

## The continuing relevance of the Copenhagen Document – Muslims in Western Europe and the security dimension

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## **The Continuing Relevance of the Copenhagen Document – Muslims in Western Europe and the Security Dimension**

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### **Abstract**

The Copenhagen Document was adopted in the wake of the Cold War, with the situation of ‘national minorities’ in Central and Eastern Europe and former Soviet States in mind. However, by recognising the potential for the violation of human rights to lead to conflict, the Copenhagen Document remains relevant to minority situations throughout the world.

This article explores the increasing relevance of these rights to Muslim minorities in Western Europe. It is argued that if Western European States wish to proactively prevent conflict with their Muslim populations, lessons can be learnt from the approach adopted in the Copenhagen Document. In particular, the emphasis on encouraging societal cohesion in order to reduce the potential for conflict, through effective participation in public affairs and intercultural dialogue and tolerance, is a message that must be heeded by Western European States.

**Keywords:** Copenhagen Document, Framework Convention for the Protection of National Minorities, Muslim minorities, Western Europe, Integration, Societal Cohesion, Conflict Prevention

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At the time of its adoption the Copenhagen Document was described as the ‘peak of “standard setting on national minority issues”’ (Wright, 1998: 4). Although it has subsequently been overtaken in academic discourse by legal minority rights instruments, the Copenhagen Document signalled a shift in the approach taken to minority issues in Europe. Whereas the question of minorities had primarily been approached as a human rights issue in the post-war period, the Copenhagen Document recognised the nexus between the protection of human rights and conflict prevention (1990: para 30) and, in so doing, contained a number of innovative provisions. Specifically, the Copenhagen Document recognised the need to adopt special measures (1990: para 31; Wright, 1996: 198), the right to self-identify (1990: para 32; Bloed, 1990: 40), the right to ‘express, preserve and development their ethnic cultural, linguistic or religious identity ... free of any attempts at assimilation against their will’ (1990: para 32; Jackson-Preece, 1997: 90) and that the establishment of ‘local or autonomous administrations’ may be appropriate to ensure the effective participation of national minorities in public affairs (1990: para 35). Furthermore, this was the first instrument to add effective participation to the traditional ‘two pillars’ of minority protection: preservation of minority identity and non-discrimination and equality. While the Copenhagen Document was adopted with the situation in Central and Eastern European States and post-Soviet Union States in mind, its contents remain relevant to minority situations throughout the world.

This article focuses on Muslim minorities in Western Europe. Although it does not argue that these minorities constitute ‘national minorities’ for the purpose of the Copenhagen Document, it does argue that their situation is increasingly analogous to that of more traditional minorities. Muslim minorities now constitute citizens and permanent residents in Western European States, but with the rise of right-wing politics, Islamophobic discourse and restrictions on their rights justified by security concerns, these communities are increasingly marginalised. This, in turn, poses challenges in relation to integration, societal cohesion and conflict prevention. Whereas research into the rights of ‘new minorities’ has primarily focused on the challenges of integration and societal cohesion (Medda-Windischer, 2009; Berry, 2015), this article explores the rights of European Muslims from the perspective of the security dimension. It is submitted that if Western European States wish to proactively prevent conflict with their Muslim populations, lessons can be learnt from the approach adopted in the Copenhagen Document. In particular, there is a need to take proactive steps to facilitate societal cohesion through intercultural dialogue and tolerance, and the effective participation of these communities in public affairs.

Initially, a comparison is made between the situation of national minorities and Muslim minorities in Western Europe, in order to evaluate whether the aims of the Copenhagen Document are relevant to Muslim communities. Although there are some significant differences between national minorities and Muslim minorities, the permanence and marginalisation of Muslim communities in Western Europe alongside the prospect of conflict leads to the conclusion that lessons can be learnt from the Copenhagen Document. Secondly, the relevance of the standards established in the Copenhagen Document to the situation of Muslim minorities in Western Europe is drawn out, focusing on effective participation in public affairs (1990: para 35) and intercultural dialogue and tolerance (1990: para 36). It is argued that by focusing on the equal participation of these communities in society, these standards aim to increase societal cohesion and thereby reduce the potential for conflict. However, in practice, Western European States have not fully realised these rights in respect of their Muslim minorities.

### **1. Comparing National Minorities and Muslims in Western Europe**

This article does not suggest that Muslims in Western Europe fall within the term ‘national minority’ employed in the Copenhagen Document. As previously noted, the Copenhagen Document was adopted with the situation of national minorities in Central and Eastern Europe and the former Soviet Union in mind. Furthermore, the suggestion that migrants, including ‘guest workers’ (or *Gastarbeiter*) in Western Europe, should be included in Chapter IV of the Copenhagen Document on ‘National Minorities’ was dismissed during the drafting of the instrument (Helgesen, 1994: 20-21). As a significant proportion of the ‘guest workers’ recruited in the post-war period in Western Europe were Muslim, this resulted in the exclusion of these communities from the scope of the Copenhagen Document.<sup>1</sup> However, their situation has changed significantly since the 1990s and has begun to resemble that of national minorities more closely. Consequently, while the Copenhagen Document itself may not be applicable to Muslim minorities in Western Europe, it is argued that the rights contained therein are of increasing relevance to these communities. This section will explore how the situation of Muslim minorities originating from immigration to Western Europe has evolved, and the key ways in which it corresponds and diverges from the situation of national minorities. This facilitates the evaluation of the relevance of the Copenhagen Document to Muslim minorities in Western Europe.

The exclusion of ‘new minorities’ from the scope of application of minority rights standards has been justified on the grounds that immigrants were initially expected to assimilate into their receiving State<sup>2</sup> or to return to their State of origin (Davy, 2005, 126). Citizenship (Capotorti, 1977: para 568) and an element of permanence or ‘longstanding, firm and lasting ties with’ the State (Capotorti, 1977: para 202) have consistently been cited as prerequisites of minority rights protection. While the majority of British Muslims would have satisfied the requirement of citizenship at the time of the adoption of the Copenhagen Document (Nielsen, 2004: 51-2), other Western European States, such as Germany, were still systematically denying their Muslim ‘guest workers’ citizenship. However, subsequent developments such as the Act of German Citizenship of 2000<sup>3</sup> have meant that the majority of Muslims in Western Europe are now citizens of the State in which they reside (Nielsen, 2004: 51-2; Choudhury, 2010: 36). This development has thus reduced the legitimacy of arguments for the denial of minority rights to Muslim minorities based on their lack of citizenship or permanence. Furthermore, by continuing to practice their religion and maintain their culture, a significant proportion of the Muslim population in Western Europe have withstood the pressure to assimilate. Thus, the oft cited requirement of the ‘will to maintain their distinct identity’ appears to have been satisfied by European Muslims, implicitly. As noted by Alfredsson ‘[a]t some point ... the newcomers become minorities’ (2005: 167). Consequently, since the turn of the Century, Muslim communities have increasingly been recognised as constituting minorities under article 27 of the International Covenant on Civil and Political Rights<sup>4</sup> (ICCPR)<sup>5</sup> and the Framework Convention for the Protection of National Minorities (FCNM)<sup>6</sup> (Thornberry and Martin Estébanez, 2004: 95).<sup>7</sup> Nonetheless, opposition from some Western European States to the inclusion of Muslim minorities within the scope of application of the FCNM remains.<sup>8</sup>

Muslims in Western Europe are not national minorities, in the sense intended by the drafters of the Copenhagen Document. Historically the term ‘national minority’ implied a connection to a kin-State, ‘a larger nation already constituted in a state or in a federated entity within a federal state’ (Benoît-Rohmer, 1996: 15). Although a common understanding of the term has not evolved (Benoît-Rohmer, 1996: 15; Malloy, 2005: 21) as indicated by the liberal approach adopted by the Advisory Committee to the FCNM (AC-FCNM) (Hofmann, 2005: 16),<sup>9</sup> the context of the adoption of the Copenhagen Document indicates which minorities were the intended beneficiaries of Chapter IV. National minorities in Central and Eastern Europe and the former Soviet Union had an ethnicity connected to a corresponding kin-State,

as required by the historical definition. Thus, in the aftermath of the Cold War ‘minority demands which remained unanswered were identified as potential threats to the post-Cold War international order’ (Jackson-Preece, 1997: 88). This perceived threat to security provided the incentive for the adoption of the Copenhagen Document. Notably, minorities such as the Roma that do not pose a threat to security were originally marginalised within the CSCE/OSCE system (Wright, 1998: 6).

The national minorities understood to be the focus of the Copenhagen Document primarily identify on the basis of ethnicity, with a common language or religion and connection to territory as a corollary of this. In contrast, Muslim minorities in Western European States, originating primarily from immigration, are ethnically heterogeneous. Nonetheless, particular ethnic identities are associated with Islam in Western Europe, such as Pakistani or Bangladeshi origin in the UK, Turkish origin in Germany and Denmark, North African origin in France and Somali origin throughout Western Europe. This impacts the form of Islam that is practiced and the language spoken. Religion is often intertwined with the cultural identity of Muslim communities in Western Europe (Berry, 2011, 439-47). Claims made by European Muslims to the accommodation of identity, in particular specific forms of religious clothing or access to linguistic education, may be rooted in both religion and culture (Berry, 2011, 440-41). Rather than forming one religious minority in Western Europe, the complexity of European Muslim identity means that they form plural ethnic, linguistic and religious minorities. Consequently, they are not directly comparable to the intended beneficiaries of the Copenhagen Document. Moreover, although Muslims in Western Europe have in many instances settled in similar regions for several decades, influenced by ethnic origin as well as religion (Yilmaz, 2005: 56), their minority identity is not connected to territory in the same way as national minority identity. Therefore, the extension of rights on the basis of a historical connection to territory is not appropriate.

Muslims in Western Europe have not suffered from historical oppression to the same degree as the national minorities addressed by the Copenhagen Document. For national minorities ‘[i]n many postcommunist countries, there is a strong sense that historical wrongs have not yet been acknowledged or remedied’ (Kymlicka, 2008: 28). This, Kymlicka suggests, justifies an accommodationist, rather than integrationist, approach to the question of national minorities (2008). In contrast, ‘[i]n deciding to uproot themselves, immigrants voluntarily relinquish some of the rights that go along with their original national membership’ (Kymlicka, 1995: 96). Consequently, it is reasonable for States to expect such

‘new minorities’ to integrate. While an accommodationist approach to national minorities is preferable, in practice, the majority of the Copenhagen Document’s innovative provisions adopt an integrationist approach (1990: para 35, 36), with the exception of the second subparagraph of paragraph 35 of the Copenhagen Document, which mandates ‘appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances’. Similar integrationist clauses are found in the FCNM,<sup>10</sup> an instrument which has been criticised, alongside the OSCE HCNM’s recommendations for adopting an integrationist approach to the question of national minorities (Kymlicka, 2008: 30). While a distinction between the rights of national minorities and ‘new minorities’, including Muslims in Western Europe, is justifiable, there is less reason to restrict the application of the integrationist provisions found in the Copenhagen Document, with the exception of the rights pertaining to territory or autonomy.

Although it can be argued that ‘new minorities’ do not satisfy the elements of the definition of national minority, if the approach of the OSCE to conflict prevention is to remain proactive rather than reactive, as intended (Wright, 1996: 192), the similarity between the situations of new and old minorities should be recognised. Reserving the rights found in the Copenhagen Document exclusively for national minorities does not recognise the potential for the oppression of ‘newcomers’ to cause similar problems over time. In noting the ‘security-rights nexus’, Sasse, suggests:

... the focus on security also creates a link between groups recognized as ‘national minorities’ and recent immigrants. The lack of integration of minorities, however defined, undermines societal cohesion and can give rise to political mobilization against the host polity, for example in the form of separatism or fundamentalism. (2005: 679)

The recognition of the connection between security and human rights lies at the heart of the OSCE. Notably, paragraph 30 of the Copenhagen Document ‘reaffirm[s] that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in participating States’ (1990: para 30). Thus, to the extent that the provisions of the Copenhagen Document aim to integrate diverse societies and improve societal cohesion, lessons can be learnt from their content. Despite being designed to combat a specific situation at a specific time, the Copenhagen Document has continuing relevance to new and emerging minority situations.

Developments since the 1980s indicate the potential for dissatisfaction amongst some Muslim communities in Western Europe to lead to conflict. Conflict has a wide meaning and

does not inevitably lead to violence. Simply defined, ‘conflict denotes the incompatibility of subject positions’ (Pia and Diez, 2007: 2). If the causes of conflict are not adequately addressed then there is potential for the resulting dissatisfaction to lead to physical violence (Pia and Diez, 2007: 2). Prominent examples of conflict with groups within European Muslim communities include the Rushdie Affair in the UK in 1988, the Danish Cartoon Affair in 2005, peaceful protests in opposition to the Iraq war in 2003, and riots in the North of England in 2001 and the *banlieue* of Paris in 2005 and 2007. Furthermore, a rise in anti-Immigration and Islamophobic political agendas,<sup>11</sup> Islamophobic hate speech,<sup>12</sup> and discriminatory media reporting<sup>13</sup> in Western Europe has been noted by the AC-FCNM. As a result of this ‘climate of intolerance’,<sup>14</sup> restrictions have increasingly been placed on the manifestation of Islam in public spaces, including bans on the *hijab*,<sup>15</sup> *burqa*<sup>16</sup> and minarets,<sup>17</sup> leading to increased alienation amongst European Muslim minorities (Hammaberg: 2010).<sup>18</sup> As noted by Gilbert, ‘a state that persistently fails to recognize the rights of its minorities will sow the seeds of disloyalty’ (1996: 167).

Additionally, the fear that Muslims in Western Europe threaten national security also resembles the perception that national minorities are disloyal and irredentist (Kymlicka, 2007: 24). The growth of Islamic fundamentalist terrorism, including attacks in Madrid 2004, London 2005, Copenhagen 2015 and Paris 2015, and the rise of Daesh in the Middle East, have also led to suggestions that Muslims in Western Europe are disloyal and sympathise with extremists (Newton Dunn, 2015). Thus, the need to adopt measures to integrate Muslim minorities in Western Europe has been recognised by the former OSCE High Commissioner on National Minorities (HCNM), Knut Vollebæk:

In the light of what we have already seen in many places in Europe and after discussions with many Western European governments, in my opinion we will face a serious social threat if we do not quickly implement measures in order to integrate all groups in our society, not least the new. (2008: 5)

Similarly, Kymlicka has noted that the security dimension of minority rights ‘is a non-issue throughout the established western democracies with respect to historic national minorities and indigenous peoples, although it remains an issue with respect to certain immigrant groups, particularly Arab and Muslim groups after 9/11’ (2010: 106).

Consequently, while the situation of Muslim minorities in Western Europe is not directly comparable to that of national minorities in Central and Eastern Europe and post-Soviet Union States, there are sufficient similarities to suggest that the application of the



integrationist provisions of the Copenhagen Document may be beneficial. As Wolff has stressed '[a]t the heart of all of these – past, current, latent, potential – conflicts is a fundamental lack of social cohesion' (2013: 70).

## **2. Integrating Diverse Societies with a view to Conflict Prevention: Participation and Dialogue**

Despite the presence of many national minorities in Western Europe, the specific focus of the Copenhagen Document has meant that these States have historically been excluded from the oversight of the OSCE mechanisms. This has been attributed to the fact that these States were 'generally less willing, and less susceptible to pressure, to allow HCNM engagement in conflicts in their jurisdictions' (Wolff, 2013: 63). Moreover, the mandate of the HCNM has been restricted to prevent oversight of pre-existing conflicts and any situation involving terrorism, at the request of the United Kingdom and Turkey (Alexanderson, 1997: 52; Heintze, 2000: 386-7). However, as '[m]inority conflicts in Western Europe are doubtless subject to the same rules as those in Eastern Europe' (Heintze, 2000: 390), Western European States would benefit from engaging with the specialised instruments and bodies of the OSCE.

Western European States have recognised the need to improve societal cohesion on the basis of unrest amongst their Muslim communities (Council of Europe, 2008: 9) and have linked this to security concerns (Cameron, 2011). However, the approach adopted by many of these States runs counter to the message of Chapter IV of the Copenhagen Document, which recognises the nexus between the protection of human rights and conflict prevention (1990: para 30). Levey submits that 'in the wake of militant Islam and the moral panic over Muslim immigration' there has been a shift towards integration and 'interculturalism' in Western Europe (2012: 218). While the Copenhagen Document recognises that the preservation of minority identity alongside measures of integration are central to cohesive societies, States have increasingly conflated integration with assimilation (Xanthaki, 2016: 821-22). This phenomenon has been recognised, in the context of Western Europe, by the AC-FCNM,<sup>19</sup> which has expressed particular concern about Dutch authorities 'addressing integration issues mainly through the objective of protecting Dutch national identity'.<sup>20</sup> Forced or unwanted assimilation violates the rights of persons belonging to minorities (UN Commission on Human Rights, 2005: para 22; Council of Europe, 1995: para 45). Furthermore, such measures are recognised as decreasing societal cohesion, as noted by Bengoa, '[t]he causes of

fundamentalism are generally to be found in the implementation of such assimilationist policies, whereby the State refuses to recognize the existence of minority groups within itself or simply prevents the build-up of a multicultural society' (2000: para 36). By adopting assimilationist policies, Western European States are likely to increase the alienation of Muslim minorities, contrary to the message of the Copenhagen Document.

The Copenhagen Document encourages the adoption of integrationist measures that allow the participation of persons belonging to minorities as equal members of society, in conjunction with measures to facilitate the preservation of minority identity. The link between societal cohesion and conflict prevention has been emphasised by the former HCNM, Vollebaek: 'Developing and implementing integration policies should be among the priorities of all States seeking to accommodate diversity and avoid the risk of conflict developing out of increased separation and tension between groups in society' (Ljubljana Guidelines, 2012: 6). Two provisions that originated in the Copenhagen Document stand out as both innovative and important in this respect: the right to participate in public affairs (para 35) and what is now known as the right to intercultural dialogue and tolerance (para 36). Notably, the addition of these rights extended the scope of minority protection past the two traditional pillars of minority protection: non-discrimination and equality and the preservation of minority identity (Henrard, 2000: 8-11).<sup>21</sup> They have subsequently been given legal effect through their formulation as rights in the FCNM.<sup>22</sup> This, Ringelheim suggests, 'bring[s] the FCNM beyond a mere ideal of peaceful coexistence of majorities and minorities. It is also geared towards ensuring their inclusion and participation on an equal footing in the society at large' (2010: 118). While the AC-FCNM has focused on 'justice' ahead of 'security' (Craig, 2012: 64), the connection between the achievement of these rights in practice and the security dimension remains:

Effective integration and conflict prevention are also linked in that they require a comprehensive approach in terms of the policy areas and people or groups they involve. Integration and conflict prevention policies, thus, have both horizontal and vertical dimensions: they need to engage elites and the masses within and across different population segments and they need to address the specific concerns that they have (Wolff, 2013: 72).

Whereas the right to effective participation allows minorities 'to engage elites', the right to intercultural dialogue and tolerance encourages engagement 'within and across different population segments'. However, not all Western European States have been willing to recognise that the FCNM extends to Muslim minorities.<sup>23</sup> Notably, if Muslims are not

recognised as falling within the scope of minority rights instruments, equivalent protection is not available in generally applicable human rights treaties. As the achievement of these standards has the potential to improve societal cohesion and, in turn, prevent conflict, it is argued that Western European States would benefit from adopting a similar approach with respect to their Muslim minorities to that advocated in the Copenhagen Document.

This section evaluates whether the lessons of the Copenhagen Document have been heeded by Western European States in relation to the integration of their diverse societies. The content of effective participation and intercultural dialogue and tolerance, as elaborated by the AC-FCNM, will be considered alongside the extent to which Western European States have realised these rights in relation to their Muslim minorities. This approach, however, does not allow for a full elaboration of the implications and potential difficulties faced by States when striving to implement these standards.

### ***2.1. Effective participation***

As citizens and permanent residents of the States in which they live, the majority of European Muslims are able to vote and participate in democratic processes. However, procedural inclusion alone is unlikely to enable persons belonging to minorities to influence decisions, as '[i]n a democracy, the majority/dominant ethno-cultural group will dictate the relevant convention' (Wheatley, 2005: 160). The right to effective participation has been interpreted as serving the dual purpose of providing the necessary conditions for persons belonging to minorities to overcome structural inequalities in the political process (Council of Europe, 1995: para 80), and enabling persons belonging to minorities to participate in decisions that have the potential to impact their culture (Hofmann, 2006: 22; Verstichel, 2009: 253). The AC-FCNM has therefore stressed that effective participation should allow minorities to engage in decision-making processes that 'encompass a wide range of areas, including those not exclusively dealing with minority issues'.<sup>24</sup> If a minority is able to participate on equal terms with the majority in public life and, in particular, voice the specific concerns of the community, then it is less likely to resort to non-democratic means (Palermo and Woelk, 2004: 240-41; Verstichel, 2009: 72) and will have increased ownership in and loyalty to the State (Palermo and Woelk, 2004: 240-41; Hofmann, 2006-07: 6). Thus, effective participation has the potential to reduce the likelihood of conflict, by providing appropriate fora for persons belonging to minorities to air grievances.

Rather than the ‘local or autonomous administrations’ suggested by the Copenhagen Document, which are more appropriate for national minorities, Hofmann has suggested that consultative mechanisms are the most appropriate method of enabling the effective participation of ‘new minorities’ (Hofmann, 2006-07: 16). As a result of their flexibility, ‘consultative mechanisms often prove more effective in transmitting the interests of minority constituencies into the chain of legislative or political decision-making’ (Weller, 2010: 478-79). Minority rights monitoring bodies have recognised that there cannot be a one-size-fits-all approach to minority consultative mechanisms and, consequently, have not been overly prescriptive in respect of the requirements of such mechanisms (UN Commission on Human Rights, 2005: para 43; Lund Recommendations, 1999: 25-6 paras 12-13; AC, 2008: paras 113-15). However, the difficulties faced in establishing effective and representative bodies are particularly apparent in relation to attempts to consult Muslim minorities in Western Europe.

The nature and mandate of consultative mechanisms and the legitimacy of the representatives consulted have the potential to impact their success. Thus, the AC has established that ‘[i]t is important to ensure that consultative bodies have a clear legal status, that the obligation to consult them is entrenched in law and that their involvement in decision-making processes is of a regular and permanent nature’ (AC, 2008: para 107). Belgium, France and Germany have established permanent consultative fora specifically for their Muslim communities,<sup>25</sup> whereas the Netherlands and the UK have established consultative mechanisms with broader mandates, based on ethnic origin<sup>26</sup> or religion.<sup>27</sup> However, these attempts to consult Muslim minorities in Western Europe have frequently fallen below the standard advocated by the AC-FCNM.

The broader platforms established by the Netherlands and UK have been discontinued in favour of *ad hoc* consultation mechanisms, which, as noted by the AC-FCNM in the context of the discontinuation of the Dutch National Consultation Platform on Minorities, do not satisfy the requirements that ‘participatory structures need to be of a long term and institutionalised character in order to ensure continuity and to allow for the broader discussion of minority issues among all concerned’.<sup>28</sup> Rather than enabling effective participation, *ad hoc* mechanisms have the potential to further disenfranchise and alienate persons belonging to minorities. This is apparent in the UK, where the AC-FCNM has noted:

[T]he complaints it has received from representatives of minority ethnic communities of Muslim faith regarding the difficulties they encounter in establishing a dialogue with the Government. This sense of alienation is reported to be widespread among representatives of most sections of the Muslim population in

the United Kingdom, including the Muslim Council of Britain, the largest umbrella group of Muslim organisations in the country.<sup>29</sup>

Consequently, if consultation mechanisms are to be effective, States must make greater efforts to ensure that they are permanent, accessible to Muslim minority representatives and have a broad mandate. While *ad hoc* mechanisms are problematic, operational concerns have also been raised in relation to permanent consultation mechanisms. The UN Committee on the Elimination of Racial Discrimination welcomed ‘the establishment of the Islam Conference, as a forum ... with the aim of establishing continuous dialogue to address Islamophobic tendencies and discuss relevant policy responses’.<sup>30</sup> However, in reality, it has been suggested that Muslim representatives in the German Islam Conference are unable to raise issues of concern to their communities and influence the outcome of consultation (Amir-Moazami, 2011: 8). The French Council for the Muslim Faith, despite being an elected and permanent body, has no legal standing.<sup>31</sup> This, in turn, has the potential to lead to inconsistency in consultation and hinder the effectiveness of the body. If minority consultative mechanisms are unable to influence the decision-making process, they will be perceived by persons belonging to minorities to constitute a token gesture and lack legitimacy (AC, 2008: para 9; Human Rights Council, 2009: para 27). Inadequate or insufficient consultation has the potential to undermine societal cohesion by marginalising minority voices and increasing the alienation of communities.

The Lund Recommendations and the AC-FCNM have also recognised that the internal diversity of minorities must be represented, if consultative procedures are to be effective (Lund Recommendations, 1999: para 12; AC, 2008: paras 110-111). In this respect, the adoption of democratic methods to appoint minority representatives are preferred, but not required.<sup>32</sup> The AC-FCNM has emphasised that States should consult a variety of minority associations.<sup>33</sup> ‘The “representativeness” of organizations that allegedly represent ethnic groups or the degree to which organizations can claim to represent the will, interest and support of its constituents is often variable’ (Malloy, 2007-8: 218). Consequently, States should avoid privileging one minority representative association to the disadvantage of others<sup>34</sup> as ‘such differential treatment between organisations of minorities is not conducive to pluralism and internal democracy within minorities’.<sup>35</sup> European Muslims are heterogeneous in nature and, thus, if consultation is to be effective it is important that the variety of opinions, practices and perspectives within Muslim communities are represented. The failure to consult

legitimate representatives, who represent the internal diversity of these communities, has the potential to undermine the purpose of consultation.

In direct contrast to the AC-FCNM's recommendations, members of formal consultative mechanisms in the United Kingdom have been unelected,<sup>36</sup> and 'appointed because of their personal experience and expertise not as representatives of any community or organisation'.<sup>37</sup> The legitimacy and representativeness of Muslim representatives at a national (Hellyer, 2007: 236; McLoughlin, 2005: 60) and local level (Vertovec, 2002: 28-9; McLoughlin, 2005: 58-9) have been called into question. Notably, the 2001 riots in Bradford, Burnley and Oldham in Northern England were attributed to the disenfranchisement of Muslim communities (Bagguley and Hussain, 2008: 193). Thus, the potential for inadequate consultation to lead to conflict has already materialised in the United Kingdom. Accordingly, in relation to the United Kingdom, the AC-FCNM has stressed that '[t]here is a clear need to step up communication and meaningful consultations with a *full spectrum of representatives of Muslim communities*, in order to ensure their inclusion in decision-making'.<sup>38</sup> Similarly in relation to the Netherlands, the AC-FCNM has expressed concern that the National Consultation Platform on Minorities consulted only one representative organisation for each ethnic minority.<sup>39</sup>

Even when democratic processes have been adopted, State interference has the potential to undermine the legitimacy of representatives. The requirement that the Ministry of Justice approve the democratically elected members of the Muslim Executive of Belgium led 'almost half of all the members of the Assembly' to be vetoed 'due to their "fundamentalist" leanings' (Cesari, 2004: 66-7). This is problematic as minority representatives should be appointed in an open and transparent manner (AC, Commentary 2008: 8; Lund Recommendations, 1999: 26 para 13) and consultative mechanisms should reflect the internal diversity of the minority (AC, 2008: paras 110-111). Although it is not suggested that States engage with terrorist organisations, they must engage with a wide spectrum of Muslim representatives, including those who are perceived to be illiberal, if consultations are to be effective. The vetoing of elected members of a minority organisation has the potential to leave sections of Muslim communities unrepresented and removes the opportunity to air grievances. This, again, has the potential to increase alienation and lead to conflict.

Attempts have been made to consult Muslim minorities in Western European States, including Belgium, France, Germany, the Netherlands and the United Kingdom. However, these mechanisms have consistently been criticised for failing to allow meaningful

consultation and for not fully reflecting the spectrum of views within the communities they are supposed to represent. This has the potential to increase alienation, undermine attempts at societal cohesion and, in turn, increase the prospect of conflict. If the message of the Copenhagen Document is to be heeded, a more concerted effort to engage Muslim minorities in Western Europe, through truly representative bodies, is required.

## ***2.2. Intercultural dialogue and tolerance***

Even if the requirements of effective participation are satisfied, it is unlikely that the cause of conflict can be transformed if the majority is not receptive to the perspective of the minority. Stavenhagen has noted that:

... a dominant ethnies (whether majority or minority) may attempt to impose its own norms and standards, or its own model of society, on a weaker, underprivileged minorities (or majority) and encounter resistance when it does so. Or the dominant majority may feel that the minority has 'been granted' or is demanding 'too much' and must be kept in its place. No matter what the apparent expressions of ethnic conflict may be, and the underlying causes are usually much more complex, the issues of group interests and groups rights are always at the center of the debate. (1987: 510)

In order to transform conflict, intercultural dialogue and tolerance play an important role, as 'the proposition for conflict resolution relies on the transformation of conflictive discourse through self-reflection and a broadening of dialogue between conflict parties' (Pia and Diez, 2007: 7). Thus, paragraph 36 of the Copenhagen Document establishes that '[e]very participating State will promote a climate of mutual respect, understanding, co-operation and solidarity among all persons living on its territory'. Integration policies are key in this respect, and 'should promote contact and exchange between communities and individuals through incentives and by raising awareness of the mutual advantages of interaction, dialogue and participation' (Ljubljana Guidelines, 2012: 21). Thus, intercultural dialogue is central to integration and has the potential to transform relationships between different groups within Western European societies.

However, the AC-FCNM has expressed concern that the conditions in Western Europe are not conducive to intercultural dialogue and tolerance. In relation to the Netherlands, for example, it has expressed concern that the move away from multiculturalism 'has led to an increased polarisation of the society whereby minority communities, and in particular persons belonging to the Muslim population of the Dutch society, tend to be stigmatised'.<sup>40</sup> It has also expressed concern at the rise of right-wing political movements<sup>41</sup> and Islamophobic political

discourse.<sup>42</sup> The AC-FCNM has linked intolerance and a lack of intercultural dialogue to interference with the rights of Muslims, in the form of opposition to and the rejection of planning permission for mosques,<sup>43</sup> the ban on minarets in Switzerland<sup>44</sup> and restrictions on the *hijab*, *burqa* and *niqab*.<sup>45</sup> The FCNM, HCNM's Ljubljana Guidelines and the UN Declaration on Minorities have recognised that intercultural dialogue and tolerance can be improved through educational measures and the approach adopted by the media (Council of Europe, 1995: paras 48-9, 71; UN Commission on Human Rights, 2005: paras 65-9; Ljubljana Guidelines, 2012: 21-23, 54-55, 60-61).<sup>46</sup> Furthermore, the AC-FCNM has increasingly stressed that politicians have a responsibility to create conditions of intercultural dialogue.<sup>47</sup>

The Ljubljana Guidelines establish that education serves the dual purpose of the preservation of minority identity and is 'one of the most effective ways to promote intercultural contact and understanding and a shared sense of civic identity' (2012: 54). Education within article 4(4) of the UN Declaration on Minorities and article 12(1) of the FCNM is not limited to the majority being educated about the minority, as integration is a 'two-way process'. By reducing ignorance of other cultures, languages and religions, intercultural dialogue has the potential to prevent stereotyping and intolerance against minorities. However, by requiring that the minority learn about the majority, such education may also prevent myths and prejudices about the majority from developing within the minority (Eide, 1998: 13) and, thus, 'counteract tendencies towards fundamentalist or closed religious or ethnic groups' (UN Commission on Human Rights, 2005: paras 65-8).

The AC-FCNM has stressed the importance of interaction between the majority and minority in the school environment,<sup>48</sup> the role of bilingual education,<sup>49</sup> and the adoption of measures to reduce hostility and bullying in order to ensure such interaction.<sup>50</sup> It has praised programmes which seek to increase knowledge of minorities of immigrant origin and the benefits of diversity.<sup>51</sup> For example, the AC-FCNM welcomed 'the implementation of innovative experiences to counteract these negative trends, such as the creation by the City of Barcelona of a "network of anti-rumours agents", trained to challenge stereotypes that are spread about immigrants'.<sup>52</sup> Nonetheless, it has also recognised that often these measures are inadequate<sup>53</sup> and that a lack of understanding can lead to restrictions on the rights of European Muslims. Thus, in the context of the Swiss minaret ban, the AC-FCNM noted that 'during public debates following the vote on the popular initiative, many people voiced a need for a better understanding of Islam'.<sup>54</sup> Consequently, while steps have been taken to improve mutual understanding and interaction between Muslim communities and the majority in



Western Europe, these measures have not gone far enough. As the restriction of the rights of Muslim minorities has been attributed to a lack of understanding, States must increase their efforts in the field of education.

The media serves the dual purpose of educating the majority about the minority whilst creating space for intercultural dialogue to take place (Council of Europe, 1995: 29-34). Media hostility towards minority concerns has the potential to lead to distrust of both the majority and the media (Verstichel, 2009: 61), and inhibit minority political participation (Human Rights Council, 2009: para 30). Consequently, the media has the potential to present minority claims as a threat to societal security but can also help to desecuritize the minority-majority relationship. In accordance with the Ljubljana Guidelines, States are required to encourage the media to promote tolerance and intercultural dialogue and ‘challenge negative stereotypes and intolerance’ (2012: 60). Moreover, the AC-FCNM has emphasised the importance of minority representation to ensure that ‘the public is adequately informed ... about political issues relevant to persons belonging to national minorities’ (AC, 2008: 8). This may require funding for minority media, intercultural initiatives and programmes dealing with minority issues or as well as minority representation in the mainstream media (Council of Europe, 1995: para 62).<sup>55</sup> The AC-FCNM has welcomed media initiatives with respect to multicultural education and combatting xenophobia<sup>56</sup> and the reporting of minority issues in an impartial and unbiased manner.<sup>57</sup>

In contrast, the AC-FCNM has been particularly critical of reporting in the media that is xenophobic and has the potential to incite hostility<sup>58</sup> and hate crime.<sup>59</sup> Notably, the AC-FCNM has expressed concern at the increasing Islamophobic discourse present in Western European media. In its Opinion on the Fourth Danish State Report, the AC-FCNM emphasised that in the context of media reporting on Muslims,

...the media analysis indicated that most news stories were restricted to topics such as extremism, terror, sharia, freedom of speech, democracy versus Islam, and women’s rights, which contribute to negative stereotyping of Muslims. More positive topics such as the general contribution of Muslims to Danish society, the everyday life of the vast majority of Muslims, the value of ethnic, religious and cultural diversity, and discrimination against Muslims appeared in newspapers less frequently.<sup>60</sup>

Similarly, in relation to the Third United Kingdom State Report, the AC-FCNM expressed concern ‘that a steady rise in hate crimes against Muslims in the United Kingdom, most notably in London, is being fuelled by a negative discourse being held in the media’.<sup>61</sup> Thus,

further measures are needed to ensure that the media does not promote intolerance and lead to the marginalisation of Muslim minorities.

The manner in which the media reports right-wing political movements and Islamophobic discourse also has the potential to be divisive. Thus, '[t]he media need to be mindful of the potential consequences when they report statements made by politicians or other public figures that contribute to negative stereotyping and other divisive activities' (Ljubljana Guidelines, 2012: 61). As negative reporting and political speech have the potential to undermine intercultural dialogue and tolerance, the AC-FCNM has encouraged States to take proactive steps to combat manifestations of intolerance in the public sphere. Such measures include 'legislative measures and policies'<sup>62</sup> and 'initiatives to encourage both national and regional media outlets to promote more balanced and objective reporting on issues related to diversity within German society and to strengthen the training of journalists and other media professionals'.<sup>63</sup> Divisive and Islamophobic political discourse and reporting has the potential to marginalise and alienate Muslim communities. Nonetheless, the AC-FCNM has also recognised that measures must be balanced with freedom of expression. Therefore, it is preferable that the media self-regulate<sup>64</sup> and any measures adopted should ensure freedom of expression and the editorial independence of the media.<sup>65</sup>

While measures have been adopted to increase societal cohesion in Western European States, the AC-FCNM has expressed concern that racist and Islamophobic manifestations in the media and by politicians have increased. Such intolerance directly undermines attempts to establish dialogue between minorities and the majority and has the potential to lead to the restriction of the rights of minorities. If the lessons of the Copenhagen Document are to be learnt and the potential for conflict reduced, Western European States must make concerted efforts through education and the media to reduce intolerance and the resulting alienation of their Muslim minorities.

## **Conclusion**

The Copenhagen Document was adopted at a specific time with specific minorities in mind. However, many of its provisions have subsequently been reiterated in generic minority rights instruments. The innovations of the Copenhagen Document are relevant not only to 'national minorities' in Central and Eastern Europe and former Soviet States, but also to new and emerging minority situations.

The situation of Muslims in Western Europe highlights that it is not only ‘national minorities’ that have the potential to be a security concern. Consequently, this article has argued that the innovative elements of the Copenhagen Document, to the extent that they encourage integration and societal cohesion, are relevant to these Muslim minorities. Paragraph 35 of the Copenhagen Document, the right to effective participation in public affairs, and paragraph 36, the right to intercultural dialogue and tolerance, are both central to the integration of these communities and the prevention of future conflict. However, not all Western European States have recognised that these rights apply to their Muslim minorities and, where they have, insufficient efforts have been made to give effect to these standards. Contrary to the message of the Copenhagen Document, Western European States are increasingly pursuing assimilation rather than integration. Attempts to engage European Muslims in public affairs have been selective, unrepresentative and tokenistic. Furthermore, an increase in Islamophobic discourse in the media and political discourse has been reported alongside inadequate educational measures to facilitate mutual understanding. These issues alone have the potential to increase the exclusion and alienation of persons belonging to Muslim minorities. As acknowledged by the Copenhagen Document, if minorities are able to fully participate as equal members of society, the potential for conflict is reduced. Rather than adopting assimilationist measures, Western European States should heed the message of the Copenhagen Document and make a more concerted effort to facilitate the inclusion of Muslim minorities in their societies.

## *Notes*

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- <sup>1</sup> The ‘guest workers’ recruited in the post-war period were not exclusively Muslim, with France and UK recruiting ‘guest workers’ from their former colonies and Germany recruiting from Southern and South-Eastern Europe (Fassmann, 2009, 27-28). Although many Western European States also had small Muslim populations prior to this, the post-war period saw the settlement of significant Muslim populations (Nielsen, 2004: 1-7).
  - <sup>2</sup> UNGA, ‘Annotations on the Text of the Draft International Covenants on Human Rights’ UN doc A/2929, Chapter VI para 186; UNGA, ‘Draft International Covenants on Human Rights – Report of the Third Committee’ (5 December 1961) UN doc A/5000, para 120; HRC, HRC, ‘Fourth Periodic Reports of States parties due in 1993 – Germany’ (22 February 1996) UN doc CCPR/C/84/Add.5, para 242.
  - <sup>3</sup> AC, ‘Second Opinion on Germany’ adopted on 1 March 2006 ACFC/OP/II(2006)001 para 13. See also, AC, ‘Third Opinion on Germany’ adopted on 27 May 2010 ACFC/OP/III(2010)003 21, footnote 15.
  - <sup>4</sup> International Covenant on Civil and Political Rights 999 UNTS 171, entered into force 23 March 1976.
  - <sup>5</sup> HRC, ‘Third Periodic Report – Netherlands’ (25 August 2000) UN doc CCPR/C/NET/99/3 paras 198-200; HRC, ‘Fifth Periodic Report – Germany’ (4 December 2002) UN doc CCPR/C/DEU/2002/5 paras 373-4.; HRC, ‘Fourth Periodic Report – Belgium’ (16 May 2003) UN doc CCPR/C/BEL/2003/4, Article 27 para.1.2; HRC, ‘Fifth Periodic Report – Finland’ (24 July 2003) UN doc CCPR/C/FIN/2003/5 paras 417-

- 421; HRC, 'Fifth Periodic Report – Norway' (3 December 2004) UN doc CCPR/C/NOR/2004/5 paras 267-270; HRC, 'Fourth Periodic Report – Austria' (20 November 2006) UN doc CCPR/C/AUT/4 paras 472-477; HRC, 'Sixth Periodic Report – United Kingdom of Great Britain and Northern Ireland' (18 May 2007) UN doc CCPR/C/GBR/6 para 765.
- <sup>6</sup> Framework Convention for the Protection of National Minorities CETS No 157, entered into force 1 February 1998.
- <sup>7</sup> AC, 'Report Submitted by the United Kingdom Pursuant to Article 25, Paragraph 2 of the Framework Convention for the Protection of National Minorities 26 July 1999 ACFC/SR/(1999)013' paras 45-6; AC, 'Report Submitted by Ireland pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities' 13 November 2001 ACFC/SR(2001)006, 5; AC, 'Second Report Submitted by Finland pursuant to Article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities' 10 December 2004 ACFC/SR/II(2004) 012 E.
- <sup>8</sup> AC, 'Comments of the Government of Denmark on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in Denmark' 7 June 2001 GVT/COM/INF/OP/I(2001)005, 3; AC, 'Comments by the Federal Republic of Germany on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in the Federal Republic of Germany' 19 July 2002 GVT/COM/INF/OP/I(2002)008, 5.
- <sup>9</sup> AC, 'Opinion on Denmark' adopted on 22 September 2000 ACFC/INF/OP/I(2001)005 paras 14-15; AC, 'Opinion on Finland' adopted on 22 September 2000 ACFC/INF/OP/I(2001)002 paras 12-13; AC, 'Opinion on Germany' adopted on 1 March 2002 ACFC/INF/OP/I(2002)008, paras 14-15; AC, 'Opinion on Sweden' adopted on 25 August 2002 ACFC/INF/OP/I(2003)006 paras 14-16.
- <sup>10</sup> Article 6(1) and 15 FCNM.
- <sup>11</sup> AC, 'Fourth Opinion on Denmark', 20 May 2014, ACFC/OP/IV(2014)001, paras 62, 64; AC, 'Fourth Opinion on Germany', 19 March 2015, ACFC/OP/IV(2015)003 para 56; AC, 'Second Opinion on the Netherlands', 20 June 2013, ACFC/OP/II(2013)003 paras 57, 133; AC, 'Third Opinion on Sweden', 23 May 2012 ACFC/OP/III(2012)004 para 63;
- <sup>12</sup> Fourth Opinion on Germany, above n 11, paras 56, 68; Second Opinion on the Netherlands, above n 11, para 13; AC, 'Third Opinion on Switzerland' adopted on 5 March 2013 ACFC/OP/III(2013)001, para 63; AC, 'Fourth Opinion on Spain', 3 December 2014 ACFC/OP/IV(2014)003 para 7; AC, 'Third Opinion on the United Kingdom', 30 June 2011, ACFC/OP/III(2011)006 para 117
- <sup>13</sup> Fourth Opinion on Denmark, above n 11, para 61-64; Fourth Opinion on Germany, above n 11, para 63; Third Opinion on the United Kingdom, above n 12, para 109.
- <sup>14</sup> Fourth Opinion on Spain, above n 12, para 42.
- <sup>15</sup> Loi no 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics; *Aktas v France* App no 43563/08 (ECtHR 30 June 2009); *Bayrak v France* App no 14308/08 (ECtHR 30 June 2009); *Gamaleddyn v France* App no 18527/08 (ECtHR 30 June 2009); *Ghazal v France* App no 29134/08 (ECtHR 30 June 2009)
- <sup>16</sup> Loi no 2010-1192 interdisant la dissimulation du visage dans l'espace public of 11 October 2010, JO 12 October 2010; Loi visant à interdire le port de tout vêtement cachant totalement ou de manière principale le visage of 1 June 2011, JO Le Moniteur 13 July 2011. *SAS v France* App no 43835/11 (ECtHR 1 July 2014); Fourth Opinion on Spain, above n 12, para 42.
- <sup>17</sup> *Ouardiri and Ligue des Musulmans de Suisse and Others v Switzerland* App nos 65840/09 and 66274/09 (ECtHR 8 July 2011); Third Opinion on Switzerland, above n 12, para 63.
- <sup>18</sup> *SAS v France* App no 43835/11 (ECtHR 1 July 2014) para 150.
- <sup>19</sup> AC, 'Second Opinion on Denmark' adopted on 9 December 2004 ACFC/INF/OP/II(2004)005 para 84, 90; AC, 'Third Opinion on Finland' adopted on 14 October 2010 ACFC/OP/III(2010)007 para 70; AC, 'Second Opinion on the United Kingdom' adopted on 6 June 2007 ACFC/OP/II(2007)003 para 114, 116.
- <sup>20</sup> AC, 'Opinion on the Netherlands' adopted on 25 June 2009 ACFC/OP/I(2009)002 para 37.
- <sup>21</sup> *Minority Schools in Albania* PCIJ Series A/B. Advisory Opinion of April 6 1935, 17.
- <sup>22</sup> Article 6(1) and 15 FCNM. The UN Declaration on Minorities contains a right to effective participation (article 2(3)) but does not contain a general right to intercultural dialogue and tolerance.
- <sup>23</sup> Above n 8.
- <sup>24</sup> AC, 'Second Opinion on Sweden' adopted on 8 November 2007 ACFC/OP/II(2007)006, para 172.
- <sup>25</sup> See, for example, Deutsche Islam Konferenz: CERD, 'Eighteenth Periodic Reports of States Parties due in 2006 – Germany' (31 January 2008) UN doc CERD/C/DEU/18 para 6; Exécutif des Musulmans de Belgique; CERD, 'Thirteenth Periodic Reports of States Parties due in 2000 – Belgium' (9 August 2001) UN

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doc CERD/C/381/Add.1 para 199; Conseil Français du Culte Musulman <<http://www.lecfcm.fr/>> accessed 3 July 2012.

26 Report Submitted by the United Kingdom, above n 7, paras 71-72.

27 *Ibid.*

28 Second Opinion on the Netherlands, above n 11, para 56. See also, Second Opinion on the United Kingdom, above n 19, para 252; Third Opinion on the United Kingdom, above n 12, para 192; HC Deb 23 June 2011, vol 530, cols 440W-441W.

29 Second Opinion on the United Kingdom, above n 19, para 253. See also, Third Opinion on the United Kingdom, above n 12, para 192.

30 CERD, 'Concluding Observation of the Committee on the Elimination of Racial Discrimination – Germany' (22 September 2008) UN doc CERD/C/DEU/CO/18 para 13.

31 Conseil Français du Culte Musulman, 'Site officiel de l'instance representative du culte musulman en France' <[http://www.lecfcm.fr/?page\\_id=16](http://www.lecfcm.fr/?page_id=16)> accessed 29 April 2016.

32 AC, 'Third Opinion on Estonia' adopted on 1 April 2011 ACFC/OP/III(2011)004 para 165.

33 AC, 'Opinion on Montenegro' adopted on 28 February 2008 ACFC/OP/I(2008)001, para 103; AC, 'Opinion on Romania' adopted on 6 April 2001 ACFC/INF/OP/I(2002)001, para 67.

34 AC, 'Second Opinion on Spain' adopted on 22 February 2007 ACFC/OP/II(2007)001 para 149.

35 AC, 'Second Opinion on Romania' adopted on 24 November 2005 ACFC/OP/II(2005)007, para 107.

36 AC, 'Comments of the Government of the United Kingdom on the Opinion of the Advisory Committee on the Implementation of the Framework Convention for the Protection of National Minorities in the United Kingdom' 18 April 2002 GVT/COM/INF/OP/I(2002)006, 35.

37 *Ibid.*

38 Second Opinion on the United Kingdom, above n 19, para 257. [Emphasis added].

39 Opinion on the Netherlands, above n 20, paras 38, 41.

40 *Ibid.*, para 37.

41 Fourth Opinion on Germany, above n 11, para 56

42 Second Opinion on the Netherlands, above n 11, para 57; See also, Third Opinion on Sweden, above n 11, para 63.

43 AC, 'Opinion on Norway' adopted on 12 September 2002, ACFC/INF/OP/I(2003)003 para 36; Second Opinion on Denmark, above n 19, para 88, AC, 'Third Opinion on Spain' adopted on 22 March 2012 ACFC/OP/III(2012)003, para 75.

44 AC, 'Second Opinion on Switzerland' adopted on 29 February 2008 ACFC/OP/II(2008)002, para 89; Third Opinion on Switzerland, above n 12, para 63.

45 Third Opinion on Spain, above n 43, para 75, Fourth Opinion on Spain, above n 12, para 42.

46 Articles 6(1), 12 FCNM; article 4(4) UN Declaration on Minorities.

47 Fourth Opinion on Denmark, above n 11, paras 62, 64; Fourth Opinion on Germany, above n 11, para 56; Second Opinion on the Netherlands, above n 11, paras 57, 133; Third Opinion on Sweden, above n 11, para 63.

48 Opinion on the Netherlands, above n 20, para 56.

49 AC, 'Opinion on Austria' adopted on 16 May 2002 ACFC/INF/OP/I(2002)009, para 54; AC, 'Second Opinion on Austria' adopted on 8 June 2007 ACFC/OP/II(2007)005, para 133.

50 Third Opinion on the United Kingdom, above n 12, para 106.

51 Second Opinion on Switzerland, above n 44, para 85; Second Opinion on Spain, above n 34, para 83; Third Opinion on Germany, above n 3, para 88; AC, 'Third Opinion on Norway' adopted on 30 June 2011 ACFC/OP/III(2011)007 para 67.

52 Third Opinion on Spain, above n 43, para 73.

53 Second Opinion on Spain, above n 34, para 91; AC, 'Fourth Opinion on Lichtenstein' adopted on 21 May 2014 ACFC/OP/IV(2014)002 para 6; Third Opinion on Germany, above n 3, para 88.

54 Third Opinion on Switzerland, above n 12, para 64.

55 Second Opinion on the United Kingdom, above n 19, para 113; AC, 'Third Opinion on Denmark' adopted on 31 March 2011 ACFC/OP/III(2011)002, para 64.

56 AC, 'Second Opinion on Norway' adopted on 5 October 2006 ACFC/OP/II(2006)006, para 79.

57 AC, 'Opinion on the Czech Republic' adopted on 6 April 2001 ACFC/INF/OP/I(2002)002, para 37.

58 Opinion on Austria, above n 49, para 32; AC, 'Opinion on Spain' adopted on 27 November 2003 ACFC/INF/OP/I(2004)004, para 50; Second Opinion on the United Kingdom, above n 19, paras 112, 115.

59 AC, 'Second Opinion on Bulgaria' adopted on 18 March 2010 FCNM/II(2012)001, paras 121-22.

60 Fourth Opinion on Denmark, above n 11, para 64

61 Third Opinion on the United Kingdom, above n 12, para 117.

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<sup>62</sup> Fourth Opinion on Denmark, above n 11, para 66.

<sup>63</sup> Fourth Opinion on Germany, above n 11, para 65.

<sup>64</sup> AC, 'Third Opinion on Austria' adopted on 8 June 2007 ACFC/OP/II(2007)005 para 65; Second Opinion on Denmark, above n 19, para 98; AC, 'Second Opinion on Finland' adopted on 2 March 2006 ACFC/OP/II(2006)003 para 87; Third Opinion on Germany, above n 3, paras 106, 109.

<sup>65</sup> Second Opinion on Austria, above n 49, para 92; Third Opinion on Denmark, above n 55, para 63; Opinion on Finland, above n 9 para 24; Fourth Opinion on Germany, above n 11, para 65; Third Opinion on the United Kingdom, above n 12, para 112

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