

OSCE Human Dimension Implementation Conference

Warsaw, 11 to 22 September 2017

Contribution of the Anti-discrimination Department

I. Combating discrimination on the grounds of sexual orientation or gender identity (SOGI)

The Council of Europe standards and mechanisms seek to promote and ensure respect for the human rights of every individual. These include equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender (LGBT) persons. Assuming its leading role in human rights protection, the Council of Europe Committee of Ministers adopted on 31 March 2010 [Recommendation CM/Rec\(2010\)5 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity](#). The Recommendation is the first international legal instrument dealing specifically with one of the most persistent and difficult forms of discrimination. It sets out the principles deriving from existing European and international instruments, with particular emphasis on the European Convention of Human Rights and the European Court of Human Rights case law. The recommendation identifies specific measures to be adopted and effectively endorsed by member states to combat discrimination, ensure respect for LGBT persons, promote tolerance towards them and ensure that victims have access to legal remedies.

In January 2014 the Committee of Ministers encouraged further action to implement the CM/Rec (2010)5 in particular in areas regarding:

1. identification, promotion and exchange of good practices;
2. mainstreaming LGBT issues within the Council of Europe and setting up a long-term action plan for the respect of LGBT persons' rights;
3. collecting data and carrying out research, disseminating know how and expertise;
4. raising public awareness on issues related to discrimination on the grounds of SOGI;
5. enhancing co-operation and synergies with stakeholders, governments, IGOs and LGBT civil society.

Since 2014 an inter-secretariat taskforce on SOGI issues was established by the Secretary General of the Council of Europe with the main objective of mainstreaming SOGI in the work of the organisation and enhancing coordination and cooperation between the different sectors. The cooperation activities on SOGI are carried out within the following frame:

1. **Provide, upon request, support to member states, local authorities and civil society actors through capacity-building and sharing good practice :**

development and implementation of national action plans, provision of legislative expertise, training of law enforcement and legal professionals on hate crimes and violence, peer-to-peer activities on legal gender recognition and asylum policies;

2. **Sharing good practices among member states and carrying out research:** the publication of the [short guide to legal gender recognition](#); [the compendium of good practices on local and regional level](#) as a concrete follow up to the [Congress Resolution 380 \(2015\)](#); the analysis of challenges, the gaps and opportunities in the field of human rights of LGBTI children ; [the booklet on national action plans as effective tools to promote and protect the human rights of LGBTI people](#); [the setting up of a Council of Europe online database on good practices and policies on SOGI](#); the development of training material for law enforcement professionals on addressing hate crimes against LGBTI; [the guidebook for legal professionals on the case law of the European Court of Human Rights on SOGI](#)

3. **Raising public awareness** on issues related to discrimination on the grounds of SOGI and enhancing co-operation and synergies with stakeholders, governments, IGOs and LGBTI civil society organisations.

Council of Europe Programme and Budget for 2017/2018 includes a specific action aimed at supporting member states, on demand, in their capacity to develop legislation and policies for preventing or redressing discrimination on grounds of sexual orientation or gender identity. The

Standards and mechanisms developed by the Council of Europe to combat discrimination on the grounds of sexual orientation or gender identity (SOGI), include:

[European Convention on Human Rights – Article 14 – Prohibition of discrimination](#)
[Protocol No 12, Article 1 - General Prohibition of discrimination](#)
[The European Social Charter \(Revised\) of 1996](#)
[Council of Europe Convention on preventing and combating violence against women and domestic violence \(CETS No. 210\)](#)
[Recommendation CM/Rec\(2010\)5 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity.](#)

Parliamentary Assembly:

[Resolution 1945 \(2013\) on Putting an end to coerced sterilisations and castrations](#)
[Recommendation 2021\(2013\) on Tackling discrimination on the grounds of sexual orientation and gender identity](#)
[Resolution 1952\(2013\) on Children's right to physical integrity](#)
[Resolution 2048 \(2015\) on Discrimination against transgender people in Europe](#)

Congress:

[Resolution 380 \(2015\) on Guaranteeing lesbian, gay, bisexual and transgender \(LGBT\) people's rights: a responsibility for Europe's towns and regions](#)

Commissioner for Human Rights:

[Human Rights and Gender Identity](#)
[Discrimination on grounds of sexual orientation and gender identity in Europe](#)
[Discrimination on grounds of sexual orientation and gender identity in Europe \(2011\)](#)
[Human rights and intersex people \(2015\)](#)

Venice Commission:

[CDL-AD\(2013\)022-e - Opinion on the issue of the prohibition of so-called "Propaganda of homosexuality in the light of recent legislation in some Council of Europe Member States, Adopted by the Venice Commission at its 95th Plenary Session \(14-15 June 2013\)](#)

European Court of Human Rights (Factsheets)

[Gender identity](#)

[Homosexuality: criminal aspects](#)

[Sexual orientation issues](#)

For further information, see our website: <http://www.coe.int/lgbt> or send an e-mail to the electronic address of the Secretariat soqi@coe.int

II. Protection of national minorities

Introductory Remarks

The Council of Europe has dealt with the protection of national minorities since its early years of existence. In 1961, the Consultative Assembly (today: Parliamentary Assembly) encouraged the Committee of Ministers to include a specific article on the protection of persons belonging to national minorities into the Second Protocol to the European Convention on Human Rights.

The protection of national minorities became a priority concern for the Council of Europe during the early 1990s with the collapse of the communist regimes and the rise of extreme nationalism in certain parts of Europe. The outbreak of inter-ethnic violence and hostility in former Yugoslavia and the former Soviet Union made it all too clear that the protection of national minorities is not only a crucial element of human rights but also essential for stability, security and peace in Europe. The Heads of State and Government of the Council of Europe responded to these developments at their first Summit Meeting, held in Vienna in October 1993, by launching both standard-setting and cooperation activities aimed at protecting persons belonging to national minorities, and combating racism, xenophobia, anti-semitism and intolerance.

The increased attention given to minority issues within the Council of Europe resulted in a range of concrete achievements during the 1990s, including the adoption of the first legally binding minority rights instrument, namely, the Framework Convention for the Protection of National Minorities, as well as the European Charter for Regional or Minority Languages, with effective monitoring mechanisms coupled with targeted co-operation activities to support member states.

Council of Europe Action

Council of Europe action in the field of minority protection and respect for diversity is based on the principle that the protection of persons belonging to minorities is part of the universal protection of human rights.

Action includes standard setting and monitoring, intergovernmental co-operation, activities for the development and consolidation of democratic stability, and confidence building measures in civil society. It extends to many related policy fields and involves, in addition to intergovernmental co-operation, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe as well as specialised bodies.

The co-operation activities organised in the field of minority protection are continuously evolving and include, *inter alia*, minority protection related actions in Albania in the framework of the Horizontal Facility, a co-operation initiative between the Council of Europe and the European Union, as well as in Georgia and Belarus, as part of the Council of Europe - European Union Partnership for Good Governance.

Legal Instruments

The European Convention on Human Rights, which is the centre piece of the Council of Europe's normative "*acquis*", is of relevance for the protection of minorities because its universally applicable individual rights can also be claimed, individually or collectively, by persons belonging to national minorities. Relevant provisions include the freedom of thought, conscience and religion, the freedom of expression, the freedom of assembly and association. Next to the non-discrimination provision of the Convention (Article 14), which prohibits discrimination in the enjoyment of the rights guaranteed by the Convention, Protocol No. 12 to the Convention, which entered into force in April 2005, contains a general prohibition against all forms of discrimination and thereby strengthens the protection afforded under the Convention to individuals belonging to national minorities. The Council of Europe continues to work for the widest possible acceptance of this Protocol amongst all Council of Europe member states (currently 20 states have signed and 17 states have ratified Protocol No. 12).

The Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages are the two Council of Europe conventions with direct relevance to the protection of national minorities: the former as an individual rights instrument, the latter as a tool for the protection and promotion of regional or minority languages as part of Europe's cultural heritage.

Framework Convention for the Protection of National Minorities (FCNM)

The Council of Europe Framework Convention for the Protection of National Minorities has been in force since February 1998; today it has 39 State Parties.¹ It is the only legally binding instrument in the world that protects the specific rights of persons belonging to national minorities as an integral part of human rights.

With ratifying the Framework Convention, states parties assume the obligation to safeguard the specific rights of persons belonging to national minorities such as the right to preserve and develop their cultural and linguistic identity, media and education rights, as well as provisions related to the use of minority languages in public life. In addition, the Framework Convention contains important general principles related to non-discrimination and the promotion of full and effective equality for persons belonging to national minorities in all spheres of life. Member states are further encouraged to formulate overall policies that foster diversity and promote inter-ethnic tolerance and understanding, and to ensure that persons belonging to national minorities are enabled to effectively participate in all economic, social and cultural life and in public affairs.

¹ Parties to the Framework Convention: Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Republic of Moldova, Montenegro, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom. Belgium, Greece, Iceland, and Luxembourg are signatories to the Framework Convention. In addition, following a 2004 agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe, the Advisory Committee for the Framework Convention also assess the minority rights situation in Kosovo*.

The Framework Convention sets out principles to be respected as well as goals to be achieved by the Contracting Parties, in order to ensure the protection of persons belonging to national minorities, whilst fully respecting the principles of territorial integrity and political independence of states. The principles contained in the Framework Convention must be implemented through national legislation and appropriate governmental policies

The Framework Convention is monitored by the Council of Europe's Committee of Ministers which adopts resolutions on the implementation of the Framework Convention in member states, containing recommendations on how to improve minority protection in the states under review. The Committee of Ministers is aided in this task by the Advisory Committee on the Framework Convention, a Committee of 18 independent experts, which provides detailed analyses on minority legislation and practice in the different member states.

Most of the countries concerned welcome the Opinions of the Advisory Committee and provide constructive comments to them, in many cases indicating that the Opinion has already prompted increased action to address specific shortcomings in the implementation of the Framework Convention. The Opinions stimulate fresh rounds of inter-departmental discussions within governments and in some cases have prompted an immediate dialogue with national minorities on the issues raised. Often this is assisted with the organisation of a 'follow-up seminar' in the country concerned. These seminars allow for a national discussion of the findings contained in a given Advisory Committee Opinion and provide a platform to discuss concretely how best to implement its recommendations. Follow-up seminars have become a standard feature of the Advisory Committee's work and are highly welcomed by civil society representatives as an occasion to discuss constructively with various levels of authority, in the presence of experts who know the situation in the country. The Advisory Committee continues to encourage all states to organise such seminars at the end of each monitoring cycle. The 3rd cycle follow-up dialogue events in the member states were finalised at the end of 2013. 4th cycle follow-up seminars are ongoing and will continue in 2018.

The monitoring mechanism of the Framework Convention has, in many cases, been a central catalyst for improved dialogue between governmental agencies and national minorities and for concrete improvements in legislation and practice in diverse subjects. It has also prompted the adoption of new laws devoted to the protection of national minorities and encouraged states to improve their non-discrimination legislation and practice.

The Framework Convention and the Opinions of the Advisory Committee have emerged as a central reference in the work of other international bodies, including the OSCE High Commissioner on National Minorities and the European Commission, which rely on the Framework Convention when it examines the implementation of the Copenhagen criteria on national minorities in candidate countries.

While the adoption of country-specific opinions forms the backbone of the Advisory Committee's work, the Advisory Committee has over the years also engaged in thematic commentaries on issues of particular importance and concern in a number of member states. Three such thematic commentaries have so far been adopted, based on the Advisory Committee's experience and findings throughout its monitoring work: the First Thematic Commentary on Education Rights under the Framework Convention was adopted in 2006, followed in 2008 by the Second Thematic Commentary on Article 15 of the Framework Convention and the effective

participation of persons belonging to national minorities in cultural, social and economic life and in public affairs. In May 2012, the Advisory Committee adopted a Third Thematic Commentary on the language rights of persons belonging to national minorities. The Fourth Thematic Commentary on the scope of application of the Framework Convention was adopted in May 2016 and presented to a wide audience of State Parties, academics and representatives of minorities in October 2016.

Regular monitoring in five year cycles constitutes the essence of the Advisory Committee's work. In 2017, most states Parties are in their fourth cycle of monitoring. So far the ACFC has conducted 4th cycle country visits to Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Republic of Moldova, Norway, Romania, the Slovak Republic, Slovenia, Spain, Sweden, Ukraine, "the former Yugoslav Republic of Macedonia" and the United Kingdom. Further, under the Special Monitoring Arrangement with the United Nations Interim Administration Mission in Kosovo (UNMIK) the ACFC also carried out its fourth visit to Kosovo*. For the remainder of 2017, visits to Latvia and Russia are planned.

In addition, the Advisory Committee conducted for the first time an ad hoc visit in March 2014. This visit occurred at the request of the Ukrainian authorities and subsequent to the instruction by the Committee of Ministers to review the situation of national minorities in Ukraine and report on the findings as soon as possible. The visit took place from 21 – 26 March 2014 and the Advisory Committee adopted its ad hoc report on 1 April. The report was made public by the Committee of Ministers on 2 April 2014.

For further information see: <http://www.coe.int/minorities>.

European Charter for Regional or Minority Languages (ECRML)

The European Charter for Regional or Minority Languages is the only legally binding instrument in the world for the protection and promotion of traditional regional and national minority languages. With the support of the Parliamentary Assembly, the Standing Conference of Local and Regional Authorities of Europe (today: Congress of Local and Regional Authorities of the Council of Europe) took the lead in drafting the European Charter for Regional or Minority Languages during the 1980s. The Charter was opened for signature in November 1992 and entered into force on 1 March 1998. It has been ratified so far by Armenia, Austria, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Finland, Germany, Hungary, Liechtenstein, Luxemburg, Montenegro, the Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom. A further eight states have signed the Charter². Six states have committed themselves to ratification when joining the Council of Europe but have not yet done so (Albania, Azerbaijan, Georgia, Republic of Moldova, Russian Federation, "the former Yugoslav Republic of Macedonia").

The purpose of the Charter is to protect and promote the various regional and minority languages spoken in the different countries of Europe. The Charter provides for a definition of the languages covered by this treaty (Article 1): these are the languages which have been traditionally used within a given territory of a state by nationals of that state who form a group numerically smaller than the rest of the State's population and are different from the official language(s) of that State. The definition explicitly excludes

² Azerbaijan, France, Iceland, Italy, Malta, Republic of Moldova, Russian Federation and "the former Yugoslav Republic of Macedonia".

the languages of migrants and the dialects of the official language(s) of the state. The protection of regional or minority languages must respect the territorial integrity of each state without interfering with the development of the official language(s) of that state.

Part II of the Charter lays down the aims and principles for all the traditional regional and minority languages spoken on a given territory which are to be the states' long term policy targets. These aims and principles include, *inter alia*, the recognition of the language as an expression of cultural wealth, the respect for the geographical area in which each language is spoken, the facilitation and/or encouragement of the use of such languages, in speech and writing, in public and private life, and the teaching and study of these languages at all the appropriate stages. In addition, states are required to eliminate discrimination in respect of the use of regional or minority languages. Although the Charter is principally concerned with languages which are historically identified with a particular territory of the State, it was considered necessary to grant "non-territorial languages" protection as far as possible, and they are therefore subject to the protection under Part II of the Charter.

Part III contains more specific provisions for the languages identified thereunder by the states at the time of ratification. The undertakings entered into by the states under Part III require the latter to adopt concrete positive measures for the protection and promotion of regional or minority languages in several fields: education, justice, dealings with the administrative authorities and public services, media, cultural activities and facilities, economic and social life and transfrontier co-operation. However, the extent of the protection can vary according to the situation of each language (e.g. the number of speakers) provided that the state applies at least 35 paragraphs or sub-paragraphs of the Charter to each language that it has selected under Part III. This contributes to a minimum standard of protection.

The Charter foresees a system of monitoring its implementation by an independent Committee of Experts. Each Party is required to present a first report within the year following the entry into force of the Charter with respect to it, in which the Party states its policy and measures taken in order to fulfil its obligations under the Charter. Other periodical reports are to be presented thereafter at three yearly intervals. These reports are made public by the State Party. The Committee of Experts, established in accordance with the Charter's provisions, has already considered the sixth periodical reports presented by the longest-standing States Parties.

In the context of the fact-finding process, the Committee of Experts can be approached by bodies or associations legally established in the respective State Party wishing to supply additional information or to give their views on specific situations relating to the implementation of the Charter. After this process of information gathering, the Committee of Experts adopts a report which is then sent to the Committee of Ministers of the Council of Europe together with proposals for the recommendations to be addressed by the Committee of Ministers to the state concerned.

Additionally, the Secretary General of the Council of Europe is required to report every two years to the Parliamentary Assembly concerning the implementation of the Charter.

Several improvements in the situation of minority languages can be attributed to the Charter and recommendations made during the monitoring procedure.

The Charter being a rather complex instrument for states to ratify and implement, information seminars are regularly organised by the Secretariat in those states which are approaching ratification or are facing difficulties in the implementation of the Charter

and the recommendations made by the Committee of Ministers and the Committee of Experts.

Non-governmental organisations and local, regional and national authorities are usually also involved in such seminars. In particular, non-governmental organisations have the important role of assisting the authorities in identifying the needs of the languages as to which kind and level of protection is adequate. They also have the role of providing the Committee of Experts with information, after ratification and during the monitoring process, on how the Charter is applied in practice. Local and regional authorities are often the authorities, which are in practice confronted with implementing the obligations arising from the Charter, for example in pre-school education, in local and regional assemblies and administration.

The OSCE High Commissioner on National Minorities continues to make reference to the Charter as the legal framework of reference for the protection and promotion of languages used by national minorities. In this context, the secretariats of the Charter and the HCNM regularly exchange information, for example in relation to HCNM country-visits.

III. The European Commission against Racism and Intolerance (ECRI)

The fight against racism, racial discrimination (i.e. discrimination on grounds such as “race”, colour, citizenship, national/ethnic origin, religion and language), xenophobia, antisemitism and intolerance is at the core of the Council of Europe’s mission. Since 1993 this task has been entrusted to the European Commission against Racism and Intolerance (ECRI), which is an independent human-rights monitoring mechanism set up by the Heads of State and Government of the Organisation.

Main trends

Three main developments recently affected areas of concern to ECRI: efforts to integrate the large number of migrants who arrived in several countries; a strong surge of nationalistic populism, often generating and fuelling xenophobic discourse and creating an atmosphere in which hate speech, and ultimately violence, were able to thrive; and the response of several member states to the continuation of Islamist terror attacks that affected Europe.

Following the arrival of an unprecedented number of migrants in European countries, the focus shifted to facilitating integration. While efforts to support this have shown positive results, years of austerity policies left many European citizens with fear concerning the future of their communities. With respect to terrorist attacks, some member states responded by taking strong measures, ranging from reintroducing border controls within the Schengen-area to declaring a state of emergency.

Antisemitism propagated by a diverse range of groups persists. In some countries, politicians from across the political spectrum have compounded existing problems through antisemitic rhetoric.

Anti-Muslim arguments are embraced by some mainstream politicians resulting in growing xenophobic populist discourse. The extent of islamophobic incidents against Muslims often remains undocumented and under-reported.

The perception of Lesbian, Gay, Bisexual and Transgender (LGBT) persons varies significantly among member states. LGBT rights activists have continued to be the

targets of violent attacks in several countries. Similarly, homo- and transphobic hatred is still prevalent, particularly on the internet and in social media.

ECRI's country reports continue to show that Roma still suffer from widespread prejudice, stigma and violence; however, efforts for the integration of Roma have also been partially successful.

ECRI's activities

ECRI's programme of activities is based on three pillars. The first is country monitoring work, whereby ECRI conducts an in-depth analysis of the situation concerning manifestations of racism and intolerance in each of the Council of Europe member states. ECRI's findings, along with priority recommendations for interim follow-up, are published in a report drawn up after a contact visit to the state concerned and confidential dialogue with the national authorities.

ECRI's country monitoring work is carried out in five-year cycles. ECRI's fifth cycle will finish at the end of 2018 and focuses on four common topics in all member states, namely legislative issues, hate speech, violence and integration, and a number of topics specific to each country, as well as LGBT issues.

So far in 2017, ECRI has conducted country visits to Croatia, Malta, San Marino, Spain and Sweden. Further visits will take place this year to Latvia, Liechtenstein, Moldova, and Portugal.

The second pillar of ECRI's activities is work on general themes. ECRI elaborates General Policy Recommendations (GPRs) addressed to all member states, on topics such as discrimination against Muslims, the dissemination of racist and antisemitic material via the Internet, combating racism while fighting terrorism, combating antisemitism, racism and racial discrimination in education and in policing, and combating discrimination against Roma.

ECRI recently published its GPR on combating hate speech. ECRI and ODIHR continue to work on improving state and civil society responses to hate crime, an area of common interest also in the context of ECRI's fifth monitoring cycle, as it focuses inter alia on hate speech and racist violence. The two bodies co-operate and benefit each other's expertise and initiatives in this area. ODIHR's annual reports on Hate Crime in the OSCE Region are a key source of information for ECRI in all of its country monitoring reports. ODIHR systematically references ECRI's country reports and GPRs as well as the recommendations of the Council of Europe Commissioner for Human Rights in its annual hate crime reporting, which is available at <http://hatecrime.osce.org/> and, when relevant, in its practical guides and manuals.

ECRI also published its GPR on safeguarding irregular migrants from discrimination in 2016. In 2017 ECRI produced abridged versions of six of its GPRs. ECRI will adopt a revised version of its GPR on the role of Equality bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

Relations with civil society and equality bodies constitute the third pillar of ECRI's work. In this context, awareness-raising and a communication strategy are crucial. ECRI's upcoming round table in the Slovak Republic on 28 September 2017 is organised in co-operation with the Slovak National Centre for Human Rights. The Round Table is part of ECRI's civil society programme and will discuss the follow-up to be given to ECRI's report on the Slovak Republic. ECRI

furthermore organised its traditional seminar with national independent authorities on the revision of ECRI's GPR on Equality bodies on 23-24 May 2017.

National Equality Bodies continue to perform their tasks in the difficult context of austerity. Their increased presence at the local level has facilitated better cooperation with local authorities. ECRI's GPR on equality bodies emphasises that these bodies should be granted the resources to carry out their work.

ECRI and ODIHR have continued to involve each other in their activities. For example, ODIHR attended ECRI's annual seminar with Equality Bodies in 2016. Each year a joint statement by ECRI, ODIHR, and FRA is published on 21 March on the occasion of the International Day for the Elimination of Racial Discrimination. ECRI participated in the OSCE's Human Dimension Implementation Meeting (HDIM) and in the OSCE Supplementary Human Dimension Meeting on Policies and Strategies to Further Promote Tolerance and Non-Discrimination in 2016. On 15 May 2017, ECRI participated in Understanding Anti-Semitic Hate Crimes and Addressing the Security Needs of Jewish Communities organised by the ODIHR in Berlin, and continues to collaborate with the ODIHR as in previous years. ECRI would like to emphasise its excellent cooperation with the OSCE-ODIHR. Both benefit from each other's expertise and initiatives.

* All reference to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo."