The Latest Recommendations Endorsed by the HCNM on Ethnic Policing: A New Development in Relation to Minority Protection?

I. Introduction and Overview

The aim of this contribution is twofold. It sets out to provide an overview of the content and process of developing the latest recommendations sponsored by the High Commissioner on National Minorities (HCNM), namely the ones on Policing in Multi-Ethnic Societies (hereinafter, “Policing Recommendations”). At the same time, this article situates these recommendations in the broader schema of issues related to minority protection. More specifically, it sets out to analyze them in terms of continuation versus difference in relation to the previous sets of Recommendations (and guidelines). Finally, an estimation is made of possible topics for new ‘instruments’ on minority protection and of the possible role the office of the HCNM can (be expected to) play regarding the formulation of these new standards.

First of all, a background is sketched, explaining the reasons why the HCNM considered it important that recommendations be developed in relation to policing. This sketch is set against the more general practice of the HCNM in instigating the formulation of this kind of recommendation, as well as the outcomes of previous endeavours. Subsequently, the actual process that was followed leading up to the final version of the Policing Recommendations is reflected upon, including the identification of relevant themes, the ‘source’ material and the working methods of the expert group. The analysis will then focus on the extent to which the Policing Recommendations are new (innovative) both from a formal (procedural) point of view and from a more substantive point of view. The latter analysis will highlight the central themes and ethos of the Policing Recommendations. Finally, this paper concludes with an overview of other potential new developments in relation to minority protection (instruments) and a brief assessment of the possible role of the HCNM in this respect.
II. The HCNM and the Development of Recommendations

The HCNM was established to be “an instrument of conflict prevention at the earliest possible stage”, demanding that the High Commissioner be a neutral mediator between public authorities and minorities. The ensuing mandate obviously does not include standard setting, while the HCNM is meant to operate within the framework of existing legal standards (both in terms of general human rights and minority rights). In order to do so, it is of course important that these norms are sufficiently clear so as to provide effective, meaningful guidance. However, as is often emphasized, this is not really the case. Human rights norms are not minority-specific and everything depends on how supervisory bodies actually interpret these norms in relation to minorities and their specific situation (and needs). Minority rights may be minority-specific but are formulated in such a vague way, replete with qualifiers (also called escape clauses), that here everything depends on the way they are interpreted by the relevant supervisory mechanism. This need for clarification of the existing norms (inter alia, in light of the supervisory mechanisms) in order to guide the practice of both the HCNM and the OSCE states has led the HCNM to venture indirectly into the domain of standard setting, better described as standard clarification.

Through the course of his practice, the HCNM has identified certain themes that have kept recurring (as sources of potential conflicts) and in relation to which he aspired to achieve a clarification of existing standards. Each time, he commissioned a group

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2 CSCE, op.cit. note 1, para. 6.
4 A prototypical example of a minority provision with several qualifiers is Article 10, Para. 2, FCNM: “In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities”. Qualifiers make it very difficult to deduce what the actual content of this right is.
6 Compare in this respect the introductions to the first three sets of recommendations enumerated below.