



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Exchange of views with the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM)

Speech by Marko Bošnjak

Strasbourg, 25 February 2025

**Dear Chair and Vice-Chairs,
Dear Members of the Advisory Committee,**

It is a great pleasure for me to be here this morning for an exchange of views with the Advisory Committee on the Framework Convention of National Minorities.

The last institutional exchange which took place between the Advisory Committee and the Court was in November 2019. At that time, President Sicilianos came to speak to you on the rich case-law of the Court in relation to minority rights touching upon issues such as ill-treatment; forced evictions; freedom of religion and association and property restitution.

The Court does not see itself as an isolated body within this vital organisation, a proverbial judicial “ivory tower”. We cannot, and do not wish to, operate in an institutional, political or social vacuum. The maintenance of permanent and dynamic relations between the Court and the monitoring and advisory bodies of the Council of Europe is essential to the functioning of the whole organisation, making us the true house of democracy on the European continent.

Protection of minority rights is an essential part of this work. Of course we come to it from the differing perspectives of our Conventions however: “it is a purpose of all human rights instruments to secure the protection of the essential rights of members of minority groups, even when they are unpopular with the majority. Democracy values everyone equally even if the majority does not.”¹ And, you will be aware that the Court often references the work of your Committee in its judgments.

With that in mind, it is interesting to survey some of the Court’s jurisprudence touching on the protection of national minorities since our last encounter at the highest level back in 2019. It is perhaps worth recalling at the outset that although only a few provisions of the Convention and its Protocols, namely Article 14 of the Convention and Article 1 of Protocol No. 12 on the prohibition of discrimination, explicitly refer to the term “minority”, in particular “national minority”. However, in practice almost all Articles of the Convention or its Protocols are relevant to the rights of the minorities. Minority rights issues, given the-specific nature of group identity and the context for

¹ Lady Hale of the then House of Lords (which later became the UK Supreme Court of which she was President 2017-2020) in *Ghaidan (Appellant) v. Godin-Mendoza* ([2004] UKHL 30) § 132.

manifestation, are therefore cross-cutting in the Court's case-law and the cases I will mention touch on a variety of issues.

In **2020**, concerning self-identification, the Court reiterated in cases against Slovenia and France, its established conclusion that the Court has considered the traditional itinerant lifestyle as an integral part of identity for Roma and Travellers; [Hudorovič and Others v. Slovenia](#), 2020, § 142; [Hirtu and Others v. France](#), 2020².

2021 saw the case of [Lacatus v. Switzerland](#), which was the subject of some discussion at that time. The applicant was a woman who belonged to the Roma community. She was fined for unintrusive begging on public streets in Geneva and subsequently imprisoned for five days for failure to pay the fine.

The Court found that the imposition of a blanket ban on begging and the punishment of the applicant, an extremely vulnerable person, in a situation in which she had in all likelihood lacked any other means of subsistence and had no choice other than to beg in order to survive, had not been proportionate to the aim of protecting the public order. Accordingly, the penalty imposed on the applicant had infringed her human dignity and impaired the very essence of the rights protected by Article 8. Having found a violation of Article 8 of the Convention, the Court did not deem it necessary to give a separate ruling on the complaint under Article 14 in conjunction with Article 8.

You may be interested to learn that since the Court's judgment, the criminal provision criminalising begging has no longer been enforced in the canton of Geneva, on the instructions of the Prosecutor General.³

2022 saw cases concerning the long-standing issue of segregation of Roma pupils in education. [Elmazova and Others v. North Macedonia](#), 2022, concerned the segregation of Roma pupils in State-run primary schools. [X and Others v. Albania](#) the Court found a violation of Article 1 of Protocol No. 12 to the Convention as the respondent State had failed to implement swift and comprehensive desegregation measures in an elementary school which was attended almost exclusively by children of the Roma and Egyptian minorities.

In **2023**, the Court delivered its judgment in the case of [Mestan v. Bulgaria](#), where a leader of a political party and candidate to parliamentary elections was ordered to pay an administrative fine on the grounds that he had spoken in a language (Turkish) other than the official language (Bulgarian) at a public event during his election campaign.

The Court held that a regulatory framework consisting of an absolute prohibition on the use of a non-official language coupled with administrative sanctions could not be considered compatible with the essential values of a democratic society, which included freedom of expression guaranteed by Article 10 of the Convention.

It added that the right of a person to impart their political views and ideas and the right of others to receive such information would be meaningless if the possibility of using a language that could properly convey those views and ideas were diminished owing to the threat of sanctions, even if they were administrative in nature. The case is also notable in that the Court referred to the "repeated criticism" of the situation by your Committee in coming to its conclusions⁴.

² See [Chapman v. the United Kingdom](#) [GC], 2001, §§ 73 and 96, where the applicant's occupation of her caravan is an integral part of her ethnic identity as a Roma, reflecting the long tradition of that minority of following a travelling lifestyle; see also [Connors v. the United Kingdom](#), 2004, § 84.

³ See [Lacatus v. Switzerland](#), Status of Execution: <https://hudoc.exec.coe.int/?i=004-57455>.

⁴ § 61.

Your Committee's conclusions were also referred to by the Court in its reasoning in another judgment given that year – *Memedova and Others v. North Macedonia*. The case concerned border incidents in which the applicants, all of Roma ethnicity, were not allowed to leave the territory of the respondent State.

They complained that they had been singled out by the border police officers owing to their Roma ethnicity. The Court referenced the Opinion of your Committee which documented incidents of ethnic profiling at the respondent State's border directed primarily at Roma persons, in coming to its conclusion that the applicants had made a convincing *prima facie* case of indirect discrimination⁵, which it found the respondent State was not able to justify. It concluded there had been a violation of Article 2, Protocol 4 (freedom to leave the country) alone and in conjunction with Article 14.

It may be noted that the Committee of Ministers was able to close its supervision of that case in 2024 noting instructions issued to the border police aimed at preventing any discrimination at the border; new laws to prevent discrimination and aimed at bringing legislation with the Convention and the relevant EU directives; training, and positive statistics⁶.

Finally, you might be aware of another case delivered in 2023, albeit final only in 2024 against Hungary. That was *Bakirdzi and E.C. v. Hungary*. The two applicants were members of two national minorities officially recognised in Hungary: Armenian and Greek. They registered as national minority voters for the 2014 parliamentary elections and therefore could not vote for the national lists of political parties; instead, they cast a ballot on the closed national minority lists. In the 2014 Parliamentary elections, none of the national minority lists obtained enough votes to win a national minority seat. They complained successfully, that they had been substantially limited in their electoral choice, with the obvious likelihood that their electoral preferences would be revealed. The system fell with unequal weight on them because of their status as national minority voters. There had therefore been a violation of Article 3 of Protocol No. 1 taken in conjunction with Article 14.

The case of [Association of People of Silesian Nationality \(in liquidation\) v. Poland](#), also delivered in 2024, concerned the dissolution and ordering of the liquidation of the applicant association using "Silesian Nationality" in its title. In that case, with reference to previous case-law, the Court observed that: "the consciousness of belonging to a minority and the preservation and development of a minority's culture cannot be said to constitute a threat to "democratic society", even though it may provoke tensions⁷. The emergence of tensions is one of the unavoidable consequences of pluralism, that is to say the free discussion of all political ideas. Accordingly, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing political groups tolerate each other."

This brief survey brings us almost to the present, but I would add that 2023 and 2024 have also seen some cases concerning Article 2 of Protocol 1 combined with Article 14, which is the Right to Education. In this context, it is worth highlighting what the Court has said about what Article 2 of Protocol 1 (Right to education) is designed to protect, and thus what the Court examines in such cases. For this, we go quite far back into the Court's case-law to the famous *Belgian Linguistic Case* of 1968, where the Court found that although Article 2 of Protocol No. 1 does not specify the language in which education must be conducted in order that the right to education should be respected, it recognised that the right to education would be meaningless if it did not imply in favour

⁵ § 95.

⁶ *Memedova and Others against North Macedonia*, [CM;ResDH\(2024\)258](#).

⁷ *Association of People of Silesian Nationality (in liquidation) v. Poland*, 2024, § 40; *Ouranio Toxo and Others v. Greece*, 2005, § 40; see, *mutatis mutandis*, *Ukraine v. Russia (re Crimea)* [GC], 2024, § 1378; *Sidiropoulos and Others v. Greece*, 1998, § 41.

of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be⁸. Principles relied on in many cases since.

In spite of its importance, the right to education is not absolute, but may be subject to limitations⁹. In order to ensure that the limitations imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim. However, unlike the position with respect to Articles 8 to 11 of the Convention, it is not bound by an exhaustive list of 'legitimate aims' under Article 2 of Protocol No. 1. Furthermore, a limitation will only be compatible with Article 2 of Protocol No. 1 if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved¹⁰

The Court has also found that the rights of persons belonging to national minorities to use their mother tongue and receive education in this language, as well as the State's corresponding obligation to protect and encourage the development of minority languages, are among the principles safeguarded by the international instruments on the matter¹¹. The member States which have ratified the [Framework Convention](#) have undertaken to preserve the essential elements of the identity of persons belonging to national minorities, including their language¹².

Applying these principles, the Court found no violation of the Convention in the recent cases of [Valiullina and Others v. Latvia](#), [Džibuti and Others v. Latvia](#), 2023, and more recently, [Djeri and Others v. Latvia](#), 2024. Concerning, respectively, public and private primary and secondary schools and pre-schools, and the Respondent state's programme, prior to 2022 which aimed to increase teaching in the official language of Latvian, and reduce the use of Russian as a language of instruction.

I am aware that there has been discussion concerning the judgments I just mentioned and your Committee's Opinions on related reforms. You will understand that it is not for me to comment on those.

It is perhaps important to note however that the examination by your Committee in its [fourth opinion on Latvia](#) does not concern the same time period as that examined by the Court in its recent decisions. The Court's judgments concern an earlier period in the policy i.e. pre-2022. Nor do our decisions concern the same provisions – our Conventions being different. I will say therefore, that it is perhaps not entirely surprising that when a different question is posed under a different Convention, about a different matter, a different answer may sometimes be given.

I highlight this because there should not be any misunderstandings that could be used to fragment the protections that our Conventions provide. Our work is complementary, as I hope some of the examples I gave in my survey of recent case-law demonstrate. Where your work enriches our jurisprudence, I hope that our case-law may also inspire your work.

⁸ [Belgian linguistic case](#), 1968, § 3 of "the Law" part.

⁹ Provided that there is no injury to the substance of the right, these limitations are permitted by implication since the right of access 'by its very nature calls for regulation by the State' ([Belgian linguistic case](#), 1968, , § 5).

¹⁰ [Catan and Others v. the Republic of Moldova and Russia](#) [GC], 2012, § 140; [Leyla Sahin v. Turkey](#) [GC], 2005, § 154.

¹¹ [Adam and Others v. Romania](#), 2020, § 94. In this regard, the Court refers to the Council of Europe instruments, specifically [Framework Convention](#) and the [European Charter for Regional or Minority Languages](#).¹¹ The provisions of the [Framework Convention](#) cover both teaching in and teaching of minority languages, both in public and private schools. These obligations are complementary to those under the [European Charter for Regional or Minority Languages](#), which particularly focuses on protection and promotion of minority languages.

¹² [Valiullina and Others v. Latvia](#), 2023, §§ 87 and § 134, referring to; see also Articles 5, 12, 13 and 14 of the [Framework Convention](#). While encouraging States to ensure teaching in minority languages and the learning of those languages, the Framework Convention allows for this to be provided in several ways: bilingual or multilingual education; classes in minority languages in public schools; and private minority language schools or "Sunday classes" organised by communities themselves.

In that connection, I am very pleased to announce to you that in the first half of this year we will be producing our first 'Case-law guide on Minority Rights'. This will be a welcome and informative addition to the information available on the Court's Knowledge Sharing platform and will reinforce the dialogue on this topic at all levels. It is also good news that in a few days we will officially launch our Knowledge Sharing platform in non-official languages in Romanian, Turkish and Ukrainian. Another important step forward in increasing accessibility to our case-law.

Even if at this stage we can only but be inspired by the 16 or more non-official languages into which you have translated your Thematic Commentaries!¹³

As I said in my opening remarks, protection of national minorities is essential for democracy. This year marks the 75th anniversary of the Court. And as we celebrate the achievements of the European human rights system, we must also look to the future. The challenges we face today – rising authoritarianism, populist attacks on judicial independence, the erosion of democratic norms – remind us that the fight for human rights including the protection of the rights of national minorities, is a permanent struggle. Finding the synergies between our two Conventions is as vital a task as ever.

Thank you. I look forward to your questions.

¹³ [Thematic commentaries of the Advisory Committee - National Minorities \(FCNM\)](#). The most recent is the ACFC Thematic Commentary No. 1 (2024) Education on 31 May 2024.