

**Conference on the prevention of Human Rights Violations**  
**Kyiv, 20-21 September 2011**

**The Framework Convention for the Protection of National Minorities as a tool for  
the prevention of minority rights violations**

Mr Chairman,  
Your Excellencies,  
Dear Ministers,  
Ladies and Gentlemen,

Permit me, first of all, to thank the Ukrainian Ministry of Justice for the kind invitation to attend and represent the Advisory Committee of the Framework Convention for the Protection of National Minorities in this important conference on the prevention of human rights violations.

Article 1 of the Framework Convention reminds us that the protection of the rights and freedoms of persons belonging to national minorities forms an integral part of the international protection of human rights and thus, of the international system of preventing human rights violations. And indeed, the Framework Convention for the Protection of National Minorities is a legally binding human rights convention, committing its 39 member States to protect and promote the rights and freedoms of persons belonging to national minorities, to support the preservation of minorities' cultures, identities and languages, to abstain from assimilation policies, to grant specific linguistic and education rights, and to provide for the right to effectively participate in public affairs. Yet, the FCNM is only a 'Framework' Convention, listing very few directly applicable rights but containing mainly programmatic objectives that member States must implement within their domestic systems, taking into account the needs and demands of national minority communities themselves, as well as the available resources. The latter, as we all know, tend

to be limited nowadays. Can such an instrument therefore really prevent human rights violations?

As you know, the Framework Convention comes with a monitoring mechanism: member States submit a report every five years on developments related to the implementation of the Convention. Then, a delegation of the Advisory Committee conducts a visit to the capital as well as the regions where minorities live traditionally or in large numbers, to speak with the relevant stakeholders, minorities, and authorities alike, in order to obtain a comprehensive picture of the situation in the country. Based on this, the Advisory Committee adopts conclusions concerning the state of implementation of the Convention in the given country, including recommendations on how to improve certain aspects. The latter are made politically binding following the subsequent adoption of a Resolution of the Committee of Ministers on the basis of the Advisory Committee Opinion. Importantly, the whole monitoring process is public: the State report, the Advisory Committee Opinion – and the State’s subsequent comments thereon - as well as the conclusions and recommendations of the Committee of Ministers, are made public and are translated into the respective State language as well as – often – into relevant minority languages.

The Framework Convention, hence, does not provide for a judicial procedure, that presents ‘judgments’ to the States concerned on where minority rights violations have taken place. In fact, the drafters of the Convention deliberately decided against that. Instead, the Advisory Committee was established as a body that will – primarily – seek to establish a constructive dialogue with the governments concerned in order to form – in an atmosphere characterised by a spirit of cooperation and not confrontation – correct and well-founded opinions as to the extent to which States parties have fulfilled their legal obligations. I believe that the practice of the Advisory Committee since 1998 has shown that this monitoring system constitutes indeed an effective tool to prevent minority rights violations.

Firstly, we should recall that the mere existence of a monitoring system as provided for by the Framework Convention has a considerable preventative aspect. The very fact that States are under a legal obligation periodically to report on measures taken by them to implement

their obligations under the Convention, and the fact that these measures are scrutinised in terms of their adequacy by the independent Advisory Committee as well as the Committee of Ministers, will contribute to the prevention of minority rights violations, as States – as a rule – seek to avoid Advisory Committee Opinions or Committee of Ministers Resolutions, stating that they have not fulfilled their legal obligations under the Framework Convention.

Secondly, the task of the Advisory Committee does not only consist in determining human rights violations and indicating ways to redress them, but – importantly – also encompasses the right and obligation to identify situations that have a *potential* for human rights violations in the future. It is the task of the Advisory Committee then to propose solutions which will reduce the *risk* that such situations eventually result in actual human rights and minority rights violations. In this context, I want to return to the point that the monitoring system is based on a *constructive* dialogue with the governments concerned. It is important to note that the Advisory Committee has repeatedly stressed its profound willingness to engage in such ‘constructive’ dialogue in order to identify ways and means by which the minority rights situation in a country may be improved, with a view to bring about adequate solutions for *all* sides concerned.

Thirdly, the monitoring process attempts to be as inclusive as possible. The Advisory Committee has a legal duty to submit thoroughly researched and, thus, well-founded opinions as to the adequacy of the measures taken by States Parties to fulfill their legal obligations. This implies the duty to take into consideration the information provided in the State report as well as that provided by other sources, including – importantly - civil society. The above mentioned constructive dialogue hence also includes representatives of civil society. Ideally, it should be perceived as a forum in which all actors concerned genuinely cooperate in the search for appropriate ways and means to implement adequately the States’ obligations resulting from the Framework Convention. Thereby such constructive dialogue will contribute to prevent critical minority rights situations from deteriorating and, thus, from developing into situations with a potential to destabilise internal and regional peace and security. Dialogue takes place at various levels. On the one

hand, direct and constructive dialogue between the Advisory Committee and representatives of the authorities as well as of national minorities and civil society is pursued during the visits and the follow-up activities, in order to raise awareness of the findings and recommendations of the Advisory Committee and the Committee of Ministers, and to foster dialogue among all the parties concerned. On the other hand, we have witnessed increasing communication between minority representatives and the authorities at various levels around the implementation – and monitoring - of the Framework Convention, which the Advisory Committee considers particularly encouraging.

Additionally, multilateral dialogue is taking place as part of the process of adopting the Committee of Ministers' resolution on the implementation of the Framework Convention. When establishing the system, the aim was to take minority issues out of bilateral, often strained discussions between neighbouring countries and to lift them to the multilateral level, as other human rights issues. The underlying principle was to depoliticise sensitive minority questions. States must respect the rights of persons belonging to national minorities as part of the general respect for individual human rights, not because they have a special relationship with the 'kin' state and expect similar treatment for 'their own' in the other country.

This last important 'dialogue' aspect of the monitoring system under the Framework Convention also concerns its essential quality as forming part of a general *early-warning* system in the field of human rights law in general and of minority rights law in particular. It is not by coincidence that the Framework Convention was drafted and adopted in the early 1990s, in the context of armed conflicts in the former Yugoslavia which produced large-scale human rights violations unknown in Europe since the end of World War II. Majority-minority relations have been over and over again identified and recognised as a constant threat to the internal peace and security of the States primarily concerned. The success of early warning systems depends on the establishment and existence of a continuous constructive and inclusive dialogue maintained by all parties concerned in a spirit of mutual understanding and based upon a shared aspiration to prevent minority rights

violations, to ensure that critical minority rights situations do not deteriorate and begin destabilising internal and regional peace and security.

Ladies and Gentlemen,

On the whole, the Advisory Committee has been pleased to see that recommendations are being implemented by States parties and the level of protection of the rights of persons belonging to national minorities has clearly risen overall. Laws containing detailed guarantees for the use and learning of minority languages, for instance, have been adopted, administrative frameworks for their implementation have improved, consultative mechanisms have been created to ensure that the views and concerns of minority representatives are given due account before relevant policy decisions are taken, such as in the area of culture, education, regional development, or the promotion of effective participation in public life. These improvements have clearly led to the prevention of minority rights violations as such, as well as, in a number of instances, have prevented a difficult situation from deteriorating and possibly becoming a threat to the stability in the country.

As always, there are challenges to the monitoring system of the Framework Convention: among these challenges, I would like to emphasise one in particular: we are now witnessing a trend towards a re-bilaterisation of minority issues. The heightened politicisation of monitoring under the Framework Convention in recent years has resulted sometimes in minority issues being moved back into the context of bilateral relations in which the implementation of obligations is based on reciprocity, rather than a sense of commitment to the international protection of human rights. This has a particular impact on “kin” minorities who can sometimes be held hostages to wider interstate negotiations and conflicts between neighbouring states. This trend, unfortunately, risks obstructing the proper functioning of the monitoring mechanism, including as regards its early warning and prevention purpose, and should therefore be taken very seriously.

In this context, I want to particularly congratulate our host, the Ukrainian chairmanship of the Council of Europe, for the initiative of organising a high-level conference on such an important topic at this time. It will no doubt contribute to reminding us all of the importance of prevention and early-warning in the area of human rights and minority rights which, in the view of the Advisory Committee on the Framework Convention for the Protection of National Minorities which I preside, depends heavily on the establishment of a constructive and inclusive dialogue with all parties concerned.

It will be a great pleasure for me to come back to Ukraine in the beginning of 2012 for the third monitoring visit in the context of the Framework Convention.

Thank you for your attention.