

# Council of Europe and Migration

**Boriss Cilevičs**

Member of PACE committee on Migration, Refugees  
and Population

# European Committee on Migration

**Task:** to develop European co-operation on

- migration,
- the situation and social integration of populations of migrant origin, and refugees,
- community relations.

**Aim:** to influence government policy and practice in the member states of the Council of Europe.

# European Committee on Migration

## Target groups:

- government policy-makers and public officials responsible for delivering services to migrants at both national and local level
- parliamentarians
- academics
- NGOs working with migrants
- migrants themselves

# Migrants

- emigrants
- returning migrants
- immigrants
- refugees
- displaced persons
- persons of immigrant background *or*
- members of ethnic minority populations that have been created through immigration

# Committee of Ministers

## ■ Recommendations

[http://www.coe.int/t/dg3/migration/Documentation/Default\\_rec\\_en.asp](http://www.coe.int/t/dg3/migration/Documentation/Default_rec_en.asp)

- Integration
- Employment
- Housing
- Legal status of migrants
- Family reunification
- Migration and development
- Children

# **PACE Committee on Migration, Refugees and Population**

## **TOR:**

- The committee shall consider all relevant matters relating to migration, refugee and population policy issues. It shall work and propose actions for closer European co-operation in these fields, as well as, when relevant, with non-European countries

# **PACE Committee on Migration, Refugees and Population**

- **questions relating to migration and refugees in Europe and in other parts of the world, including the problem of asylum-seekers and internally displaced persons as well as close co-operation between countries of origin, transit and destination**
- **population trends in Europe and in other parts of the world and the social and economic effects of those trends**
- **community relations in multicultural societies, including the situation and integration of migrant workers and their social, economic and political rights**
- **humanitarian law and humanitarian issues**

# PACE Committee on Migration, Refugees and Population

## Current focus:

- strengthening the protection of rights of migrants, refugees, asylum seekers and displaced persons
- promoting integration, dialogue and tolerance of migrant communities in their host societies





# Council of Europe:

Watchdog for democracy and human rights

**Accommodation of cultural diversity**

**- *legal framework?***

**- *international standards?***

# Political declarations - background

- “*Romantic nationalism*”: ideal – culturally homogenous state without minorities
- **Dangerous illusion!**
- EU – the opposite: quasi-state without majority
- Practice: language policy – (in)equality of languages?
- Political correctness

# Political declarations

- UN
- Council of Europe
- OSCE
- EU
- Regional documents
- National documents
- *Mechanisms*: **ECRI** – not a treaty body!



# Legally binding instruments

- Non-discrimination and equality
- Minority rights
- Preservation of cultural identity

# Non-discrimination and equality

- Universality as a cornerstone of modern human rights
- UN: CERD
- EU: Race Equality Directive - *indirect discrimination, shifting burden of proof*
- CoE: Art.14 ECHR, Protocol 12

# Minority rights

- “Early” bilateral treaties
- “Minority treaties” under League of Nations
- Art.27 ICCPR (1966)
- OSCE: Copenhagen document (1990)
- UN: Declaration... (1992)
- CoE: Framework Convention (1994)

# Preservation of cultural identity

- UNESCO (cultural heritage)
- EU: programmes and projects (EBLUL, Eurolang, MERCATOR... - traditional minorities/languages)
- CoE: Language Charter

# Diversity policies at national level

- Symbolic vs practical level
- Conservative strategy: homogenization
- Liberal strategy: “cultural neutrality”
- Multiculturalism
- Specificity of federal arrangements





# **Non-discrimination – interpretation?**

- Equal treatment vs substantive equality
- Full and effective equality

# Non-discrimination - key question:

- Does equal treatment ensure equality?
- If yes - *what kind* of equality?
- Sometimes different treatment is needed to provide substantive equality
- - Thlimmenos vs Greece (6/04/2000, No. 34369/97)

# Minority rights: legal criteria?

- Kymlicka: *national* vs *immigrant* minorities
- Different needs and demands?
- What makes “*recent immigrants*” different from “*traditional minorities*”?
- Longstanding and lasting ties – how to formulate in legal terms?
- **Citizenship**: equality of citizens?

# **UN: CCPR General Comment No. 23, 08/04/1994**

- **5.1. The terms ...also indicate that the individuals designed to be protected need not be citizens of the State party. In this regard, the obligations deriving from article 2.1 are also relevant, since a State party is required under that article to ensure that the rights protected under the Covenant are available to all individuals within its territory and subject to its jurisdiction, except rights which are expressly made to apply to citizens, for example, political rights under article 25. A State party may not, therefore, restrict the rights under article 27 to its citizens alone.**

# The citizenship criterion

- **Venice Commission: *REPORT ON NON-CITIZENS AND MINORITY RIGHTS*** (January 2007)

[www.venice.coe.int/docs/2007/CDL-AD\(2007\)001-e.pdf](http://www.venice.coe.int/docs/2007/CDL-AD(2007)001-e.pdf)

- Article-by-article approach

# FCNM Advisory Committee

- *Scope of application*: criticisms towards Denmark, Estonia, Germany...
- Generally – consistently advocates inclusive approach

# FCNM Advisory Committee

- **In the absence of a definition in the Framework Convention itself, the Parties must examine the personal scope of application to be given to the Framework Convention within their country... Whereas on the one hand Parties have a margin of appreciation in this respect in order to take the specific circumstances prevailing in their country into account, on the other hand this must be exercised in accordance with general principles of international law and the fundamental principles set out in Article 3. In particular, the implementation of the Framework Convention should not be a source of arbitrary or unjustified distinctions.**

# **PACE: Recommendation 1623 (2003):**

- 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.



# PACE: Resolution 1713 (2010) :

- ... adopt a more flexible approach regarding the scope of application of the Framework Convention, in particular by not basing it exclusively on the citizenship criterion, so that all persons belonging to minorities may benefit from the rights enshrined in the Framework Convention in a non-discriminatory manner;

# States' position:

- Declarations: “traditional” minorities (Austria, Estonia, Switzerland...)
- Lists (Denmark, Germany, Slovenia...)
- No minorities (Liechtenstein, Luxembourg, Malta)
- National law (Hungary, Poland – 100 years)
- Inclusive approach (UK, Russia...)



# **To sum up: international standards**

- Restrict conservative strategies
- Prescribe liberal strategies
- Encourage elements of multiculturalism