

High Commissioner helps set legal standards for the use of flags

"Try telling a minority community to take down their flag and you will soon learn what a recipe for trouble is," says Krzysztof Drzewicki, a senior lawyer at the office of the OSCE High Commissioner on National Minorities (HCNM). "Signs and symbols are a powerful expression of identity for many individuals and communities. In my five years with the HCNM, the flag issue has popped up regularly."

The central message in the High Commissioner's work is one of integration with respect for diversity. Flags as well as other national symbols play a key role in bringing various ethnic groups together around a unifying image of the state. But controversy can erupt, says Drzewicki, when flags are used by specific groups seeking to affirm their own identity as distinct from the rest of the country. Things get ever more complicated when a particular community's flag coincides with the official flag of a neighbouring state.

While flags touch the heart and soul of many people, the subject is a blind spot in international law. Their use is only regulated in maritime law and the rules for air navigation. Over the past few years, Drzewicki and the rest of the HCNM's legal team have been exploring the problem's various aspects. The High Commissioner relies on their practical advice in his activities across the OSCE region to help set a global standard for policy-makers in finding satisfactory solutions.

Balancing national unity and freedom of expression

One conclusion Drzewicki and his colleagues have drawn is that the state should be free to prescribe the use of flags on its territory. It is only bound by two limitations: the provisions of international treaties and the right to freedom of expression when it comes to individuals' use of symbols.

But what does that mean in practice? Essentially, national minorities are free to choose their own flag without interference from the authorities and are free to display their symbols on their buildings. But does this entail the right to hoist their flag along with the state flag on, say, ministerial buildings? These are some of the questions that the HCNM's legal team is trying to answer.

"It is up to the state to permit or to limit the use of flags in the public domain," Drzewicki says. But while national minorities don't have the right to display their symbols on the premises of public authorities, he adds, it is advisable to find a way to accommodate their interests. "International law sets the basis but domestic rules can go further."

Accommodation, however, sometimes proves next to impossible when a national minority flag is identical to the flag of the country next door. Governments may fear that displaying a foreign flag on their turf may convey a message of separation or separatism.

Such reactions are understandable given the sensitivities involved. A flag is the ultimate symbol of sovereignty which no country wants to share with another. But limitations often

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go too far, says Drzewicki. Some states have completely banned the use of foreign flags on their territory, even in private life. These limitations breach the right to freedom of expression.

Governing creatively

There is much to learn from this debate regarding the implications of the flag issue on peace between neighbours in multi-ethnic cities and towns.

Drzewicki and his legal colleagues are convinced that restrictions often breed discontent and that governments should try to find compromises with ethnic communities as a matter of good governance. Thinking and governing imaginatively does make a difference, he says.

Creative compromises have emerged in many countries. Some, including the former Yugoslav Republic of Macedonia, Montenegro, Bosnia and Herzegovina, and Romania, have allowed minorities to fly their flags at the municipal level in areas where they live.

In other states such as Germany and Norway, the hoisting of minority flags during public and minority holidays as well as official days of mourning has been permitted. A number of countries, Georgia and Montenegro for example, have also experimented with the size and height of their national and minority flags.

"By adopting a tolerant approach and recognizing minority symbols, Governments lay the foundation for amicable relations among communities," says Drzewicki.

Written by Dmitri Alechkevitch and Francesco Palermo, 27 February 2008



A number of flags, including the one belonging to the Dutch Frisian minority, are displayed in front of the Parliament building in The Hague. (OSCE/Ivana Radenkovic)

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