



**CONFERENCE:
ENHANCING THE IMPACT OF
THE FRAMEWORK CONVENTION**

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**A comment on the reports on the impact assessment of the
Framework Convention for the Protection of National Minorities
in the State Parties**

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The views expressed are those of the author only

Workshop 1: The impact-assessment of the Framework Convention in the State Parties
Comments on:

- **Indicators for Assessing the Impact of the FCNM in its State Parties** by Tove Malloy, Roberta Medda-Winscher, Emma Lantscher and Joseph Marko (European Academy Bolzano, Institute for Minority Rights - EURAC)
- **Impact of Framework Convention for the Protection of National Minorities on Western States** by Sia Spiliopoulou Åkermark
- **The FCNM and Minority Rights in the Western Balkans** by Florian Bieber

The workshop is based on three studies, which are quite different and very informative. While the EURAC study develops and systemises indicators for measuring the positive impact of the FCNM, laudably also taking potential negative effects into account, Spiliopoulou Åkermark and Bieber in their studies analyse the impact of the FCNM on the basis of examples for the Western European countries on the one hand, and for the states of the Former Yugoslavia on the other hand.

The EURAC study undertakes a sound assessment of ten years of experience with the FCNM and uses the results for a systematic structuring and good operationalisation of the FCNM's objectives into an indicator system. This system will make the development and hopefully the progress in minority politics transparent and measurable.

It shows that in some countries the obligations from the FCNM are only fulfilled in a formal manner. Additionally, it becomes apparent, that the responsibility of the State Parties for taking real action volatilises intentionally or unintentionally. These states refer to the different responsibilities of autonomous and independent instances and levels.

The indicators developed by EURAC will make such strategies of a merely symbolic politics or the volatilisation of responsibility easier to identify. Thus, it is a very promising instrument for the future.

Spiliopoulou Åkermark starts with emphasizing the equally binding obligation of the FCNM for all signing countries – without difference. Then, she examines the impact of the FCNM using the examples of two minority groups: the Sami and the Roma. This is particularly interesting as this two "special cases", of one indigenous minority and one minority with no clearly defined settlement area, illustrate the different action-taking strategies of the governmental players under the influence of the FCNM. In doing so, she examines, respectively, the differences between the first and the second state report on a minority.

While in the first state reports the description of the minorities and the relevant legislation usually dominates, the second State reports are more comprehensive and describe also the implementation of these laws. Furthermore, they also bring up questions of political participation as well as cultural rights and the education of minorities. These reports indicate a development to a bigger awareness and a stronger commitment of the three nordic countries.

By means of the indicator types of the EURAC, Spiliopoulou Åkermark identifies the following tendencies of development: A judicial and quasi-judicial focus for Finland, a legislative focus for Sweden and a focus on public discourse and transparency for Norway.

I would like to use the example of the Sinti and Roma in Germany to illustrate the importance of the factors History and Collective Experience. Information and measures which are helpful and necessary for the improvement of the minority's situation might be burdened within the experience of the minority members so that such information and measures are categorically rejected. The national socialistic 'race research' examined the Sinti and Roma including their language. Later, the knowledge gained was used for the aimed arrest, abduction and killing of the Sinti and Roma. Current political measures will require a lead time in order to regain trust. Furthermore, it is indispensable to find non-governmental supporting organisations that are not burdened.

On the other hand, history can help, as Florian Bieber explains with reference to the experience of the political actors on the Western Balkans. They know minority rights from the times of the former Yugoslavia.

The stereotype of Roma and Sinti not being settled and, thus, of them being "non-civil" citizens is so deeply seated that granting minority rights to Roma and Sinti unfortunately often does not achieve a sufficient majority. Spiliopoulou Åkermark mentions Italy (p. 16 and 17). Another example is Germany where the incorporation of a minority article into the German constitution (Grundgesetz) failed. The anticipated prejudices and the associated refusal of a "privileging" of the Roma and Sinti expected among the voters still prevent majorities in the parliaments – even in western ones.

In the case of the Roma and Sinti we will have to deal primarily with the second main category of the legislative indicators of the EURAC "Equal treatment and non-discrimination", which is the grave and difficult part of the FCNM.

The emphasis set on the territorial principle for the recognition of national minorities by the State Parties in Italy, but also in other countries, might (apart from pragmatic considerations) have been caused by the intention to "protect" the majority of the population against too many "pretensions" from the minorities. Settlement areas have the effect of creating a form of reservation and, thus, creating spaces that are free from minorities and minority rights.

While Italy gives hardly any reason for optimism, the example of Spain shows, that the FCNM can indeed effect a change of perspective for the governmental players, in this case a change from a socio-political problem to an issue of recognising distinct culture and identity (p. 23).

For the case of Germany, Spiliopoulou Åkermark rightly points out that reports can reach an enormous extent that exceeds the organisational capacities of the minorities. One could get the impression that this is an attempt to bury the Advisory Council and the minority associations in paper, but the State Parties are affected by this load as well. Here, streamlining and concentration is with good reason indicated.

For the Roma groups , Spiliopoulou Åkermark discovers that the load of different measures like reporting, project work and counselling interviews is a major problem.

Spiliopoulou Åkermarks' reflections on the dangers of a single-sided perception of the FCNM and minority politics are of particular value.

1) A tendency towards an overestimation of quantitative indicators (for example the Roma in Spain) and

2) the unconscious proposition that developments in terms of minority rights always proceed in a linear and progressive way.

Minority politics will in some cases move in cycles, including some significant setbacks, and in others persist on a low status quo.

Spiliopoulou Åkermarks directs her gaze consistently on the individuals and the life-worldly context of minority politics. The living conditions for members of national minorities should be improved on this micro-level. This is where the concrete conflict about respect and dignity takes place.

One can only agree with her when she points out the difficulties of evaluating the impact of the FCNM on the life conditions of individual members of minorities.

The systematic analysis by Florian Bieber illustrates the outer and inner factors for the development of minority rights in the Western Balkans.

Analogous to the development in Germany, the minority politics there also stands under the primacy of foreign policy. While the driving factors for a minority politics in Germany have been NATO membership, reunification and European eastern enlargement, it is the EU membership for the countries of the Former Yugoslavia.

It is interesting, that the FCNM of the Council of Europe is the EU's most important instrument for the implementation of minority rights. From the perspective of the minorities, such a network between the FCNM or the European Charter for Regional or Minority Languages with the policy of the EU would be highly desirable. This would also counter the allegation of double standards.

According to Bieber the gaps between legislation and practice in the countries of the Western Balkans have multiple reasons. We find some reasons in West European countries, too, as can be seen from the other two studies, and some reasons are owed to the transformation processes in those countries. This is why targeted aid from the EU for civil-societal structures appear both particularly necessary and very effective in terms of minority rights. This can also be expected from the positive initiatives on the local level that Bieber mentions (p. 13).

The question of political participation rights is especially touchy. A merely symbolic participation creates frustration instead of an impact; too many institutional rights, on the other

hand, could lead to minorities having a power of veto. Both exacerbates conflicts instead of soothing them.

Bieber gives no answer to the – admittedly – difficult question how, in his opinion, a "Point-of-no-return" in the accession countries should be secured. The experience from all over Europe shows that minority politics is a dynamic field which unfortunately knows not only progress, but also setbacks.

It might be characteristic for the first ten years of the FCNM that it had unfolded a bigger impact in countries that treat their minorities comparatively good or for groups which are comparatively well off in a country than for those who particularly need it.