

### FCNM: diversity through minority rights

#### Thematic Commentary No.4 on the Scope of Application of the FCNM

The [Framework Convention for the Protection of National Minorities](#) adopted in 1995, in the aftermath of violent conflicts in Europe, is **the only legally binding** international instrument on the rights of persons belonging to national minorities. Its goal is to establish a set of specific rights for persons belonging to national minorities, so that they could participate in the society fully and equally.

At the moment, the Convention has **39 states parties**; and a special monitoring arrangement exists for Kosovo (\*). Belgium, Greece, Iceland and Luxembourg have signed the Convention and thus committed themselves to act in line with its objectives and purpose, but have not ratified it yet; while Andorra, France, Monaco and Turkey have neither signed nor ratified the treaty.

The Framework Convention **does not contain a definition of the term “person belonging to a national minority”**; rather than asking “**who**” should be protected, it asks “**what**” is required to manage diversity most effectively through the protection of minority rights, and to ensure the space for “**being different**” in the society.

The framework character of the Convention requires additional legal instruments at domestic level to make it fully operational.

The purpose of the newly launched Thematic Commentary is to look at how the Advisory Committee interprets the Convention and how the states Parties could best use it.

#### The right to free self-identification – cornerstone of minority rights

Every person must have the right to **identify freely** as a member of a specific group, **or to choose not to do so**. However, identification with a national minority that is motivated solely by the wish to gain particular advantages or benefits, may run counter to the principles of the Convention.

Further, a minority identity **must not be externally imposed**: mandatory recording of ethnicity in identity documents or in administration records, including at the police and healthcare facilities, is contrary to the right to free self-identification. People **should never be obliged to choose between** preserving their **minority** identity and claiming the **majority** culture – they should always have both options. Besides, they should be free to indicate more than one ethnic affiliation (for instance, in the case of mixed families). The choice of affiliating with a minority should be **free of fear of loss in social prestige**.

Participation in the **census and data collection exercises** related to ethnic background must be **voluntary**: no automatic assumptions are to be made based on a person’s name, language or religion. States parties should not exclusively rely on **official statistics**, as they may **not fully reflect reality**: due to the history of past disadvantage,

may persons belonging to national minorities are still unwilling to indicate their ethnic background to any official entity.

## Approaches taken by states parties to the scope of application of FCNM

### How are the beneficiaries of the national minority rights determined?

- In 18 cases, already at the time of ratification, states deposited a list of declarations and reservations to clarify to whom the rights are to be applied via:
  - establishing a set of specific criteria to be met (Austria, Estonia, Latvia, Luxembourg, Poland and Switzerland);
  - explicitly listing the groups to be covered (Albania, Denmark, Germany, the Netherlands, Norway, Sweden, the Slovak Republic, Slovenia and “the former Yugoslav Republic of Macedonia”);
  - stating that there are no national minorities present (Liechtenstein, Luxembourg and San Marino);
  - declaring reservations at the time of signature or ratification (Belgium and Malta).
- Incorporated statements into the first state report or adopted national legislation referring to the groups considered as belonging to national minorities (e.g. Armenia, Bulgaria and Hungary).

### Which criteria do states parties apply, and what is the Committee’s stance?

- **Formal recognition** of a national minority required to access minority rights. The Advisory Committee has **criticised** such approach as exclusionary; but some states have de facto disregarded a formal recognition requirement (e.g. Cyprus including Roma, and Finland including “Old Russians” and newer Russian-speaking arrivals under the protection of the FCNM).
- **Citizenship**: a person belonging to a national minority must be a citizen to access minority rights. The Advisory Committee pointed out that this may have a **restrictive and discriminatory** effect, especially for persons in vulnerable situations displaced by conflicts or those who lost their citizenship or even became stateless due to the creation of new states, despite having long-lasting ties to their places of residence. The Committee **welcomed extending minority rights to non-citizens** (e.g. Czech Republic), and explicitly recommended the more consistent application of minority rights to non-citizens (Latvia).
- **Length of residency** of a particular group in the territory of a state: e.g. “prior to the 20<sup>th</sup> century” (Finland), “approximately 100 years” (Austria), “autochthonous minorities” (Slovenia), “long-lasting ties to a particular region”, including non-residents who want to return to the region (Georgia vis-à-vis Meskhetians and Ossetians). The Advisory Committee considers that the length of residency **should not be considered a determining factor**, any temporal restrictions should be regarded

flexibly, and distinctions in the treatment of otherwise similar groups based solely on the length of their residency can be unjust.

- **Territoriality:** minority rights may only be enjoyed in specific areas. The Advisory Committee argues that such an approach may a priori **exclude some persons** belonging to national minority but living outside such areas. A flexible approach is needed to ensure they are not disproportionately disadvantaged (e.g. Slovak Republic); the Advisory Committee criticised rigid approaches disregarding demographic changes (moving from traditional settlements to urban centres).
- **Substantial numbers** (or “**compact settlement**” as defined by, e.g., Austria, Azerbaijan and Germany). The Advisory Committee acknowledges that it may be more problematic to ensure access to minority rights to persons dispersed throughout the country, but reiterates that **recognition** as national minorities **must not be impeded by numerical criteria**. It has expressed its deep concern when **Roma**, for instance, have been denied protection as a national minority, because they are territorially dispersed and not settled in substantial numbers anywhere in the country (e.g. in the Netherlands).
- **Support by “kin-states”** is required to be considered a ‘national minority’, as opposed to ‘ethnic’ or ‘ethno-linguistic’. The Advisory Committee considers that another state’s support **cannot be used as a relevant point** for recognition or access to rights; creating “hierarchies” of minorities should be avoided. While **welcoming bilateral agreements** to boost cross-border relations via, for instance, textbooks supplies and teachers exchange, it **disapproved** of agreements **outsourcing** fundamental aspects of minority protection to another state.
- **Specific identity markers** (language, religion, culture, ethnic background, traditions, names, visible features) based on common perceptions. The Advisory Committee considers that this entails the **danger or including or excluding individuals** against their will (e.g. in the UK, the over-reliance on the ‘racial group’ criterion might result in a priori exclusion of groups that have legitimate claims).

## Successful integration v. forceful assimilation

Integration is a “**give-and-take**” process and affects society as a whole – efforts must be made not only by persons belonging to national minorities, but by members of the majority population too. States parties must also take into account diversity that exists within minorities, the need to ensure equality between minorities in access to their rights, and consider applying the Convention to persons who don’t belong to national minorities but live in a similar situation. E.g. protective measures applied in minority-language schools, such as a requirement to have fewer pupils per class, should also apply to state school teaching in the official language in otherwise minority-language dominated areas (as in Estonia and Lithuania).

## Disputed territories

As for disputed territories or regions of states parties to the FCNM that are de facto outside the control of the authorities, the Advisory Committee observed that the **applicability of the rights is not altered as a result of the change in de facto authority**. On the contrary, the rights of persons belonging to national minorities remain in force and often gain a particular urgency in times of conflict (e.g. Ad hoc report on the situation in Ukraine, April 2014). International access and the continuation of regular monitoring activities, however, are deeply affected if not entirely stalled by such territorial disputes. The Advisory Committee has repeatedly called on all parties to take a constructive approach in line with the general principles of international law and of the FCNM, to safeguard the rights of persons belonging to national minorities as an integral part of universally applicable human rights throughout the territories of all states parties.

## Special cases

A number of rights in the Convention **apply to all persons** on the territory of states parties, including those not belonging to national minorities: protection against discrimination, promotion of mutual respect and intercultural dialogue, protection from hostility and hate crime, promoting tolerance and intercultural dialogue via education and media.

Under the FCNM, **all persons belonging to national minorities even if they are not recognised as such** by the state party, should be accorded a right to equality before the law; to preservation and development of national minority culture and identity; to hosting and manifesting a religion or belief, to participating actively in the media; to using one's language in public and private, to using one's personal name in minority language, and to putting up signs of a private nature in minority languages; to equal access to education in minority and official languages; and to effective participation in public life.

The rights to use a minority language in relations with local administration, to have topographical indications and signposts also displayed in the minority language, and to learn minority languages or receive instruction in them, have a **specific scope of application**, i.e. their availability may be limited to certain areas of traditional residence of national minorities, and/or substantial numbers. The Advisory Committee has encouraged states parties to demonstrate flexibility in situations where the conditions are not formally met, but where implementation would serve to promote an open society.

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Update: October 2016