

## CASE STUDY: Europe

COUNCIL OF EUROPE:  
INTERNATIONAL LAW  
MINORITY RIGHTS  
HUMAN RIGHTS

FAAVM Human Right Crises Management and Prevention (HRCMP)

---

The 1990s, a decade marked by the resurgence of ethnic and regional conflicts, especially following the collapse of communism, saw the emergence of a large corpus of texts and measures relating to the protection of minorities, at both European and global level. In view of its prominent role in the human rights fields, the Council of Europe has been particularly active in this regard, as can be seen from this study.

Issues of ~minority-majority~ relations have dominated the politics of the wider Europe over the past decade. The Council of Europe, in tandem with the Organization for Security and Co-operation in Europe, has taken a lead in providing some answers to the complex challenges and opportunities that arise in this context. The Council of Europe, in particular, has been a unique focus of action in generating the first set of comprehensive, legally binding rules on minority governance in general and also in relation to minority and regional languages more specifically. This has been backed up by the first dedicated implementation monitoring mechanism, staffed by leading international and independent experts, and a very efficient international secretariat. It is therefore no exaggeration to say that it was the Council of Europe that has pioneered important developments affecting minority governance and minority rights. It has done so in a way that covers all of Europe, East and West, thus answering the criticism of selectivity in the approach to minority issues of European institutions.

The basic aim of this study is to provide an introductory survey on the protective regimes which have developed in the main international institutions (namely, UN, Council of Europe, OSCE and EU), as well as within special treaty co-operation frameworks, in response to the needs and demands of minority groups. Following from a concise introduction to the issues of minorities in historical perspective, and a general discussion of the understanding of minority rights and 'minority' within the corpus of international human rights law. This study also examines major international standards and supervisory methods, and briefly explores particular minority arrangement in European country context.

In recent years, minorities' issues have regularly come up in activities within international forums, such as the UN and several European institutions. The 'old' problem of minorities is one of the most delicate challenges posed to the human rights and institutional framework of the post-cold war era. Far from showing a lack of applicable standards, the current international scene presents a large set of provisions relevant to the situation of minorities, couched in a plurality of forms and reflecting varying degrees of legal significance. A variety of international techniques of supervision are directly or indirectly concerned with their implementation. They generate patterns of

scrutiny, providing guidance to a forward-looking assessment on state compliance. Moreover, domestic systems and other ‘*ad hoc*’ arrangements supplement the overall picture, highlighting models or otherwise means of protection and control to be viewed in the light of the relevant international instruments.

The work of both the United Nations \*(UN)\* working group and the High Commissioner for Human Rights is inspired by the experience of the OSCE HCNM, acting since 1993 as an institution for “preventive-diplomacy”. Along comparable lines, the Office of the Commissioner on Democratic Institutions and Human Rights, including the Rights of Persons Belonging to Minorities was established in 1994 by the CBSS, set up as a conference of foreign ministers, comprising, among others, the Baltic states and the northern countries. In June 2000, the Council further revised the commissioner’s mandate, which still contains, however, a remit to address minority rights issues, and appointed him a ‘commissioner’ on Democratic Development. In May 1999, the Council of Europe established a Commissioner for Human Rights entrusted with mostly promotional so called confidence-building task. His broad mandate clearly covers minority rights education as a tool for facilitating the implementation of the pertinent Council of Europe instruments. A variety of measures, including technical assistance and advisory services, are also offered under the umbrella of specific activities of the Council of Europe. The EU, for its part, is devising a range of ways and means of improving minority rights compliance in eastern Europe. In particular, ‘respect for and protection of minorities’ has been made a requirement for EU membership, thereby building upon the Council of Europe’s approach to membership requirement, and accessibility to economic benefits, such as trade as an example. It is a specific conflict-prevention initiative which aims to stabilize the region and promote development by facilitating bilateral and multilateral agreements as well as domestic arrangement, covering the whole range of regional crisis factors, with a special emphasis on the protection of human rights in general and minority rights in particular, in accordance with universal and regional standards.

In terms of relevant human rights standards, the EU Charter further develops the anti-discrimination approach as it embodies a provision on equality before the Law (Article 20) and a general clause prohibiting discrimination (Article 21, paragraph 1) – whose scope of application thus reaches beyond the more limited one; for instance, Article 14 of the ECHR, addressed to EU institutions and bodies as well as member states only when implementing EU law, in accordance with their respective powers (Article 51).

An ‘implementation-oriented’ pattern of prevention is shown by the recent use of multilateral and bilateral programmes of technical co-operation and advisory services. In the context of UN, such programmes are being carried out by the office of the UN high commissioner, upon request from the countries concerned. The basic aims are to assist European states in the process of drafting and reviewing their constitutions and/or pieces of legislation in view of the relevant international human rights standards, as well as supporting the setting up of adequate national institutions responsible for implementation. This approach calls for a co-ordinated effort among the various UN agencies and organizations in conformity with Article 9 of the UN declaration.

The action plan adopted by the 1997 Strasbourg Summit of the Heads of European States and Government of the Member States of the Council of Europe stresses

the need for complementing the standard-setting achievement in the field of minorities, through practical activities, such as confidence-building measures and enhanced co-operation, involving both governments and civil societies. The post of Commissioner for Human Rights established by the Committee of Ministers in 1999 (Resolution (99) 50), largely reflects these objectives, while within a wider human rights framework, notably in relation to educational, advisory and technical assistance tasks (Article 2 of resolution 99 (50)). Interestingly, in recommendation 1492 (2001), the Parliamentary Assembly urges the Committee of Ministers to attach to the commissioner a person with special responsibility for issues concerning the protection of minority rights. On the other hand, existing specialized bodies are contributing significantly to monitoring the situation of minorities and their rights. The work of ECRI encompasses to some extent the protection of minorities when reporting on country situations, formulating recommendations on general themes and developing co-operation with NGOs. In particular, the Venice Commission and the advisory committee under the Framework Convention are offering their technical services to facilitate the adoption of appropriate domestic measures on the protection of minorities.

The legal orders of European states largely conceive of ~fundamental rights~ as rights of an individual nature. Still, there are countries, for example, Hungary, Poland and Slovenia that, while adhering to this conception in relation to 'traditional' fundamental rights. Recognize the 'mixed' character of minority rights as combining individual rights and group protection aspects. Moreover, some countries have developed specific solutions concerning the protection of their own minorities, including the establishment of territorial and personal autonomy regimes within a federal or regional framework. In recent years, constructive national arrangements for minorities have been recommended in order to strengthening, where appropriate, the collective dimension of protection and to prevent ethnic future conflicts.

As per international Law, the implementation of human rights norms is now becoming one of the major preoccupations of different international institutions, demanding serious technical and financial involvement. In the area of minority rights, effective means of control are even more necessary, due to the manifest ~interrelation~ of the protection of minorities and domestic as well as international stability. Although the growing emphasis on 'positive' protection of minority groups is being paralleled by efforts at 'positive' supervision in an attempt to assists states in bringing their laws and practices into line with international standards, the enforcement system remains largely inadequate, obviously in connection with the shortcomings of the entire minority rights architecture.