



IED Conference “National Minorities in the European Strategy”

Protection of Minority Rights in Europe

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Overview

1. Historical Evolution of Minority Protection in International Law
2. What is a “Minority”?
3. What are Minority Rights?
4. Protection of Minority Rights in Europe
5. Conclusions

1. Historical Evolution of Minority Protection in International Law

- **1648:** end of **Thirty Years War** and the Peace of Westphalia: State sovereignty, principle of non-interference in internal affairs and confirmation of *cuius regio, eius religio*
- **1918:** end of **World War I** and the Peace Treaties: League of Nations and the Wilson doctrine; Several *Minority Treaties* and constitutional regulations
- **1945:** end of **World War II** and birth of *human rights* system: e.g. UDHR (1948), ECHR (1950), ICERD (1965), ICCPR and ICESCR (1966); minority rights in few bilateral agreements (e.g. Italy-Austria)
- **1989:** end of **Cold War** and return to *minority rights*: Ethnic wars (e.g. Yugoslavia, Rwanda); minority standards and mechanisms developed at universal and European level

2. What is a “Minority”?

□ A working definition:

○ Elements:

- objective: - different national, ethnic, cultural, religious and linguistic characteristics from the rest of the population.
- minority position (numerical & non-dominant)
- subjective: will to preserve group identity

○ Self-identification

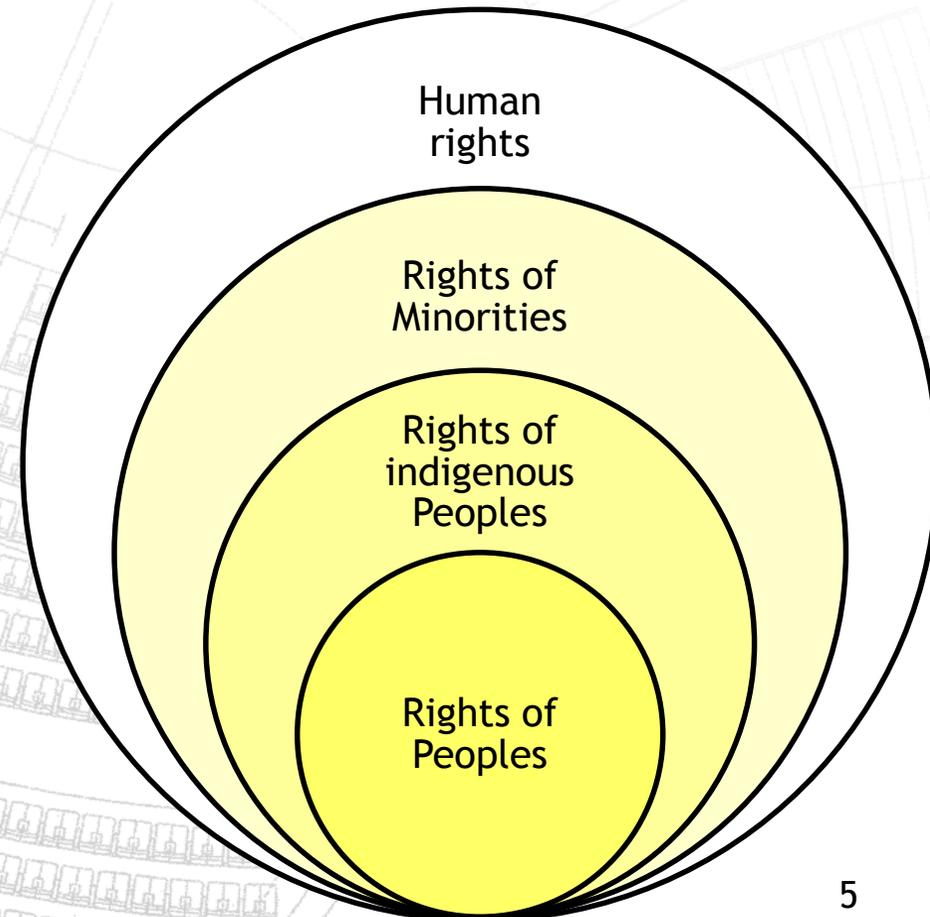
□ Several contested issues:

- Citizenship criteria
- Official recognition as minority
- Durable ties with the territory
- Role of kin-state
- Individual vs collective rights
- Relation to other concepts: *nation, people, indigenous people*

3. What are Minority Rights?

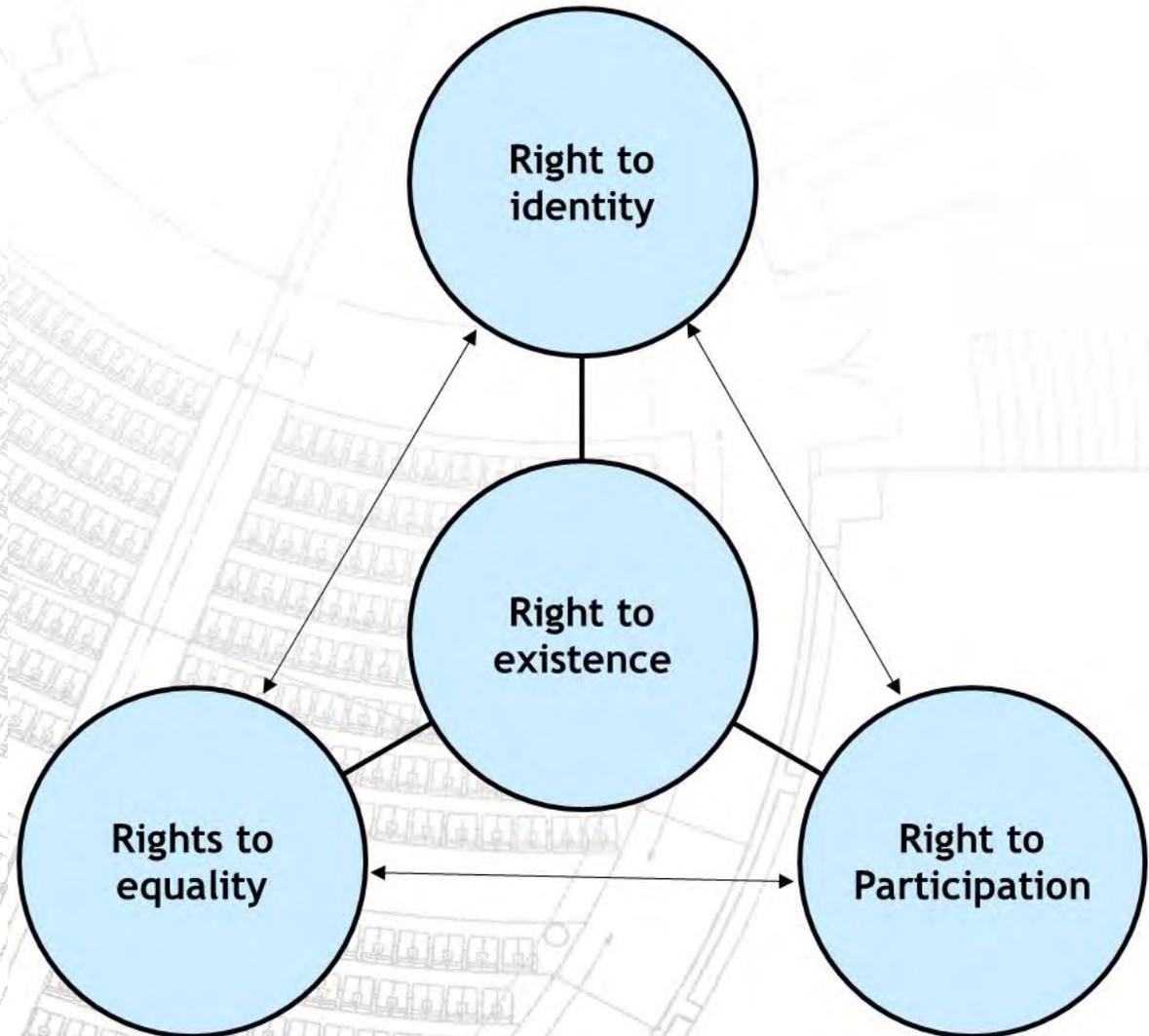
Categories of rights and their beneficiaries (Eide, 2000):

- **Human rights:** individual rights
- **Minority rights:** individual rights but “states have some duties to minorities as collectivities”
- **Indigenous peoples’ rights:** mostly collective rights
- **Peoples’ rights:** solely collective rights including the right to self-determination



An overview of Minority Rights

- **Existence**
 - ✓ Physical existence
 - ✓ Access to basic rights
- **Identity**
 - ✓ Language
 - ✓ Education
 - ✓ Culture
 - ✓ Religion
- **Equality**
 - ✓ Non-discrimination
 - ✓ Positive action
- **Participation**
 - ✓ Political
 - ✓ Socio-Economic



4. Protection of Minority Rights in Europe

□ The main institutional actors:

- Council of Europe (CoE)
- Organization for Security and Cooperation in Europe (OSCE)
- European Union (EU)

□ The main areas of intervention:

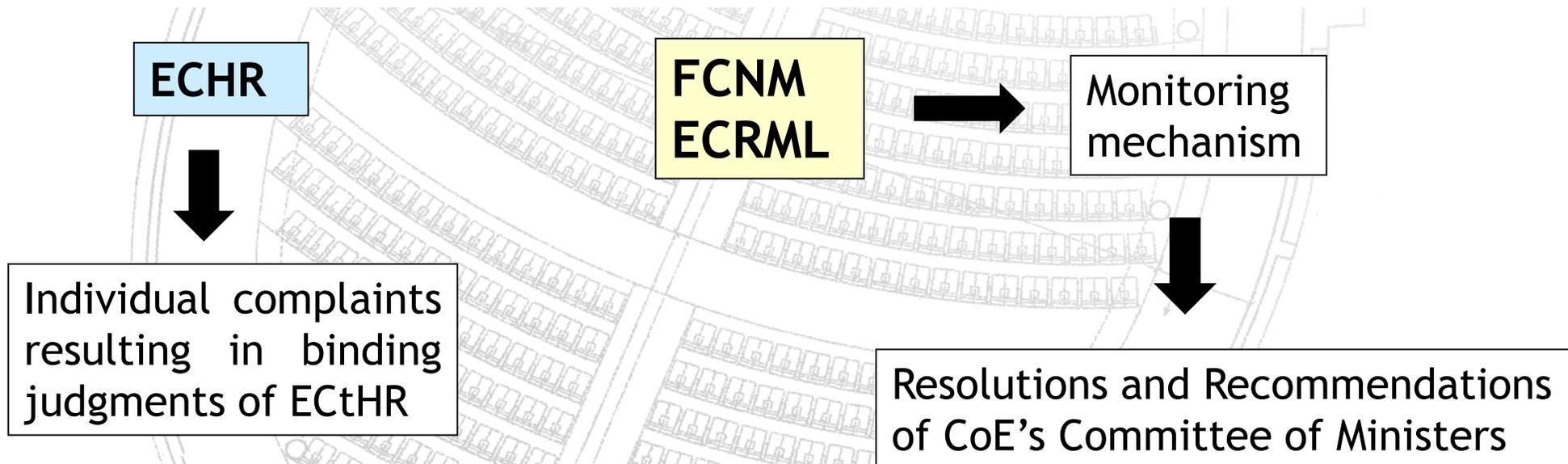
- **Standard setting: CoE** => ECHR (1950), FCNM (1992) and ECRML (1995)
- **Minorities and security: OSCE** => Copenhagen Document (1990), Rec. of the High Commissioner on National Minorities - HCNM (from 1996 on)
- **Conditionality and support: EU** => Copenhagen criteria (1993), Racial Equality Directive (2000) and Charter of Fundamental Rights (2009)

□ **The instruments:**

- **Legally binding:** treaties, conventions, agreements
- **Non-binding** (“soft law”): declarations, resolutions, recommendations

□ **The implementation:**

- Complaints procedures, binding international courts judgments
- State reporting and monitoring mechanisms
- On-site study visits and assessment



Instruments and mechanisms at European level:

Treaties and binding judgments:

- hard jurisprudence based on hard law: e.g. **ECtHR judgments & ECHR**
- Usually effective but also exceptions (e.g. case of *Sejdić and Finci v. Bosnia and Herzegovina*); what about **ECJ**?

Treaties and legally non-binding reviews:

- soft jurisprudence based on hard law: **opinions of expert bodies of FCNM and ECRML**
- Less effective, sometimes states ignore them (e.g. ACFC's 2nd and 3rd Opinions on Romania as regards the restrictive conditions for registration of new minority organizations)

Non-treaty based mechanisms:

- soft jurisprudence based on soft law: **recommendations of HCNM**
- Even less effective, implementation depends on political will (e.g. effective participation and autonomy arrangements)

A minority right enforceable before ECJ? Only if...

- it is relevant to the proceedings
- It doesn't harm the functioning of the EU
- it is within the EU legal framework, when referring to national measures implementing EU legislation (Topidi 2004)

ECJ, *Case C-391/09, Runevič-Vardyn and Wardyn* (12 May 2011)

Art. 3(1)(h) of Directive 2000/43/EC: “**access to** and supply of goods and **services** which are available to the public, including housing”

“National rules which provide that a person’s surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language relate to a situation which **does not come within the scope of Council Directive 2000/43/EC** of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.” (ECJ judgment, Case C-391/09)

5. Conclusions

Achievements:

- Development of standards and minority protection mechanisms mostly in the 1990s
- Increasing relevance of monitoring mechanisms

Outstanding Issues:

- Monitoring problems: duration, minority participation, transparency
- Implementation problems: gap between “law in the books” and “law in practice”, “one-size-fits-all” policies

Minority rights and the EU?

- An internal approach based only on equality and non-discrimination
 - An essential concept in the EU foreign and external policy
 - Attempts to move forward through new EU instruments:
 - **European Grouping for Territorial Cooperation (2006)**
 - **European Citizens Initiative (2011)** - a missed opportunity?
- e.g. ‘Minority SafePack’ rejected recently by EU Commission

Thank you

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