

**CONFERENCE ON THE INTEGRATION OF NATIONAL MINORITIES IN  
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**Address by Boriss Cilevičs, Rapporteur in the Parliamentary Assembly of the  
Council of Europe on Minority protection in Europe: best practices and  
deficiencies in implementation of common standards**

Until recently, the Parliamentary Assembly's reports concerning national minorities have been focused on elaboration and improvement of the standards pertaining to minority protection in Europe, more particularly on the Council of Europe's two main instruments in this respect: the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

Although very different in nature, these two mutually complementary instruments are crucial for building a Europe based on universal values: substantive equality, non-discrimination and effective participation, on the one hand, and preservation and promotion of cultural and linguistic diversity, on the other. This „*unity in diversity*” concept is, in my view, the most adequate explanation of the very term “*integration*”.

The Framework Convention has become the first ever legally binding instrument on minority rights, while the European Charter has become the first ever legal instrument to protect languages.

The period of standard setting is now over for a while, and the Assembly work in recent years was aimed at encouraging recognition of these standards by all Council of Europe member states.

Unfortunately, the two instruments mentioned above have not yet become universally accepted standards throughout Europe, as some Council of Europe member states have not yet ratified them.

To date, four states – Belgium, Greece, Iceland and Luxembourg – have signed the Framework convention but have still not ratified it, and four others – Andorra, France, Monaco and Turkey – have neither signed nor ratified it. The Parliamentary Assembly on several occasions reiterated its call upon the above-mentioned states to sign and ratify the Framework convention as soon as possible, without reservations or restrictive declarations, and deplored the lack of progress in this respect.

The Assembly also expressed its regrets that the reservations and restrictive declarations formulated by states which have already ratified the Framework convention have not been revoked and asked those states to do so.

As to the European Charter for Minority or Regional Languages, it has so far been ratified by 24 states. Another nine states have signed it, some of which are expected to ratify soon. But to date, almost half of the Council of Europe's member states have not yet fully subscribed to this legal instrument.

Needless to say, the mere fact of ratification does not mean that all provisions of the instrument are duly fulfilled. Emphasis now needs to be put on proper implementation of existing standards. This is why diligent implementation of the Framework convention and the Charter in practice draws increasing attention of the Assembly.

Both the Framework convention and the Charter provide for a review mechanism of their implementation, involving independent bodies: the Advisory Committee for the Framework convention and the Committee of Experts for the Charter.

Over the years, the monitoring procedures conducted by these committees have produced an extensive array of valuable data on practical successes and issues for concern. These data reveal that, on one hand, a lot has been achieved in terms of minority protection in Europe and that, on the other hand, amazing creativity has been demonstrated across Europe to avoid fair implementation of the principles of minority protection and to elude undertaking clear-cut legal obligations in this respect.

In general, the acceptance of international scrutiny of minority policies and practices has become more widespread, with the Framework convention affirming its position as the main legal yardstick in Europe. Most countries today recognise the positive contribution of national minorities to their societies and the value of the Framework convention as an objective legal standard and a tool for countering extremist positions, although anti-minority rhetoric still remains all too common in Europe, particularly around election time.

For the Assembly, the political aspect of the data accumulated in the course of the monitoring by the expert bodies is of particular interest. Indeed, for parliamentarians it is essential to single out the most essential decisions of a political nature which have a crucial impact on the implementation of minority standards. This was the main aim of my report discussed by the Standing committee in March.

This report was not meant to be a monitoring exercise, it did not aim to give assessment of minority situations in particular countries, the more so that successful solutions for specific issues and serious problems in implementation of others can be observed in the same country.

As a rapporteur, I rather strived to determine, through, in particular, a “case-study”, the most crucial and potentially controversial areas of political decision-making affecting the implementation of the standards of minority protection.

It is also essential to stress that my report did not deal only with those states which have ratified the Framework convention and the Charter. Provisions of these instruments are not without relevance also for those states which refused to undertake obligations under these instruments directly, as these states participate, within the Committee of Ministers, in the Convention's monitoring mechanism. Furthermore, these states are also bound by political commitments on minority standards of the OSCE, notably the Copenhagen Document of 1990. It is important because the latter constituted the basis for drafting the framework convention. Moreover, they are bound by other Council of Europe's instruments or mechanisms which establish the principles of equality and respect for diversity in terms of minority protection and entail essential obligations in this field.

Four areas where decisions of political nature are crucial for fair implementation of the provisions on minority protection have been singled out in particular.

**1. Obligations of the local and regional authorities** under the Framework convention (taking into account the autonomy of the local and regional authorities, particularly in federal states).

The provisions of the framework convention are binding on all authorities, irrespective of the constitutional order of the state party as a federal or centralised state, without any limitations or exceptions. Local and regional authorities are therefore obliged to implement the framework convention, like any other legally binding international instrument.

On some occasions, however, while appropriate measures are taken at the national level, local authorities sometimes failed to act properly. Decentralisation is often considered as a solution for solving several problems related to the protection of minorities. In many cases, it has indeed had a positive impact. However, in practice a shift of competences in the field of minority protection towards local authorities has often resulted in a weaker protection of minority groups. Sometimes the division of competences between the central and subnational authorities is unclear. In some cases local authorities do not properly implement the Framework convention because of a lack of funds from the central budget or because of a lack of political will.

It is essential to stress that obligations resulting from the Framework convention are binding on every state party as a whole. According to the Vienna Convention on the Law of Treaties, a state party “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.

**2. The continuity of minority policies following a change of government.**

In some state parties the commitments taken by previous governments in the field of minority protection are not upheld, for instance concerning the adoption of new legislation in this area. In some cases the financial support for the protection of minorities and the political will in this respect was weakened following changes in governments at the central or local level. In many cases this problem was manifested in shifts in state policies and sometimes also in the change of the relevant institutions, which affected the capacity of these institutions.

It is necessary to stress that these are states and not concrete governments or ruling coalitions who undertake obligations in respect of minority protection. Under no circumstances can political changes in the state parties justify incompliance with the provisions of the Framework convention.

**3. The scope of application of the Framework convention.**

The scope of application of the Framework convention remains one of the most controversial issues related to its implementation. Basically, each state party can itself determine which groups are covered by the Framework convention. Therefore, state parties do have a margin of appreciation in this respect. However, such decisions “must be exercised in accordance with general principles of international law and the

fundamental principles set out in Article 3 of the Framework convention. Implementation of the Framework convention should not be a source of arbitrary or unjustified distinctions”.

The Assembly considers that state parties do not have an unconditional right to decide which groups within their territory qualify as national minorities in the sense of the Framework convention. Any decision of the kind must respect the principle of non-discrimination and comply with the letter and spirit of the Framework convention.

The implementation of the Framework convention by state parties is characterised by different approaches, ranging from minimalist approaches (for example limiting the scope of application to the so-called “historical minorities” or to some selected minorities while arbitrarily denying recognition to others) to more inclusive and generous ones.

The Assembly deplored *a priori* exclusions from the personal scope of application of the Framework convention. It encouraged the relevant authorities to continue their dialogue with the groups concerned on a possible extension of the personal scope of application of the Framework convention, possibly on an article-by-article basis.

#### **4. The effective participation of persons belonging to national minorities in cultural, social and economic life and public affairs.**

The Assembly emphasised the importance of a state party’s obligation to create the conditions necessary for effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them (Article 15 of the framework convention). It aims above all to encourage real equality between persons belonging to national minorities and those belonging to majority. Article 15 of the Framework convention is indeed a key provision of this convention and is closely related to its various other provisions.

Participation in public affairs should include not only participation in the elected bodies but also in the executive branch and the civil service. The lack of participation in this area is closely related to the lack of participation in socio-economic life and vice versa, which may be best illustrated by cases of socio-economic exclusion.

The area of social and economic life covers such issues as employment, housing, access to social benefits and health care. To be effective, such participation implies not only equal access to employment, housing and/or health care, but also a possibility to share the benefits and material results of economic and social life.

To sum up:

- Along with numerous successes and progress in minority protection throughout Europe, outstanding problems persist;
- Successful solutions for specific issues and serious problems in implementation of others can be observed in the same country;

- Irrespective of change of government and of power structures in a given state, state authorities are bound by Council of Europe instruments which have already been ratified;
- Freedom of ethnic self-identification is a major principle in which democratic pluralistic societies should be grounded and should be effectively applied to all minority groups, be they national, religious or linguistic;
- Even if state authorities have not ratified specific European instruments on minority protection, a number of other Council of Europe instruments and mechanisms establish the principles of equality and respect for diversity;
- Tolerance and open, sincere dialogue between authorities and all minority groups should be maintained and promoted as widely as possible at all levels: national, regional and local;

In conclusion, I would like to quote the the judgment of the European Court of Human Rights in the case *Serif v Greece* of 1999:

“[t]he role of the authorities is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other”.