

REVIEW. RETHINK. REFORM
Europe and Central Asia Regional Forum
30th anniversary, UN Declaration on the rights of minorities,
1992-2022

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Speaking points

Proper implementation of minority rights standards implies several aspects:

- institutions and mechanisms
- policies
- compliance: monitoring, complaints and litigation, sanctions for violations

The current anniversary is a good point of time to evaluate effectiveness of implementation, achievements and gaps

UN:

- UN Forum on Minority Issues; Special Rapporteur on Minorities Issues; former UN Working Group on Minorities
- Virtually none. No special decades for minority rights or the like. Only Minorities Fellowship Programme
- Art.27 ICCPR – Optional protocol - individual complaints to HRC, several important cases.
Some examples when minority-related cases considered by monitoring committees of other UN treaties, including CERD, CEDAW or CRC. All these opinions and conclusions are not legally binding

Some good practices have been developed at the regional level.

In particular, in Europe practical implementation of MR standards is more advanced both with regard to institutions, policies, and monitoring compliance.

OSCE: HCNM – political and diplomatic mechanism based on conflict prevention

CoE: legal framework. FCNM: transformed political declaration - the 1990 CSCE Copenhagen document – into a legally binding convention. Monitoring mechanism: AC - legal but not judicial.

The European Charter for Regional or Minority Languages – specific instrument where the languages not persons are right-holders. Committee of Experts, weak monitoring because of a la carte principle

Other CoE monitoring bodies regularly deal with minority related issues, both treaty-based – like CPT or Social Committee, and non-treaty based – ECRI.

The Venice Commission – Commission for Democracy through Law – published a number of relevant conclusions and recommendations (eg on whether citizenship is a necessary precondition for the enjoyment of minority rights).

Finally, although minority rights are not explicitly mentioned in the ECHR, a number of ECtHR rulings deal with several essential aspects of minority rights, and these are legally binding.

However, serious gaps also in the European system:

- very restricted availability of individual complaints mechanism and hence limited justiciability. PACE recommended adoption of an additional protocol to ECHR on minority rights still back in 1993, but the governments chose elaboration of FCNM instead.

- insufficient coordination between different bodies resulting in differing interpretations of the same rights in similar cases and circumstances. Example: interpretation of the right to the name spelling in minority language in the case-law of the UN HRC, ECtHR and ECJ.

Finally, a disastrous trend of “re-securitization” of minority issues should be mentioned. Before the WW2, Hitler abused the idea of minority protection of Sudeten Germans to justify invasion to Czechoslovakia – and discredited the very idea to an extent that no minority rights were included into the UN documents until mid-60s. Nowadays, Russia’s invasion in Ukraine is justified with similar pretexts, and we already see its disastrous impact on several states’ policies towards minorities.

Recommendations:

- specialized comprehensive legally binding instrument on minority protection at the UN level
- coordination of different expert monitoring mechanisms under different legal and political frameworks to ensure uniform interpretation of minority rights and avoid “forum shopping”
- “de-securitization” of minority protection – minorities should not be made accountable for their kin-states’ wrongdoings