

Presentation of the Eleventh Activity report for the period 1 June 2016-31 May 2018

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Protection of National Minorities

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Mr Chairman, dear Ambassadors,

Thank you for inviting me to your meeting to introduce the Advisory Committee's Eleventh Activity report covering the period from 1 June 2016 to 31 May 2018 during which I had the honour of being its president.

In the two years covered by the present report, which also marked the 20th anniversary of the entry into force of the Framework Convention for the Protection of National Minorities, the Advisory Committee conducted 14 visits, and adopted 14 opinions during its six plenary meetings. Over the same period, it received 13 state reports and the Committee of Ministers adopted 15 resolutions. (I am pleased to add that over the summer, two more state reports were submitted.) Today, the third monitoring cycle is all but concluded while just a few state parties' reports remain to be evaluated in the fourth monitoring cycle. The preparations for the fifth monitoring cycle are well under way. As you know, all state parties have received a letter indicating the due date for their fifth cycle state report, which depends – as it is known – for some states on the entry into force of the Framework Convention and for others on the date of depositing the ratification instrument with the Council of Europe (so it will begin soon for many states and later for others). For more statistics and detailed pieces of information about the work of the Advisory Committee in the past two years, I would like to invite you to look at the biannual report. And I would like to seize this opportunity to draw your attention to several other aspects of the work of the Advisory Committee – both in terms of factors that affect its work and in terms of its observations over the past two years.

Let me first draw attention to a couple of issues about the quality of the entire process of the implementation of the Framework Convention. Firstly, a timely submission of state reports is

very important – not only to fulfil the legal obligation, but also with a view to allowing the Advisory Committee and the Secretariat of the Framework Convention to better prepare desk research and country visits. These remain a crucial aspect of the monitoring work, as viewed not just by the Advisory Committee, whose delegation is thereby able to see the situation on the ground and discuss issues with different stakeholders, including persons belonging to national minorities and of course government officials responsible for individual policies affecting access to minority rights. As the General Rapporteur Mr Philippe Boillat (who can be considered as a founding father of the Convention as he chaired the working group that was tasked to draft the text of a treaty on minority protection) wrote in his report on the 20th anniversary (in fact anniversaries) conference organised by the Croatian Chairmanship in June here in Strasbourg, these visits

“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.”

Secondly, what is crucial is also the quality of state reports with relevant pieces of information, including relevant data, but equally important, with an assessment of how the respective authorities have been implementing recommendations from the previous cycle, based on effective consultation and participation of minority representatives, on achievements and on possible obstacles encountered on the way. In this context, I would like to stress also today that the implementation of the convention needs to be understood as a continuous effort – by an individual state party (with respect to its obligations towards its population at home) and by member states collectively, with respect to their collective promise and obligation to put the treaty into practice, multilaterally, so as to achieve the goals of the convention – access to minority rights, integration of diverse societies with minorities and persons belonging to them being viewed as an equal and valued part, and consequently, to achieve stability, democratic security and peace (as stated in the Preamble of the Framework Convention). These are not just empty words, empty promises or empty expectations... In fact, the 20th anniversary offered

plenty of opportunities for reflection – of today’s developments in societies across Europe and of the reasons for and circumstances in which the Framework Convention was drafted some 24 years ago. And both are worth recalling. I will get back to this in a moment, but let me first finish my thought on monitoring being a continuous process.

The implementation as a continuous process also refers to the Advisory Committee, with the need to strengthen its continuous dialogue with state parties. In fact, the past two years have certainly confirmed the view that the Advisory Committee can execute its tasks best when it is in a continuous dialogue with a state party. You may recall that I spoke, on different occasions – not least in the meetings of the Committee of Minister’s Rapporteur Group on Human Rights (GR-H) – about the importance and benefits of organising follow-up seminars or roundtables, somewhere in the middle of a cycle, when the opinion and resolution have been adopted, and when time is most fruitful to have an open discussion, without the pressure of being assessed, between the state party, its authorities at all levels, its national institutions (such as ombudspersons), national minority representatives and other relevant civil society actors and the Advisory Committee. Such follow-ups provide an occasion for a productive discussion about open issues, but also about obstacles and possible solutions, based on comparative knowledge and expertise, which the Advisory Committee can offer. It is also an opportunity for the Advisory Committee to explain further its recommendations and to receive feedback, of course. I would like to warmly invite you to consider organising such a follow-up in your respective country; and at the same time, I would like to express my sincere appreciation to the authorities of Albania, Montenegro, Slovakia, as well as Finland and Sweden, for either recently having organised, with the Advisory Committee, a follow-up or for planning to do so in the very near future. (I understand other states organise such events nationally.) This joint and inclusive discussion on how best to implement the Framework Convention has proven very helpful and has led to mutual appreciation and satisfaction.

Such increased communication, with the effective participation of all stakeholders, including persons belonging to minorities, is very much needed, perhaps more than even, given the circumstances across Europe, as observed by the Advisory Committee in the field of minority rights. You may recall the political interest in minority rights and in the protection of regional or minority languages as demonstrated at the above-mentioned anniversary conference in mid-

June in Strasbourg. The conference's General Rapporteur, Mr Philippe Boillat (who can be considered a founding father of the Convention as he chaired the working group that was tasked to draft the text of a treaty on minority protection), wrote in his final report that the two respective instruments, the Framework Convention and the Language Charter,

“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.”

Having this opportunity today, to address this distinguished body, I would like emphasise the significance of your support today and in the future – for the sake of all of us, as Europeans, as citizens of Council of Europe member states, but also as human beings who believe in universal and equal human rights, including minority rights, and – more fundamentally – in human dignity ... for everyone, not just for the privileged some, not just for ‘us’ (and not for ‘them’).

Why am I mentioning this? It is because trends across the Continent in the field of minority rights and diversity management more generally, as well as efforts to integrate societies, are worrying at the very least. The Advisory Committee, over the past two years covered by this Activity Report, has observed some worrying trends I would like to recall, and at the same time reflect on some of the dangers that lie at the heart of those trends.

In many respects, the Framework Convention's 20th anniversary was marked by similar times of upheaval as those that paved the way for its drafting in the early 1990s. The on-going conflicts, violations of basic principles of international law, open calls for independence, terrorism... to mention but a few – these have all affected the stability of both states and European institutions alike. Geopolitics has been on the rise, in Europe and globally, thus increasing security concerns in many states and negatively affecting prospects for their societal integration, as well as bilateral relations between states, in addition to, by implication, multilateral co-operation (or effective multilateralism). These developments have had a negative impact on the functioning

of the human rights regime in general, and on the implementation of the Framework Convention in particular. Let me now turn to some of the most worrying processes as observed by the Advisory Committee – many -isms, as it were, and their consequences for access to minority rights and ultimately to the integration of societies, their stability, democratic security and peace.

As mentioned by the Secretary General of the Council of Europe in his 2017 report on the State of democracy, human rights and the rule of law, two trends have been particularly marked over the past years: **populism** and **nationalism**. Although very different processes and phenomena, they both have a strong common feature: a homogenising ideology that seeks to unite and protect ‘us’ from ‘them’ – be it the ‘common’ public against elites; or ‘our’ national or ethnic, linguistic or religious community against ‘other’ communities and persons belonging to them; ‘our’ language against ‘theirs’; ‘our’ culture against theirs; ‘our’ identity against ‘theirs’. As observed by the Advisory Committee, the omnipresence of both processes, coupled with the lack of effective (political) participation of certain segments of the population, including the economically most vulnerable ones, as well as new media platforms, created many (new) obstacles to access to minority rights.

Most importantly, this antagonism between ‘us’ and ‘them’, the presumption of intra-group unity and homogeneity, and the expectation that this homogeneity provides the necessary conditions for (state and human) security, is also understood as ‘our’ protection *vis-à-vis* the ‘others’ – because the ‘others’, including often persons belonging to national minorities, are still too often perceived as a ‘problem’. As observed by the Advisory Committee in its assessment of minority rights, the popularity of both processes, populism and nationalism with exclusive nation-building policies, coupled with new media platforms that enable their unlimited access to the public, typically receptive to such scapegoating as they themselves live in difficult socio-economic circumstances and are easy targets for engaging in hate speech campaigns and even in hate crimes, have all created notable obstacles to access to minority rights. This homogenising ideology, and the overwhelming prevalence of identity politics in general, has paved the way for the **securitisation** (or the re-securitisation) of minority rights.

When minority rights are viewed as a security concern, and when too many rights are perceived as a disintegrating element, we should pause and learn from history. The adoption of the Framework Convention was a culmination of lessons learned. It was not a coincidence that the treaty is explicit about minority rights as an integral part of universal human rights, applicable to all persons belonging to national minorities so that they, too, can be equal in law and in fact. and it was not a coincidence that the Framework Convention applies to everyone in a society (I refer to its Article 6 here) so that societal conditions are created in which persons belonging to national minorities can freely affiliate with minority communities, and preserve, protect and develop their identities – free from any fears or negative consequences stemming from their self-identification (in line with Article 3 of the Framework Convention).

The international regime we have today is multi-layered and multilateral whose core value lies also in the understanding that protection of minority rights is a common international concern, whereas the main obligation to provide access to minority rights at home, to their populations, lies with states with minorities. Securitisation of minority rights – if it does not endanger this premise, it certainly puts a lot of pressure on the implementation of minority rights in practice, and thus on societal integration leading towards diverse societies where everyone can preserve and develop their different, and often multiple identities, and where diversity is recognised as an integral and equally valued part of those societies, rather than viewed in the sense of a ‘foreign’ population that belongs to some other nation. And it is this nation that is typically expected to help out, but this help is easily understood as interference in internal affairs, possibly also a security threat.

In such circumstances, the next trend the Advisory Committee has observed, is almost a logical next step: restrictions to the **freedom of peaceful assembly, association and expression** (stipulated in Article 7 of the Framework Convention) have had an impact on civil society. While assessing the implementation of the Framework Convention, the Advisory Committee found that certain NGOs established by persons belonging to national minorities or dealing with minority issues have less space for their activities, due to increasingly burdensome administrative procedures or diminished opportunities to receive funds, including from abroad, should domestic resources be insufficient. In fact, a backward trend has been detected by institutions measuring freedoms and respect for human rights – and some estimate that the state

of democracy today resembles the state of affairs some 15 years ago. The questioning of fundamental freedoms in the field of minority rights, as observed by the Advisory Committee, takes the form of minority-related organisations and persons engaged with them being perceived as disloyal to the state in which they perform their activities. They frequently face criticism that they focus on a ‘foreign population’ or that they support ‘foreign interests’.

Add to this developments in the field of the **media**: in the absence of sufficient media production in minority languages and by persons belonging to national minorities, information is provided through ‘alternative’ means, including through various (semi-)professional online media outlets or even via foreign media – that all lead to the creation of parallel media realities and consequently, to parallel, divided societies. All this, in turn, only strengthens the process of **securitisation** of national minority issues I mentioned earlier.

Closely related with the process of securitisation is another worrying trend the Advisory Committee encountered and also reflected on in its Biannual Activity Report: the process of intensive **bilateralisation** of minority rights, whereby states try to solve issues that may arise as to the protection of national minority rights between themselves, rather than jointly within multilateral institutions such as the Council of Europe, or the OSCE. Typically, this process of bilateralisation concerns the so-called kin-states and states of residence (or home states, rather than host states as they are still frequently referred to). Bilateral contacts between states are by no-means negative as such; on the contrary – good neighbourly relations and bilateral co-operation are encouraged by the Framework Convention. However, there are evident risks that when bilateralisation takes precedence over effective multilateralism (in fact, the Framework Convention was drafted as a multilateral instrument to overcome the problems stemming from protecting minority rights either by individual states or through just bilateral treaties). It was believed that minority rights as universal norms within the system of human rights protection would be a tool that would “enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society” (Preamble of the Framework Convention). Such an integrated diverse society requires states, again I am quoting the Preamble of the Framework Convention, to “respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority,” but also the creation of “appropriate conditions enabling them to express, preserve and develop this identity”. So we are all envisaged as actors or

stakeholders under the Framework Convention. It is a living instrument, applicable to entire societies.

For minority rights to be indeed guaranteed across the continent, every society, every state, should actively seek to create such conditions mentioned in the Preamble of the Framework Convention, and every state should reflect on the need to contribute its share in addressing minority issues as an international matter, as a matter of international concern – so jointly, multilaterally – not because one state can twist an arm of another; not because one national minority has the so-called kin-state and others do not; not because a state is more concerned about its co-ethnics living abroad than about its own minorities at home (in fact, again, even the home-host terminology would warrant more attention in this respect). Such bilateralisation is not just against the spirit of the Framework Convention, but, importantly, deprives persons belonging to national minorities of their own actorship – of their needs, interests and concerns being voiced internally, and being effectively dealt with internally, or through multilateral forums should domestic mechanisms fail to function as effective consultation and participation avenues.

These trends I have briefly touched upon are closely inter-linked and unfortunately strengthen one another. Obviously, they neither take place everywhere nor at the same time, and when they do take place, their intensity may vary. What the Advisory Committee has observed, however, is the fact that they are on the rise and in different parts of Europe, in fact across Europe. Furthermore, these trends have a profound negative impact, both direct and indirect, on persons belonging to national minorities and on the implementation of minority rights as enshrined in the Framework Convention. For instance, nationalism has manifested itself in exclusive nation-building policies, which have been based on the ethnic understanding of the nation as a mono-ethnic community characterised by one language, one culture, one religion and one history. Policies adopted to strengthen protection of a (dominant) nation, often adopted out of fears for its existence as a result of open conflicts or histories of past oppression, have had a negative effect on the implementation of minority rights. The Advisory Committee has observed these trends most notably with respect to language policies and in education. Minority rights, including the rights to speak minority languages, to express different forms of minority cultures and identities or to participate effectively in decision-making processes, have been perceived in

some cases as a threat to national security and stability. Not as a right that should be effectively enjoyed, in addition to speaking the official (or state) language, not to replace this language.

Dear Ambassadors, allow me to conclude by saying that the protection of national minority rights is as relevant and important today as it was when the Framework Convention was adopted almost a quarter of a century ago. Then, the Framework Convention was born out of the need to ensure stability, democratic security and peace by ensuring the effective equality of everyone, and their human dignity. It is those fundamentals that are at stake today if these trends I talked about continue, or even grow.

Allow me to argue that scepticism or even open opposition to multilateralism in the sense that multilateral institutions are obsolete, that they do not serve specific interests of individual states, or even that they promote ‘wrong’ international norms and values, is a damaging context for effective implementation of multilateral treaties such as the Framework Convention. Perhaps we should remind ourselves that political international institutions are a phenomenon in existence only for a century, that they came into existence as a major step forward towards addressing the most difficult issues jointly. Of course, it has never been easy to agree on common normative grounds, but issues are so inter-linked and transnational that states knew even a century ago that the only way to address them and for all of them to be improved through international institutions, multilaterally, jointly, as part of their common international concern. Effective multilateralism in the field of minority rights as a joint effort to prevent discrimination and secure access to minority rights to ensure effective equality is needed now perhaps more than ever. History should have taught us that selective instruments after World War I or ignorance of special minority rights right after World War II were not satisfactory. The international regime we have today, with the Framework Convention at its core, is a major historical achievement.

My final reference to history will be also my conclusion: it is not access to minority rights and equality that undermines peace and stability. It is not too many rights for too many individuals that will lead to problems and societal disintegration. Rather, discrimination, inequality and negative attitudes towards persons belonging to national minorities are a guarantee for societal disintegration. We all need to understand this and work jointly to avoid this scenario. Access to

minority rights has to be guaranteed to all persons belonging to national minorities, regardless of the state in which they live, or regardless of the particular interests of another state.

The Advisory Committee has – over the past two years, and in the 18 years before that – helped to uncover potential issues and problems persons belonging to national minorities face, but also as encountered by diverse societies as such. It has sought to provide objective, comparative advice on how best to overcome those hurdles. It has done this following its conviction that non-respect of minority rights, and human rights in general, comes at the cost of diminished democratic security, stability and peace in Europe. Minority rights and access to them are thus needed more than ever. The Advisory Committee will continue to provide advice on how best to achieve integrated societies in which minority rights are guaranteed. Open and inclusive societies are also the best guarantee for democratic security and stability, and of course peace. And these are undoubtedly our joint concern.

I thank you for your attention, and I look forward to the discussion.