Framework Convention for the Protection of National Minorities: Taking Stock after 20 Years

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A practitioner's view

1. Justiciability

Lack of individual complaints procedure – criticised

Case-law:

long list of relevant cases, but:
mainly discrimination on the ground of association with minority (freedom of association, freedom of speech, the right to be elected, the right to education, etc.)

Specific provisions on minority rights?

In some cases, ECtHR explicitly referred to FCNM – notably, in cases where corresponding states were not states parties to FCNM (minority names' spelling in the cases against France and Latvia – prior to ratification)

However, in general one cannot but conclude that little if any specific case-law has been produced on the basis of FCNM

2. Universality

Scope of application.

AC consistently advocated inclusive approach – while recognizing the state party's rights to define the scope of application, always stressed that the decisions of the kind must not arbitrary nor discriminatory.

PACE – not fully consistent, however, in several recent resolutions called upon the members states to withdraw reservations or restrictive declarations.

To be mentioned: associations of traditional minorities demonstrated little solidarity and took rather conservative attitudes towards inclusiveness of FCNM.

The so called refugee crisis: new window of opportunity. However, FCNM was rarely recalled in public discourse at both national and international level, instead, rather vague concept of integration has become a buzzword.

Despite some positive practice, no reservations or declarations have been withdrawn, and most states parties still stick to a rather restrictive approach.

3. Synergy

Cooperation and synergy between different CoE monitoring bodies greatly improved (AC – and ECRI, the Charter's Committee of Experts).

In the meantime, synergy with the OSCE HCNM remains weak – not surprisingly, as in fact HCNM has been turned rather into a technical assistance body – in accordance with the political will of the OSCE participating states.

Coordination and synergy with the EU bodies remains a matter of concern, first of all, with regard to fast developing non-discrimination acquis. FCNM as a strong anti-discrimination instrument remains underestimated by the powerful and influential EU bodies.

In practice, coordination and synergy is ensured – however, at the personal rather than institutional level. And – substantive synergy between minority rights approach and no-discrimination approach is still to be developed.

4. Securitization

The origin of minority rights lies in security considerations, this was the basis for the system of minority treaties under the League of Nations. Adoption of the CSCE Copenhagen document and its legal version – the FCNM marked the change of paradigm, since then minority rights are declared integral part of fundamental HR – while, of course, the security dimension has always been there.

However, recent developments triggered significant backsliding. Besides the refugee crisis, these are, of course, annexation of Crimea and warfare in Donbass under the pretext of "protection of the Russian minorities" there. At political level, these events had a disastrous effect for the very idea of minority protection. One could recall consequences of the annexation of Sudetenland by Hitler, which resulted not only in cruel oppression of Sudeten Germans - ignored for decades – but also in discrediting the very idea of minority protection and huge delay of adoption of the UN instruments on minority protection.

These security considerations, aggravated by the current circumstances of the so called hybrid warfare, led to toleration and even approval of some measures which would be severely criticised still several years ago – such as eg drastic reduction and even virtual elimination of education in minority languages in Ukraine and Latvia.

5. Mainstreaming

Unfortunately, one cannot but conclude that minority have not been duly mainstreamed – this is particularly obvious when comparing to eg gender equality. Gender aspect is nowadays taken into account in virtually any issue, while FCNM is mentioned only when specific minority related issues are discussed. Unfortunately, very few MPs know and refer to the FCNM. AC opinions and even CM relevant

resolutions remain unknown to public at large and even to politicians. This is not a criticism towards AC – its work is excellent and useful, but rather a problem of political support provided by the CM and CoE chairmanships.

To sum up:

Entry into force of FCNM – a major breakthrough in minority protection. A lot has been achieved. However, now we enter the stage of backsliding – because of objective changes in the situation, changing priorities and new challenges to peace and stability. I am sure it is not the end of the story.

It is essential now:
to consolidate what has been achieved in these 20 years,
to keep the modern interpretation of MR on the table,
to develop more synergy, first of all, between MR approach and non-discrimination paradigm,
to facilitate emergence of relevant case-law at all levels,
to prioritise mainstreaming of FCNM and its approach to MR.