



CHAIRMANSHIP OF CROATIA
Council of Europe
May - November 2018

PRÉSIDENCE DE LA CROATIE
Conseil de l'Europe
Mai - Novembre 2018



Strasbourg, 19 June 2018

Minorities and Minority Languages in a Changing Europe

Conference on the occasion of the 20th anniversary of the
Framework Convention for the Protection of National Minorities and the
European Charter for Regional or Minority Languages

Council of Europe, Strasbourg, France
Palais de l'Europe, room 1

18 – 19 June 2018

Conclusions and final remarks by the rapporteur of the conference,
Mr Philippe Boillat

Chairs,

Your Excellencies,

Ladies and Gentlemen,

We have reached the close of this conference to mark the 20th anniversary of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. As you will have noticed, the conference has been very well attended, with many high-level participants. That is to be welcomed.

I now have the privilege, or the task sometimes described as difficult, of presenting some conclusions and closing remarks. You will no doubt understand that the great wealth and diversity of the contributions made over the last two days mean that I cannot hope or, still less, claim to be exhaustive. I will nevertheless seek to highlight some key points, particularly from an operational angle, and will therefore deliberately leave aside the fascinating and gripping contributions and discussions about languages and language teaching in multilingual societies, which I am sure are going to provide food for thought for the members of our two monitoring bodies.

First of all, however, I should like to express my grateful thanks to the Croatian Chairmanship of the Committee of Ministers for including among its priorities the protection of national minorities, an issue which remains vital in 21st-century Europe.

My thanks also go to the Directorate General of Democracy for the perfect organisation of this major event, and to the interpreters who have helped us over the past two days.

Lastly, I should like to sincerely thank all the panellists and all the speakers for the relevance of their analyses, their criticisms and their comments and for the constructive proposals which they have made.

Celebrating an anniversary is firstly an opportunity to look back to the past.

Three major events – the fall of the Berlin Wall in November 1989 and then the breakup of the former Yugoslavia in 1991 and of the former Soviet Union the same year – brought about sweeping changes in the history of our continent and the political architecture of Europe. Following those events, a whole range of new states began aspiring to democracy, respect for human rights and the rule of law. Against that background, the Council of Europe was assigned a completely new role founded on its legal *acquis* – primarily the European Convention on Human Rights – and its unrivalled expertise.

That role was officially conferred on it by the first Summit of Heads of State and Government of Council of Europe member States, held in Vienna in 1993. The Summit not only confirmed the Organisation's pan-European dimension but also assigned it the crucial role of ensuring stability in Europe by establishing an area of democratic security as a requirement for lasting peace, which, in turn, is the precondition for economic, social and cultural development.

From this angle, the issue of the protection of national minorities and the rights of their members – including language rights, the central theme of our conference – was one of the most acute. In this context, two key factors were highlighted and accepted from the outset by our states: the first being that the protection of national minorities was an integral part of the international protection of human rights and the second being that such protection was an area for international co-operation. At the same time, the preambles to the two texts made a point of confirming the need to respect territorial integrity and national sovereignty.

The issue therefore had to be tackled under a multilateral approach, as bilateralism had shown its limits. The two instruments whose 20th anniversary we are marking today are the practical outcome of that innovative approach. It had been foreshadowed a year earlier by the Charter, on the initiative of the Congress of Local and Regional Authorities.

Celebrating an anniversary is also an ideal opportunity to assess progress made and to take stock.

From this point of view, the conference has shown that the common standards adopted have largely been implemented by the States Parties, even though many obstacles are yet to be overcome. The conference has also highlighted that the two monitoring mechanisms established have turned the instruments into “living instruments” by interpreting them “in the light of current circumstances”, in particular taking account of the complexity and wide range of the demands of members of national minorities.

In this regard, I am pleased to note that what was initially seen as the Framework Convention’s major weakness – namely the lack of a definition of national minorities – has in fact proven to be a remarkable factor in its adaptability and resilience. In particular, the lack of a definition has enabled each State Party to adapt to the requirements of the Convention at its own pace and in accordance with its own specific characteristics, while, naturally, respecting the scope of application of the instrument.

I would point out here that the *travaux préparatoires* for the Framework Convention made it quite clear that only Article 6 was to apply to all persons living on the territory of the States Parties so as to encourage a spirit of tolerance and intercultural dialogue.

The two instruments therefore continue to show their relevance and play their role to the full, in spite of the various changes seen in our societies, not least the great diversification of European societies and also technological advances, including digitalisation. I believe that we have not yet fully grasped the impact of these changes on our societies and our political, administrative and judicial systems.

Both through their content and the way they are interpreted, these two legal instruments have produced positive, practical outcomes and continue to be well suited to the pursuit of their objectives.

Among the many successes of the Framework Convention and the Charter, the following examples have been mentioned:

- the passage of “comprehensive” legislation covering all aspects relating to minorities and their rights;
- more practical projects such as the development in a municipality of a multilingual online tool that improves prospects for governance and access to rights.

If you read the evaluation reports, you will see that we could also quote legislation at regional level which both promotes a regional language in the public sphere and, among other things, allows its use in dealings with the administrative authorities, the employment of officials speaking that language and the introduction of bilingual signposting.

Following a Council of Europe recommendation on promoting media in a minority language, we could also mention the awarding of a broadcasting licence to a radio station that is unique in its kind in the territory concerned.

These successes, which are obviously to be welcomed, must nevertheless not hide the fact that some pitfalls and challenges still have to be overcome.

The first challenge is no doubt the low level of ratification of the Charter. There are many different reasons specific to each country. It has nevertheless been pointed out that the Parliamentary Assembly has required states that have joined the Council of Europe since 1995 to undertake to accede to the two instruments – a commitment which has been made but not always honoured.

As a means of persuading the States still holding back, the conference has pinpointed the significant benefits of the Charter. In particular, the speakers highlighted the way it complements the Framework Convention, with one instrument protecting individuals and the other the cultural heritage formed by languages. The recent changes in the Executive Committee's working methods also underline the relevance of regarding the two instruments as a coherent whole. Personally, I much approve of the term used by the Croatian Minister for Foreign Affairs, when she spoke of a "Magna Carta for the rights of the persons belonging to national minorities". I believe the term is very appropriate.

The great added value of the monitoring mechanisms has also been emphasised, but they must not under any circumstances – and I emphasise this point – be regarded as mechanisms that are confined to blaming and shaming. On the contrary, they must be seen as a form of support to the State Parties, as part of an open dialogue aimed at implementing their commitments.

On this subject, it has also been noted that the respective procedures could be improved, at least in two areas:

Firstly, information gathering. Monitoring of both the Framework Convention and the Charter is based on a state report, which starts each cycle, and continues with a visit to the country concerned and the collection of information from the national or local authorities. The sometimes chronic delays in the submission of the state reports undermine the smooth conduct of the monitoring cycles. The roundtable yesterday afternoon involving civil society representatives provided an excellent illustration of the key role which civil society plays in the process. I will mention a few corresponding proposals later on.

Secondly, the on-site visits. The added value of the visits has been highlighted many times. They are a means of clarifying or updating the information received and also, where appropriate, a means of going beyond that information and examining certain points in greater depth. They are vital not only for ensuring the legal and factual relevance of the opinions and reports produced but also for consolidating relationships based on trust with the national authorities, in particular the points of contact, as well as NGOs and, of course, members of national minorities.

On a more prosaic level, since this issue was also raised, I would add that, given the organisation's current budgetary circumstances, it obviously costs less to have four or five people from a monitoring mechanism visit a State Party than to bring all the people to be met on such a visit to Strasbourg; clearly, however, this would not prevent certain exceptions to this rule in specific cases, in particular in connection with following up recommendations.

I would emphasise these various stages in the procedure because they are now being called into question in some quarters, although they had seemed to be fully accepted. It is therefore crucial to reiterate the need for them and, if necessary, to institutionalise them so as to ensure the long-term effectiveness of the monitoring bodies.

There is another challenge which I believe needs to be overcome: the return to what I would call a kind of minimalist bilateralism, sometimes tinged with populism and nationalism, to the detriment of recognised international standards. Protection of national minorities based solely on reciprocity – the underlying principle of bilateralism – runs the risk of undermining the level of protection of minority rights. In most of

these cases, it is the lowest common denominator on either side of the relevant border that is taken as the benchmark.

In my view, it can never be repeated often enough – and the Secretary General did so in his introduction – that multilateralism is a tool for preventing conflicts. Moreover, the implementation of Council of Europe standards is intrinsically linked to collective mechanisms of guarantee, regardless of any politicisation of the issue. Ultimately, democratic stability and peace in Europe are at stake here. The only bilateralism that should be promoted is bilateralism which enshrines rights and measures that go beyond the minimum protection standards laid down in multilateral instruments.

If I may say, personally, I regret the fact that another by no means insignificant challenge has not been mentioned, namely the ability of the monitoring bodies to cover the whole territory of the States Parties, including the infamous “grey zones”. That will probably be the subject of future discussion.

Lastly, celebrating an anniversary is a unique opportunity to look to the future and agree together what we want for the years ahead.

One point seems to be agreed: the conference has clearly reasserted a shared desire for the Framework Convention and the Charter to continue to safeguard effective rights in the future. To this end, several avenues have been outlined and several practical proposals have been made. I shall try to summarise the key points here.

First of all, however, I should like to stress that a strong message was sent out by assigning the role of keynote speaker to Ms Josefina Skerk. Her grassroots account of experience on the ground, if I may put it that way, which was moving and gripping, showed that, in spite of the difficulties, where there is a will, there is a way. In my view, her contribution also illustrated the need to involve young people in the issues affecting minorities. We must draw inspiration from young people’s aspirations, which will sometimes mean thinking outside the box, leaving the usual processes behind and taking advantage of technological advances. This aspect was also underlined by many speakers.

In this regard, there can be no doubt that the continuously advancing uses of digitisation will enhance the ability of the monitoring processes to promote their work beyond insider circles and identify new publicity channels which will further raise the visibility of the opinions and reports produced. Responsibility here must be shared between the Council of Europe, the States Parties and civil society.

Full use will also have to be made of the significant potential of these new technologies, these new means of communication, these new social networks in all areas concerning national minorities.

Over the past 20 years, as we have seen, the efforts of both the Parties and the two monitoring bodies have mainly focused on the adoption of the legislation required for the proper implementation of the Framework Convention and the Charter. However, the contributions have highlighted the need now to focus more on the actual practical situation and facts and on conduct and the measures taken and implemented to make sure that there are no discrepancies between the legal standards and their application. To use the language of the European Court of Human Rights, the rights in question must not just be “theoretical and illusory”. They must be “concrete and effective”. In order to ensure that the rights are effectively guaranteed, it is necessary to step up exchanges of information about what works and what does not work, if you will pardon the expression. Some speakers even suggested considering the introduction of sanctions for failing to follow up recommendations or comply with procedural rules.

In order to facilitate the implementation of recommendations by State Parties, some other speakers believed that it was more realistic to make better use of the expertise of international organisations,

especially the Council of Europe, built up through co-operation activities on the ground. A good practice implemented in a State Party should be brought to the attention of the others through regular exchanges for the benefit of all concerned. The speakers also praised the good co-operation between the Council of Europe, the OSCE and the United Nations.

It has also been noted that most of the information gathering currently depends on the authors of the state reports, which, depending on the national processes, are drawn up with or without consulting members of national minorities. As has been shown, the information gathering, which in any case remains an obligation of the State Parties, can certainly be reviewed in the light of the possibilities offered by new technologies and supplemented by other credible sources of information.

After all, while it is clearly important to always have more information, it is, above all, important for the information to always be more accurate and more reliable. The regular online collection of the relevant information could make it possible both to draw up more specific, more relevant and more measurable recommendations and also to avoid information overload and repetition when subsequent reports are drawn up. To this end, a standardised and digitised system for the submission of relevant information by the Member States, in particular new legislation and official translations of such legislation, could be introduced. That would make the drafting of the state reports easier, thereby also responding to the often legitimate complaint of "monitoring fatigue".

The new technologies could, of course, be used for the purpose of enhanced dialogue with the State Parties, in particular in terms of following up recommendations, by making it possible to maintain contact with the authorities between two monitoring visits.

If confirmed by the Chair of the Ministers' Deputies, this report of mine should be submitted to the Committee of Ministers. That is why I should like to reiterate the points made this morning by Ambassador Tomič, which are already being considered by a Committee of Ministers rapporteur group (GR-J).

The first proposal is to increase the monitoring cycle for the Charter to five years and introduce interim reports so as to avoid any gaps. After a transitional period, the monitoring cycles for the Charter and the Framework Convention would be more complementary.

The second proposal is to authorise the Committee of Experts of the Charter to prepare its evaluation reports and make its country visits without having yet received a delayed periodic national report. As you will understand, closer consideration obviously still has to be given to this aspect, although it should be underlined that the proposal is based on the option available to the Advisory Committee on the Framework Convention if state reports are over two years late, an option which has never actually been used to date.

Lastly, the third proposal is to publish the Charter evaluation reports once the States concerned have received copies of them and had the opportunity to present their comments. This proposal, which could also apply to the Framework Convention, should also, however, be looked at in greater detail. In any case, there would need to be a phase for dialogue between the relevant committee and the national authorities prior to the adoption of the opinions or reports. Constructive dialogue could facilitate the almost automatic publication of the opinions and reports following their adoption.

Of course, I would stress once again that all these proposals and suggestions will have to be examined closely by the relevant Council of Europe bodies.

The Framework Convention for the Protection of National Minorities and the Charter for Regional or Minority Languages and their respective monitoring bodies have shown their relevance over the last 20

years. In keeping with their main objective, which still stands today, they have undoubtedly helped to consolidate democratic security and stability throughout our continent.

In order to maintain their effectiveness in future, they vitally need the support of the Member States, in a spirit of solidarity and shared responsibility within the Council of Europe, and also the support of national, regional and local authorities and civil society.

Given the turmoil Europe is now experiencing and the challenges facing it, we must do our utmost to safeguard the Council of Europe's achievements in terms of democracy, human rights and the rule of law, which we believed had taken root for good throughout Europe, but which, unfortunately, are increasingly being called into question.

If our monitoring processes are to remain credible and, ultimately, legitimate, their work must be based on scientific foundations, verifiable facts and expertise that is beyond all reproach.

We must therefore give them the tools and resources they need to perform their noble task over the next 20 years.

Thank you for your kind attention.