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High-level conference

Council of Europe norms and standards on national minority rights: Results and challenges

Strasbourg, 29 June 2021

**Speech by Vello Pettai,
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Madame Secretary General

Mister Minister,

Excellencies,

Ladies and gentlemen,

On behalf of the European Centre for Minority Issues, allow me to thank the Council of Europe and the Hungarian Presidency for your invitation to this high-level conference. Having been founded in 1996 by three governments – that of the Kingdom of Denmark, the Federal Republic of Germany and the Bundesland Schleswig-Holstein, the ECMI sees itself very much as an example of the same kind of multilateral, European institution devoted to minority issues that the Council of Europe's own instruments in this domain represent. Moreover, with the ECMI's Executive Board being comprised of members, who include representatives from the Council of Europe, the European Parliament and the OSCE, we see ourselves as being well placed to contribute to the overall discussion and betterment of minority issues in Europe. It is my sincere honour therefore to share with you some thoughts about two issues on the agenda for today's conference: the situation of minorities and COVID-19, and the results and challenges of the Council of Europe's instruments on the protection of national minorities and their monitoring procedures.

A. COVID-19 and the situation of national minorities

It has already long been recognized that the COVID-19 pandemic has ripped bare many of the underlying weakness of our respective societies. In addition to underscoring socio-economic differences, the pandemic has posed added burdens for minority groups, be they national minorities, immigrant communities or migrant groups. An important research focus of the ECMI has been the so-called securitisation of minorities, meaning ways in which governments and public authorities have unwittingly or sometimes perhaps also wittingly served to frame the dangers and challenges of the pandemic specifically with reference to minority groups.

It is important to stress that the notion of 'securitization' is a multi-layered one, aiming to examine the interaction of several actors at once: public officials and their public pronouncements, the actions by public authorities, and last but not least the way in which these two phenomena are reported on by the news media. Added to these three dimensions is, of course, also the way in which these pronouncements and/or reports are spread on social media. Finally, there is also a reverse-loop effect in which reporting on a certain issue may end up being framed in such a way that it ends up encouraging authorities to impose even more severe policy actions, or xenophobic attitudes among the general public are flared to the point that individuals feel emboldened to undertake their own harassment or persecution of minorities.

Policing is one realm where all of these layers interact. Politicians not only stigmatize minorities in the context of the pandemic, but also authorize intrusive or discriminatory policing operations, which are then reported on by the media, and these then serve to reinforce public perceptions of "problematic minorities". All of this is further magnified, when we speak of migrant centres and refugee situations, where medical conditions are even more complicated and challenged.

It should be noted, however, that the member-states of the Council of Europe do have instruments at their disposal to counteract these tendencies. These include provisions in both the Framework Convention and the European Charter against discrimination vis-à-vis minorities. In particular, this involves the encouragement of tolerance and intercultural dialogue as well as the provision of relevant public health information in minority languages. In other words, it was precisely for these kinds of challenges that the CoE instruments were

generated: not only for the exercise of positive, developmental rights, but also for the protection of rights during periods of strain and challenge.

B. Results and challenges of the FCNM and the ECRML

It is against this *appel* that I will now try and pivot to my second constellation of issues: the results and challenges of the Council's two main minority rights instruments. Here I would like to make four points.

1. NM protection and Diversity management

The first is a general remark about the need to really think about where we are nowadays in the intersection between national minority protection and diversity management more broadly. I refer, of course, to the seeming chasm between the starting point of the Framework Convention and the European Charter in terms of national minority rights and the ever intensifying nature of ethnic and racial diversity in our societies as a whole.

For the most part there are two avenues of departure here. The first is to see in the existing legal instruments a framework for collecting information on and providing input on diversity management issues as a whole. This speaks to the ethos that the existing instruments are 'living' and should be able adapt themselves to evolving circumstances. Alternatively, one might look at the broader challenge of diversity management as something that rests primarily with institutions such as the European Commission against Racism and Intolerance or the Committee on Anti-Discrimination, Diversity, and Inclusion. This would allow a broadening of the notion of a minority to include religious minorities, in particular with respect to their right to the preservation of their religious identities. In such a situation, however, the monitoring of diversity management becomes limited mainly to informational reports as well as norm-setting/bench-marking, but it does not carry the weight of an international accord.

All of these issues are much too complex to be addressed fully here. But I believe that a high-level reflection group would be worthwhile in order to think about where Europe wants to go in the future. How does it see the combined nature of national minority protection and diversity management, say, in 2030? As an institution combining academic research and policy-oriented action, the ECMI would stand ready to undergird such a reflection group.

2. General political environment

As a second point, allow me to take a step yet higher in terms of analytical focus. I noted in my first point that the Council of Europe's legal instruments for the protection of national minorities are facing a strain during the corona pandemic, but that if we adhere to the spirit and strength of these instruments, we will be able to weather the storm.

The same applies to a much broader challenge facing the European body politic and this is the rise of democratic backsliding and even open autocratization in some states of the region. These developments are, of course, outside the scope of our conference today. But I would like to stress that as we seek to assess the challenges facing the Council of Europe's legal instruments moving forward, we have to recognize that we will be dealing not only with the lingering effects of the corona pandemic or even the longer term issues of where we see diversity management in ten years, but also the question of what is the readiness of governments and member-states to safeguard even core tenets of democracy in today's Europe. The spirit of the early 1990s is, alas, no longer as strong as it once was. I would therefore note as a 'challenge' for the future more broadly the safeguarding of the vigor of our contemporary democratic community. The ECMI applauds the work and legacy of the Council of Europe in this regard, and is devoted to helping it continue fulfilling its mission.

3. On the FCNM and the ECRML within the European human rights regime

One of the precipitating occasions for today's conference is the chance to examine current and proposed reforms within the Framework Convention and European Charter. It goes saying that the effects of the Convention's 2019 reforms have yet to be fully appreciated so far. Hence it is difficult to comment on these prospects. However, taking again a bit of a broader perspective, we remain with two salient considerations.

It is imperative – not least because of the intersection of national minority rights and diversity management mentioned earlier – that the Framework Convention and the European Charter help to remain an integral part of the overall CoE legal system and specifically with respect to rights adjudication within the European Court of Human Rights. It is clear that the movement toward fully judiciable minority rights within the CoE legal framework will remain limited. However, the degree to which the Advisory Committee, the Committee of Experts and the Court can together remain in dialogue on how to undergird minority rights will be an important test of the viability of the European minority rights regime. These arguments have been made most trenchantly by Stephanie Berry at the University of Sussex.

4. Digitalization and the ECRML

With regard to the challenges facing specifically the European Charter, I would like to commend the 2019 expert report on “New technologies, new social media and the European Charter for Regional or Minority Languages”. As the report makes clear, the digital revolution is having far-reaching effect on the vitality of regional or minority language media. And while (again) the broad implications of digitalization for the wherewithal of regional or minority languages go beyond the scope of what the European Charter alone can achieve, it has raised very salient questions with regard to the obligations of states signatories to the Charter, when the form of RML media are transformed to such a degree. Aspects of privatization of media through their digitalization as well as how public broadcasters should operate in this context are particularly thought-provoking. The Committee of Experts has, of course, been attuned to some of these changes. But it is no less a continually moving target in terms of interpretation of the Charter and the setting of new norms. The ECMI itself has tackled these issues over the last 12 months with a series of interviews and reports on minority language media in change, and we will be co-hosting a special conference on the issue in Flensburg in October.

I thank you for your kind attention.