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**The role of the Framework Convention for the Protection of
National Minorities in selected countries of South-Eastern Europe
after two monitoring cycles**
Report prepared by Florian Bieber

The views expressed are those of the author only

1. Introduction

The fate of the Framework Convention for the Protection of National Minorities (FCNM) and the Western Balkans¹ have been closely intertwined. The advances in the field of minority rights in international law and among international organizations occurred under the impression of the wars in former Yugoslavia between 1991 and 1995. Ironically, before its dissolution Socialist Yugoslavia had been one of the main driving forces for minority rights at the international level. Domestically, Yugoslavia had one of the most developed systems of group rights prior to the country's dissolution. Mechanisms to include minorities into the newly established states of former Yugoslavia have often been at the core of the conflicts and disputes of the 1990s. In fact, whether or not a particular group was a minority, a community, a constituent nation or did not exist in the eyes of the state or majority, was contested. With the exception of Slovenia, the other countries of former Yugoslavia struggled during the 1990s in establishing stable democratic governments and consolidating their fragile statehood. Integration into international and European institutions, though formally aspired to, was not achieved beyond a very limited degree. The genuine implementation of international human rights standards and other conditions of democratic governance associated with Euro-Atlantic integration began only in the late 1990s and early 2000s.

Today, there are six categories of minorities in the Western Balkans: Marginal minorities are small in size and often under threat of assimilation. These include all minorities other than Roma in Bosnia and Herzegovina and groups such as Vlachs in Macedonia, Czechs in Croatia or Bulgarians in Serbia. The second group are the socially excluded groups, largely confined to Roma (as well as Ashkalia and Egyptians) in the region, characterized by poverty and exclusion from economic and social life of the majority. The third category encompasses larger minorities which are able to sustain their own culture and enjoy kin-state support and have not been part of the conflicts of the 1990s. This primarily includes the Hungarian minority in Serbia. A fourth group of minorities has been directly affected by the conflicts of the 1990s and thus minority-majority relations are often particularly tense. Such communities include Serbs in Croatia and Albanians in Southern Serbia. A fifth community incorporates the minorities which emerged as a result of intra-Yugoslav migrations, such as most Bosniaks/Muslims in Croatia or Macedonians in Serbia. Finally, a sixth group of de facto minorities are state majorities which find themselves in a situation where they live as minority in particular parts of the country. This is particularly the case in Bosnia and Herzegovina.²

As a result of the dissolution of Yugoslavia and the ensuing wars, these different minorities in the region have been facing a number of challenges in addition to the problems commonly experienced in other countries in Central and Eastern Europe, such the transition to democratic governance and rule of law, 'nationalizing states' and limited financial resources. The

¹ While the term 'Western Balkans' is problematic, it shall be used here to describe the countries of former Yugoslavia (without Slovenia). The term usually also includes Albania, but as Albania did not share the Yugoslav experience and the problems of state dissolution and ensuing conflict, it has been omitted from this report. The countries share the prospect of EU membership and experiences of state collapse and weak statehood during the 1990s.

² For an overview over the state of minorities in the Balkans, see Florian Bieber, "Interethnic Relations in the Contemporary Balkans," *Southeastern Europe*, Vol. 31/32.

particular challenges include a) displacement; b) citizenship issues; c) legacies of interethnic distrust; d) recognition of “new” minorities”; and e) post-conflict reconstruction.

In terms of displacement, millions have become refugees and Internally Displaced Persons (IDPs) been displaced across the region—half of the population of Bosnia and Herzegovina and Kosovo and more than 10% of the population of Macedonia and Croatia. In 2008, still nearly half a million citizens, mostly from minority communities, live in the region as refugees and IDPs.³ Displacement has had multiple effects on minority rights across the region. Firstly, the demographic balance in the areas origin of refugees and IDPs has been, often irreversibly, changed. Secondly, the refugees and IDPs, often unable or unwilling to return, have also altered the demographic balance in their new places of residence, such as in Vojvodina. The refugees and IDPs often face double marginalization as minority and as displaced person. In particular displaced Roma across the region have often become the most marginalized community. Closely linked with displacement have been citizenship issues. As with the other state dissolutions (Czechoslovakia, USSR) in Central and Eastern Europe, some communities have lost access to citizenship of one of the successor states. While this challenge has been less than for example in the Baltic States, citizenship and documentation has affected particularly displaced Roma, which often lack or lost their proof of citizenship. Another particularity of the region has been the high degree of interethnic tensions and ethnic distance as a result of the conflict. Studies from the 1980s have consistently shown that citizens the most diverse regions (except Kosovo) in Yugoslavia displayed the highest level of interethnic tolerance. However, the conflicts have resulted in often extensive segregation⁴ and distrust. In addition to increased territorial fragmentation, institutions, especially schools, are often ethnically divided and thus perpetuate segregation.⁵ Another feature of the dissolution of Yugoslavia has been the emergence of ‘new’ minorities which were members of one of the Yugoslav nations which became minorities in the new states. These minorities often did not receive recognition until more than 10 years of the dissolution of the state. Furthermore, there have been delays with the recognition of the minority languages. The recognition of Bosnian as the language of Bosniaks has been challenging in the Sandžak region of Serbia and Montenegro. In both countries the language was occasionally recognized as Bosniak, a name with which the minority does not identify.⁶ Finally, the conflicts and the slow post-war reconstruction have placed a particular burden on the region in terms of economic opportunities for minorities. Limited economic opportunities in post-conflict region and explicit or implicit discrimination of minorities have often prevented refugee and IDP returns and solidified the marginal position of minorities.⁷

³ UNHCR, *Estimates of Refugees and Displaced Persons still seeking solutions in South-Eastern Europe*, 2008. Available at:

[http://www.reliefweb.int/rw/fullMaps_Eu.nsf/luFullMap/EBEA770098B0B628C12574900036510A/\\$File/unhcr_IDP_eur080331.pdf?OpenElement](http://www.reliefweb.int/rw/fullMaps_Eu.nsf/luFullMap/EBEA770098B0B628C12574900036510A/$File/unhcr_IDP_eur080331.pdf?OpenElement)

⁴ In 1991 only 10 of 109 municipalities had a majority of one group larger than 90%, while in 2007, there are less than 10 municipalities with a share of the second larger group exceeding 10% (i.e. Brčko, Mostar, Sarajevo Centre, Tuzla and Livno). Savezni zavod za statistiku, *Popis 1991*. Belgrade 1998; Independent, *Alternative Report, Bosnia and Herzegovina*, 2008, p. 13.

⁵ This is particularly the case in Federation of Bosnia and Herzegovina with the concept of ‘two schools under one roof’, the parallel education system in Kosovo. However, less pronounced forms of segregations also exist in Macedonia, Serbia and Croatia. Kosovo, Advisory Committee, ACFC/OP/I(2005)004, 2.3.2006, p. 26; Bosnia and Herzegovina, Advisory Committee, ACFC/INF/OP/I(2005)003, 11.5.2005, p. 25-26.

⁶ Serbia and Montenegro, Advisory Committee, ACFC/INF/OP/I(2004)002, 27.11.2003, p. 21.

⁷ Croatia, Advisory Committee, ACFC/INF/OP/II(2004)002, 13.4.2005, p. 7.

Against this backdrop, the countries of region have ratified the FCNM and enacted mostly comprehensive minority legislation over the past decade. As this report will highlight, the evolution of minority rights during this period in light of the FCNM has been gradual and not without setbacks. In particular, a large gap has emerged between declaratory (and legal commitments) and reality experienced by minorities.

2. The FCNM and the Minority Rights Infrastructure

The countries of the Western Balkans have generally been latecomers to the FCNM. Although some countries committed themselves to the FCNM in a declaratory and unilateral fashion, such as Federal Republic of Yugoslavia in 1998 or Bosnia and Herzegovina in its Dayton Constitution in 1995⁸, the countries of the region only began implementing the FCNM after 2000 (with the partial exception of Croatia). This delay in comparison with other European countries is best understood from the fact that some countries were struggling with their internal stability (Macedonia, Bosnia and Herzegovina) and/or authoritarian regimes (Croatia, Serbia), putting the FCNM low on the list of priorities. Even once the FCNM has come into force, there have been significant delays in the receipt of the first state reports, ranging up to four years.

	Entry into Force	First Report	Second State Report
Bosnia-Herzegovina	2000	2004	2007
Croatia	1998	1999	2004
Kosovo	2004	2005	
Macedonia	1998	2003	2006
Montenegro	2006 (2001)	2007	
Serbia	2001	2002	2008

Table 1: The State of FCNM and the reporting cycle in the Western Balkans⁹

The ratification of the FCNM occurred in parallel with the development of a sophisticated infrastructure of institutions and comprehensive minority laws.¹⁰ In the field of minority rights, the FCNM has arguably the most important international instrument. While the OSCE High Commissioner on National Minorities has been active in some countries (esp. Macedonia), the HCNM has not had the infrastructure to address the minority issues in the region

⁸ According to Annex I of the Constitution of Bosnia and Herzegovina (Annex 4, General Framework Agreement for Peace in Bosnia and Herzegovina, 1995), the FCNM (and 14 other international human rights treaties) was to be directly applied in Bosnia. However, this was without much practical meaning before the formal entry into force in 2000. Similarly FRY declaration to implement the FCNM 1998 was largely a political ploy without consequence.

⁹ The FCNM came into force in Montenegro in 2001 as part of the FRY. After its declaration of independence the Council of Europe's Council of Ministers that Montenegro was a signatory or party to the open convention, allowing it to become party to the FCNM prior to full membership in the Council of Europe in 2007. Kosovo is party to the FCNM under a special monitoring regime, due to the lack of recognition as an independent country by the CoE. This report focuses primarily on the Opinions of the Advisory Committee for the 2nd reporting cycle, as far as these are available.

¹⁰ In Serbia the 2001 Federal law on national minorities remains in effect and its substance has largely been transferred to the 2006 constitution.

comprehensively. The EU has been effective in advancing minority rights in the context of the Stabilization and Association Process (SAP), as well be discussed below, but had to rely on the standards set out in the FCNM.

The opinions of the Advisory Committee and also the Resolutions of the Council of Ministers on the implementation of the FCNM in the Western Balkans and indeed more broadly focus on five aspects: Firstly, they relate to information, i.e. the degree to which information on the state of minorities is available, especially in the case of Bosnia and Herzegovina and Kosovo.¹¹ Secondly, comments examine the legal infrastructure for minority rights. Third, the Advisory Committee and the Council of Ministers consider the implementation of laws and policies. Fourth, comments relate to the degree to which minorities are participating in the implementation of minority rights and political decision-making processes more broadly. Finally, comments relate to the degree which institutions discriminate against minorities or to which degree the state is attempting to prevent discrimination.¹² These five components provide for a comprehensive map of the degree to which minority rights have been implemented across the region in key fields of minorities (such as education, cultures, etc.) and to which degree minorities have been included in the countries political process and administrative structure. Less the focus of the reports, but also significant, is the social context that frames the government policies (and is in turn shaped by the policies of government). Here we will focus on three of these aspects which are of particular significance; the legal framework, their implementation and the nature of minority participation.

3. The Emerging Legal Frameworks

After minority rights were often unregulated or the laws were highly inadequate during the 1990s, there has been a wave of new minority laws since 2002 in the Western Balkans. During the 1990s, the lack of laws and nationalist constitutions compounded the already vulnerable position of minorities across most of the region. Especially “new minorities” arising from the dissolution of Yugoslavia (i.e. Muslims/Bosniaks in Serbia and Croatia) were not or only partially recognized and thus could not enjoy full recognition.¹³ The legislative activity coincided with the taking of power of reformist governments and the ratification of the FCNM across the region. In 2002, both Croatia and the Federal Republic of Yugoslavia passed new liberal legislation on minority rights. The Yugoslav law remained in force during the State Union of Serbia and Montenegro and remained in force in Serbia after the Montenegrin declaration of independence in 2006. In 2003, Bosnia-Herzegovina similarly passed a law on national minorities, rapidly followed by a specific minority law in the Serb Republic in 2004. In 2006, shortly before the referendum on independence, Montenegro passed its minority law. Although parts relating to the political representation of the law were declared unconstitutional and suspended by the Constitutional Court in the same year, the law remains in force. Kosovo

¹¹ In the case of Bosnia, this relates to the lack of information from the entities and absence of census data since 1991. Bosnia and Herzegovina, Advisory Committee, ACFC/INF/OP/I(2005)003, 11.5.2005, p. 5-7. In Kosovo, similarly the main information deficit arises from the fact that no reliable census has been held since 1981. Kosovo, Advisory Committee, ACFC/OP/I(2005)004, 2.3.2006, p.12.

¹² While the countries have advanced minority rights laws, the anti-discrimination legislation has often been lacking, despite it being an explicit condition of the EU. See Macedonia, Resolution CM/ResCMN(2008)6, 9.7.2008; Croatia, Advisory Committee, ACFC/INF/OP/II(2004)002, 13.4.2005, p. 7; Bosnia and Herzegovina, Advisory Committee, ACFC/INF/OP/I(2005)003, 11.5.2005, p. 12.

¹³ This extended in particular to language rights, arguably a difficult field due to the proximity of Bosnian, Croatian, Serbian and Montenegrin languages.

passed a minority law in March 2008, shortly after the declaration of independence. Macedonia finally followed in July 2008 with a law on communities other than the Albanian community.¹⁴

In addition to these comprehensive minority laws, a number of countries significantly improved the constitutional framework for minority rights. Already in 2002, the entities of Bosnia-Herzegovina had to amend their constitutions to provide for more inclusion to the non-dominant ‘constituent’ nations. Similarly, Macedonia has been adjusting its constitution since the signing of the Ohrid Agreement in 2001 to incorporate greater rights for minorities, in particular the Albanian community. The State Union of Serbia and Montenegro adopted an exemplary Charter on Human and Minority Rights and Civil Freedoms, which was abandoned by both states after the dissolution of the State Union. However, the new constitutions in Serbia (2006) and Montenegro (2007) provide for extensive minority rights and incorporate many of the features of the Charter. Similarly, the new constitution for Kosovo, drafted extensively by international legal experts and adopted in June 2008, provides for extensive minority rights protections. The other countries of neighbouring countries—Albania, Bulgaria and Romania—have not seen similarly significant changes in the legal framework during the same time period.

Possibly the country with the most serious problems at the constitutional level is Bosnia and Herzegovina. As the Advisory Committee¹⁵ and the Venice Commission¹⁶ have noted, the constitution discriminates against minorities and members of the ‘constituent people’ living in the entity where they do not dominate by reserving certain seats exclusively for Serbs from the Serb Republic and Croats and Bosniaks from the Federation. Efforts to reduce some of the discriminatory practices and rigid quotas failed in 2006 after a constitutional reform package narrowly missed the necessary majority in parliament.

Country	Name	Year of Adoption
Bosnia-Herzegovina	Law on the Protection of Rights of Members of National Minorities	2003
Croatia	Constitutional Law on the Rights of Minorities	2002
Kosovo	Law on The Protection and Promotion of the Rights of Communities and their Members in Republic of Kosovo	2008
Macedonia	Law on the Advancement and Protection of Members of Communities which are smaller than 20% of the Population of Macedonia	2008
Montenegro	Law on Minority Rights and Freedoms	2006
Serbia	Law on the Protection of Rights and Freedoms of National Minorities	2002

¹⁴ The Macedonian law is primarily focused on the establishment of a specialised agency for communities, rather than comprehensively laying out minority rights.

¹⁵ Bosnia and Herzegovina, Advisory Committee, ACFC/INF/OP/I(2005)003, 11.5.2005.

¹⁶ Venice Commission (European Commission for Democracy through Law), Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative, CDL-AD (2005) 004, 11 March 2005.

	Charter of Human and Minority Rights and Civil Freedoms	2003-2006
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Table 2: Key Minority Rights Laws in the Western Balkans

The new legislation in Croatia, Serbia, Montenegro, Bosnia and Herzegovina and Kosovo is closely modeled on the FCNM and frequently draws on the relatively progressive Hungarian minority law of 1993. As such, the legal framework in most countries of the region is at first glance exemplary. In particular, all five above-mentioned laws do not only secure minority rights, but also recognize collective minority rights and establish innovative forms of minority participation in the form of minority councils which have a degree of self-government in the domains affecting communities. As such, the laws extend beyond a narrow understanding of minority rights limited to minority language, culture, education and media, by affirming the collective nature of minority rights (in addition to the individual rights and need for protection from discrimination) and acknowledge the need to involve minorities themselves in the implementation of these laws.

While a comprehensive minority law is neither a stringent requirement of the FCNM or any other international legal instrument, nor for accession to the EU or the Council of Europe, this has been the dominant approach in the region. Such a general minority law offers the advantage of focusing the core minority rights provisions into one document and thus making minority rights more accessible to minority communities and allowing for an integrated approach towards minorities. At the same time, the minority laws require significant follow-up legislation in the particular areas affected by the new provisions, such as education. It is here, where the greatest gaps in legislation can be identified. In particular the Yugoslav and the Bosnia law are framework laws, setting out just basic principles underpinning minority rights in the two countries, requiring the entities in the case of Bosnia and the republics in the Yugoslav case to provide for detailed legal instruments to translate these laws into practice. Serbia has not passed any comprehensive follow-up law in the broader field of minority rights and the incorporation of the principles of the minority law into other legislation has been haphazard at best. Montenegro altogether failed to implement the law until its independence. In Bosnia and Herzegovina, the follow up legislation has similarly not been passed in the Federation, after a draft law failed in parliament in 2006. In the Serb Republic a law was passed already in 2004.¹⁷

The constitutional and highest legal framework for the protection of minorities in the region is thus generally speaking more than adequate. In fact, the laws might at times be too ambitious for the means and commitments of the countries.

4. Good Law, Slow or No Implementation?

As noted above, the minority laws in the region have largely had a framework and broad character. The follow-up legislation to provide for specific regulations has been slow and inconsistent. In particular in Serbia and Bosnia and Herzegovina the ambitious framework laws have not found their legal implementation. Beyond the lack of follow-up legislation, a key

¹⁷ Independent, *Alternative Report, Bosnia and Herzegovina*, 2008, p. 14.

obstacle in securing minority rights and translating the FCNM into practice has been the lack of implementation of existing laws.¹⁸

This fragile and tentative progress suggests that change is only partly driven by local actors. International pressure through the Council of Europe and the monitoring of the EU has yielded some legal advances, but often reversals cannot be prevented. This trend suggests that international minority rights conditionality is limited, especially considering other issues, such as cooperation with the ICTY and other larger political discussions—such as the status of Kosovo or independence for Montenegro—might cancel out the effects of minority rights conditionality.

A number of factors have caused the delays in the implementation of the new minority rights frameworks in the region:

First, the new laws have been at times very ambitious considering the country's financial and political environment, such as the minority law in Bosnia-Herzegovina. In other cases, the laws have been vague and require more detailed legislation to fill the framework, as has been the case with the Federal law in Serbia and Montenegro. Consequently, more concrete and less ambitious laws might actually be more adequate.

Second, there is a general delay in most countries in the region in regard to the implementation of reform legislation. This is due to the limited capacities of the public administrations and the often instable parliaments which can delay the passing of necessary regulations. It would thus be misleading to assume that the causes for the delay in minority rights-related legislation are unique to this particular field of legislation.

Third, there has been considerable reluctance of governments to implement the existing minority rights frameworks. The legislation was in most cases part of a local consultative process, but largely based on the international obligations of the countries. Especially the post-conflict states, which had to address their legacy of nationalist authoritarianism, were pressured by the EU, OSCE and other key international organizations to adjust the minority rights framework. After the passing of the law, there has been a limited sense of ownership by governments in these countries to further pursue their implementation. This neglect should be primarily attributed the lack of interest in minority rights by governments in the region, rather than outright opposition to the legislation. This lack of interest is borne out of three reasons. First, other reform initiatives have received higher priorities and reformist political parties have been more interested in investing their energy in fields of economic reform. Second, a number of the minority rights provisions have significant costs associated, such as state funding for minority councils and education in minority languages. Considering the shortage of funds, financial means are only reluctantly allocated to minority rights based needs. Finally, nationalist reflexes often let minority-based concerns be disadvantaged over other funding priorities.

¹⁸ For example, in Kosovo, the government frequently does not communicate with municipalities in minority languages, even though it is obliged to do so according to the Law on the Use of Languages. Personal communication with officials in the municipalities of Dragash/Dragaš, July 2008 and OSCE Mission in Kosovo, *Implementation of the Law on the Use of Languages by Kosovo Municipalities*, June 2008.

5. Forms of Minority Participation

A third relevant feature of the implementation of the FCNM in the Western Balkans has been the participation of minorities. Here we can distinguish between the participation of minorities in the process of translating the FCNM into legislation and the tools which secure the continuous inclusion of minorities into the political system.¹⁹ Although the degree of inclusion of minorities in the drafting of minority legislation does receive some attention in the opinions of the Advisory Committee,²⁰ it is not a central feature, while the long term mechanisms for the inclusion of minorities in public life is subject of the attention of the Advisory Committee and also other monitors of minorities rights in the Western Balkans.

Minorities have often not or only inadequately include in the process of drafting minority legislation. This is, however, not a specific feature of minority policies, but rather of a common lack of appreciation of governments and parliaments for a broader process of law making which consults extensively with stakeholders. This is compounded by the fact that comprehensive minority legislation often appears to be inspired, at least in part, by motives beyond the advancement of minority rights themselves. For example, the rushed passing of the Minority Law in Montenegro in May 2006 appears to be linked to securing minority support for independence in the referendum a few days later, rather than minority rights themselves. The Kosovo minority law similarly appears to have been motivated by the need to secure international support for the declaration of independence. Often legal projects in the field of minority rights lack adequate governmental support and fail to be placed on the parliamentary agenda and lack inclusion of all relevant minorities.²¹ While some laws, like the Federal Yugoslav law and the Croatia law did include consultations with minority representatives, the overall record is sobering. It reflects the lack of commitment of governments to prioritize minority rights and often the low capacity of minority institutions and organizations to effectively move this process forward.

In contrast to the limited inclusiveness in the legislation of minority rights, the new laws foresee a rich infrastructure of minority rights institutions which include strong minority voices. In terms of these institutions, we can identify six types which are widely found (at least in the text of the laws) in the Western Balkans:

1. Specialized agencies (often ministries) responsible for the implementation and monitoring of minority rights;
2. Ombudsperson institutions with specific competences in the field of minority rights;
3. Elected minority councils which enjoy varying degrees of cultural autonomy;
4. Consultative councils including all minority groups which provide advice to the executive on minority issues;
5. Representation of minorities in parliament; and
6. Specialized bodies at the municipal level to address minority issues.

¹⁹ Furthermore the Advisory Committee has criticized the lack of consultation with minorities during the drafting process of the state report, in particular in case of the UNMIK report for Kosovo, Advisory Committee, ACFC/OP/I(2005)004, 2.3.2006, p. 7.

²⁰ See for example Bosnia and Herzegovina, Advisory Committee, ACFC/INF/OP/I(2005)003, 11.5.2005, p. 17.

²¹ This has been the case of a number of follow-up laws in Serbia (i.e. Law on Councils of National Minorities) and Montenegro.

This rich institutional scene is based both on a rich institutional tradition in regard to group rights and the particular needs of the post-conflict region. As with the legal norms, the effectiveness of these institutions, however, has varied greatly.

All countries under consideration have established a specific ministry or institution responsible for Minority Rights. In some cases (Serbia, Bosnia and Herzegovina), minority rights were part of human rights more broadly, while in others (Montenegro, Kosovo, Croatia), the institution was specifically in charge of minority issues. In addition to co-ordinating minority rights policies across different line ministries, the creation of a specific institution was often a political signal of the government to highlight its commitment to minority rights. However, frequently the ministries lacked the competences and capacity to genuinely advance minority rights. In fact, in some circumstances, it might have actually been an obstacle to the advancement of minority rights, as other ministries ‘delegated’ the responsibility for minority rights to a ministry or office with limited means.

Country	Name
Bosnia-Herzegovina	Ministry for Human Rights and Refugees, 2000-
Croatia	Office for National Minorities of the Government
Kosovo	Ministry for Communities and Returns, 2001- Office for Communities, Office of the Prime Minister, 2008-
Macedonia	Agency for the Attainment of Community Rights, 2008-
Montenegro	Ministry for the Protection of Minority Rights, 1998-2006 Ministry of Human Rights and Minority Protection, 2006-
Serbia	Federal Ministry for Ethnic and National Minorities, 2000-2003 Federal Ministry for Human and minority Rights, 2003-2006 Service for Human and Minority Rights, 2006-2008 Ministry for Human and Minority Rights, 2008- Secretariat for Regulations, Administration and National Minorities (Vojvodina)

Table 3: Key Minority Rights Agencies in the Western Balkans

In addition to ministries, ombudsperson bodies have become a key institution with a special focus on minority rights.²² The ombudspersons across the region have been struggling with establishing their place as an independent and accepted institution by other state institutions. In some cases (Serbia and Kosovo), Ombudspersons have not been named for years, whereas in other cases, facilities are not provided and otherwise there appears to be a limited commitment to the institution. In addition to the state-level ombudspersons, some countries (i.e. Serbia) have also introduced municipal and regional (Vojvodina) ombudspersons. In some cases deputies have been specifically in charge of minority rights (i.e. Vojvodina), whereas elsewhere members from minority communities have held the office (i.e. Macedonia). The effectiveness of this institution for minorities has been restrained by the lack of regional offices in some cases (i.e. in Croatia)²³ and the slow process of nominating deputies responsible

²² The first regional Ombudsman Office was established in Croatia in 1993, followed by Macedonia in 1997, Bosnia and Herzegovina and in Kosovo in 2000, in Vojvodina in 2002, in Montenegro in 2003 and in Serbia in 2007.

²³ Croatia, Advisory Committee, ACFC/INF/OP/II(2004)002, 13.4.2005, p. 15/16.

minority rights.²⁴ Despite these obstacles, the institution has been increasingly accepted by citizens, as evidenced by the number of complaints, including by members of minorities in a number of countries. Furthermore, the ombudspersons have been generally been relatively successful in resolving the complaints they receive.

In addition to institutions responsible for implementing and/or monitoring minority rights, a number of institutions have emerged in the region with the goal of enhancing the participation of minorities. While both ministries and ombudsperson office have included members of minority communities, these do not constitute a systematic form of minority participation. The most explicit form of minority participation have been minority councils, which constitute varying degrees of minority cultural autonomy. Such councils are established in the minority laws of Croatia, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo. These bodies have been struggling, however. Firstly, the election of the councils has been challenging, as has been defining the specific competences and funding of the councils. The Serbian councils, established following the 2002 Federal law, are today de facto illegal as Serbia never passed a law on their election and the original mandate of most councils expired years ago.²⁵ In Bosnia and Herzegovina and Montenegro there have been considerable delays in the formation of the councils. As the councils are not directly elected (except in Croatia), the process of choosing the councils have often been cumbersome and time-consuming.²⁶ Once again, the absence of detailed legislation have rendered the councils in the region largely ineffective.

Closely linked are bodies which serve as consultative institutions for all minorities and often the key interlocutor between state authorities and minorities. While in Montenegro, the Republic Council for the Protection of the Rights of National and Ethnic Minorities has been established by the 1992 constitution, well before the creation of minority councils, these national councils generally bring together representatives from established minority councils. Often linked to the office of the president (Kosovo, Montenegro) or Prime Minister (Serbia), they provide for a high-level channel of communication between the government and minorities. However, exactly this high-level link has limited the effectiveness of the councils in most countries. They have often met only rarely and in the context of particular crisis (as in Serbia in 2004), but mostly lack institutional continuity.

Another form of minority participation in the region has been not through special institutions, but rather through inclusion in parliament. All countries under consideration here, except for Macedonia, have established special rules to secure the inclusion of minorities in parliament. Serbia has abolished the 5% threshold for minority parties in 2004 after no minority party managed to enter parliament in the 2003 elections. In Montenegro, the minority law reserved one seat for minorities amounting to 1-5% of the population and three seats for larger minorities. However, these provisions were declared unconstitutional by the Constitutional

²⁴ In Kosovo Parliament has not elected a permanent Ombudsman since the end of the mandate of the international ombudsman in 2005, preventing the choice of a deputy responsible for minorities. Similarly in Serbia, a deputy Ombudsman for Minority Rights was only confirmed in September 2008.

²⁵ Even the establishment of the councils was problematic as it was based on a Ministerial decree rather than a law, unlike foreseen in the Federal law.

²⁶ In addition, there often been accusations that councils are dominated by one particular political party within the minority. See Florian Bieber, "Minderheitenschutz in Serbien nach Milošević's Sturz," *Südosteuropa*, Vol. 52, No. 1-3 (2003), pp. 50-65.

Court in 2006.²⁷ In Bosnia and Herzegovina, minorities are in fact excluded from one chamber of the state-level parliament, the House of Peoples, which is exclusively reserved for the three constituent people, but minorities have reserved seats in the entity parliaments. However, as the Advisory Committee has pointed out, the ambiguous term ‘Others’ in the Bosnian legal system has meant that seats reserved *inter alia* for minorities have been largely taken by MPs who claim to represent groups not recognized by the constitution or the law on minorities (i.e. Bosnians or Muslims), which are closely linked to majority communities.²⁸ In Croatia, the system of reserved seats for minorities is possibly the most developed in the region, although it curiously groups several minorities together to be represented by one MP alone.²⁹ Most generous has been the representation of minorities in Kosovo, where 20 seats have been reserved for Serb (10) and other smaller minorities (10). Due to the tense Serb-Albanian relations, the Serb deputies have mostly not made use of the seats since 2004, reducing the effectiveness of the reserved seats.³⁰

Final piece of the institutional puzzle in the region can be found at the local level, where most countries, in particular Serbia, Macedonia and Kosovo have established committees in charge of mediating between majorities and minorities.³¹ These councils, mostly with an unclear legal mandate, are charged with monitoring the implementation of minority rights at the local level and responding to interethnic tensions. Some have been able to develop significant activities, others were never established. Due to the absence of central government supervision, the success of these local institutions is largely up to the commitment of local authorities and support by various projects by international organizations and NGOs.

As outlined above, the institutional infrastructure for minority rights is striking complex across the region. In some cases up to four national bodies and dozens of municipal institutions are primarily involved in advancing minority rights. However, there is a string gap between the number and scope of the institutions and their effectiveness. In part, this is a consequence of their relatively recent establishment. In addition, the implementation of laws and the establishment of new institutions have been generally slow. In addition, particular problems can be identified in the context of minority rights. The advances in the field of minority rights by governments in the region have often been reactive, rather than strategic. Consequently, the reforms often lack a comprehensive legal basis, adequate funding and the political will to establish the necessary bodies.

6. EU Integration and the FCNM

The Western Balkans have been particular in terms of the wide-spread ratification of the FCNM. Every country of the region has ratified and implemented the convention to varying

²⁷ Montenegro, State Report, June 2007, p. 64. The new 2007 constitution appears not to conflict with this provision and the ministry apparently seeks to amend the law to allow for the reserved seats to be established, but so far no amendments to the law have been passed.

²⁸ Bosnia and Herzegovina, Advisory Committee, ACFC/INF/OP/I(2005)003, 11.5.2005, p. 29.

²⁹ Croatia, Advisory Committee, ACFC/INF/OP/II(2004)002, 13.4.2005, p. 33. The advisory committee has not generally criticized the measure.

³⁰ For more on this topic see Florian Bieber, “Regulating Minority Parties in Central and Southeastern Europe,” Ben Reilly, Per Norlund (eds), *Political Parties in Conflict-Prone Societies* (Tokyo: UN Press, 2008).

³¹ The Croatian minority law establishes local minority councils in multiethnic municipalities which are forms of local minority self-government, similar to the Hungarian model, rather than interethnic bodies. See Art. 23/24, *Ustavni zakon o pravima nacionalnih manjina*, 19.12.2002.

degrees.³² The regional coverage of the FCNM sets it apart from other parts of Europe. In part, the universal acceptance of the FCNM in the Western Balkans can be explained by the legacy of minority rights in former Yugoslavia, which saw all of the successor states willing to accept, at least formally, international minority rights instruments. A second feature is clearly the European Union. As the countries of the region have been, at least since 2000, aspiring to EU membership, the FCNM has benefited from the EU's Copenhagen Criteria. In the absence of the EU's own minority standards or *acquis* in this area, it has relied extensively on the FCNM and its monitoring mechanisms to measure the advancement of the potential member states in the field of minority rights. Both the ratification and the implementation of the FCNM have become an integral part of the EU accession requirements, which have already been tried in the case of the first and second Eastern enlargement of the EU in 2004 and 2007.

There are three advantages to the EU integrating the FCNM in its assessment of candidate countries: 1. It provides pressure on countries otherwise reluctant to ratify the FCNM, where they otherwise might find it easy to avoid it; 2. The annual progress report allow for more frequent identification and monitoring of minority rights problems in the countries in question; 3. If a country is making insufficient progress in the field of minority rights, the EU is able to exert pressure to secure advances in the particular area, whereas the means of the CoE are considerably more restricted. Despite these advantages, scholars and observers have also noted a number of inadequacies in this symbiotic relationship. In particular in regard to the monitoring of the Eastern Enlargement of the EU, the coverage of minority rights in the progress reports of the European Commission and the insistence on the respect of minority rights by the EU has been often haphazard and inconsistent.³³ This weakness in regard to the previous enlargement has been partly overcome in recent years. The information gathering mechanisms of the EU and the consultative processes with minorities and NGOs has significantly improved. Nevertheless, the section in Progress Reports for the countries of the Western Balkans devoted to Minority Rights remains relatively short. Furthermore, the absence of any minority rights protection within the EU means that current member states have no particular obligations in the field. This discrepancy is particularly visible in the Balkans where Greece is not only not party to the FCNM, but also has violated minority rights extensively. Consequently, the insistence of minority rights by the EU have often been described as double standards and not based on universally applied principles.³⁴ This gap has arguably had negative repercussions on minority rights in general and their understanding as an integral part of universal human rights. The strategy of the EU to overcome this credibility gap has been to advance human and minority rights first in the constitution and later in the Lisbon Treaty. The uncertain future of the Lisbon Treaty, however, casts some doubt on whether higher human and minority rights standards will form part of the international organization of the union any time soon. A second response has been to insure that the minority rights protection mechanisms in

³² Furthermore, only Macedonia has made an declaration in regard to the FCNM. See <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=8&DF=08/02/05&CL=ENG&VL=1>.

³³ James Hughes and Gwen Sasse, "Monitoring the Monitors: EU Enlargement Conditionality and Minority Protection in the CEECs," *Journal of Ethnopolitics and Minority Issues in Europe*, no. 1 (2003), pp. 1-36.

³⁴ Snježana Bokulić, Galina Kostadinova, "Pushing for Change? South East Europe's Minorities in the EU Progress Reports," *MRG Report* 2008, p. 6.

the accession countries reaches a ‘point of no-return’ where a reduction of existing rights is difficult, if not impossible.³⁵

Finally, the European Commission has been the arbiter of the implementation of minority rights in candidate countries, rather than the Council of Europe. While the FCNM as a treaty and the outputs of the reporting mechanisms have been incorporated into the assessment of the countries’ progress towards accession, it has been the Commission which judges advances in minority rights, and which might also subordinate the implementation of minority rights to other political considerations. Unlike, for example, the ICTY which has been reporting on the degree of the country’s cooperation with the tribunal, the CoE does not hold such a position.³⁶

As the significance of minority rights is clearly understood in the context of stability in the Western Balkans, minority rights are bound to receive greater attention than during the previous enlargement. In addition, the enlargement towards Bulgaria and Romania has generally discredited pre-mature accession without the consolidation of key reforms, which doubtlessly will have repercussions on minority rights as well.

Minority Rights and the FCNM have thus been more effectively integrated into the EU strategy towards the Western Balkans. Nevertheless, the FCNM and the EU will remain uneasy bedfellows as the commitment towards minority within the EU continues to be uneven. Furthermore, the long reporting cycles of the FCNM renders the information gathered in its framework on partially and occasionally relevant for the EU, which monitors countries on a more regular basis.³⁷ With the monitoring of the FCNM being a process of implementation international law and the EU accession being an inherently political process, tensions between the two remain inevitable.

7. Conclusions

The FCNM has been part of the broad international and European human rights instruments and other obligations which have instrumental in advancing democratic reforms and the rule of law in the countries of the Western Balkans. All of the countries under discussion here have ratified the FCNM and passed new laws largely in line with the convention. Today, few political forces, even among extreme nationalist forces, would deny minority rights. While elsewhere in Europe minority rights in general, collective rights in particular, have been highly controversial, they have been widely accepted in the Western Balkans. This might appear counterintuitive in the context of the violence of the 1990s, but is understandable in the context of advanced group rights in Socialist Yugoslavia. Furthermore, the conflicts of the 1990s were not about states denying the existence of minorities, but rather over groups not being satisfied being classified as minorities, rather than nations. The source of contention was becoming a minority, rather than being denied recognition as a minority.³⁸ Thus, only few conflicts could be mitigated through minority rights. Still, a number of groups which would not identify

³⁵ Interview with EC officials, September 2008.

³⁶ The ability of the ICTY to determine cooperation has been controversial and the final decision on the insistence of this condition rests with the Council of Ministers of the EU.

³⁷ Interview with EC officials, September 2008.

³⁸ Dejan Jović, “Fear of becoming *minority* as a motivator of conflict in the former Yugoslavia,” *Balkanologie*, Vol. 5, No. 1-2 (2001). Available: <http://balkanologie.revues.org/index674.html>.

themselves as minorities (Bosniaks in the Serb Republic, Albanians in Macedonia) have or can benefit from minority rights provisions.³⁹

The state of minority rights protection across the region is uneven, with some countries (Croatia) and regions (Vojvodina) boasting a well-developed legal framework and serious commitment by the authorities, including funding.⁴⁰ In other cases, minorities have experienced an institutional and/or legal vacuum (i.e. Bosnia and Herzegovina and Serbia). In addition to the challenges of the implementation of laws and establishment of institutions, the existing minority rights often 'trickle down' to the minority communities only slowly or not at all. Especially in post-conflict regions of Croatia, Bosnia and Herzegovina and Kosovo, the lack of economic opportunities and perceived and real interethnic tensions have undermined many minority rights provisions. Here, the main obstacle for international human rights instruments to advance the state of minorities is the fact that the state needs to change the social environment rather than 'only' preventing discrimination or advancing particular minority provisions.

An unintended consequence of the complex minority rights infrastructure which has emerged in recent years is the inability of the state to monitor the implementation of its laws. As many competences have been shifted to municipalities with limited means and capacities and often no political will, neither international organizations nor states are able to ensure that minorities benefit from the principles enshrined in the FCNM and the laws of the country. This gap can be filled by civil society, but in many regions, NGOs and minority associations lack the capacity and channels of communication to monitor the implementation of minority rights.

The first half of the 2000s was a period of legislation, when new minority laws were crafted. Currently, the main challenge in terms of the implementation of the FCNM in the region is the implementation of existing commitments and the adjustment of legal frameworks in light of the experience. As EU accession is become a more real prospect for most countries in the region, the effect of EU conditionality in the field of minority rights might improve. Despite these perspectives, there is space for set-backs. Especially in regions where the gap between reality and law is particularly striking, as in Kosovo, and where minority rights has been instrumentalised in the political disputes between ethnic groups, as in Macedonia, minority rights might fall victim to the lack of political commitment.

³⁹ Bosnia and Herzegovina, Advisory Committee, ACFC/INF/OP/I(2005)003, 11.5.2005, p. 11.

¶ The Croatian government provided approx. 1 Mio. € to all national minorities in assistance in 2006, a number significantly higher than that of all countries under consideration here. Ured za nacionalne manjine Vlade Republike Hrvatske, *Nacrt izvješća o provođenju ustavnog zakona o pravima nacionalnih manjina i utrošku sredstava osiguranih u državnom proračunu Republika Hrvatske za 2006. Godine za potrebe nacionalnih manjina*, Zagreb, 2007, p. 140.