OSCE HCNM Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations. These recommendations highlight the importance of international instruments on minority rights, including the need to support their monitoring mechanisms. You are now heading Georgia's mission to the EU, with many pressing foreign policy issues requiring your attention. What is your experience in putting these types of recommendations into practice in the multilateral arena? How useful and how difficult are these recommendations to implement?

These particular recommendations are certainly the most international recommendations produced by the OSCE HCNM. While other recommendations relate to what states should do themselves, the Bolzano/Bozen Recommendations tell us what states have to do together and don't have to do together. As I have left the field of minority rights, I may not have the information on their implementation, but I know that they have been referred to by national government officials in diplomatic discussions. This is positive. The fact that they deal with very international questions is precisely their added value: they set standards that go beyond a specific political context and are there to protect against this reciprocity approach which is very common in inter-state relations. In fact, one could say that reciprocity is deeply ingrained in inter-state relations. It is a diplomatic tool. The Bolzano/Bozen Recommendations challenge that and say that reciprocity is not to be applied but that international minority rights standards are those standards against which any state can judge itself.

The Bolzano/Bozen Recommendations refer to the FCNM. In the current international and European setting, characterized by a retreat from multilateral diplomacy, it may be more difficult for an instrument like the FCNM to assert itself. In your view, how serious is the threat of re-bilateralisaton of minority issues and how seriously are these instruments like the FCNM taken?

It depends on the multilateral institution where these instruments are rooted. The Council of Europe still works quite well as a norm-setting organization and does have the power of a normative reference. But yes, there is a re-bilateralization of minority issues because it is more convenient to negotiate directly with the other states. 'I open two schools if you open two schools.' This type of negotiation is of course irrelevant. What is relevant are international standards and they should be made clear by the authoritative bodies. And they need to be preserved by those multilateral institutions from which they come.

Would you say that this message does not come out clearly enough?

The most important thing is to say clearly that what goes on in each other's backyard is not a standard. I may not be the best placed to evaluate whether this is made clear enough but I would think that it is not the case. Diplomats also have this reciprocity discourse in formal settings and they have no idea that this is wrong. Nobody says that this is wrong. This is also due to the fact that understanding of international standards is being weakened. The international institutions that gave birth to these documents in the 1990s when there was a normative renaissance definitely have a role to play. These times have gone but the norms are still there. If you cannot improve the norms, at least focus your efforts on preserving them. This means at least backing them up politically. Diplomats who are part of the game should know them but they don't. This is not the problem of instruments like the FCNM as such, it is more the problem of international organizations that stand behind them as they may lack the political clout needed for these norms to be preserved.

The question of monitoring bodies' access to territories outside the effective control of the state has been discussed. It seems that this situation is not evolving much. Do you also see this as a 'frozen issue' and how do you see international organizations behind these norms dealing with it?

The question of access is being discussed. This is of course for me a very real situation as you know that Abkhazia and South Ossetia, but Abkhazia especially, are completely sealed off. Of course, access of international monitoring bodies would be important to have. I think that it is again a question of international organizations showing muscle on this issue. Yes, these places are not under the effective control of the state and as such, it is important to say explicitly that access was denied. However, there is somebody that is in effective control and we need to talk to that somebody and ask for access. Effective control implies certain obligations. Of course, the situation is very contested with a de facto reality and many parallel realities. I wonder how forcefully the case of access is made. I don't see so much pressure, including from the UN High Commissioner on Human Rights or the Secretary General of the Council of Europe. That they talk between themselves is not good enough. The recipient side should know it, I should know it as a representative of Georgia, Russia should know it as a country in effective control whether it admits it or not and de facto authorities should know it. And there should be pressure for access to happen. If it is not on the agenda, then that is a problem. And of course, it is a problem as you have most probably the worst situation when it comes to human and minority rights. When Crimea happened and my OSCE HCNM experience was rather recent, I was thinking of the Crimean Tatars and who is under effective control of that protection that everybody denies. These cases are very real and they exist in the Council of Europe area. They need to be addressed more forcefully. But I can see overall a retreat on the side of multilateral organizations from their obligations. States are more powerful and they can basically close doors. International organizations are not so keen to confront not only the biggest players but also their members. There is a legitimate interest to putting pressure and ensuring that this is given publicity. It is fine if the discussions are held behind closed doors as long as these are producing results. Unfortunately, there are no results so far, so one can legitimately wonder what is going on. That experts in monitoring bodies who care about the issue talk to each other is fine but these talks do not seem to transform into political action. And that political action should come from the international organizations within which these bodies operate.

We are in a different context to 20 years ago when the FCNM entered into force. How can mechanisms such as the FCNM live up to the challenges of today?

Monitoring in itself is very useful and I would not review it: that is a way to understand how the situation evolves on the ground. In spite of the diplomatic language used, these reports act as pressure on states to perform. States are always interested in having good reports. They do care. You can of course always look at how things are communicated. But what do you do with that report once it is communicated is the most important: where is it reflected, in which documents, in which of those processes for which states really care? I remember when I was covering Romania in the OSCE HCNM. That was at the time of the accession process, the time when the OSCE HCNM and the Council of Europe mattered. That was an effective process and it is now much more difficult when the country is member of the EU club. EU accession was an example of process where the opinions were transmitted effectively to international processes. It is true that there are less and less of those processes. States, depending on their agenda, would usually care about the opinion of international organizations from which they would like to get closer to. So, this is something to use. How you do it is a different thing but if it is a mechanism that the state cares about, then it will respond to it. Attention paid by domestic actors can also be used as leverage: if we take the example of Georgia, there is substantial pressure from civil society to work closer in the direction of European standards. At this stage, it requires more thinking on finding effective processes, especially as the enlargement is sort of frozen and as we know, that has been an obvious tool through which you could influence developments through conditionality. I believe that we come back to the issue of transforming the political clout of the international institutions. For example, using properly the Parliamentary Assembly of the Council of Europe could be a way forward in some context: you have local politicians there and they get a lot of public attention. The process has to be political because if it is about an expert opinion only, with no political action, its impact will be limited.

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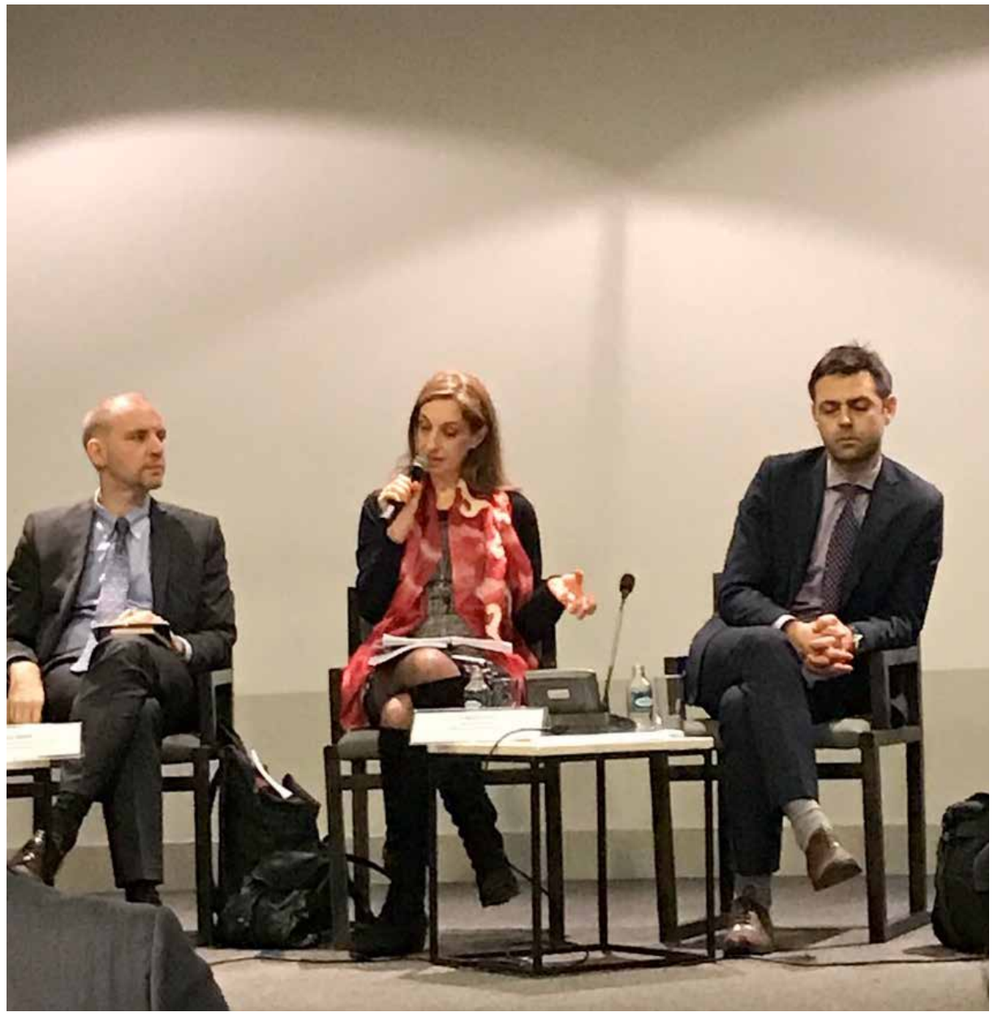


FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

The FCNM, bilateral relations, and the Balkans

Marika Djolai

The problem is in fact not about reporting, it is about understanding what is happening on the ground and its implications.

You have been involved in the work of the Balkans in the Europe Policy Advisory Group (BIEPAG) on the Berlin process. Your engagement has been focused on the resolution of bilateral issues in the Western Balkans. How relevant is the Berlin process for solving bilateral issues on minorities and how do you see the role of an international treaty like the Framework Convention in this context?

The Berlin process is an intergovernmental cooperation initiative aimed at revitalizing multilateral ties between Western Balkan countries[3] and is linked to their EU accession agenda. On one hand, it is positive that bilateral issues are part of the Berlin process agenda in recognition that they could be a potentially significant obstacle to the EU accession of those countries. On the other hand, bilateral issues are not specifically defined in this process. In practice, any issue in the relations between two countries whether economic, political, or territorial can become a bilateral issue at any point. We need to focus on bilateral issues that are really impeding the region's development. The focus of my work is on these bilateral issues between the Western Balkans countries. So far, territorial disputes remain a big problem in the region since the delimitation of borders has not yet been finalized between the former Yugoslav Republics, now independent countries. Issues pertaining to national minorities and their rights are equally important because they can be easily politicized in the relations between two countries. A recent example in that respect is Croatia as an EU member state using the issue of the status and rights of national minorities to block the opening of chapters 23 and 24 in Serbia's EU accession negotiations. BIEPAG analysis suggested that the Berlin process should provide an overall acknowledgment of minority rights disputes in the bilateral issues resolution framework. EU member states participating in this process, with perhaps the exception of Austria, are very much reluctant to push the Western Balkan countries toward the operational resolution of their bilateral issues agenda and therefore avoid raising direct questions about minority rights. I have never experienced a situation in which a member from the EU chairing the process, whether Germany, Austria, France, or Italy ever referred to the FCNM in that context. The biggest challenges that, in some way, have a minority component are Kosovo–Serbia relations, the name issue between Macedonia and Greece, and Croatia–Serbia relations.

You referred to the politicization of minority issues and their possible escalation. By assessing progress on minority issues in bilateral relations, can international instruments like the FCNM help in putting issues on the agenda with a view to their resolution?

Even though countries in the region fulfill reporting obligations under the FCNM country-specific monitoring, their approach to national minorities rights remain largely formal as they mostly focus on building and maintaining the legal framework rather than actually implementing it. Countries are very careful to present themselves in a way that shows compliance with the FCNM, particularly using appropriate subject-specific language. They also organize wide consultative process with NGOs,

[3] Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia and Kosovo.

formal bodies, and representatives of minority civil society organization to feed into the report. However, the politicization of minority issues is a different issue. A minority issue can be turned into a dispute because of rhetoric or sometimes misinterpretation of commitments to the formal framework in a given country. It can also be an actual problem, depending on how sensitive the issue is. My experience is that the countries concerned need some kind of mediation, which is most of the time done through backdoor diplomacy. As I worked with all Ministries of Foreign Affairs in the region, I also realized that often the governments and relevant ministries are working toward resolving issues but will not necessarily make these cases widely publicized and this is often done without the involvement of third parties, for e.g. international players and foreign diplomacy. If the issue at stake is politicized, it becomes very public and any existing instruments like the FCNM are not particularly useful. On the other hand, FCNM reports are very useful reference points should an issue arise because they are detailed and up to date and cover legal regulations, bylaws, political and strategic documents, provincial regulations, and international treaties.

As we know, these kinds of backdoor diplomatic talks may not include the beneficiaries themselves, i.e., the national minorities. Shouldn't there be some scrutiny of how these discussions are carried out?

As we know from bilateral issues resolution, negotiations are usually done at a high political level. Likewise, politicians don't like discussing minority issues and related challenges in public and would prefer to leave them out of the agenda. While in some cases backdoor diplomacy may be beneficial, particularly in handling politically sensitive issues, it does often exclude the final beneficiaries. Two different matters need to be considered here. First, if the issue is really pertaining to the rights of national minorities, they have to be included in the consultation process and the government needs to make a provision for the minorities' formal representation. The process has to be public. Second, if it is the politicization of a matter pertaining to the rights of national minorities such as alleged breaches, requests to resolve alleged unresolved issues and using this to exert pressure on a government, as we often see in the bilateral issues escalation, then the issue is not about the national minorities. In these cases, reference to the FCNM and ACFC reports can be very useful. In addition, having teams such as intergovernmental commissions and other government bodies with experts who work on the resolution of minority issues internally or bilaterally is another useful reference point for ensuring that the issue is addressed in a substantial way.

If existing models of reporting are discouraging the involvement of minorities, what would be your suggestions to encourage minorities to take an active part in the monitoring process?

The problem is in fact not about reporting, it is about understanding what is happening on the ground and its implications. Often there is a lack of operationalization of existing legal frameworks and agreements and a lack of a supervisory body to ensure enforcement. The way the FCNM reporting is structured does not encourage follow-up discussions or specific action. One could imagine a two-tier reporting system: one level would be the formal state report while the second level would be a follow-up report in which representatives of civil society organizations, together with formal and informal representation of national minorities, would be discussing and questioning the state report. This would help to bring the report to the public arena. Often members of national minorities or the wider public are not even aware of the existence of the FCNM and they are certainly not aware that it gives them certain rights that they can claim, while numerically smaller minorities are not included in the consultative process even if it exists. This lack of publicity and awareness is also linked to the lack of fora whereby different stakeholders could discuss minority issues and ask questions about implementing the minority rights framework. A public discussion of the FCNM state report built as part of the reporting mechanism would therefore be of help. Another challenge of the reporting is that it does not always follow political developments: take the example of Macedonia that went through a serious political crisis in 2015 – 16. The government report (fourth cycle) reflected on legislative and policy aspects of the FCNM implementation and did not mention at all what is happening on the ground, where a number of problems persisted. These were only picked up by the FCNM Advisory Committee Opinion in 2016.'

And when it comes to improving the monitoring of the FCNM?

Minority rights are a broad framework, it is difficult to address all minority rights at all times even if we would like this to happen. For this reason, it would be good if specific issues could be highlighted in specific cycles. The question would be selecting a thematic issue that would be addressed in depth in a specific monitoring cycle. I also see that there are issues that don't make their way to the ACFC assessment. Indeed, some issues are internationalized while some others stay within the boundaries of the country. They deserve to be flagged more publicly and some more in-depth focus and scrutiny of the situation by the FCNM would be helpful.

When you refer to the need for fora of discussion, one can also ask who should be invited to the discussion table. Would you say that in some instances there has been an excessive institutionalization of minority rights leading to a sort of monopolization of the issue by some?

It is true that the field of minority rights is not diversifying. However, this affects civil society organizations more broadly, at least those with high profile and influence. For example, I attended a discussion on ethnic minority issues between Serbia and a neighboring country, which was organized by one civil society organization in Serbia that had been working in this field for more than 25 years. I could see that the discussion stayed within a limited circle. This is not helpful. It would be important to broaden the base of what civil society is: it is not only NGOs but also religious organizations, political parties, and all those who may influence the operationalization of minority rights. In fact, people don't often sit together at the discussion table and this is where international bodies could have a role in making sure that a broader spectrum of actors are included in the conversation.

Would you say that minority rights discussions have been somewhat disconnected from the general human rights framework with its own set of interlocutors?

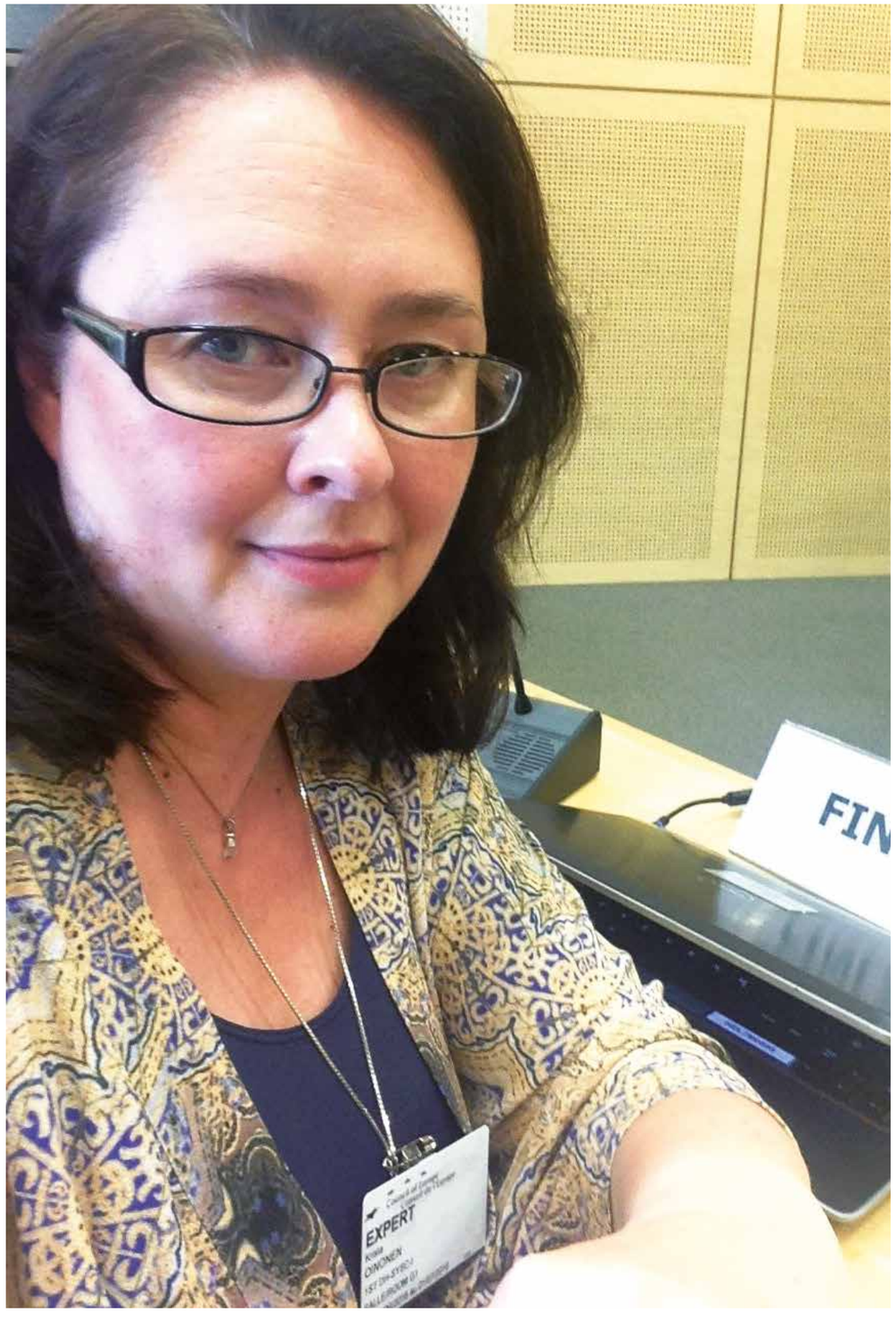
In the region, this disconnect stems from the Balkan wars and the approach to minority issues is disconnected from the human-rights based approach. There was a point in time when minority rights were rather prominent in the public discourse and were receiving significant attention. In fact, there were two parallel ongoing discussions: one looking at the human rights violations linked to war atrocities (and these were not necessarily directly connected to minority rights) and then the issue of minority rights oppressed under nationalist regimes. It seems that human rights and minority rights have had different trajectories in the region. Often minority rights are discussed outside the general human rights framework. This creates a challenge if you are looking for publicity or pressure mechanisms in the public arena. The discourse is narrowed downed to question of 'for or against minority rights', which isolates the whole field of minority rights from basic human rights.

The fourth Western Balkans Summit was hosted in Trieste in July 2017 by Italy of the Balkan Process: how do you see the next phase in terms of bilateral issues?

Bilateral issues need to be resolved and not necessarily only when they arise in a problematic way. There are some developments: before the Paris Summit 2016, there was a meeting focusing on territorial disputes resolution with the participation of the Ministries of Foreign Affairs of the Western Balkans countries, EU member states participating in the Berlin process and guest attendance from Slovenia and Croatia. One of the outcomes was that the Western Balkan countries agreed to report on these disputes based on the Declaration signed at the Summit held in Vienna in 2015. Countries have reported on these issues but these reports didn't get released until the Trieste Summit. While multilateral agencies' requests to produce reports are usually followed up, the question that arises is to what extent these agencies are prepared to insist on properly following up on specific issues and disputes. So far there has been no request to report on minority issues even though they are recognized as important. It would be a priori possible to make such a request if there was a political will to do so among EU members. Minority issues are however also a sensitive issue for them. Following a meeting with the Ministries of Foreign Affairs of the Western Balkan region this year (2017), I agreed to prepare an overview of the current state of affairs with regard to minority protection agreements and implications on bilateral relations, focusing on both the domestic legal and constitutional frameworks and bilateral treaties. There has not been any report providing such an overview in the last ten years. This is a first step that should allow multilateral agencies to attempt to engage countries in reporting against this forthcoming expert report in the Berlin process framework and possibly for the London Summit 2018.

Marika Djolai *is a Peace, Conflict, and Development Consultant and policy analyst on peacebuilding, conflict resolution, and ethnicity. She also works on bilateral issues resolution, migration, and minorities in the Western Balkans and Eurasia and is a member of the Balkans in Europe Policy Advisory Group (BIEPAG). She holds a PhD in Development Studies (Conflict and Violence) from the Institute of Development Studies, University of Sussex and MSc in Anthropology and Ecology of Development from University College London. Marika has been engaged in politics, independent media, and civil society activities in her native Novi Sad, most notably for EXIT foundation, local newspaper 'Nezavisni' and as a co-founder of Charity 'Panonija'. Since 1999 she has been based in the UK where she worked for the UK political establishment, the BBC Media Action, and International Alert. She also held different positions in Bosnia and Herzegovina and Kosovo.*

FCNM



Views from Europe

Letter from Helsinki

Krista Oinonen

Lots of efforts are put into these [State] Reports and besides, NGOs and minorities are also invited to contribute. We are hoping to better use this report when we design our policies or redraft our legislation because it is an excellent overview of the situation.

Finland was one the first countries to ratify the FCNM and has been a key supporting country to this treaty. The first visit of the ACFC took place upon the invitation of the Finnish Government, which in fact started the practice of country visits. For you working in the Ministry of Foreign Affairs on this issue since the beginning, what are the main achievements of the FCNM in Finland?

As we ratified the Framework Convention, we had to answer the question of who the national minorities are in Finland. This was our starting point. In Finland, we do not have any specific legislation defining minorities but we have a very good Constitution with a fundamental and human rights chapter that was actually drafted at the same time as we were ratifying the FCNM in 1999. The FCNM ratification therefore brought up issues of national minorities at the same time as we were having debates about fundamental rights. The timing of the FCNM ratification was therefore excellent for Finland. In the end, it was quite easy to define the scope of application in Finland: we have indigenous Sami people and we asked the Sami people if they would like to be protected by the FCNM. They replied positively. We were afraid that they would not be interested in being part of the FCNM because they are very strong about the fact that they are indigenous people and not a national minority. But the Sami people in Finland felt that it was a good instrument that would bring additional protection for them. If we think about our national minorities like the Tatars or the Jewish community that have lived in Finland for hundreds of years, they are so well integrated and you basically never get to hear about them. Thanks to the FCNM, they got the opportunity to raise their issues and have a dialogue with the government and the ACFC. The great value of the FCNM is that it provided a forum for regular dialogue between the government and national minorities. It is interesting to see how minorities are using the FCNM and are, for example, asking about the next state report, especially when there are some challenges. They really use the FCNM and they need it.

Could you point out cases where the findings of the Advisory Committee have helped to bring some policy changes?

One recommendation that has been repeatedly addressed to us is the linguistic rights of the Sami people. We have three Sami languages spoken in Finland: Northern Sami is doing relatively well but there are also Inari Sami and Skolt Sami. Altogether there are less than 1000 people speaking these two languages. As the FCNM regularly raised the issue of Sami linguistic rights, the government started a revitalization program for Sami languages. The ACFC was the first international body raising this issue in detail.

The FCNM also covers the Swedish-speaking Finns and Swedish is also our national language. The Swedish-speaking Finns are not considered a national minority as such but rather a de facto linguistic minority. It was interesting to see how we have been able to use those recommendations in the government to enhance the use of Swedish language. In Finland, the areas concerned are mainly the coast and archipelago or the biggest cities like Helsinki where Swedish-speaking Finns live. But the FCNM recommendations have alerted the government that even if it is a national language, it is not doing that well these days. In Finland, it is quite self-evident that we have those two official languages but when you have the Committee of Ministers telling you that we should have better measures to protect Swedish in Finland, I believe that helped.

The context has changed since the 1990s. How would you describe the main challenges in implementing the FCNM today in Finland? What changes would be needed for the future monitoring cycles to be more relevant and timely?

The first challenge is about making better use domestically of the state report on the FCNM. Our state reports are usually very thorough, they provide a very valuable package of information on national minority legislation, policy, and practice in Finland. Lots of efforts are put into these reports and besides, NGOs and minorities are also invited to contribute. We are hoping to better use this report when we design our policies or redraft our legislation because it is an excellent overview of the situation.

The FCNM reporting cycle of five years is fine. It is actually quite ideal because usually the government mandate is four years so we have had enough time to take measures. The three years reporting cycle of the Language Charter is more problematic and as the reporting is more demanding, we are faced with more delay. I see more synergies between the FCNM and the European Commission against Racism and Intolerance (ECRI) than the Language Charter. I can see that ECRI uses the FCNM findings in its report. This is in fact something that our national minorities sometimes ask since we are reporting on the same situation. The difference between the protection of minority languages and the protection of minorities is not quite clear.

The ACFC Opinions are of course commented upon but in practice, it is the Committee of Ministers resolutions that are seen as our tool. The resolution is automatically translated into Finnish, Swedish, and North Sami and is circulated quite widely. The distinction between recommendations for immediate action and further recommendations is of great help for us: I can see that these recommendations for immediate action are really picked up by the ministries concerned because they are more alarming. We therefore ought to take action. Last time, the recommendations for immediate action were on Sami, Swedish language, and on non-discrimination and I could note that these were more easily used. We welcome the fact that the Committee of Ministers resolutions are so well focused and that you can easily identify what the key issues are in Finland. They are user friendly. This is especially so if you compare to the UN treaty bodies' concluding observation, which can be extremely long and cover a wide variety of issues. At times, you can clearly see some copy-pasting of recommendations that are too general for the Finnish context. This is not the case with the recommendations of the Committee of Ministers as you can really see that these are addressed to Finland. In sum, both the format and the substance of the Committee of Ministers resolutions have been well received in Finland.

We usually advise to read the Advisory Committee's opinion in conjunction with the Committee of Ministers resolution so there is an understanding of what is behind the recommendations and how the Advisory Committee explains it. However, the flow of information is such that I have to 'sell' the Opinion by drawing attention to it this way.

You mentioned 'selling' the opinion. How challenging is it to reach the political level with ACFC Opinions as these are perhaps too technical? Since you are somehow the interface between Strasbourg and Helsinki, could you share your experience in reaching out on the FCNM recommendations?

It is true that in the broader context we have had some recommendations that we have had to sell and that is usually when recommendations are of poor quality: we have received some recommendations particularly from the UN that do not fit the Finnish context or recommendations for which we simply cannot understand what we are expected to do. For the FCNM, we don't have this problem of 'selling' or explaining the ACFC Opinions, we just distribute them.

When the Committee of Ministers reiterates a recommendation, it has a stronger emphasis. I cannot see any sort of fatigue on these instruments. If I look at other instruments, especially on the UN side, there is more frustration.

The quality of the ACFC work has been good and especially this last round, everybody was praising the ACFC and the Secretariat on how thorough the Opinion was, how carefully the information contained in the state report was read. It was clear that the delegation of the ACFC had a set of questions before they came to Finland. I was present at the governmental meetings and I can say how detailed the discussion was and how the ACFC was able to pick up on the most tricky issues. What I heard from minority organizations, with whom the ACFC met separately, is that they were also pleased that the Committee had a good understanding of the situation. The ACFC was very keen to go to Lapland while I was perhaps more hesitant as it takes a long time to go there for a short visit. However, they insisted that it was crucial for them to go there in order to understand what the challenges are. Sami people really appreciated this. It has been a very genuine interaction and it was an acknowledgment that their situation mattered.

Would you say that the balancing act between priority recommendations and keeping the overview should stay the same in the next round of monitoring or should there be an even stronger focus on a set of two or three priority issues?

In Finland, we have established a mechanism in 2012: it is a government network of contact persons for fundamental and human rights. Each of the ministries has its own focal point and together we form a network that meets several times a year. Recommendations of international human rights bodies are directly sent to the network and we have a meeting in order to go through these recommendations. I received only positive feedback on the way the Opinions are structured between the recommendations for immediate action and other recommendations. At the same time, there are a variety of issues and topics ongoing and it is important to keep these issues on the agenda, too, otherwise the Opinion would offer a rather limited perspective. We are hoping that the ACFC will keep this format. As we are approaching the 5th monitoring cycle, it would help if there were even more detailed recommendations.

If you look at the last ACFC Opinion, the Committee encouraged us to look at the broader situation of minorities in Finland. In fact, it encouraged us to look at the situation of the Estonian speakers and to involve them. They are not a so-called national minority in Finland but they are the second biggest minority group at the moment. The way they formulated their recommendation was very balanced and elegant as they encouraged us to discuss whether Estonians would like to be protected by the FCNM. We very much appreciated this approach and because it was so finely put forward, I am confident that we can make progress on this.

How do you see the use of thematic commentaries in helping to discuss and understand national minority issues. For example, there has been substantial discussion on the scope of application of the FCNM. How do you see this debate in Finland? Do you see the thematic commentary and the ACFC Opinion helping you in these discussions?

I believe that Finland is still the only state party that has publicly stated in Strasbourg that we understand this 4th Thematic Commentary and we support its approach. We have discussed this commentary within the public administration and for instance, the Ministry of Justice which is responsible for non-discrimination issues, stated that this approach is exactly the same as we already have in Finland. This is again a fine approach of the ACFC to say that you cannot protect national minorities unless you take care of the overall society, all people and not only the national minorities. Non-discrimination in the whole society is needed. I have not received any feedback from national minorities on this commentary as yet and this is something that we are planning to discuss. We have been very preliminary in touch with the ACFC to organize a follow-up seminar next year as the feedback from previous follow-up seminars has been good and helpful. The focus will be of course on the ACFC-specific recommendations on Finland but it would be useful if the ACFC presented and explained its last thematic commentary. This would be a great opportunity to hear the opinion of national minorities about it.

Would you say that there is enough knowledge of the commentaries, as these are accompanying the reading of the country-by-country opinions?

They should definitely be discussed in the national context and I feel that it is the state's responsibility to translate these. The 4th Commentary was a timely and important topic. I have read it and a few colleagues too but that is about it. Yet the problem is definitely that these commentaries are not well known. I hope that when they have access to the last commentary in Finnish, they will look at the other ones. But it is a challenge.

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Krista Oinonen *is Director of the Unit for Human Rights Courts and Conventions at the Ministry for Foreign Affairs of Finland and the Agent of the Government before the European Court of Human Rights. She has gained 20 years of experience in international human rights law. Oinonen has chaired the Council of Europe's Drafting group on human rights in culturally diverse societies in 2014–15 and is currently chairing the Drafting group on civil society and national human rights institutions. Oinonen has served in the Permanent Mission of Finland to the UN Offices in Geneva in 2008–11 and worked at the Office of the UN High Commissioner for Human Rights in 2004–07. She has received her Master's degree in Law from the University of Lapland in 1998 and joined the Ministry for Foreign Affairs of Finland in 1999.*

Views from Europe

Letter from Brussels

Karl-Heinz Lambertz

Why did you get interested in the FCNM and what benefits would you see in the ratification of the FCNM in the current constitutional set up of Belgium? Is there any forum in Belgium where expectations or views around the FCNM could be discussed?

Why did you get interested in the FCNM and what benefits would you see in the ratification of the FCNM in the current constitutional set up of Belgium? Is there any forum in Belgium where expectations or views around the FCNM could be discussed?

I have lived and worked my whole life in the German-speaking Community of Belgium, which has a minority of 76,920 inhabitants so the FCNM is of personal and professional importance to me. The ratification of the FCNM by Belgium would contribute and give additional international recognition to the relatively well-advanced legislation on the protection of minorities in my country. However, the ratification could not be materialized due to disagreement between Flanders and Wallonia on who to recognize as a minority in Belgium aside from the German-speaking Community, especially with regard to the French-speaking in Flanders.

Within the current federal system in Belgium, several fora would be suitable for a discussion around the FCNM such as the parliamentary assemblies of each federal entity or the Belgian Senate, which is the Upper House of the Belgian Federal Parliament and consists of members of the Belgian Regions and Communities. Citizens' dialogues could also be held. These are a more participative and open way of discussing expectations and views around the FCNM, given that it is citizens who are the most affected by issues of minorities.

You are chairing the European Committee of the Regions, a consultative body of the EU. Local authorities are often the first line when it comes to dealing with ethnic diversity. What are the main messages that you would pass on to EU decision-makers on this point?

The European Union is a celebration of diversity. Recognizing and respecting cultural and ethnic differences found across member states and between its regions and cities is deeply rooted in what it means to be European. As the European Committee of the Regions, which represents the voice of local and regional governments from all 28 EU member states, we strive to give all communities a voice in deciding Europe's future. The EU must listen to citizens' concerns, wishes, and beliefs because they are living the European project and are most impacted by the decisions made at the European level. Moreover, the European Union is built on cooperation and dialogue. Only cooperation and dialogue between and among minorities in their regions and cities can create a stable environment for democracy, solidarity, a flourishing economy, and cultural exchanges. Consequently, if tensions between minorities should occur, they need to be resolved through peaceful and constructive debate.

Notwithstanding the ongoing linguistic debate in Belgium, are there any practical positive examples of dealing with linguistic diversity that you would bring to the fore in order to overcome difference of views and fears in multilingual Belgium?

It's true that there is an ongoing linguistic debate in Belgium, which is natural when three different languages coexist in one country, each having its own specific history. The major positive example of dealing with linguistic diversity in Belgium is the federal structure of the Belgian State itself. In Belgium, we have managed to build a state that grants each language group an important degree of autonomy while maintaining a functional federal authority. It needs to be underlined that this was achieved through negotiations – often in a very emotional context – with all concerned parties. This is essentially the main achievement: to bring all language groups around a table, despite their cultural differences, and negotiate a consensus on the structure of the Belgian State.

The absence of definition of a minority has given rise to different arguments on who is to be protected. In its latest commentary, the monitoring bodies of the FCNM emphasized that the FCNM is a living instrument and that adjustments are needed to make minority rights relevant to societies, that have been notably transformed by migration. How do you see this approach fitting the current realities at a local level and indeed the needs of different groups?

Migration is and will continue to be one of the major challenges facing Europe today and into the immediate future. A comprehensive integration policy inspired by core European values such as solidarity is needed. While migration is definitely a challenge, it's also an opportunity in the context of the significant demographic shifts in Western European societies. With regard to minorities and how societies might change in the future due to migration, it is difficult to predict how the composition of our regions and cities may be restructured. In terms of minority rights, this means they need to be granted sufficient protection in the framework of the respective national legislation. But it also implies that everything should be done to guarantee a harmonious, respectful, and mutually enrichening coexistence of both minorities and majorities (Art. 20 of the FCNM).

***Karl-Heinz Lambertz** is a member of the Belgian Senate representing the German-Speaking Community and is currently President of the European Committee of the Regions (CoR). Lambertz's interest in politics came early in his career having served as President of the German-speaking Youth Council (1975-1980). After a number of functions linked to his academic background in law, he became Member of Parliament of the German-speaking Community in 1981. Between 1990-1999 he held numerous Ministerial posts in the German-speaking Community Government before being elected its Minister-President (1999-2014). He was then President of Parliament until 2016 before taking post as Senator. Since 2000, he has been a Member of the Congress of Local and Regional Authorities of the Council of Europe and is currently one of its Vice-Presidents.*

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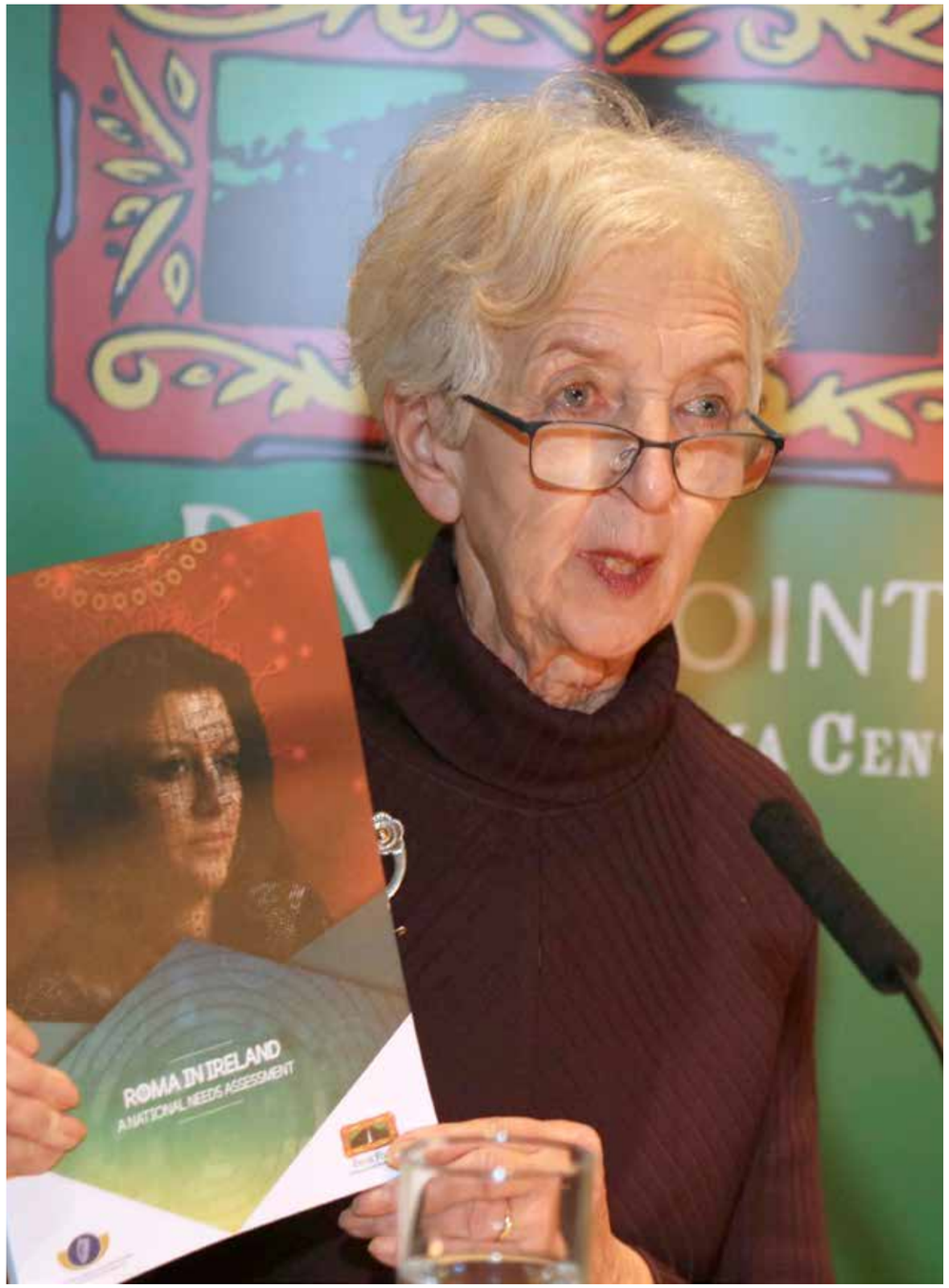

Anastasia Crickely who chaired the launch of ‚Roma in Ireland – A National Needs Assessment' on 18th December 2017 at the Royal College of Surgeons in Ireland.
Photo: Derek Speirs

Views from Europe

Letter from Dublin

Anastasia Crickley

I fully support the concept of the FCNM as a living instrument. We simply cannot have a hierarchy of oppression. The circumstances have evolved. That was a brave move by the ACFC to ensure that the FCNM continues to be used to vindicate rights.

You have worked on issues of national minorities in different capacities, as an NGO representative, as an international expert, and as a member of the ACFC. How would you define your relation to the FCNM?

My relationship with the FCNM has indeed been on a number of different levels: I have been engaged with minority issues in the Council of Europe in the early days, even before the FCNM was adopted, as well as after the FCNM came it force. After Ireland ratified the FCNM in 1999, I served two terms as a member of the ACFC. I am conscious of that role but I am also conscious of the role of the FCNM for Travellers and Roma communities. I see the FCNM as having multiple values. First, it was a very important instrument at the time of its entry into force, particularly for minorities in the Balkans but also for a number of states throughout the Council of Europe. In my view, it was also an important instrument for Roma and Sinti throughout Europe at a time when there were not so many instruments. The FCNM served as a practical framework in which the difficulties faced by minorities could be addressed. However, one of the problem since the outset was the approach of states to the groups to be covered. As we know, some states included all minorities in the scope of the application of the FCNM on an article-by-article basis but others had pre-set definition of minorities. Second, the fact that the ACFC undertakes visits is also an essential tool to get a practical understanding of the reality on the ground. Third, the way the ACFC is framed with 18 members, i.e. not too little nor too many, who are representing all different parts of the Council of Europe is also an asset. An interesting development in this respect is the recent nomination by the Irish Government of an Irish Travellers' leader as member of the ACFC.

You mentioned the FCNM as the only instrument at the time of its adoption and you have had other mechanisms since then. How do you see that importance of the FCNM evolving, 20 years after its entry into force? What is the specificity of the FCNM for a community like the Roma and Travellers community?

If you look at the articles of the FCNM, there are specificities in each of the instruments of the Council of Europe which are important. For example, the FCNM includes the principle of participation in society, education in minority languages, use of minority languages. There are a range of issues which are not articulated in the exact same way in other instruments. I wouldn't agree that there is duplication with other instruments. As far as I can see, there are still major challenges for the duty bearers to fulfill what they have agreed to do and there are still gaps for the rights holders. As long as these gaps remain, the more tools and instruments we have at both regional and international levels, the better we ensure that these gaps are bridged.

You have been engaged in addressing issues faced by the Travellers community in Ireland. What is the most positive impact that you could remember from the FCNM monitoring for this community?

From the perspective of Ireland, the state report on the FCNM specifically mentioned the issues of Travellers' identity and ethnicity. But the ACFC was one of the first international bodies to clearly articulate the importance of identity, culture, and recognition for Travellers. It introduced a sort of groundbreaking rule. Although you cannot say that it was just because of the FCNM, the Irish state acknowledged the Travellers' identity and ethnicity formally on the 1st of March 2017 after a 30-year sustained campaign.

Recognition of identity is important. Now if we turn to the needs of the Travellers community: institutional and administrative provisions have been made by the Government to better protect Travellers' rights. The results are sobering, however: a 2017 study by the Economic and Social Research Institute (ESRI) showed that almost 70 per cent of Travellers live in caravans or overcrowded housing, just 1 per cent have a college degree, 82 per cent are unemployed and their health worsens more dramatically than non-Travellers as they age. How do you explain these results? Has international scrutiny of such programs been too focused on policy development rather than results?

The policy focus is an important one in the FCNM. In the end, practice and direct initiatives need to have a policy frame if they are to be replicated. If that is not the case, they become one-off projects that may have a limited impact on the small group of people that they are intended to support. And yes, there is still considerable progress to be made before Roma and Travellers fully achieve their rights. The 2017 ESRI study and one more recent indicate clearly that there are educational issues, that Travellers don't have the opportunity to go to secondary education and that very few of them go to tertiary education. On the other hand, there are some encouraging signs: there are good role models now and there are some Roma going to tertiary education. The census results which will be out later in the year will indicate some of that. But it is correct, this is a challenge for the Travellers who have worked so hard for the acknowledgment of Travellers' ethnicity because of course this acknowledgment won't do away with unemployment or lack of education. There are major gaps that the state needs to address in its strategies.

Does it mean more monitoring of the policies?

It means a couple things. First, it means the restoration of budgets that were decimated during the period of austerity. Second, it means that implementation and monitoring systems are in place and are working. Third, it means a political commitment to interrogate those attitudes to measures. This is key to ensure that they can deliver the expected outcomes and to ensure that everyone involved in providing services to Travellers and Roma or other minority groups have the culturally appropriate and anti-racist training to be able to do their job correctly and in a way that is actually transformative.

In its latest thematic commentary, the ACFC argued that the FCNM is a living instrument and that adjustments are needed to make minority rights relevant to societies that have been notably transformed by migration. Some historical communities as well as some in government feel that this may open up the scope of application and therefore jeopardize the system of minority protection currently in place. How do you see this debate evolving in Ireland and what are your views on this issue?

I fully support the concept of the FCNM as a living instrument. We simply cannot have a hierarchy of oppression. The circumstances have evolved. That was a brave move by the ACFC to ensure that the FCNM continues to be used to vindicate rights. For example, there have been issues in some member states with regard to including some Roma communities under the scope of application of the FCNM. Some Roma who happened to be living in a country at particular point in time may not have been considered a national minority at a time when decisions on minority issues were made. As a result, you may have Roma who have moved away from that country because of conflict who are simply not covered, and this even if they may be related to members of another Roma group which has been covered. There are major problems with not acknowledging the evolving nature of the minority communities that make up Europe. National minorities are not set in stone, they have never been if you look at the history of Europe. If you look at how they were formed and how they came to this particular geographical situation, you see a constantly evolving tapestry. This last commentary is therefore brave, it may cause some resistance but it is important for the future.

Do you also understand the fear of some traditional minorities that there may be less for them in the FCNM as a result?

I don't think that there can be less. Rights are vindicated for all. It is not a question that there is more or less for a person who experiences racism. As I said, I don't believe in hierarchies of oppression. I understand the fear and I believe that there is an important leadership role that needs to be played by political leaders and by leaders of the communities directly involved so that fears are discussed rather than being manipulated by those who deny the evolving nature of the continent where we live. We need to embrace the diversity of the continent and see what that diversity means with instruments like the FCNM.

You are now Chairperson of the Committee for the Elimination of Racial Discrimination (CERD). Both the ACFC and CERD cover the same realities of discrimination. How do you relate to the Framework Convention in your work with CERD and where do you see ground for more convergence to obtain better results? To what extent do you see the ACFC findings referred to in the UN system?

There are differences between CERD and the FCNM. The FCNM is not an instrument for the elimination of racial discrimination although it does deal with discrimination. It is important to be aware of these differences. You could say that they both address discrimination but there are differences in emphasis in the way the issues are framed. Having said that, in my experience, the FCNM is a particularly useful instrument: in CERD, we examine state parties who are not member of the EU, and for Roma, this means not party to the EU strategy on Roma and not party to the Equality Directives. However, some of those states are parties to the FCNM and they do report under the FCNM, which is very useful.

Anastasia Crickely who chaired the launch of ‚Roma in Ireland – A National Needs Assessment' on 18th December 2017 at the Royal College of Surgeons in Ireland.
Photo: Derek Speirs

FCNM

How do you see the ACFC work being understood or referred to in the UN system?

I may be biased in my comments but I see that there is awareness of the FCNM but it is true that this awareness can be amplified and in fact it should be amplified. I have been engaged with some activities of the FCNM since I joined CERD and we have not had a joint meeting as yet like I had with ECRI. Much more could be done to develop exchanges and develop our capacity not to just use each other's work as I believe that both FCNM and CERD secretariat do that very well. It is important to go beyond that and examine where we can cooperate and ensure not just implementation of rights but also best practices in order to ensure a better realization of the rights.

A last question on monitoring: as the FCNM will start its 5th monitoring cycle, and the reported fatigue increases, how can the ACFC approach its work in a way that makes it even more relevant?

The ACFC has kept a close eye on how it gets on with its work. For each new monitoring cycle, there has been consideration of what needs to change and how to build on the last cycle of monitoring. I would not offer advice but I don't support the talks about an alleged monitoring fatigue. I do understand where it can come from for civil servants who write the reports. However, the countries involved have voluntarily signed up to the FCNM, they have agreed to be engaged with it in a way that creates conditions for the rights to be realized. This does require more than ratifying, it does require action. If this action is to be made visible to regional organizations, that action needs to be reported and monitored. If there is a monitoring fatigue then, it is to be after the rights have been vindicated.

***Anastasia Crickley** is President of the UN Committee for the Elimination of Racial Discrimination (CERD). She was the first chairperson of the Fundamental Rights Agency. She was a member of the Advisory Committee for the Council of Europe's Framework Convention for the Protection of National Minorities and Personal Representative of the OSCE Chair-in-office on discrimination. She has been involved all her life in supporting and leading civil society efforts to ensure that human rights are upheld: she was a founder member of the European Network against Racism, has been active in supporting Travellers and Roma rights in Ireland, and elsewhere, and is chairperson of Pavee Point National Travellers and Roma Centre Ireland. She is a founder of the Migrants Rights Centre Ireland and of Global Migration Policy Associates. She is also the current chair of Community Work Ireland, the national association for promoting community development, and Vice-President of the International Association for Community Development.*

Views from Europe

Letter from Kiruna

Josefina Skerk

[…] the FCNM can be complementary [to International Labor Organization ILO Convention 169] and a useful tool in different areas, one being the possibility of participating in decision-making […]. It may not bring us to where we would like to be, that is, an equal seat at the discussion table with the authorities or self-determination. However, it is a good step in the right direction at the end.

Sweden ratified the FCNM in 2000 and made it applicable to the Sami people among other ethnic groups. What did that ratification mean for the Sami people and what were the expectations at the time about the FCNM?

The Sami people were positive about the ratification of the FCNM. It was a step forward. The Sami people including the Sami Parliament and other Sami representatives were consulted by the government about their inclusion in the scope of application of the FCNM and they were interested in being included. I understood that at the time, expectations were focused on language rights as Sami were eager to get stronger rights in this field and better opportunities for children to have preschool in Sami language.

There is some debate about the value of FCNM for the Sami people as compared to ILO Convention 169 which has not yet been ratified by Sweden. How do you see the FCNM being of help in ensuring the rights of the Sami people in Sweden?

A key issue for the Sami people is the use of land and water. The current situation is critical: Sami people's land and water are being destroyed at a high pace. This is happening because the state is allowing it to happen. Our culture is extremely threatened. It is hence important that ILO Convention 169 gets ratified and to remember that Sami people are indigenous people. However, I think that the FCNM can be complementary and a useful tool in different areas, one being the possibility of participating in decision-making. In that sense, the FCNM helps us to bring our issues forward and have them discussed with the authorities. It may not bring us to where we would like to be, that is, an equal seat at the discussion table with the authorities or self-determination. However, it is a good step in the right direction provided the FCNM is used properly. But we have seen that in practice, the FCNM has been misused by the municipalities and has therefore not reached its full potential. Today, the right to participation as enshrined in the FCNM is being used to inform the Sami people rather than discussing and negotiating with them. There should also be a right to have the entire or substantial part of preschool education in Sami language but this right has been translated in practice to 'full or part of preschool education'. This is despite the fact that the term 'substantial' has been included in the law in line with the FCNM as this was meant to help to implement it. In some municipalities, it has been understood as giving them the right to decide how much education in Sami language the children would receive based inter alia on economic considerations. This means that very few people are entitled to enjoy their rights and there has been unnecessary arguing with the authorities. We have been pointing this out for some time but the support from international monitoring bodies is really important to make progress. The Minister of Education has now launched an inquiry to review the law and policies

in education and the possibility of increasing the volume of mother tongue teaching in the five minority languages. We are therefore seeing some concrete steps being made.

What is your experience with regard to using the Framework Convention in your work as a member of the Sami Parliament and in your dialogue with Stockholm as well as with the municipalities?

The monitoring of the FCNM is really important for the Sami people because Sweden listens to outside pressure. This is especially so when we can show that Sweden has received repeated criticism for not providing proper opportunities for people to become teachers in the Sami language. This was pointed out by the Advisory Committee already in 2013 but the lack of teachers has been persistent since then. Receiving a recommendation from an outside body like the FCNM has helped us to put forward our issues to the government and eventually get attention to our demands.

You mentioned education as an area where progress is being made. Are there other areas where you see tangible progress since the ratification of the FCNM?

In the field of education, we will first have to see in a couple of months the results obtained by the inquiry in terms of policy change. Today, Sami children get education in Sami language for 45 minutes a week. There are discussions to increase the volume of teaching to at least three hours. Language is also an issue. With the Act on National Minorities and Minority Languages, there is the possibility for the municipalities to be registered as a municipality with specific responsibilities for minorities. These municipalities get additional funds to this end. It is in those municipalities that you can see some positive steps even though progress remains slow. It is indeed easier to obtain daycare or preschool in Sami language, public signs in Sami languages. In addition, consultations with local Sami population are taking place.

There was a visit of the ACFC in spring 2017 and a new opinion has just been released in October that year. What expectations do you have regarding the outcome of this process for the Sami People?

Our experience of the ACFC Opinions is that they are very clear and constructive. They provide recommendations or criticism to Sweden that we do recognize as being based on our experience. We had a good discussion with the delegation of the Advisory Committee when they came to Kiruna earlier this year. I also hope that the Ministers concerned and the decision-makers will listen to their recommendations. I hope that this will result in increased pressure to take our recommendation into consideration, including properly functioning provisions for education of Sami teachers.

How will you be using this Opinion to advance the Sami people's claims?

The current government has made some good steps forward. I am quite satisfied with the way the main ministers responsible for Sami issues have dealt with our issues. The number of meetings between the Sami people and the government has increased. There will be a meeting with the government to discuss the new opinion of the ACFC. There is currently a concrete proposal from the government to establish a formal water consultation mechanism between the state, regional institutions, and municipalities. There will be pressure from the Sami Parliament and NGOs for this proposal to materialize and use the meeting to this end.

Josefina Skerk *is a member of the Sami Parliament and was its Vice-President until September 2017. She has been active in Sami politics since she was 19 and is the vice leader of the Jakt-och Fiskesamerna party, which represents the hunting and fishing Sami. She is working on land and water protection and the right of the Sami to be educated in their own language.*

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

Views from Europe

Letter from Riga

Boriss Cilevičs

Strategically, one should depart from the understanding that minority rights are special rights for special groups but see them in the broader context of fundamental rights. In other words, everybody belongs to a minority, there is no majority at all. This is what accommodation of diversity in society means.

Latvia was a latecomer to ratifying the FCNM. What were the expectations then and what are the main benefits of this ratification in addressing national minorities' issues over the last 10 years for Latvia?

There were no major expectations because Latvia's delay in ratifying was too substantial. It was then clear that the FCNM was ratified in a manner that would allow Latvia to avoid any changes to its legislation. In other words, there would be no new commitments undertaken upon ratification. Unfortunately, this was a serious precedent of bypassing obligations. Formally, Latvia adopted three declarations. One of them defined minorities in line with Capotorti's definition but adding a citizenship criterion. The two other ones were in fact substantive reservations. My position was that such a ratification should not have been accepted by the Council of Europe. These reservations were contrary to the Vienna Convention on the Law of Treaties. As far as I know, there were some discussions on this issue in the Council of Europe but the reservations were eventually accepted. This signaled the next stage of development of the FCNM. The logic behind the acceptance of these reservations was to increase the total number of ratifications of the FCNM. It was argued that it would be better to discuss those minority issues once Latvia is in rather than outside the system of monitoring. This inclusion argument would have been useful provided the FCNM monitoring process delivered some domestic changes. I was skeptical about this.

Hasn't the ACFC monitoring helped in addressing some issues in that period?

The ACFC Opinions are formulated in diplomatic language. Its monitoring is based on dialogue and no sanction is attached to cases of non-compliance. This is implied by the very nature of this convention, which is formulated in terms of commitments by states rather than rights of persons. This dialogue is attractive when it is carried out seriously, when there is diligence in terms of understanding obligations. However, developments went in another direction, reflecting the general trend in Europe today. Politically, the very long discussions at the Committee of Ministers level were not discussions of substantive issues but a sort of political diplomatic game between Russia and Latvia. This was not helpful. In the end, the Opinion is relevant, the Committee of Ministers resolution may be fine, but few are those who take these documents seriously.

Does this mean that the FCNM would not bring any additional protection to what national minorities had already?

The Convention was ratified when the EU political conditionality was over. Latvia's accession to the EU and NATO was in fact the last time when progress could be achieved. This phase was actually a good test for the implementation of the Copenhagen criteria. The EU adopted this political criterion

with the mention of 'respect for and protection of national minorities' but nobody knew what it meant since the EU had neither standards, mechanisms, nor experts. Accession talks were done at the political level, mostly with the government. The parliament was involved quite marginally and civil society played no role whatsoever. Informally, it was presumed that the ratification of the FCNM should be considered as a certification that the situation of national minorities was satisfactory. Eventually, some candidate states could enter without this formal certification. This was the wrong signal: it meant that the EU did not take the issue seriously as they opted for a formal and indirect evaluation, relying on the OSCE and the Council of Europe to a lesser extent. In fact, NATO played a more important role as they formulated their position on the basis of some experts' opinions. You will recall the problem of the language requirement for parliamentary candidates, the solving of which was seen as a precondition to close the OSCE mission. This was indeed done but these language requirements were reintroduced pretty soon after, although in a different form. And this was accepted by the EU, NATO, and the Council of Europe. As we know, after accession, the political leverage to introduce reforms was lost in the absence of any EU mechanism on minority issues.

The last ACFC Opinion on Latvia was adopted in 2013 and there will be another round of reporting with a common ECRI–FCNM visit planned in autumn 2017. How do you see the monitoring cycle generating a certain level of momentum and what are the expectations regarding this joint visit?

The conclusions of ECRI have usually been more straightforward and more useful than the ACFC Opinions. When it comes to the FCNM, the problem is that I have never heard my colleagues in the parliament nor in the government mentioning the FCNM other than in the context of the monitoring procedure. My impression is that this 2013 Opinion has been read by very few people from the Ministry of Foreign Affairs and some minority activists. Latvia is also a specific case as we don't have minority rights NGOs anymore and haven't for several years. In fact, the NGO environment has been completely deserted. Latvia's accession to the EU was critical for civil society because funding stopped. Some specialized NGOs are now working within EU expert networks; a few NGOs were strong enough to survive while others simply died. Overall, the FCNM is perceived as an instrument adopted for the Council of Europe and is seen as a reporting burden. I made a couple of attempts to bring a few cases to the attention of the Constitutional Court with reference to the FCNM. These were not successfully.

You say that the FCNM is for Strasbourg and has not been internalized domestically. Is it about reaching out on what minority rights is about and raise awareness?

There are some deep disagreements among the political class on the FCNM. Unfortunately, the whole monitoring mechanism allows it to ignore it or bypass it. I would refer to the adoption of the Preamble of Latvia, which is fully in line with the 19th century's ideas of nation-building: the concept of minority rights is seen as a sort of compensation for not belonging to political decision-making. While the FCNM says that it is a way to ensure equality, to overcome disadvantages. It is therefore very difficult to invoke the FCNM because the Latvian position is that the way to equality is assimilation, at least at the social level. We don't mind if you speak your language at home, in private, but in the public space, you must behave properly. The recognition of national minorities is seen as an anomaly. In fact, minority rights are perceived as being against human rights and the right of the main ethnic majority to their own country. Of course, minorities will not be expelled but they will be helped to become normal. They will be helped to assimilate. This is an ideology which is against the FCNM of course but that is getting more and more explicit in Latvia as well as some other countries.

What would your suggestions be to the ACFC to have more impact?

The procedure as it is cannot be improved. Any amendments to the rules will lead to them being weakened. The whole procedure of the FCNM is based on the principle of confidentiality, although this is more a practice than a codified rule. This would need to be re-considered. For example, if you take mainstream media in Latvia and the discourse of the political elite, you will never see the FCNM being referred to. You need to reach out not only to minorities but to the majority and to the government. And this should not be done through public statements but through interviews, discussions, trainings. If I publish in the Latvian media, my piece will be contradicted by many others. A genuine debate cannot be done from inside. It has to come from outside and has to be well organized. If you look at positive developments in Latvia, you will find a remarkable change regarding the attitude toward LGBT people. Public opinion changed drastically because there was substantial external involvement: every representative from the US, the EU, the Council of Europe mentioned LGBT rights in Latvia. There was a lot of work done with young people and for them, LGBT is a non-issue. With minorities, refugees, migrants, it is exactly the opposite. Prejudice is growing.

A suggestion was made to create a fund for supporting minority participation. Would you say that this would help?

It would be useful but in my view, it is not realistic. In the early days, the preparation of shadow reports was done with the support of Minority Rights Group (MRG). MRG's focus has now changed. One can see that the reporting system does not provide a proper balance between state reports and shadow reports anymore. It would be helpful to have some specific programs to continue working with civil society on the FCNM. This could be done through joint programs with the EU as the EU's interest in helping on those issues remains.

In its latest thematic commentary, the ACFC argued that the FCNM is a living instrument and that adjustments are needed to make minority rights relevant to societies that have been notably transformed by migration. Some historical communities as well as some in government feel that this may open up the scope of application of the FCNM and therefore jeopardize the system of minority protection in place. How do you see this debate in Latvia and what are your views on this issue?

The context is different. The fear of asylum seekers and refugees is widespread. There are very few people who can handle these issues. There is a lack of public debates. In fact, the public discourse is evasive on these issues and it is usually preferred not to mention minority issues. If minority issues are mentioned, it is done in the League of Nations style. The concept of national minority rights was developed under the League of Nations. It is an obsolete concept. The real issue is to consider minority rights as part of the non-discrimination concept and to consider the FCNM as an equality instrument not a special rights instrument. I am aware that there is strong resistance to this from different sides including from the traditional organizations of minorities. I don't think that positive measures are needed with the exception of some cases like the Roma population. The principle of reasonable accommodation should be sufficient. Actually, the idea of proportionality is already in the FCNM when you look at Articles 10, 11, and 14 of the Framework Convention.

If we have a general context of non-discrimination that would make it easier based on the demand and resources; it can be applied to those who want to preserve or restore their identity. In my view, this is also a late Soviet concept to have identity restored as almost a physical characteristic when it was still in passports. The non-discrimination concept is complex but it is developing fast. One technical advantage is that the EU is very much behind it and it has better developed regulations on non-discrimination. In the Council of Europe, Protocol No 12 is not well ratified and there is no positive trend in this respect since no new ratifications have been registered in the last ten years. It is true that the EU directives are very cumbersome and bureaucratic but they are expanding, starting with gender and labor relations and now covering racial equality. The Race Equality Directive is in fact promising: while nationality is excluded, language is not.

Eventually, you would need more cooperation between the Council of Europe and the EU on the issue of non-discrimination. Strategically, one should depart from the understanding that minority rights are special rights for special groups but see them in the broader context of fundamental rights. In other words, everybody belongs to a minority, there is no majority at all. This is what accommodation of diversity in society means. Mainstreaming minority rights is perhaps the only way that we can keep the protection working.

As a member of the Parliamentary Assembly of the Council of Europe, you have been working on promoting the ratification of the FCNM. What was your experience and what progress do you see in discussing national minority rights in those countries which have not yet ratified the FCNM?

We should not be dogmatic. We should also be creative enough. Discussion should focus on substance, not formalities. My experience is that discussions with Greece were difficult. There is a high degree of intolerance, also stemming from the role of the Orthodox Church. In France, the discussion revolves around terminology issues. There is a denial of the concept of minorities that is contrary to the French understanding of equality. However, the substance of minority rights can be compatible with this concept. We should frame it in different terms. This is the main problem of the Council of Europe, that it brings up concepts but does not understand the substance that is behind them. The traditional scheme with a definition of a national minority is not needed. What we need is a definition of equality.

***Boriss Cilevičs** worked as a computer scientist and since the late 1980s led human rights NGOs before being elected to the Latvian Parliament in 1998. In addition to his role in the Latvian Parliament, Cilevičs has been serving as member of the Latvian delegation to the Parliamentary Assembly of the Council of Europe (PACE) since 1999. He is currently the chairperson of the Committee on the Election of Judges to the European Court of Human Rights, a member of the Committee on Equality and Non-Discrimination. He was the first chairman of the then newly established Sub-Committee on the Rights of Minorities (2005–07) and has been PACE rapporteur on several aspects of minority protection. Cilevičs is the author of numerous publications and reports on human rights.*

Views from Europe

Letter from Novi Sad

Letter from Novi Sad

[…] the FCNM is used more with a view to opening the relevant EU Chapters than to implementing its articles. […] The interest in writing shadow reports has been lost and it is partly a consequence of the withdrawal of civil society and partly a lack of confidence in the international community's power and willingness to solve minority problems.

What was your first interaction with the FCNM and why did you get interested in using this treaty to discuss minority rights in Serbia?

My first interaction with the FCNM was at the training seminar on the Council of Europe's Framework Convention for the Protection of National Minorities in 2001 in Strasbourg. The training was organized by Minority Rights Group International (MRG) and it was attended by participants from South-East Europe. Although I finished my Ethnic and Minority Studies three years before, that training was my first deeper insight into the international system of minority rights and the content of the FCNM. I stepped into the real world of minority protection with the help of sincerely dedicated individuals from MRG. I was in direct contact with Advisory Committee members: its former President, Rainer Hofmann, and two Vice-Presidents, Alan Phillips and Gáspár Bíró. Their enthusiasm in presenting the FCNM, the Council of Europe monitoring mechanism, and the role of civil society made the Convention Framework alive for me. As a result, advocacy and monitoring became my main occupation in the following years. Furthermore, using the skills to prepare shadow reports, I started to mobilize minority communities to monitor the realization of their rights on the ground. In partnership with MRG, we organized several seminars on the FCNM gathering a number of minority representatives, former 'drafters' of shadow reports, and state officials who became our partners. For years, the FCNM was a channel to gather minorities, civil society, and state officials in one place. It was an instrument for the creation of a 'climate of tolerance and dialogue' enshrined in its Preamble. All this motivated me to deal with the FCNM and minority rights in Serbia for years.

In 2003 and 2007, you submitted shadow reports on the implementation of the Framework Convention in Serbia, bringing together views of persons belonging to national minorities, national minority councils, experts, and NGOs. What lessons did you draw from this process and what were the main results you obtained from shadow reporting in Serbia?

At that time, drafting of a shadow report was a great undertaking involving a large number of national minorities, organizations, and individuals – at one point 13 minority councils, 19 NGOs, and a number of experts participated in writing the report. We were all moved by the hope that the FCNM would improve the realization of minority rights in Serbia and strengthen the dialogue among minority representatives, civil society, the state, and the international community. Minorities strongly believed that the ratification of the FCNM meant justification for their right to express their identity, diversity, and problems that they were facing in daily life. The shadow report

was their message to the state and the Council of Europe offering solutions for overcoming real obstacles. Today, 14 years later, I could say that the submission of these shadow reports presents a testimony of genuine moments of transparency, freedom of expression, and opportunity of minority people to be heard, both by the state and the international community. All relevant state institutions were aware minorities they were in a process of drafting the report and that it would be submitted to the Council of Europe. The process was not perceived as a secret nor a threat but as a regular process of monitoring after the ratification. The submission of the report was followed by an event hosted by the state. It gathered minority representatives from all over Serbia, state officials, representatives of the Council of Europe Office from Belgrade, and Advisory Committee members. The main result was transparency and mutual dialogue among minorities and the state.

You are still active in the field of minority rights. How do you evaluate the interest and knowledge on the Framework Convention today?

The situation in the field of minority rights has changed, following social and political changes in the world. Europe is more occupied with its actual problems than with minority rights. It seems that in some countries, the realization of minority rights reached its peak at the beginning of this century and minority representatives struggle to preserve what was achieved. The FCNM remains the main tool for monitoring of minority rights but minorities' dialogue and cooperation with the state and the international community has weakened. Although the Framework Convention is still recognized as a starting point in dealing with minority issues, it is used more with a view to opening the relevant EU Chapters than implementing its articles. The state reports on the implementation of the FCNM are submitted regularly but they are not anymore followed by shadow reports. The interest in writing shadow reports has been lost and it is partly a consequence of the withdrawal of civil society and partly a lack of confidence in the international community's power and willingness to solve minority problems. Unlike before, the international community cooperates more with the states than with minorities and civil society. Consequently, in such a division of roles, minorities are directed more to the states and such a practice favors larger minority groups, while 'small minorities' usually remain left out of a dialogue.

In your experience, what can NGOs do for the rights of the FCNM to better benefit persons belonging to national minorities? What are the main challenges in this respect in Serbia?

There is a need for writing shadow reports. This is a demanding process that involves more than putting forward a single opinion or one-sided interpretation on minority rights. It needs time, knowledge, and resources. There is a lack of NGOs to write it as civil society is generally in an unenviable position of struggling to survive. Minority councils are in a better position but it is unrealistic to expect them to do this monitoring as they receive funds from the state. In such a context, the position of minorities will improve in proportion to the interest of the international community to improve their position and strengthen civil society.

What would you say is missing in the Advisory Committee's approach and functioning to increase the impact of the Framework?

As an independent body, the Advisory Committee could look at the weak points in the monitoring and reporting in order to improve them. When visiting the country, the Advisory Committee delegation could encourage minority representatives to send their complaints to them. Such information could remain unused but at least they would be submitted and heard. The Secretariat of the FCNM should be a mediator between minorities and the Advisory Committee. Such an interaction could revive the essence of the FCNM again.

***Aleksandra Vujič** is director of Vojvodina Center for Human Rights based in Novi Sad, Serbia. She worked in Hungary and Serbia. For the past 20 years she has been engaged in various projects dealing with human and minority rights. She holds a PhD in Human Rights and a Master's degree in Sociology.*

Views from Europe

Letter from Cluj

Levente Salat

The opinions of the ACFC provide a rather inconsistent overall picture: while in some cases institutionalized collective rights are highly appreciated […], in other cases, the provisions of the FCNM are utilized with success by some state parties to block any attempt to seek recognition and external protection through collective rights.

Romania was among those countries that were part of the first wave of ratifications of the FCNM. What were the expectations of the government and the hopes of minorities then and how do they compare to today?

The Romanian delegation has been very active in the Ad Hoc Committee for the Protection of National Minorities (CAHMIN), proposing, in June 1994, several amendments in the text of the Explanatory Report which were meant to provide a more stringent reading of the FCNM, especially in three respects: obligations that could infringe upon state sovereignty, provisions that could lead to implicit acknowledgment of collective rights, and obligations that could jeopardize the authority of state institutions due to leverage provided for actors representing national minorities. It is probably not without grounds to presume that the swiftness with which Romania ratified the FCNM, less than four months after the date of signature, was due to a sense of success in those endeavors, and a confidence that Romania will have to face no problems in implementing the assumed obligations. The somewhat unusual way chosen for ratification – including the Explanatory Report, as an annex, into the ratified document – is another sign that the Romanian authorities viewed the FCNM as an instrument that is compatible with the country's interests. As far as the minorities in Romania are concerned, the hopes attached to the ratification of the FCNM reflected the internal divisions within the different communities: while small minorities and Roma activists could expect more focused and systematic attention paid to the problems they face, members of the largest minority, the Hungarians, did not see their interests reflected in the FCNM, and ignored, by and large, the opportunity to take advantage of the possibilities offered by the monitoring mechanisms.

The situation today confirms, in my view, most of these expectations. The Romanian authorities have already accomplished with success three cycles of the monitoring (the fourth is close to completion, too), the resolutions of the Committee of Ministers acknowledge, in general, the progresses made by Romania in terms of minority protection, and signal – in some regards recurrently – issues of concern that require continued efforts. Small minorities gained, indeed, an increased visibility and concern for the institutional mechanisms which provide them with political representation or access to public affairs. Though the impact and effectiveness of the measures are still modest, the Roma minority has received, on justified grounds, the most consistent attention throughout the monitoring process. Most of the recommendations in the Committee of Ministers resolutions refer to the situation of Roma, which remains wanting in many regards, in spite of the consistent efforts of the Romanian authorities. Though many of the issues highlighted by the Advisory Committee are of interest for the Hungarian minority, too, like progress made in language use, improvements in the legislation on education, or inadequate implementation of certain legislative provisions, the FCNM continues to be seen by the mainstream of the Hungarian minority as a rather irrelevant instrument of minority rights protection.

One of the recurrent concerns and recommendations of the Committee of Ministers regards the failure to adopt to date the Law on the Status of National Minorities. In addition to the divergent interests of the Hungarian and other minorities, including the Roma, which could not be reconciled in order to provide a consistent support for the draft, this failure proves that the spirit of the FCNM has not become an organic part of the political culture in Romania.

In your experience, could you point out cases where the ratification of the Framework Convention and recommendations of the Advisory Committee were referred to in policy-making / national dialogue and helped to address minority concerns?

It would be quite difficult for me to recall instances of referring to the FCNM in policy-making, and I do not remember memorable public debates, either, in which the provisions of the first legally binding document of international law in minority protection would have been invoked. Yet, I believe that it is not without grounds to presume that the ratification of the FCNM did play a role in shaping the Romanian minority regime, with regard to all three of its main components: legislation, institutional designs and funding mechanism. I believe that the impact of the FCNM has been considerable in fostering the emergence of antidiscrimination measures and mechanisms, property restitution, language rights in public administration, education and mass media, and, especially, initiatives aiming to improve the situation of Roma.

What are the main challenges in implementing the FCNM today? To what extent do you see the Advisory Committee being equipped with its current monitoring procedure to address those issues? What would be your suggestions for the future?

The main challenges in implementing the FCNM follow, in my view, from the weaknesses of the convention itself and the limitations of the monitoring mechanism: the whole architecture reflects the interests of the states, rather than minorities, and fails to meet the expectation of larger and territorially concentrated minorities. In spite of the remarkable multilateral effort that made it possible, the FCNM could not trigger a breakthrough in the old dilemma of minority protection: while minorities are interested in institutional arrangements with the capacity to warrant their future, such arrangements are seen by state authorities as measures which reproduce the problem instead of solving it. The ACFC, together with the roles and competences attached to it, is one of the most spectacular elements of innovation in the history of minority protection, and the amount of information that resulted from its activity so far is of great value, both for the theory and practice of minority regimes. Judging from a minority perspective, the weaknesses of the ACFC stem, on the one hand, from the limitations of the FCNM itself. As Rainer Hofmann, the first President of the AC highlighted in 2003, the ACFC has done its utmost to ensure that in the monitoring procedures all countries are placed on an equal footing and double standards are excluded. At the same time, the credibility of these efforts are seriously undermined by the fact that the opinions of the ACFC provide a rather inconsistent overall picture: while in some cases institutionalized collective rights are highly appreciated – like the devolution in Great Britain, territorialized language rights in Trentino-Alto Adige, or the openly encouraged territorial solutions in Moldova, in other cases the provisions of the FCNM are utilized with success by some state parties to block any attempt to seek recognition and external protection through collective rights. Another source of the ACFC weakness is the fact that the so-called 'independent experts' are proposed by states and appointed by the Committee of Ministers, and their 'opinion' is translated into a 'resolution' of the Committee of Ministers, which provides for an unbalanced state-leverage. Though a multilateral framework of that kind is difficult to amend, in the process of nominating state representatives in the AC minority, actors and stakeholders should have a say.

What is your view about what some have described a retreat from multilateralism and the so-called re-bilaterization of minority issues?

The multilateralism that made the FCNM possible had a particular momentum in the mid-1990s, which has clearly faded away with the beginning of the new millennium, together with the desecuritization of the minority issue. While multilateral agreements are important in creating regimes, which can trigger, in the long run, effective standards of state behavior, it has to be acknowledged that in minority protection bilateralism has a greater potential to deepen norms and induce compliance. Indeed, the most effective minority regimes resulted from bilateral agreements, like the arrangements in South Tyrol, Northern Ireland or the Danish-German system of minority protection. It is not less true, nevertheless, that bilateral agreements need momentum, as well, and often a multilateral backing, too.

In its latest commentary, the ACFC has argued that the FCNM is a living instrument and that adjustments are needed to make minority rights relevant to societies which have been notably transformed by migration. Some historical communities as well as some in government feel that this may open up the scope of application of the FCNM and therefore jeopardize the system of minority protection in place. How do you see this debate in Romania and what are your views on this issue?

Though the sources of the two problems are very different – in the case of national minorities, borders have been moving over territories traditionally inhabited by communities, while in the case of migration people move across borders. I do agree that the FCNM, as a living instrument, indeed, has to adopt and provide solutions for the challenge of diversity Resulting from recent and contemporary migration. Yet, it would be counterproductive if this new debate diverted attention from the problems of historical minorities which have not been properly resolved so far and need continued attention.
In my view, the two challenges could be addressed by arrangements which accept, as a starting point, the distinction suggested by Will Kymlicka in the second half of the 1990s: states have different kinds of moral obligation in the two cases. While in the case of historical minorities the interest in institutional arrangements which could warrant cultural reproduction is legitimate, in the case of migrants, states have obligations only in terms of providing fair conditions for quick integration. Recent developments have shown, however, that Kymlicka's core argument regarding the importance of cultural embeddedness for members of non-dominant communities is equally valid in the case of migrants, too. If this challenge is taken, the real dilemma is whether Articles 3 and 5 of the FCNM can be seen as relevant to new minorities, or if the text of the FCNM has to be amended, and new provisions have to be included in order to accommodate the type of diversity resulting from recent and contemporary migration.

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Views from Europe

Letter from Tîrgu Mureș

Enikő Szigeti

The confidence in obtaining legal redress is low among people and the value of relying on international law to advocate for minority rights is not acknowledged. Court cases are considered lost battles.

You have worked in Romania but also internationally with the UN. What made you interested in the protection of national minorities and the implementation of the FCNM in Romania?

While I was working in international organizations, I became familiar with international minority rights and realized how imperative to make their voice heard and to use existing tools to preserve their culture, language and religion. I am a Hungarian from Romania who emigrated in 1988 at the age of 18. After almost two decades of living abroad, I came back in 2006 to my hometown Tîrgu Mureș/Marosvásárhely (Transylvania) and realized that the town where I grew up had lost its multicultural character. Romania being among the first EU countries that ratified the FCNM, I was quite shocked to witness its weak, or in some cases, lack of implementation. The use of the Hungarian language within the state institutions and on street signs had nearly vanished despite the fact that half of the inhabitants of the town are Hungarians. In fact, the town had become less multicultural and even less multilingual. I therefore decided to set up an NGO in 2007, the Civic Engagement Movement, to raise awareness on the importance of human rights, minority rights and to promote multilingualism and multiculturalism. The NGO advocates for the application of existing minority rights legislation, with a special focus on the linguistic rights of the Hungarian community in Romania, which is the largest indigenous community in the country (6 per cent of the total population, 1.2 million inhabitants).

Your organization, Civic Engagement Movement (CEMO), together with other NGOs, has recently submitted a shadow report on the FCNM covering a period of seven years (2000–17). Previously, you submitted a report on the Language Charter. As an NGO, what challenges did you face in compiling these reports and what advantages did you see in reporting under these two instruments?

Given that we are a small minority rights advocacy NGO, we are constantly facing a lack of resources and capacity. This had to be overcome during the compiling of our shadow reports. We were also confronted with the lack of familiarity of state institutions and educational institutions with the European Charter for Regional or Minority Languages (ECRML) and the FCNM. According to our knowledge, the only shadow report that was submitted before ours was the one prepared by the Romanian Helsinki Committee. That was in 1999. After the submission of our first shadow report in 2011, representatives of the Democratic Alliance of the Hungarians in Romania (DAHR). a political organization representing the Hungarian minority in the Romanian Parliament, announced that it would also submit its own shadow report. However, this report did not focus on institutions where the elected officials in decision-making position are DAHR members, contrary to our report. DAHR's report formulated some general criticisms related to the non-application of the relevant legislation. In the drafting process, NGO representatives held communication workshops and

cooperated among each other but cooperation with representatives of the DAHR was uneasy, despite our efforts.
In my view, DAHR's presence in parliament and in more than 300 mayors' offices and self-governments makes for a highly politically biased report. This situation created a certain level of confusion as there were conflicting data and findings in the two sets of shadow reports submitted to the Council of Europe.
In my opinion, the compilation of the shadow reports has lots of advantages in relation to the Hungarian community from Romania. It also has a valuable effect on the NGO sector too as submission of our first shadow report prompted other Hungarian NGOs' from Romania to monitor the implementation of the ECRML and FCNM and to submit their own or joint shadow reports. Moreover, as a result of our first shadow report on the implementation of the ECRML, the Committee of Experts raised several issues or concerns in relation to the implementation of the Charter, which have now been included in our advocacy work, strategic litigation, and lobby activities. The NGO shadow reports on the FCNM are also particularly significant as we have covered areas and criteria considered to be 'resolved'. Our reports focused mainly on the linguistic and cultural rights of the Hungarian community and the lack of multicultural education within the public schools. We have also raised the urgent need for building bridges between the various communities in order to put an end to the long existing and constantly deepening parallel societies.

In your experience, how do you evaluate the understanding of minority rights among the interlocutors (government, minorities, NGOs) with whom you have been in contact?

In my experience, the government, NGOs but also minorities, have very little, if any knowledge of minority rights. The Hungarian community, intellectuals, and members of the political elite included, tend to accept the lack of implementation of minority rights, supposedly because 'a minority cannot get more in Romania'. Existing legislation regulating minority rights is often ignored and the rule of law is weak. The confidence in obtaining legal redress is low among people and the value of relying on international law to advocate for minority rights not acknowledged. Court cases are considered lost battles, though we have demonstrated in several situations, that these cases can be won. Local DAHR politicians have often warned us not to initiate litigation and asked us to stop bringing linguistic rights–related cases to court or antidiscrimination bodies. They also requested that we to stop our activities related to discrimination in education because these activities, in their assessment, frighten the Hungarian community. When we won court cases related to minority education, we asked local politicians and members of the parliament to lobby for the implementation of these rights using these cases as supporting evidence but they were reluctant to do that.
Parents belonging to the Hungarian community do not recognize discrimination or violation of their children's rights in the educational processes. For instance, the Hungarian-speaking students are facing a serious lack of schoolbooks in primary school for three years in a row (grades 3, 4, and 5). We were informed about these issues in the summer 2017 by teachers but could hardly find parents affected by the situation who would be willing to take part in a court case. While there may be some very few cases brought by individuals, our NGO is the only one that regularly brings discrimination cases to the National Council for Combating Discrimination (CNCD). Last year we started organizing capacity-building trainings for lawyers and potential activists hoping to create a rights-based future but our task is complicated by the weak civil society sector, lack of right-awareness of the local communities, and the over-politicization of minority issues by both DAHR and Romanian nationalist politicians.

What are the main challenges in implementing the FCNM today in Romania?

In addition to the extremely low level of right-awareness I have already described, the main challenges in implementing the FCNM include the strong opposition of public institutions to implementing minority rights and the unwillingness of the judiciary to properly apply international standards and guidelines in their decisions and reasoning. For instance, state officials, mayors, school directors, and school inspectorates generally treat the decisions of the CNCD as optional and not relevant. In reply to our litigation on bilingual street name signs, the Mayors' offices and other authorities argued that the FCNM is only optional since it is not directly applicable and would need to be transposed to be enforceable. Interpretation of specific provisions in bad faith is also an issue: the reference to terms such as 'shall endeavor' and 'as far as possible' in those articles referring to the geographical and topographical names is used to argue that these do not entail any obligations related to bilingual street names. This is despite the fact that we have selected 'areas traditionally inhabited by substantial numbers of persons' that belong to the Hungarian community in our litigation cases and that there are bilateral agreements with Hungary on this issue. We have also cited the FCNM Explanatory Report and thematic commentaries in our argumentation to courts: though the thematic commentaries are not binding, we considered them to provide guidelines to the court in cases related to topographical names. In certain cases, authorities claim that the lack of domestic legislation requiring street names in minority languages is actually prohibiting them from using any other signs than monolingual street sign names.

The Advisory Committee will start a 5th monitoring cycle in 2019. Based on your experience with the FCNM monitoring, what improvements would you expect to see in the future? What would be your suggestions?

The last state report was submitted very late, which make the reporting period outdated. In cases of late submissions, state reports should include longer time periods. Stronger mechanisms should be put in place and incentives must be created to stop or prevent late submissions. For instance, the "List of Issues" procedure of the Human Rights Committee and some other UN treaty bodies might provide some inspiration. While we do understand that that both thematic commentaries and the Explanatory Report partly serves this purpose, it would be imperative to have specific commentaries also focusing and detailing states' obligations related to particular FCNM articles. An interim monitoring system, at minimum involving interim shadow reporting and official communication with the state on the progress or lack of progress both by the ACFC and the Committee of Ministers would be a great tool in order to enhance the implementation of the FCNM.

FCNM

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After working for several years in the banking sector and in the public relations field, Enikő Szigeti joined the United Nations in 2000. She worked numerous years in international human rights and public interest law organizations.

Views from Europe

Letter from Budapest

Lilla Farkas

NGOs need to think strategically as they cannot engage with so many monitoring bodies. This is why the Council of Europe needs to streamline monitoring mechanisms.

I wanted to explore with you the role of an international instrument like the FCNM in the legal space. In particular, when it comes to Hungary, I wanted to focus on the situation of Roma and in particular Roma segregation in education. To what extent do you see the Framework Convention, which is binding on Hungary, playing a role in your litigation work?

When dealing with school segregation, I use different sources, the Council of Europe being only one of them. The ACFC had a niche on the question of whether national minorities are entitled to opt for segregated education: it said that even though national law and the Convention itself stipulate the right of minorities to opt for separate education in order to preserve their ethnic identity, the implementation of this right cannot lead to total segregation as it would undermine interethnic relations and dialogue. That was extremely useful, especially in the Hungarian context where we have been litigating extensively. The Hungarian Government as well as the local governments have tried to find a justification in the law for segregated education. One of these justifications was the right of minorities to education in their language. The work of the ACFC in the late 1990s was therefore extremely useful. It was part of the then existing political leverage which helped litigators like in the Grand Chamber judgment on DH v. the Czech Republic.

In your experience, has the FCNM been invoked in domestic courts adjudication on minority issues?

The ACFC won't tell you anything more than what the national NGOs already told you. The only useful addition of the ACFC, like any regional monitoring body, is that the legitimacy of their report will not be challenged or questioned to the same degree as the domestic sources on which these reports are based. In the Council of Europe, there is a need for streamlining reports, especially on Roma. There is not only a duplication, there is a triplication, quadruplication of monitoring reports. It has gotten out of hand. At the end, it looks like monitoring is the only thing that the Council of Europe is doing. Ultimately, it would make more sense to invest in the implementation of the ECtHR judgments. At the same time, I am aware that there is a delicate political balance to achieve as the Committee of Ministers has a major role in decisions regarding implementation.

And how do you see the use of the FCNM in this context?

As far as the FCNM is concerned, the political momentum has passed. I don't know whether there is still an interest from Western European states to put pressure on Eastern European states or whether the OSCE mechanism is more useful to this end. In Hungary, the last time, we used the ACFC Opinion was in the Horváth and Kiss case v. Hungary (2012) where the Court spoke about the 'positive obligation of the state to undo a history of racial segregation in special schools. When it comes to using data in Roma related litigation, one should also say that in Hungary, you can find extremely good statistical data.

Would you say that the Advisory Committee should include more information in its analysis? Would you see this as a welcome step?

What would be a welcome step is if the Council of Europe avoided a situation where NGOs have to meet with the ACFC, ECRI and the Human Rights Commissioner and other monitoring mechanisms to discuss the same issues. NGOs have a monitoring fatigue. Most recently, when I worked with the European Roma Rights Centre (ERRC) in 2014, I participated in many visits and repeated the same messages. At the beginning, there was a real dialogue with these bodies. They were new and there was a sense of reciprocity between the different bodies' work vis-à-vis national NGOs. ECRI in particular was extremely open to NGOs input because its legitimacy is not treaty based. But this dialogue has faded away and there is now more of a hierarchical relationship. In a more recent monitoring visit from the Council of Europe, the monitoring delegation was acting like government officials looking down at NGOs. There was a total lack of respect for the work of NGOs. There is a one-way relationship of monitoring bodies' relations with NGOs: when they visit a country, they never ensure that the NGOs that they invite actually meet together and have a chance to reflect on each other's opinions. In addition, they do not come back to NGOs with their report and check their findings with them. The feedback comes from the state because the Convention is configured in that way. NGOs are not part of the picture.

You referred to multiple reports of the various monitoring bodies of the Council of Europe dealing with minority issues. Would you say that there also a risk that they end up with different evaluations?

I don't think so. The different monitoring bodies are paying attention to each other. The problem is that you never get the full picture. If you look at the legal interpretation of the different conventions on whether segregation could be legal or qualified as direct or indirect discrimination, you would be extremely perplexed. The Court says that segregation is almost always indirect discrimination. A lot has been written about this. Some are satisfied with the qualification of indirect discrimination and some others, the minorities, say that this does not help. When it comes to racial discrimination, it is more political. The Court usually refers to 'the intention' which is not part of the equality maxim. It is not part of EU law and all cases of racial discrimination come mainly from EU member states. Thus, intent should not even be discussed or should be properly assessed, based on the available evidence. It is problematic.

The confusion increases as ECRI has its own guidelines and adopted its General Policy Recommendation no 7 which qualifies segregation as direct or indirect discrimination. These ECRI recommendations were adopted in 2002 that is before the EU Racial Equality Directive was transposed and implemented and this recommendation has not been reviewed since then. Unfortunately, there is no discussion with practitioners about this. One has to understand that most lawyers in Strasbourg never practiced law at the national level so they don't know how to talk to national judges. When it comes to discrimination under the FCNM or within the realm of activities of the Human Rights Commissioner, legal sources are not used to the same extent. There is awareness of the ECtHR case law but they are not necessarily in agreement with the interpretation of other bodies. This is obviously explained by their different mandates which results in issues being analyzed from different angles. This is understandable. However, the lack of coherent interpretation remains a challenge.

Is it a question of finding a common understanding that could help the domestic courts in absorbing the case law of these monitoring bodies?

It is a question of where do you want to see your political impact: do you want to see your political impact on the political processes in the Council of Europe? Do you want to see your impact on the ECtHR? Do you want to see impact on the EU decision-making or do you want to see impact on the national level?

We all know that there is a deadlock when it comes to the implementation of human rights standards. Part of this deadlock is caused by the many standards that seem to be conflicting with each other. As a result, states do not know where to go. That is one side of the story. But the other side is that many states do not want to go anywhere. So this flurry of monitoring mechanisms which does not lead to any action. To some extent, the focus on monitoring replaces the discussion of real issues.

What I see happening is that more reports and guidelines are being produced because international organizations feel that the states do not want to commit anymore to human rights standards in treaties. This lack of commitment even includes the judgments of the European Court of Human Rights. So, if they do not want to implement human rights judgments, why would they implement anything from monitoring bodies?

At a time when human rights commitments are fading away, we may talk about the appointment of judges at the European Court of Human Rights but nobody is discussing the appointment of members of monitoring bodies. If you do not have representatives of the communities in the leadership of these committees, that is problematic.

What is your view about the engagement of NGOs with the FCNM? Is the monitoring of the FCNM still able to mobilize NGOs on minority issues?

It is not NGOs that need to be mobilized, NGOs are mobilizing the monitoring bodies. They lend legitimacy to the monitoring bodies. Today, NGOs are drowning under these multiple reporting systems. In sum, I don't think that NGOs can meaningfully engage with these processes anymore. NGOs need to think strategically as they cannot engage with all the monitoring bodies. This is why the Council of Europe should streamline monitoring mechanisms. This is why you have the Universal periodic Review (UPR) at the UN level. At domestic level, human rights institutions have been combined with equality bodies and there are other streamlining examples as well. There should be this kind of discussion in the Council of Europe as well.

Lilla Farkas *is currently a PhD Researcher at the European University Institute (EUI) in Florence. She has been a member of the Budapest Bar Association since 1998, cooperating with the Hungarian Helsinki Committee, the Chance for Children Foundation and the European Roma Rights Center. She is the race (Roma) ground coordinator of the European Network of Legal Experts in the Non-Discrimination Field.*

Views from Europe

Letter from Bratislava

Kálmán Petőcz

One realizes that the connection between minority rights and human rights is often not made, even among the representatives of minorities. If you are not aware of the fundamentals, how can you then talk about the details?

Slovakia was among those countries that were part of the first wave of ratifications of the FCNM. What were the expectations of the government and the hopes of minorities then and how do they compare to today?

The ratification of the FCNM took place under the Mečiar Government: this was a period marked by Slovak–Hungarian tensions and verbal conflicts related to the situation of the Hungarian minority in Slovakia. Mečiar used the ratification of the FCNM together with the Slovak–Hungarian Basic Treaty as a tool for his legitimization on the international scene. This was his first concern. You also have to place this ratification in concrete political circumstances: Slovakia's ratification happened because the Slovak political representation irrespective of the political orientation was firmly convinced that Slovakia had such high standards for minorities that the ratification of the FCNM would not cause any problem and that the ACFC Opinion would evaluate positively Slovakia's implementation of the FCNM. The FCNM and generally the issue of national minorities at that time were seen through the prism of the Hungarian–Slovak relationship and the situation of the Hungarian minority in Slovakia. The FCNM was therefore seen as an instrument to address the traditional minorities – that is, first of all the Hungarian minority and maybe in a second instance the Ruthenians as well as some others. Nobody in Slovakia, not even from among the traditional national minorities, considered the FCNM a tool for addressing the situation of the Roma. At the time, the situation of the Hungarian minority in Slovakia was perceived by most Slovak politicians as an issue of reciprocity, even though the situation of the Hungarians in Slovakia is not comparable to the situation of the Slovaks in Hungary. This was the political environment and that is why the ratification of the FCNM was pushed to the agenda together with the Hungarian–Slovak Basic Treaty and this even without the approval of the opposition. This is in fact the paradoxical situation: it may have led the Merčiar Government to be perceived by the international community as being in favor of minorities which is obviously not the case. It was a tactical move. Whatever the motivation of the Mečiar Government might have been, the fact that the FCNM and treaty were ratified very early on was a positive step forward. The political circumstances were just not there to implement the tools in practice. National minorities other than the Hungarians were not so aware of the FCNM, they had low to no specific expectation about it. For these minorities, expectations revolved mostly around cultural subsidies and not the use of minority language in schools and in the public administration like the Hungarians.

You mentioned that political actors were confident that the FCNM would legitimize the policy in place. What was then the reaction after the first assessment and the criticism then voiced? And how was it received in Slovakia and to what extent was the criticism was used to solve disputed issues between the state and the minorities?

When it was time to react to the first monitoring cycle, we had a new government, the Dzurinda Government, which included the party of the Hungarian coalition. This was a change that went beyond the mere composition of a government but it was a major step for the overall democratization of the country. This was a new environment and this new government was much more ready to react positively to the ACFC Opinion and Committee of Ministers resolution. In fact, some fundamental recommendations were taken into consideration. In the autumn 1999, the Slovak Government adopted the law on the use of minority languages. This was partially thanks to the pressure of the international monitoring bodies combined, including the FCNM. It is difficult to assess whether this positive change in terms of minority policy would have occurred if the Mečiar Government had continued. The law on the use of minority languages may not have been perfect nor seen so positively by minorities but it definitely changed the absurd situation characterized by the lack of legislation regulating the use of minority languages despite the fact that there is a clear provision in the Constitution about it.

Would you say that, at the time, that the FCNM was used in the dialogue with the government and that there was a certain mobilization of the Hungarian community in using the FCNM to address its concerns?

In 1995, Slovakia ratified the FCNM but at the same time, substantial restrictions were in place when it comes to the use of minority languages. These restrictions were not limited to the State Language Act but they also involved educational policies. There were large rallies, mainly of Hungarians in Slovakia protesting against the policies of the Mečiar Government. They referred to the FCNM as a new international instrument ratified by Slovakia. I cannot recall whether the Roma community used the FCNM as a tool in their battle. When the Hungarian party joined the government in 1998, the FCNM was upgraded at the political level, with the Hungarian party acting like a vector of transformation of ACFC recommendations into legal action. Such changes were supported by these rallies of Hungarians teachers and civil activists but I am not sure whether such a transformation would have happened if the Hungarian party would not have joined the government or if the Mečiar Government would have still been in place.

Looking at the situation now, what would you say are the main challenges for the FCNM implementation. Do you still think that the FCNM is still used as a useful tool? Or is it seen as business as usual?

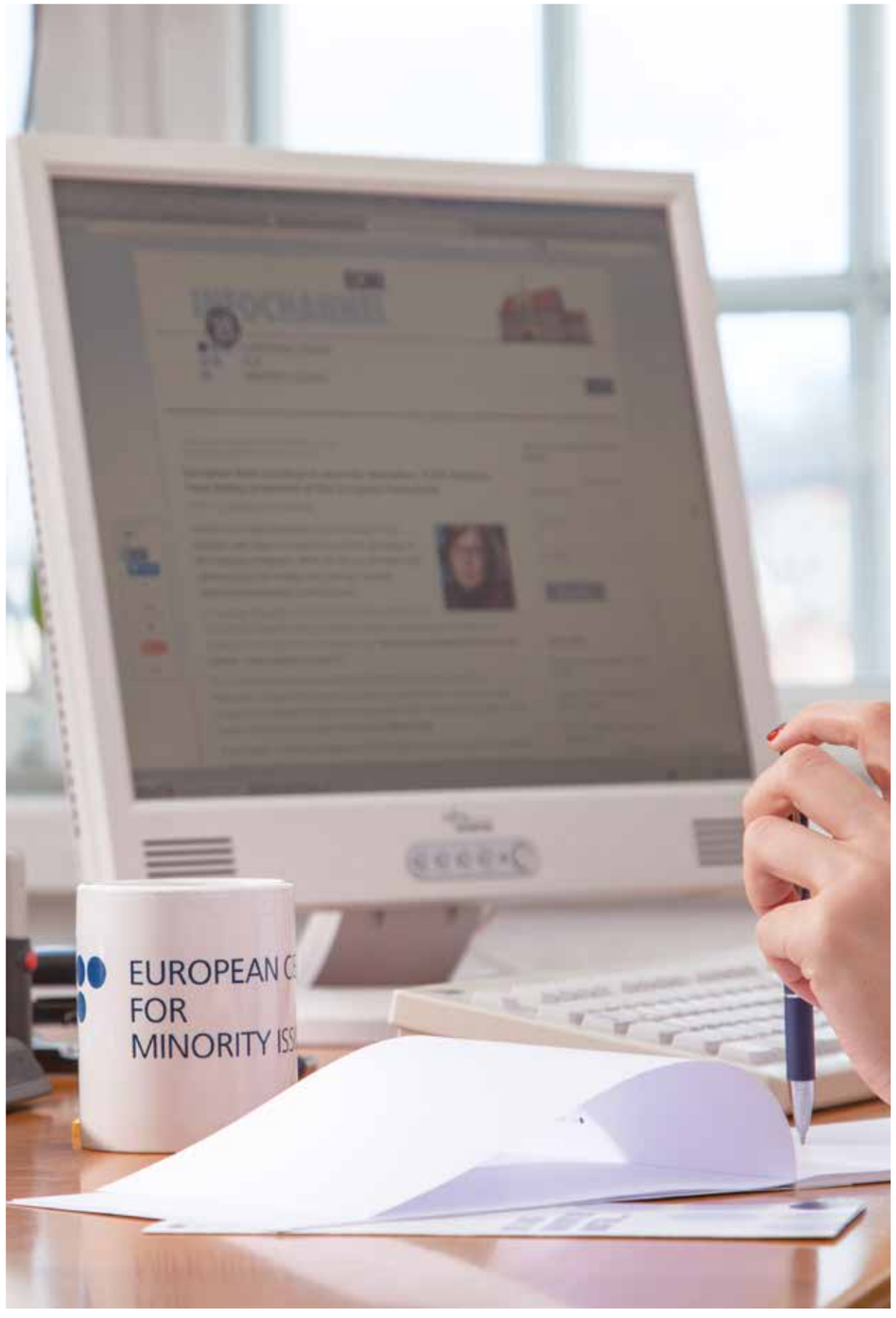
I would place my answer in the overall context. There is a problem in Slovakia with any international human rights document or treaty, whether it concerns national minorities or children, women or disabled person, not to mention LGBT. The general public does not know anything about these treaties. They remain at the level of a very thin layer of experts. I would even say that the FCNM not only does not reach the general public, it does not even reach the political level either. It works like this: there are diplomats in Strasbourg or elsewhere, they negotiate a document, then it is ratified because it is said that the document at stake does not violate the interests of the state. The whole monitoring process rests on the level of experts but at national level in Central Europe, experts have still a sense of internal censorship. They may not fully report the substance of the recommendations to the political level. As a result, the momentum is not created for these recommendations to change anything. For example, last week there was a public workshop with ECRI members with good participants from the Ministry of Justice and the Ministry of Labor. There were also a number of NGOs present. The political level was however not represented. The meeting was very critical, open and sincere but I doubt that anything of the discussions will be transferred to the political level although this is the level where changes could be made. This is a problem with these recommendations whether that these are coming from the Council of Europe or the United Nations.

Are the beneficiaries, at least the minorities aware, informed, involved?

There are mechanisms in place in Slovakia: international recommendations go through committees that include experts and civil society but there is not real discussion with the government on these. The recommendations are sent to the Slovak Government for its comments. For example, we have the reply to the recommendations on the UN Committee on the Rights of the Child. These were adopted in April 2016 and the Slovak Government responded to the recommendations in October 2017. That is one and a half year after. The government was therefore under pressure and asked for feedback within three days. This is obviously not the way to make the process more participatory.

This is a common challenge for all treaty body mechanisms. What lessons should we take from that? What should be done to overcome these challenges?

When something is dependent on the political culture, it is very difficult to make improvements through formal steps or improving the procedures. It is difficult to see how international bodies can make governments more flexible or more responsive. As far as the minorities themselves are concerned, they are sometimes impatient, they don't really understand in my experience that international bodies work within diplomatic rules. When international bodies express their opinion, they think that they take the stand of the government and do not take their concerns into account. It is also a question of educating people, minorities, and politicians alike. Education on democracy and human rights is the issue that I am now concerned with. Without that, all the formal moves that are initiated at the international level are simply missing the point. As far as the FCNM is concerned, what is very useful but is unfortunately not used, are the Advisory Committee's thematic commentaries. Country-specific reports may be used for naming and shaming but the thematic commentaries are comprehensive and good. Unfortunately, they are never used in the discussions of these issues at domestic level. They are not even translated into Slovak. With the Forum Minority Research Institute, we have translated the ACFC Thematic Commentary on Participation but it was not considered as an official translation by the Ministry of Foreign Affairs which means that you cannot even find the Slovak translation of this Commentary on the Council of Europe's website. And the same goes for the other commentaries. These commentaries could be good materials for starting a process to educate people on minority rights. One realizes that the connection between minority rights and human rights is often not made, even among the representatives of minorities. If you are not aware of the fundamentals, how can you then talk about the details? There is no feeling of solidarity in Slovakia among all the vulnerable groups. They are very much suspicious to each other. The lack of solidarity is a problem because the government can use the divide and rule approach: they grant something to this group but not the other. Since the Government Council of Human Rights is not based on cross-cutting human rights principles but rather on grounds of discrimination, the general perception is reinforced that there are no general human rights but only rights of specific groups.



In its latest commentary, the ACFC argued that the FCNM is a living instrument and that adjustments are needed to make minority rights relevant to societies which have been transformed, notably by migration. Some historical communities as well as some government feel that this may open up the scope of application of the FCNM and therefore jeopardize the system of minority protection in place. How do you see this debate evolving in Slovakia and what are your views on this issue?

In Slovakia, there are no migrants so it is not an issue. Expanding the scope of the FCNM would certainly trigger a negative reaction as the overall attitude is negative against migrants. In fact, it is negative against anything that would disturb the traditional Slovak culture. This is not only the position of the Slovak majority but of the national representation across the political spectrum, including the numerically large minorities. This is exactly the kind of problem that can only be approached at the level of cross-cutting human rights. The fundamental concept of genuine equality is not understood and it is on this concept that the whole fundamental human rights philosophy is based. A certain level of complacency has now emerged in the new democracies in the East but also among the Western democracies: the mere existence of institutional democracy is understood as a solution to all the problems. From this point of view, it would be controversial if in this context of lack of understanding of what freedoms and equality mean, we should also provide equality to migrants. This does not mean that we should not find tools within the EU, the Council of Europe, or the states of the Visegrád group in order to change. I don't think that the FCNM should be that tool.

You mentioned going back to the fundamentals. Is there scope for discussing one these?

The Council of Europe has a lot of good initiatives: for example, you have a manual for adolescents called Compass, another manual called Compasito for young children, the Charter on Education for Democratic Citizenship and Human Rights, etc. These are important initiatives but they remain isolated. I would like to see programs that connect initiatives under that Charter and specific minority issues. It would help to see how these two issues are interrelated and how respect for human rights is related to the proper functioning of the rule of law and functioning of democratic institutions. There is however a compartmentalization of issues in all European institutions that prevents creating synergies between programs.

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III.
WHAT CAN THE FRAMEWORK CONVENTION DELIVER?

A selection of experts is asked for their views on the question 'What can the Framework Convention deliver?' The question has been deliberately put in broad terms for experts to provide their analysis, constructive criticism, and thoughts for the future of the Framework Convention.

Mark Lattimer

Executive Director, Minority Rights Group International, London

Today's Europe is a continent beset by opposing forces and movements. Those movements push toward continued integration as well as potential disintegration, to intolerance as well as to inclusion. They affect some of Europe's oldest communities, in regions of traditional minority settlement, as well as its newest, including those being created by the global migrant and refugee crisis. Over the last 20 years the Framework Convention and its Advisory Committee have created a jurisprudence that addresses many of these difficult questions directly and in detail. The promotion of diversity is a fine slogan, but which are the norms that should govern how it is managed? What exactly are the duties of public authorities toward the language needs of linguistic minorities or the participation rights of excluded communities? When cultures compete, what are the principles for accommodation and where do other human rights standards need to be upheld?

These are questions that are being posed with increasing urgency by authorities, politicians, and commentators across Europe and they are questions to which the collected work of the Framework Convention can provide responses – not all the answers, but arguably the most comprehensive and authoritative set of answers that exists.

Many of those involved over the years in the work of the Council of Europe in minority protection, including my own organization, have got used to asking member states what they should do to fulfill their obligations under the Framework Convention. Now we also need to ask what the Convention can do for member states, and for Europe. But to fulfill the Convention's potential to serve as a 'living instrument' requires both institutional commitment from the Council of Europe and political will from the member states. It may well call for a more assertive approach to the personal scope of application of the Convention, both in the recommendations from the Advisory Committee and in the approach of Council of Europe political bodies to ensure that those recommendations are implemented. It will certainly require greater attention to the persecution of religious minorities, and not just those disadvantaged on national or ethnic grounds. And it will need a commitment to insisting that rights under the Convention are European standards, applicable to all minority communities, at a time when they are being denied to so many.

Sia Spiliopoulou Åkermark

Director of the Åland Islands Peace Institute, Finland (currently on research leave)

The FCNM is an international legal agreement with a programmatic account of goals in its preamble. Simple and evident as it may seem today, the FCNM achieved, for the first time ever, a legally binding link between the accommodation of minorities and human rights. Persons belonging to minorities became thus not only objects of regulation, but also holders of rights. Furthermore, the FCNM outlined a holistic approach to minority accommodation by taking into consideration all major aspects that need to be addressed, in order to ensure a reasonable balance between distance and proximity, or, if you so wish, separation and contact, in the relation between minorities and majorities. This holistic approach is entrenched in the article-by-article approach developed by the Advisory Committee.

The establishment of such a Committee monitoring the implementation of the Framework Convention allowed for the institutionalization of continuity in the work of the Council of Europe on minority matters. The contribution and quality of work by the Advisory Committee depends on several factors. The early adoption of and later the consistent adherence to clear and comprehensive procedural rules gave the Committee a firm ground of operation. Together with dedicated and adequate professional staff of its Secretariat, these factors enhanced the independent and structured working of the Advisory Committee. Finally, the designation by states of diverse, knowledgeable, and independent experts has allowed the ACFC to produce far more results than one could have expected, and in dealing with situations 'outside the box', such as minority rights in Kosovo (Agreement with UNMIK, 2004) and the situation in Ukraine and Crimea (ad hoc report 2014). These factors remain core preconditions of its independence and efficiency.

The multiplicity of experiences of states, regions, and of persons and groups with many different identities and life stories cannot be easily captured. It is a matter of constant flow of communication and deliberation, invisible behind the lines of Opinions. The contribution of the FCNM and the Advisory Committee is best summarized in the words of one of many impressive and unnamed interlocutors that I have had the privilege of meeting throughout Europe. This voice said: 'The unfiltered reality is accessible only from an outside perspective'.

Loránt Vincze
President, Federal Union of European Nationalities (FUEN)

FUEN considers the Framework Convention for the Protection of National Minorities to be the main, legally binding international instrument to address the extremely complex topic of minority protection from the perspective of human rights. There are many reasons to celebrate the Framework's 20th anniversary and it also gives us the opportunity to look into the future and say firmly that the Framework Convention is ready for an upgrade.

The FUEN welcomed in 2016 the thematic commentary that interpreted the Convention as a 'living instrument', allowing for the recognition of rights in a changing environment in the member states. However, in the commentary the focus has somewhat shifted from the original aim of national minority protection. Respecting national minorities' ethnic, cultural, linguistic, and religious identity and creating the appropriate conditions enabling them to express, preserve, and develop this identity was the primary aim of this legal instrument. Currently it seems that accommodating increasing pluralism and creating inclusive societies have become the new objectives. Yet, shifting the focus away from maintaining minorities' identity could intensify assimilation pressure and demographic decline of national minorities.

The participation of minorities in decision-making processes is crucial. There is a tendency to marginalize minorities in the media and portray them only through folklore, food, and habits, contributing even more to stereotyping. That is why the recognition of their rights should include all the spheres of societal life as well. The Advisory Committee also correctly assesses the role of self-governance, praising different forms of autonomy as a good instrument to protect and support minority groups.

An upgraded Convention would include, in our opinion, the creation of an open debate, where the representatives of the national minorities and the civil society have an equal role together with the member states representatives and the Secretariat in the preparation, monitoring, and recommendation phase of implementing the Convention. Such a broad consultation and cooperation would also enable the Convention to become a 'living instrument', making it easier to adapt to the ever-changing societies and challenges raised by digitalization and education, but also to find answers to the role of minority groups in the economy, regional policies, public services, etc.

It is also time for the full implementation of the Framework Convention in the Council of Europe member states; in that sense a stronger pressure should be put on the member states that have not signed or ratified the Framework Convention.

Florian Bieber
Professor of Southeast European Studies,
Centre for Southeast European Studies, University of Graz

The Framework Convention came about in a unique window of opportunity during the 1990s when the idea of promoting the protection of rights, in particular of minorities, through more robust international instruments was at its peak. The experience of the Yugoslav wars with the systematic violation of rights of individuals hailing from minorities to the mistreatment of Roma across the European continent made the need for the Convention abundantly clear.

However, had it been signed only a decade later, it would probably not have become a similar corner stone of minority protection in Europe. It has and continues to be an important measure for the protection of minorities in countries seeking to join the EU. In addition to its own dynamic and professional monitoring mechanism, the symbiotic relationship with EU accession has given the Framework Convention additional traction. Today, as only a few countries are in the accession process, the scope of this symbiotic relationship is limited. It can advance minority rights in the Western Balkans, but inside the EU or among countries with no prospect of joining, the leverage beyond voluntary compliance is limited.

The challenge of the Framework Convention extends beyond this restraint and is twofold:
First, how can the Convention deliver in countries whose commitment falters and where other instruments are not available? The rise of anti-immigrant and anti-Muslim rhetoric in numerous European countries highlights that while the inclusion of long-established minorities has made great progress in many countries, new scapegoats are found and they are often minorities.

Second, how does minority protection incorporate democracy? Democracy was assumed to be the default system of government in the countries that are party to the Framework Convention. However, in recent years, Europe has experienced a rise of authoritarian practices and erosion of liberal democratic institutions in a number of European countries. The governments claim to adhere to democratic standards, but in practice pursue illiberal policies and often justify their rule by the will of the majority, with little respect to political and other minorities, as well as institutions. This threat to the liberal democratic framework also undermines the effective protection of minority rights that rests on robust institutions and a general political respect for these principles, both of which have come under threat.

Thus, the Framework Convention and minority protection more broadly have to find answers on how to protect minority rights in times of a majoritarian and authoritarian pushback.

Steinar Bryn
Dialogue worker, Nansen Center for Peace and Dialogue, Oslo

My work with the Nansen Dialogue Center for Peace and Dialogue is about building dialogue, trust, and cooperation between parties previously opposed in violent conflict. Peace agreements may stop a conflict but they are often based on a verdict that one was worse than the other. The lack of recognition of the equal human value of 'the other' is the challenge.

How to build democratic societies based on equality when the starting point is moral inequality? Democracy is a challenging system: the majority is given power and with it, the feeling that it is right and the minority is wrong. When politics is combined with ethnicity, it often produces different classes of citizens. Building social structures that foster integration and the recognition of equality is the most challenging task for Europe today. Intercultural education and breaking down segregated schooling should be the way forward. States cannot continue to sail like the Titanic.

With Nansen Dialogue Center, we are increasing the pressure on the ground, but we need combined pressure from below and above to achieve change. This is why the Framework Convention is particularly useful: it offers analytical tools and in-depth understanding of how oppressive structures of minorities work. It gives a point of reference for us to confront political leaders and remind them of the documents they have signed up to.

At the same time, the Framework Convention is very dependent upon citizens like us. The Advisory Committee started its work with a strong focus on minority policies and legislation and minority participation in elected bodies. As its former President Francesco Palermo pointed out however 'only integrated and inclusive societies where diversity is embedded, valued and lived can ensure the effective protection of minority rights.'

If we want to have a genuine implementation of minority rights, even in hostile environments, we need to invest in social dialogue. In fact, we need to build up cultures of dialogue. It is not multiculturalism that has failed in Europe, it is cultural parallelism. We need to understand each other better. The role of educational reforms is crucial in that process. We need a stronger external pressure from institutions concerned with education like the Council of Europe and the High Commissioner on National Minorities. I hope that the Advisory Committee will have the courage to take one step forward by providing an even stronger alert about the dangers of continuing sailing like the Titanic.

Kristin Henrard
Professor of Fundamental Rights and Minorities at the Erasmus School of Law, Rotterdam

I clearly remember my initial impressions of the FCNM: great achievement to have a legally binding instrument totally dedicated to the rights of persons belonging to minorities but deep concern about its very vague wording (riddled with escape clauses) and the weak enforcement mechanism. The lack of political will among the contracting states could not be missed. Clearly, this 'setting' implies inherent limits on what the FCNM can deliver. Nevertheless, in the meantime far more has been achieved than expected.

The working relation between the Committee of Ministers and the Advisory Committee has been remarkably constructive from the start, with the Committee of Ministers following in broad lines the Opinions of the ACFC, and its hands-on supervision methods (including country visits, follow-up seminars), notwithstanding the rather 'demanding' reading of state obligations. The ACFC's constructive dialogue with states, and its practice of picking up the recommendations of the previous supervision cycle, has resulted in relentless pressure on the states to improve their record, continuously inviting them to broaden the groups the FCNM applied to, and extend the strength of the rights.

Furthermore, the ACFC has developed more explicit and thus also stronger lines of jurisprudence by synthesizing its Opinions in the subsequent cycles of periodic reporting into thematic commentaries. The first three of these dealt with the typical themes of education, participation, and language rights. These commentaries show the ACFC as consistently opting for extensive readings of the Convention, adding refinements (detail), and pitching state obligations at a rather high level. The 4th Thematic Commentary on the scope of application of the FCNM promises to address the rather controversial and highly topical question of the extent migrants (and refugees) can also be beneficiaries of the FCNM. Unfortunately, the ACFC prefers to address this question largely indirectly, focusing on 'managing diversity' and what is needed for an integrated society. While implicitly the ACFC thus highlights that several convention articles are also relevant for the migrant population in states, little additional guidance is given.

In the end, and notwithstanding the great strides that have been made so far, what the FCNM can deliver is constrained by the delicate, fragile power balance with the contracting parties.

FCNM

Mark Lattimer *is the Executive Director of Minority Rights Group International, an NGO in consultative status with the UN that works to secure the rights of ethnic, religious, and linguistic minorities and indigenous peoples and to promote cooperation between communities. It works with over 150 partner organizations in over 60 countries worldwide and has litigated leading cases before the European Court of Human Rights. Mark is the author or editor of a number of books including: Genocide and Human Rights (Ashgate, 2006) and (with Philippe Sands QC) Justice for Crimes against Humanity (Oxford, Hart, 2003), and is frequently used as an expert by the United Nations, the Council of Europe, and the Organization for Security and Cooperation in Europe.*

Sia Spiliopoulou Åkermark, *Jur. dr., Associate Professor (docent) in international law, Director (currently on research leave), The Åland Islands Peace Institute. Sia's work focuses on diversity, autonomy, demilitarization, the use of force, and international law and its institutions. She has worked in several universities, research institutions and non-governmental organizations around the world. Spiliopoulou Åkermark has been an expert member of the Advisory Committee on the Framework Convention on National Minorities of the Council of Europe (2002–06 and 2010–14). She served for two years as the Committee's President (2012–14). She now heads the Åland Islands Peace Institute (independent foundation) in Mariehamn, Finland. Currently, she is on research leave, heading a research project entitled 'Demilitarisation in an increasingly militarized world: International perspectives in a multilevel framework'.*

Loránt Vincze *is an ethnic Hungarian politician from Romania. Loránt Vincze was elected President by the General Assembly of the Federal Union of European Nationalities (FUEN) in 2016. Before that he served as Vice-President from 2013. On the proposal of the Democratic Alliance of Hungarians in Romania (RMDSZ) he coordinated the Minority SafePack European Citizens' Initiative. He served as International Secretary of the RMDSZ from 2011 to 2016. Since October 2009 he lives in Brussels, working at the European Parliament besides the RMDSZ MEPs as their advisor on minority protection and foreign policy. Loránt Vincze was born in Marosvásárhely/Târgu-Mureș (Romania). He first studied journalism at the Babeș-Bolyai University of Cluj-Napoca followed by a Master's degree in public administration and e-government at the University of Bucharest. Starting from 1993 he worked as a radio journalist at the Romanian public radio's Hungarian language programs and as a project manager at the Romanian Radio in Bucharest. Between 2007 and 2009 he served as CEO and editor-in-chief of the Új Magyar Szó Hungarian daily newspaper.*

Florian Bieber *is a Professor of Southeast European Studies and director of the Centre for Southeast European Studies at the University of Graz, Austria. He studied at Trinity College (USA), the University of Vienna and Central European University, and received his PhD in Political Science from the University of Vienna. Between 2001 and 2006 he worked in Belgrade (Serbia) and Sarajevo (Bosnia & Hercegovina) for the European Centre for Minority Issues. He is a Visiting Professor at the Nationalism Studies Program at Central European University and has taught at the University of Kent, Cornell University, the University of Bologna and the University of Sarajevo.*

Steinar Bryn *is Dialogue Worker at the Nansen Center for Peace and Dialogue and in that capacity, he has been particularly involved in dialogue facilitation in Ukraine. He was previously heading the Nansen Academy where he developed and supported the Nansen Dialogue Centers in the Balkans. Bryn graduated from the University of Wisconsin (BA, MA) and obtained a Ph.D. in American Studies from the University of Minnesota.*

Kristin Henrard *is Professor of Fundamental Rights and Minorities at the Erasmus School of Law (Rotterdam, the Netherlands). Her research over the past 20 years has continuously branched out to more general doctrines of fundamental rights, the right to equal treatment, the legitimacy quest of international courts, and multi-disciplinary legal research regarding integration and nationality. Kristin has won a prestigious VIDI grant of the Dutch Council for Scientific Research. She teaches courses on advanced public international law, international criminal law, and human rights, including fundamental rights of minorities.*

FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

CONCLUSION:
WHAT ARE THE PATHWAYS FORWARD?

By way of conclusion, the below attempts to offer possible avenues for debating the FCNM's future developments. It is based on the comments and suggestions received during the interviews carried out by Stéphanie Marsal.

For the FCNM monitoring

Synchronize the monitoring to developing realities on the ground

This synchronization would imply revisiting the FCNM monitoring mechanism, which is still operating on a model built in the 1960s, with consolidated reporting being the backbone of the process. In order to adapt the FCNM to a fast-changing world, ways to get input from both governments and NGOs much faster than through some consolidated reports could be explored. Modern technology could be used to keep the discussion on minority issues ongoing.

Work together with civil society

Working together with civil society goes beyond getting information from NGOs to feed into the Advisory Committee's analysis of the situation. It is about creating what some have referred to as an open debate whereby national minorities and civil society are being placed on equal footing with government representatives. If change is to be achieved, the Advisory Committee needs to be strong in alerting on some developments and add its own pressure to the one exercised by NGOs on the ground.

Communicate on the FCNM and on the ACFC findings

How often are the findings of the ACFC reflected in domestic media? To what extent is the political elite aware of the FCNM standards? The lack of press coverage or discussion of the ACFC findings outside a limited group of experts is flagged as a concern. There is also a perceived confidentiality in the way the Advisory Committee operates. This could be changed by engaging not only minorities but also majority audiences in discussing the FCNM implementation through interviews, public debates, or training.

For the Council of Europe leadership

Institutional commitment from the Council of Europe

Genuine interest by the Council of Europe political leadership in its own instrument is important. That interest should go beyond mere political statements referring to FCNM standards; it is about supporting the FCNM in its everyday reality.

For all international stakeholders

Be political, be strategic

The tools used by international institutions are considered too bureaucratic and not political enough to understand the grass roots of the problems. International institutions should demonstrate the political clout needed for human rights norms like the FCNM to be preserved and adopt strategic thinking on finding effective processes to encourage norm-based reforms. Referring to minority rights as special rights for special groups may be counterproductive. They should be seen in the broader context of fundamental rights.

Unite with other human rights bodies and make it known

Today's reality is one of a fragmented human rights system, with a regrettable competition between international organizations still happening. Cooperation may be lauded by headquarters but is often left to the goodwill of those individuals dealing with the issue on the ground. In order to have impact, international organizations should go beyond delivering coordinated messages but should engage in practical cooperation focusing on the implementation of some concrete – and realistically achievable – recommendations.

While monitoring bodies' access to territories outside the effective control of state parties may be discussed among international organizations, the request for access needs to be made clear to all those concerned, that is not only the state party without effective control over the said territory but also the state with effective control, although denied, and the de facto authorities in the territory concerned.

Reaching out, outside expert level

Discussions on the Framework Convention and minority rights more generally are said to involve a limited number of actors/experts who come to the discussion table when minority issues are at stake. 'Broadening the base' is needed together with encouraging dialogue within society, for example by bringing together those actors such as NGOs, religious organizations, and political parties who do not necessarily meet but have some influence in the operationalization of minority rights.

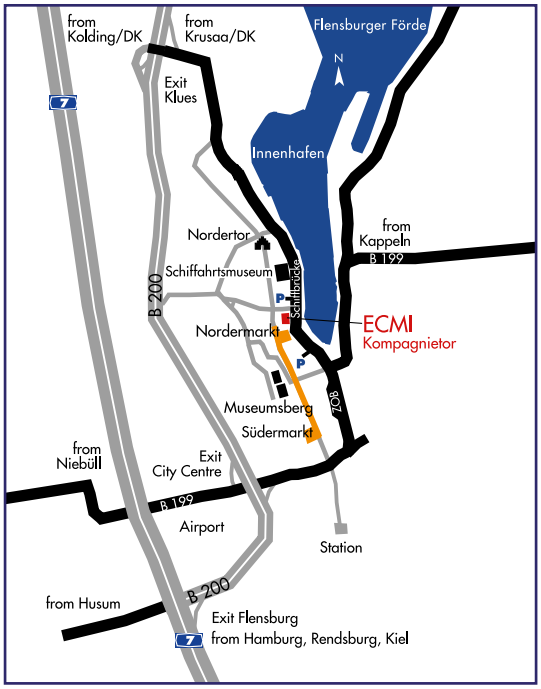
Connect human rights and minority rights

Knowledge about the FCNM is regrettably too limited and the connection between minority rights and human rights is often not made. Tackling this knowledge gap would require substantial efforts to reach out on the meaning of fundamental rights and to provide human rights training that connects the basics of human rights education with specific rights, such as the rights of national minorities.

For State parties

Internalize the FCNM reporting system at the domestic level

For some countries, the FCNM reporting system generates considerable efforts, which involves consultation with national minorities and civil society and solicits their input. Limiting the use of FCNM reports to complying with external scrutiny requirements may not be seen as optimizing the resources invested at national level. This is why some reflections could be launched, such as in Finland, on a better use of the FCNM report in domestic political processes, for example when designing policies or drafting legislation.



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