

Practical Issues Related to the Monitoring Mechanism

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1. Monitoring as an ongoing process of partnership

Several procedural and material aspects of the monitoring process of the Framework Convention for the Protection of National Minorities (FCNM) have been discussed in the previous presentations. To round up the picture, it is now essential to deal with some of the most recurring practical problems of the monitoring. Technical issues might be seen as details and they certainly are, but can also greatly contribute to the advancement of the dialogue between the Advisory Committee (ACFC), the State Parties and other stakeholders. Monitoring in fact is not to be seen as an examination or as a unilateral process whereby the ACFC evaluates the States, but rather as a permanent dialogue, which continues in between reporting and extends far beyond the mere drafting of the opinion every five years.

From the perspective of the ACFC, monitoring the FCNM implies a permanent partnership between the Council of Europe, the State Parties, the Non-Governmental Organizations (NGOs) and other independent sources. Each of these actors plays a more or less dominant role at a different stage in the monitoring process, but all should aim at improving the protection of the rights of persons belonging to national minorities and thus to the living conditions and the overall societal integration in the concerned countries.

Against this background, monitoring consists of several steps, all connected to one another and all requiring mutual cooperation of the involved actors.

The *first* step consists in *drafting the State report*. While this is primarily a task of the State authorities, it also requires cooperation with other actors involved. In particular, the

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Committee of Ministers of the Council of Europe (upon proposal by the ACFC) prepares an outline for State reports, in order to advise the State parties on the issues of main interest for each particular cycle of monitoring, as these obviously change and evolve over time. Furthermore, State Parties have to consult with non-state actors in order to come up with a comprehensive and possibly shared report, which facilitates both the examination by the ACFC and the implementation of the recommendations.

The *second* step is the *submission of the report* – which in some case takes unfortunately longer than expected¹. The State Report is formally submitted to the Secretary General of the Council of Europe, who transmits it both to the Committee of Ministers and the ACFC. It is made public on the Council of Europe's website immediately upon receipt. The report is examined by the ACFC and the Committee often requests additional information from the State, as provided by article 25 al. 2 FCNM. The ACFC often receives shadow reports by interested actors, NGOs, minority representatives and the like: such reports are sometimes quite useful as they complement the information provided by the State authorities. At the same time, their amount often proves evidence of an insufficient involvement and cooperation at the domestic level in the preparation of the report.

The *third* phase is the *country visit* by a delegation of the ACFC accompanied by one member of the Secretariat. In exceptional circumstances (essentially in very small countries) the monitoring can take place based only on the State report, but this practice considerably limits the possibility for the ACFC to fully understand the situation in that particular country and is thus in first place against the interest of the country concerned. The Committee of Ministers can also exceptionally ask for an ad hoc monitoring in one particular country in between reporting periods if specific circumstances so require, but this has not been the case so far.

After examination of the report (as well as of any other relevant document) and the visit on the ground, the ACFC *drafts the opinion*, which is collectively examined and adopted (nearly always unanimously) in one of the three plenary sessions the ACFC holds each

¹ Most States are either very punctual or limit the delay within 6-8 months. In some case, when delay in submission exceeds one year, the Secretary General writes a letter and if delay persists, the ACFC can decide to start monitoring in absence of the State Report.

year. In this regard, a major procedural improvement has been adopted in 2010: the opinion is now automatically published after four months since its adoption, irrespective of whether the Committee of Ministers has adopted the respective resolution or not. In the past, there has been a couple of cases in which controversies between countries stopped the adoption of the resolution and thus prevented the opinion from being published in due time. It must be recalled, however, that the opinion is sent to the State party concerned immediately after its adoption, and the State can (and is in fact encouraged to) publish it also immediately, as some states in fact do. The ACFC always welcomes when the opinion is translated not only into the official language(s) of the country, but also into minority languages, which helps a wider dissemination and a better understanding within the country.

The *fifth* formal step of the monitoring process is the submission of the *comments* to the opinion by the State authorities. These are of great importance as they contribute to a constructive dialogue between the ACFC and the countries. For this reason, the involvement of NGOs, minority representatives and other stakeholders also in preparing the comments is important and is always encouraged by the ACFC, even if it happens too rarely. The commenting stage should however not be seen as a formality or as a defensive exercise. Rather, it is an essential step of the dialogue, may help the ACFC to better reflect its positions and the States to consider whether some changes in policies directed to minorities are indeed necessary. Not least, comments represent an additional opportunity to involve the stakeholders and to elaborate a shared minority policy in the country concerned.

The *sixth* and legally most important step is the adoption of the *resolution by the Committee of Ministers*. This is in fact, strictly speaking, the only legally binding document of the entire process and it contains the most relevant recommendations to be implemented by the affected country. However, the resolution is the product of all the described steps and does not come as a surprise to the country. Furthermore, it is important that not only the resolution be based on the opinion of the ACFC, but also that the very opinion is made public. While the opinion is formally an advisory report by a committee of independent experts to the political body of the Council of Europe (the Committee of Ministers), it is an elaborated comprehensive document and it is essential

that it is considered as such by the State authorities and that States do not only focus on the prescriptive part of the monitoring represented by the resolution but take the whole reasoning into account.

Finally, but not least, *follow-up activities* (seminars, roundtables, debates, conferences) often take place in the countries, in order to discuss the opinions, the developments after its adoption and to bring together representatives of the ACFC, State authorities and various stakeholders. While not obligatory, follow-ups are of extreme importance in the monitoring process and are warmly encouraged by the ACFC. They can serve not only as an exchange of views on the opinion already adopted, but also as a platform for permanent dialogue and in preparation of the next State report.

Therefore, monitoring is a permanent, ongoing and cooperative process, in which all main actors are involved in each stage of the procedure. If the process is continuous and ongoing, and if the cooperation with stakeholder works well, reporting is a mere written consequence of what already happens in practice. It thus also intends to help States streamline their own processes when dealing with minority issues.

ACFC opinions and the following resolutions of the Committee of Ministers are not only a judgment on the situation in a given country. Rather, they are, in first place, an (authoritative) point of view, at a given moment of time, on the basis of which all those concerned should engage in dialogue with a view to improving the conditions and the rights of persons belonging to national minorities. The international community can only help, but the ultimate solution to a domestic problem has to be found by the State concerned.

2. How to further improve the monitoring process and dialogue?

The monitoring steps described above are partly codified in the FCNM and in the rules of procedure of the ACFC, but in part they have just evolved in practice. Monitoring is in fact also a collective learning process and can constantly be improved as it goes. For this reason, some elements emerging from the practice of three cycles of monitoring should be highlighted as possible inputs for further improvement of the quality of dialogue and cooperation.

A *first* aspect that might be considered is a more structural *assistance by the ACFC in the preparation of the State reports*. Such practice has been already tested in some country and can help both the domestic authorities to prepare a complete and useful report and the ACFC to receive a comprehensive documents that contains all the information needed for a careful assessment. Such practice can also provide an additional opportunity for early exchange of views between the ACFC, the governmental authorities in charge of the reporting and the local stakeholders.

A *second* issue that sometimes is problematic and where permanent cooperation with the ACFC may help is the way to *consult non-State actors* (NGOs, minority representatives, international bodies, etc.). The practice in the various State parties differs greatly in this regard, ranging from no consultation at all to a merely formal consultation as a lip service, from effective consultation whose results are nevertheless not consistently followed up to serious and permanent consultation. There are also different ways in order to include the views of civil society and other stakeholders when they differ from those of the government, such as to include them in an annex to the report.

Third, while the main interlocutor of the ACFC in the monitoring activity is the government and each government is free to decide how to organize its structure, a permanent consultation may help to clearly *identify an institutional interlocutor*, since quite often responsibilities to report under and to implement the FCNM are scattered among several authorities. A better coordination between the involved departments can help the States to provide a more effective and swifter reporting.

Fourth, the ACFC always encourages dialogues and opportunities to *exchange* views also *in between monitoring*. This not only facilitates the reporting by the States, but it also helps the ACFC to be constantly informed about the developments in a given country and to share developments at the level of the Council of Europe. These may include exchange of good practices and updates about important documents relevant to the reporting, such as, in particular, thematic commentaries adopted by the ACFC.

Fifth, cooperation between the ACFC (and the Council of Europe more generally) and the domestic authorities can improve the *dissemination of the monitoring results*. This might include assistance in translating documents such as the thematic commentaries or even

the very opinions, cooperation with universities in organizing seminars and conferences on the rights of persons belonging to minorities, and other activities.

Finally, it is hoped that the practice of follow-up seminars can further spread out and become common in all State parties. Follow-up activities are not only essential and short (usually no longer than one day) opportunities to discuss minority issues in between monitoring to a mutual benefit, but are also the ideal fora where synergies between various monitoring mechanisms (ACFC, the Charter for Regional or Minority Languages, ECRI), domestic authorities and local stakeholders can best and more effectively take place.