Launching conference
of the Fourth Thematic Commentary on the Scope of Application
"The Framework Convention: a key tool to managing diversity through minority rights"
Strasbourg, 11 October 2016

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Speaking points

From a practitioner's point of view

1. How political decision-makers see the problem of the FCNM's personal scope of application? How will perceive this Commentary?

Variety of states parties' views are well described in the Commentary. Evolution of PACE approach within 20+ years to some extent reflects the views of national political class.
Some of the most pertinent texts out of numerous resolutions and recommendations

1993: Recommendation 1201:
The Assembly recommended that the Committee of Ministers adopt an additional protocol on the rights of national minorities to the European Convention on Human Rights. The proposed text of the protocol included a definition:
For the purposes of this Convention, the expression ''national minority" refers to a group of persons in a state who:
a. reside on the territory of that state and are citizens thereof ;
b. maintain longstanding, firm and lasting ties with that state ;
…….
Thus, rather exclusive approach to the scope of application, apparently based on the concept of "traditional", "historical" or "autochthonous" minorities

2003: Recommendation 1623
"…the Assembly considers that the states parties do not have an unconditional right to decide which groups within their territories 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."
Obvious change of the concept of a minority, in fact, endorsed the AC approach

2014: Resolution 1985
"The Assembly also recalls the definition of national minorities set out in its Recommendation 1201 (1993) on an additional protocol on the rights of minorities to the European Convention on Human Rights, defining them as "a group of persons in a State who: a. reside on the territory of that State and are citizens thereof; b. maintain longstanding, firm and lasting ties with that State…"
Return to the original concept, the report apparently stresses the understanding of a national minority as "traditional", as opposed to "immigrant" groups

In the meantime, the European Parliament consistently and explicitly sticks to the restrictive concept of traditional minorities.

Interestingly enough, there is a striking difference between the collective position of the CoE member states reflected in the Committee of Ministers' resolutions on implementation of FCNM – which generally rely on the AC conclusions, on one hand, and political decisions and practice of most of the states parties, on the other.

Even when the FCNM protection is extended to the minorities which do not meet the criteria of being "traditional", this practice is often presented as a sort of *ad hoc* measures not stemming from the obligations and commitments under the FCNM and rather reflecting goodwill of the governments.

2. Restrictive approach to the personal scope of application is problematic, first of all, in the view of interpretation of minority rights as the right to equality. The concept of equality has developed far beyond formally equal treatment, and often different treatment is necessary to ensure full and effective equality. As a matter of fact, this is what the entire minority protection is about. The European Court of Human Rights has established this approach in a number of judgments, notably in the case Thlimmenos vs Greece.

Indeed, since minority rights form an integral part of fundamental HR, they must be enjoyed without any discrimination. As the Commentary rightly points out, the right to equality cannot be reduced to only persons belonging to some recognised groups and denied to others.

Besides, strict differentiation between "traditional minorities" and "immigrant communities" is problematic from the point of view of practical implementation. It is virtually impossible to establish any well-reasoned quantitative criteria. For how long must immigrants reside in a country in order to become a "historical minority"? If certain criteria are set, e.g. one century (some examples are mentioned in the Commentary), another question arises: how many persons belonging to this group must be present in the given territory? In practical terms, any decision of the kind will inevitably be of arbitrary nature.

3. The aspect of "objective criteria" which must complement free personal self-identification remains rather vague and the most controversial. Concerns of alleged "abuse of minority rights" are frequent in political discourse. While usually these concerns are manifestly ill-based, in some cases they might appear reasonable – in particular, when minorities are granted extensive self-government rights or e.g. preferences in elections, including exemption from threshold. Some cases are known when persons who had nothing to do with the Roma community attempted to hijack elections of Roma self-government. The European Court of Human Rights considered possible limitations on the freedom of self-determination with regard to association with a national minority in the case of Gorzelik vs Poland.

4. In general, many governments in dealing with minorities use concepts and language which are in sharp difference with the language used by the AC and have no grounds whatsoever in modern international law. The Commentary mentions one example when some states introduce distinctions between "national" and "ethnic" minorities on the basis of existence of "their own" kin states. Moreover, a number of states parties still adhere to the concept which was most articulately formulated by Stalin and implemented in the Soviet Union. This concept is based on clearly primordial understanding of cultural identity and implies that a person's ethnicity is a sort of intrinsic, physical characteristic assigned to every person from birth. This is why it is formally registered – in official registries if not in passports, based on the "principle on blood", and can be changed only under stringent rules. Needless to say, a person can have strictly one ethnicity, multiple identity is denied. Therefore, Soviet legacy appeared stronger than one could hope.

5. The Commentary rightly mentions the profound role of the concept of integration. Increasingly often integration is interpreted as cultural assimilation - rather than social cohesion. Cultural "otherness" is perceived as a sort of anomaly, and integration as a "normalization" or rectification of this anomaly – not in a sense of total elimination but rather containment. Minorities' identity can be manifested within narrow designated areas of cultural associations or religious communities, while in the society at large minorities are expected to behave "normally", i.e. like majorities.

6. Securitization of minority issues is a recent trend that substantially affects minority policies in many member states. In fact, it signifies return to the early years of minority protection, when security considerations dominated shaping new standards. Now the security paradigm is back – however, in a somewhat modified form. Perceived or alleged threats which minorities represent for traditional cultures, languages and lifestyles, are more and more often interpreted in terms of national security.

On one hand, just like in the 90-s of the previous century, more attention is paid to minority claims because of securitization. On the other – replacement of the value-based approach which makes the basis of the FCNM with the security-based approach causes devaluation of standards, favours instrumental solutions and even provokes departure from legal standards and litigation to manipulation and propaganda. The most dangerous consequence of the securitization is the wrong signal sent to minority communities: *"bad behaviour is rewarded"*. Minority claims will be taken seriously only if ignoring them might cause threat of a conflict, while peaceful attempts to assert minority rights can be ignored.

7. To conclude. I believe that the Commentary makes an extremely valuable contribution into clarification of the problem of the scope of application of the FCNM in the context of interpretation of minority rights as the rights to equality and non-discrimination. While security aspects are unavoidable, proper combination of "idealistic" value-based approach with "pragmatic" security-based approach must be sought for. The Commentary may be very useful for national politicians and decision-makers who are really concerned with better implementation of ideals of equality in their societies. However, special efforts are needed to promote this valuable document among national – and international - policy-makers.