Chapter Three

Advancing the Mandate in Post-Communist Countries

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I. Introduction

The following lines contain some of my recollections accompanied by comments, necessarily loaded with a dose of subjectivity, on the years spent in the various Council of Europe (CoE) bodies dealing with national minority issues, with emphasis on my participation in the Advisory Committee on the Framework Convention for the Protection of National Minorities (hereinafter “Advisory Committee” or ACFC) works between 1998-2004 and 2008-2012. I will mention some of the inherent pitfalls of the Framework Convention for the Protection of National Minorities (hereinafter “Framework Convention” or FCNM), characteristic to, but not necessarily the same as, all of international human rights covenants, and the ways the ACFC has dealt with them in the past 15 years. Obviously, for someone like me, coming from the region indicated in the title, the perspective on difficulties is “eastern” and may not entirely coincide with other perceptions. I also will address both the beneficial effects and the disadvantages arising from the general and sometimes elusive nature of the provisions of the FCNM, including those on the ACFC. Since I plan an essay and not a methodical and systematic study, I may allow myself to go back and forth in time for trying to sharpen the contrast between what has been the initial concept and how the practice evolved far beyond it in the past 15 to almost 20 years.

Initiatives at the interstate level of regulating through legally binding norms, various aspects of which belong to the general domain of international human rights, were often destined to lead to unexpected consequences in a largely unforeseeable future. While some instruments are simply forgotten soon after their conclusion, observers and the parties themselves have been pleasantly surprised by the great number of signatures of the FCNM in the first months after the procedure started.
In general, the initial will to negotiate, as well as the goals pursued at a certain point in time, may be altered during the sometimes decade-long travaux préparatoires due to changes in the international setting, the rapidly evolving situations in different countries, new approaches in other international organizations than the one in charge with codification and so on. The outcome may be different from that envisaged in the beginning.

In the case of the FCNM and the ACFC the factors mentioned have indeed produced outcomes different from the initial will, and in the given circumstances it must be emphasized that most of these outcomes were to the benefit of the cause, the protection of national minorities in Europe. The final text of the FCNM was ready in roughly two years of negotiations. The first Terms of Reference have been issued in 1992. These terms have been amended as negotiations progressed and the document, undergoing serious changes from the first drafts, was adopted in its final version as we know it in 1994. In comparing with other cases, this is a particularly short time. There are a number of explanations of this speed in negotiations, partly related to the ethnic conflicts that erupted in some countries of Eastern and South Eastern Europe after 1989, partly to the numerous parallel undertakings in other international organizations and fora.

Though it was rarely spoken about it in official meetings, the twentieth century history of national minority protection and prominent memories of the failure of the League of Nations’ system loomed large. The situation the League had to face in Eastern and South Eastern Europe was the result of the collapse of three empires, the Ottoman, the Russian and the Austro-Hungarian empires, which treated nationalities, as they were called at the turn of the nineteenth century, in their own way and not always peacefully. Imperial manipulation of the groups concerned, bloody ethnic and religious conflicts, cruel treatment and murders were not uncommon.

One influential interpretation of events in the early 1990s was that the nineteenth century rooted national conflicts in the region have never been resolved; Socialism has just frozen them. With the meltdown of the system, the old demons came back to life, crawling out from the “refrigerator” in some cases, in others just breaking the door open. Nationalism, old style, has become indeed a major ideology providing political legitimacy to a number of new parties and movements in a region undergoing troublesome transition, some of which came to power in certain states in the first free elections ever, or in living memory in a number of other countries. Old problems have been compounded by the newly found freedom of speech, allowing some persons to use the most despicable hate-speech vocabulary against real or perceived political opponents, and “re-orienting” the old totalitarian scapegoat creation by targeting mainly minority groups and persons belonging to such groups,